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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF *THE PROSECUTOR V. PAUL GICHERU AND PHILIP
KIPKOECH BETT***

Public redacted version

**Decision on the “Prosecution’s Application under Article 58(1) of the Rome
Statute”**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ hereby issues a decision on the “Prosecution’s Application under Article 58(1) of the Rome Statute” (the “Application”)².

1. On 9 February 2015, the Prosecutor submitted the Application, in which she requested: (i) the issuance of warrants of arrest for Paul Gicheru, Philip Kipkoech Bett and a third individual; (ii) the transmission of requests for arrest and surrender of said persons to the competent authorities of the Republic of Kenya or any other State Party to which said persons may intend to travel; and (iii) the transmission of a request for the authorities of the arresting State to permit and enable “a body search” of said persons, searches of the premises where they were arrested and their residence at the time of their arrest as well as any such offices utilised by them. The Prosecutor also requests the seizure of any relevant evidence and its subsequent transmission to the Court.³

2. On 5 March 2015, the Prosecutor withdrew the Application in respect of the third individual for whom she had originally requested the issuance of a warrant of arrest.⁴

3. In order to decide on the Application, the Single Judge will examine in turn: (i) the appropriateness of the exercise of the Court’s jurisdiction; (ii) the requirements for the issuance of a warrant of arrest under article 58(1) of the Rome Statute (the “Statute”); and (iii) the related requests presented by the Prosecutor.

¹ ICC-01/09-147-US-Exp.

² ICC-01/09-144-US-Exp with annexes A-C, under seal *ex parte*, only available to the Prosecutor and the Registry (containing further submissions) and annexes 1.1-11.2, under seal *ex parte*, only available to the Prosecutor and the Registry (containing evidence in support of the Application).

³ Application, para. 127.

⁴ ICC-01/09-146-US-Exp, paras 4-5.

4. The Single Judge notes articles 21(1)(a), (3), 25(3)(a)-(d), 30, 54(1)(a), 57(3)(a) and (c), 58(1), 68(1), 70, 87, 89, 91-93 and 99 of the Statute and rules 162, 163 and 176(2) of the Rules of Procedure and Evidence (the “Rules”).

I. Appropriateness of the exercise of the Court’s jurisdiction

5. The Single Judge considers that the Court has jurisdiction over the present case as brought by the Prosecutor in the Application due to the fact that it relates to offences against the administration of justice under article 70 of the Statute.

6. With respect to the appropriateness of exercising jurisdiction, rule 162(2) of the Rules provides, as examples, a number of factors which the Chamber may consider in making a decision whether or not to exercise jurisdiction over offences against the administration of justice under article 70 of the Statute. Rule 162(1) of the Rules also states that before making this decision, the Court “may consult with States Parties that may have jurisdiction over the offence”.

7. The Single Judge considers that based on the available information before the Chamber,⁵ an effective national prosecution is unlikely to take place in the particular circumstances of the present case. Moreover, the size and extent of organisation of the alleged criminal effort to corruptly influence witnesses of the Court, as they appear from the evidence provided by the Prosecutor in support of the Application, as well as the related concerns for witness protection, including the general security situation with regard to persons associated with proceedings of the Court, are reasons overwhelmingly militating in favour of the exercise of the jurisdiction of the Court. In these circumstances, the Single Judge also does not consider that there is a need to consult with any State Party that may have jurisdiction over the offences allegedly committed.

⁵ Application, para. 14.

II. The requirements of article 58(1) of the Statute

8. Article 58(1) of the Statute states that the Chamber shall, on the application of the Prosecutor, issue a warrant of arrest for a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that: (a) there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and (b) the arrest of the person appears necessary: (i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances. The Single Judge will address these requirements in turn.

(a) Whether there are reasonable grounds to believe that Paul Gicheru and Philip Kipkoech Bett committed a crime within the jurisdiction of the Court

9. The Prosecutor alleges the individual criminal responsibility of Paul Gicheru and Philip Kipkoech Bett, under six counts with respect to six witnesses of the Court, for offences against the administration of justice of corruptly influencing a witness under article 70(1)(c) of the Statute, in conjunction with article 25(3)(a) of the Statute, or alternatively, article 25(3)(d), or (c), or, with respect to Paul Gicheru only, article 25(3)(b) of the Statute.⁶

10. In support of the Application, the Prosecutor has provided 58 annexes containing documentary evidence, including a number of witness statements and transcripts of interviews, official documents and correspondence. Based on a thorough analysis of the Application and the evidence, as laid out below, the Single Judge considers that the requisite elements of the offences against

⁶ Application, p. 45 and annex A.

the administration of justice are sufficiently established for the purpose of the issuance of a warrant of arrest.

i. Objective elements of article 70(1)(c) of the Statute

11. The Prosecutor alleges, and the evidence demonstrates, to the requisite standard of “reasonable grounds to believe” in accordance with article 58(1) of the Statute, that there has existed, from at least April 2013, a criminal scheme designed to systematically approach and corruptly influence witnesses of the Prosecutor through bribery and other methods of inducements in exchange for their withdrawal as prosecution witnesses and/or recantation of their prior statements to the Prosecutor.⁷ The evidence indicates that said scheme has been run in an organised manner and with a clear distribution of tasks. In particular, Paul Gicheru has been a manager and coordinator of the scheme, meaning that he has finalised agreements with corrupted witnesses, organised the formalisation of their withdrawal and handled the payment.⁸ The role of Philip Kipkoech Bett has been to contact the witnesses, at least some of whom they knew previously, and to make initial proposals before bringing them to the managers, particularly Paul Gicheru.⁹ The evidence indicates that a similar role within the same scheme was exercised by Walter Osapiri Barasa, for whom a warrant of arrest has been issued by the Court on 2 August 2013.¹⁰ There is also information that those witnesses who were successfully corrupted were enticed to make contact with other witnesses, for the purpose of their corruption.¹¹

12. The Single Judge turns now to the six witnesses that form the focus of the Application and thus merit special consideration.

⁷ Application, paras 16-30 and the cited evidence.

⁸ Application, paras 16-30 and the cited evidence.

⁹ Application, paras 16-30 and the cited evidence.

¹⁰ “Warrant of arrest for Walter Osapiri Barasa”, ICC-01/09-01/13-1-Red2.

¹¹ Application, paras 16-30 and the cited evidence.

13. As alleged by the Prosecutor, and according to the evidence, Philip Kipkoech Bett, together with another individual, approached Witness P-397, informed the witness of the scheme for corrupting witnesses, and took the witness to Paul Gicheru, who negotiated and agreed with the witness that five million Kenyan shillings (KES) would be paid in exchange of the witness's withdrawal as a witness of the Prosecutor.¹² On 27 and 30 April 2013, Paul Gicheru paid Witness P-397 two cash instalments of 600,000 and 400,000 KES, respectively.¹³ On 9 May 2013, Witness P-397 signed in the office and in the presence of Paul Gicheru an affidavit, stating that the witness no longer intended to testify and wished to withdraw the testimony previously given.¹⁴ Witness P-397 remained in contact with Paul Gicheru until at least January 2014.¹⁵

14. With respect to Witness P-516, the Prosecutor alleges and the evidence indicates that the witness was contacted in April or May 2013 on the instructions of Paul Gicheru.¹⁶ Witness P-516 then met Paul Gicheru in Eldoret.¹⁷ They discussed and agreed on the terms of the witness's withdrawal.¹⁸ In July 2013, Witness P-516 failed to attend a meeting with officials of the Court.¹⁹ The Single Judge notes that, in the Application, the Prosecutor attributes no role to Philip Kipkoech Bett in the interactions with this particular witness.

15. The Prosecutor alleges, and the evidence sufficiently demonstrates that corrupt influence has been exercised on Witness P-613 between April and September 2013 simultaneously by several participants of the scheme, and in

¹² Application, paras 31-46 and the cited evidence.

¹³ Application, paras 31-46 and the cited evidence.

¹⁴ Application, paras 31-46 and the cited evidence.

¹⁵ Application, paras 31-46 and the cited evidence.

¹⁶ Application, paras 47-53 and the cited evidence.

¹⁷ Application, para. 51 and the cited evidence.

¹⁸ Application, paras 47-53 and the cited evidence.

¹⁹ Application, paras 47-53 and the cited evidence.

a sustained manner.²⁰ On or around 29 April 2013, Philip Kipkoech Bett told Witness P-613 that Paul Gicheru was paying witnesses for their withdrawal, and named some witnesses who had been bribed.²¹ On or around 7 May 2013, Philip Kipkoech Bett told Witness P-613 that other witnesses had signed affidavits withdrawing as witnesses of the Prosecutor at Paul Gicheru's office in Eldoret.²² On 19 July 2013, Philip Kipkoech Bett again told Witness P-613 of the witnesses who were paid to withdraw and advised Witness P-613 to accept to be contacted to discuss how much the witness should be paid.²³ On 29 August 2013, another individual acting as part of the scheme called Witness P-613 and offered payment in exchange of the recantation of the witness's evidence.²⁴ On 7 September 2013, yet another individual acting on behalf of Paul Gicheru contacted Witness P-613 and told the witness that the witness could be paid, and be given employment, if the witness withdrew.²⁵ The latter individual met with Witness P-613 on 13 September 2013 and attempted to persuade the witness to meet members of the scheme to directly negotiate the payment.²⁶ Finally, it is to be noted that Philip Kipkoech Bett also attempted to contact Witness P-613 through one further intermediary in September 2013.²⁷

16. As alleged by the Prosecutor in the Application, members of the scheme also approached and exercised corrupt influence on Witness P-800.²⁸ Philip Kipkoech Bett told the witness that Paul Gicheru was negotiating with witnesses to arrange for their withdrawal.²⁹ On 21 July 2013, Walter Osapiri

²⁰ Application, paras 54-76 and the cited evidence.

²¹ Application, paras 54-76 and the cited evidence.

²² Application, paras 54-76 and the cited evidence.

²³ Application, paras 54-76 and the cited evidence.

²⁴ Application, paras 54-76 and the cited evidence.

²⁵ Application, paras 54-76 and the cited evidence.

²⁶ Application, paras 54-76 and the cited evidence.

²⁷ Application, paras 54-76 and the cited evidence.

²⁸ Application, paras 77-91 and the cited evidence.

²⁹ Application, paras 77-91 and the cited evidence.

Barasa offered Witness P-800 payment, which would be given by Paul Gicheru for the witness's withdrawal.³⁰ There is evidence that Philip Kipkoech Bett introduced Witness P-800 to Paul Gicheru, and that the latter indeed promised to the witness a considerable amount of money (one and a half to two and a half million KES) was promised to Witness P-800 by Paul Gicheru.³¹ Witness P-800 signed an affidavit withdrawing as a witness of the Prosecutor in the offices of Mitei & Company Advocates, where the witness was informed that instructions had come from Paul Gicheru.³² In early August 2013, Witness P-800 broke off contact with the Court.³³

17. Furthermore, the Prosecutor alleges in the Application, and the evidence demonstrates, the corrupt influence on Witness P-495.³⁴ In or around September 2013, Witness P-495 was contacted as part of the scheme, and was offered a bribe of two and a half million KES as well as an employment opportunity.³⁵ Witness P-495 agreed to the offer, and subsequently met with Paul Gicheru and Philip Kipkoech Bett.³⁶ Paul Gicheru privately discussed the terms of the agreement with Witness P-495.³⁷ Other evidence supports the conclusion that Witness P-495 accepted the offer of a bribe from Paul Gicheru in order to withdraw as a witness.³⁸

18. Finally, the Prosecutor alleges and there is sufficient evidence to demonstrate that corrupt influence was exercised on Witness P-536.³⁹ The witness was contacted numerous times by Walter Osapiri Barasa between

³⁰ Application, paras 77-91 and the cited evidence.

³¹ Application, paras 77-91 and the cited evidence.

³² Application, paras 77-91 and the cited evidence.

³³ Application, paras 77-91 and the cited evidence.

³⁴ Application, paras 92-101 and the cited evidence.

³⁵ Application, paras 92-101 and the cited evidence.

³⁶ Application, paras 92-101 and the cited evidence.

³⁷ Application, paras 92-101 and the cited evidence.

³⁸ Application, paras 92-101 and the cited evidence.

³⁹ Application, paras 102-109 and the cited evidence.

May and August 2013 for the purpose of offering a bribe.⁴⁰ On 25 July 2013, Walter Osapiri Barasa explicitly promised Witness P-536 a payment of at least 1,400,000 KES.⁴¹ Walter Osapiri Barasa told Witness P-536 that Paul Gicheru was in charge but that he did not contact the witness directly because he should not be exposed.⁴² The Single Judge notes that, in the Application, the Prosecutor attributes no role to Philip Kipkoech Bett in the interactions with this particular witness.

19. Bearing in mind, as previously stated, that “article 70(1)(c) of the Statute proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the testimony to be given by a witness [...]”⁴³, and that “the offence of corruptly influencing a witness is constituted independently from whether the pursued impact or influence is actually achieved”,⁴⁴ the Single Judge considers that the approaches to the witnesses attributable to Paul Gicheru and Philip Kipkoech Bett, as specified above, satisfy the objective elements of article 70(1)(c) of the Statute.

ii. Individual criminal responsibility (article 25 of the Statute) and the mental element (article 30 of the Statute)

20. In terms of applicable law, the Single Judge recalls that the Chamber has held previously that, by virtue of rule 163(1) of the Rules, article 25(3) of the Statute is equally applicable to offences against the administration of justice under article 70 of the Statute.⁴⁵

⁴⁰ Application, paras 102-109 and the cited evidence.

⁴¹ Application, paras 102-109 and the cited evidence.

⁴² Application, paras 102-109 and the cited evidence.

⁴³ Pre-Trial Chamber II, “Decision pursuant to article 61(7)(a) and (b) of the Rome Statute”, 11 November 2014, ICC-01/05-01/13-749, para. 30.

⁴⁴ Pre-Trial Chamber II, “Decision pursuant to article 61(7)(a) and (b) of the Rome Statute”, 11 November 2014, ICC-01/05-01/13-749, para. 30.

⁴⁵ “Decision pursuant to article 61(7)(a) and (b) of the Rome Statute”, 11 November 2014, ICC-01/05-01/13-749, para. 32.

21. As laid out above, the Single Judge considers that there existed an organised and well-coordinated scheme, involving, *inter alia*, both Paul Gicheru and Philip Kipkoech Bett, aiming at the corruption of witnesses of the Prosecutor. Paul Gicheru and Philip Kipkoech Bett played different roles in the scheme. While Paul Gicheru had an overall coordinating role in the effort to corrupt witnesses, including the six who form the focus of the Application, Philip Kipkoech Bett participated under Paul Gicheru's direction in the implementation of the effort in relation to certain witnesses, including Witnesses P-397, P-613, P-800 and P-495. The evidence also indicates that Paul Gicheru and Philip Kipkoech Bett acted in a coordinated manner with the intent to corruptly influence the relevant witnesses, and with the knowledge that their interactions with witnesses constituted corrupt influence.

22. Accordingly, the Single Judge is of the view that there are reasonable grounds to believe that Paul Gicheru is responsible under article 70(1)(c) in conjunction with article 25(3)(a), or (b) of the Statute for the offence of corruptly influencing Witnesses P-397, P-516, P-613, P-800, P-495 and P-536, and that Philip Kipkoech Bett is responsible under article 70(1)(c) in conjunction with article 25(3)(a), (c) or (d) of the Statute for the offence of corruptly influencing Witnesses P-397, P-613, P-800 and P-495.

23. The Single Judge underlines that these findings are without prejudice for the Prosecutor to allege the appropriate modes of liability in the document containing the charges to be submitted under article 61(3)(a) of the Statute following the arrest and surrender of Paul Gicheru and/or Philip Kipkoech Bett.

(b) Whether the arrest of Paul Gicheru and Philip Kipkoech Bett appears necessary

24. The issuance of a warrant of arrest is premised on the fulfilment of any or all of the requirements under article 58(1)(b) of the Statute, in particular if the arrest of the person appears necessary: (i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; (iii) or to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

25. In the present case, the Prosecutor asserts that the arrests of Paul Gicheru and Philip Kipkoech Bett "are necessary" for all three reasons articulated in article 58(1)(b) of the Statute.⁴⁶

26. The Single Judge considers that the arrest of said persons appear necessary to ensure their appearance at trial. In particular, it seems unlikely, on the basis of the evidence currently before the Single Judge and the security circumstances prevailing in the country where the offences were committed, that the persons concerned will respect the authority of the Court by promptly submitting themselves to its jurisdiction voluntarily. The Single Judge is also attentive of the network of connections they dispose of and their access to financial resources, in particular through Paul Gicheru, which they could use to evade justice. In addition, the Single Judge notes that the offences for which proceedings against Paul Gicheru and Philip Kipkoech Bett are being brought by the Prosecutor carry a prison sentence of up to five years.

27. The Single Judge further considers that arrest of the persons appear necessary to ensure that they do not obstruct or endanger the investigation or

⁴⁶ Application, para. 120.

court proceedings, in light of the evidence that they have allegedly engaged in efforts to corrupt witnesses of the Court.

28. Furthermore, considering the evidence, discussed above, that the campaign to corrupt the witnesses of the Prosecutor was comprehensive and systematic, the Single Judge considers that the arrest of the persons appears necessary to prevent the further exercise of corrupt influence on the witnesses of the Court.

29. Accordingly, the requirements of article 58(1) of the Statute are met for the issuance of warrants of arrest against Paul Gicheru and Philip Kipkoech Bett as requested by the Prosecutor.

III. Related requests by the Prosecutor

30. The Prosecutor requests that the Single Judge issue an order requesting the arresting State to take measures for: (a) the search of Paul Gicheru and Philip Kipkoech Bett and any premises where they may be arrested including their residences at the time of their arrests, and any such offices used by them; (b) the seizure of any relevant evidence, such as cell phones, computers or PDAs, diaries, address books, notes or records of meetings or conversations, financial or banking records and/or cash which is/are on reasonable grounds believed to be used in, connected with, or to provide evidence of , the crime described in this Application; (c) permitting an investigator from the Office of the Prosecutor to be present during the execution of any such searches; and (d) the transmission of such evidence to the Court.⁴⁷

31. The Single Judge notes article 57(3)(a) of the Statute, which provides that the Chamber may, at the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation. The Single

⁴⁷ Application, para. 127.

Judge is satisfied that the requested investigative measures may be of assistance to the Prosecutor's compliance with her investigative obligation under article 54(1)(a) of the Statute. Accordingly, the requests presented by the Prosecutor should be granted.

FOR THESE REASONS, THE SINGLE JUDGE

a) **ISSUES A WARRANT OF ARREST** against **Paul GICHERU**, lawyer based at [REDACTED] [REDACTED], Kenya (email address: [REDACTED]; office telephone number: [REDACTED]);

allegedly criminally responsible for the following offences against the administration of justice:

Count 1

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

Paul GICHERU is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(b) for solicitation and/or inducement, of the crime of corruptly influencing a witness, by paying **Witness P-397** one million Kenyan Shillings (1,000,000 KES) and by offering to pay the witness five million Kenyan shillings (5,000,000 KES) in order to influence the witness to withdraw as a Prosecution witness, committed from April 2013 to January 2014 and at Eldoret, Kenya.

Count 2

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

Paul GICHERU is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(b) for

solicitation and/or inducement, of the crime of corruptly influencing a witness, by offering or paying **Witness P-516** a bribe of at least five hundred thousand Kenyan Shillings (500,000 KES) in order to influence the witness to withdraw as a Prosecution witness, committed in April and May 2013 and at Eldoret, Kenya.

Count 3

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

Paul GICHERU is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(b) for solicitation and/or inducement, of the crime of corruptly influencing a witness, by offering to pay **Witness P-613** a bribe and job offer inducement in order to influence the witness to withdraw as a Prosecution witness, committed from April to September 2013 and, *inter alia*, at Eldoret, Kenya.

Count 4

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

Paul GICHERU is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(b) for solicitation and/or inducement, of the crime of corruptly influencing a witness, by offering to pay **Witness P-800** a bribery payment of between one million five hundred thousand (1,500,000 KES), and two million and five hundred thousand Kenyan Shillings (2,500,000 KES) in order to influence the witness to withdraw as a Prosecution witness, committed in or around July 2013 and, *inter alia*, in Kenya.

Count 5

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

Paul GICHERU is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(b) for solicitation and/or inducement, of the crime of corruptly influencing a witness, by offering **Witness P-495** a bribery payment of two and a half million Kenyan Shillings (2,500,000 KES) and a job offer inducement in exchange for the witness's withdrawal as a Prosecution witness, committed in or around September 2013 in Kenya.

Count 6

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(b) of the Statute.

Paul GICHERU is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(b) for solicitation and/or inducement, of the crime of corruptly influencing a witness, by offering **Witness P-536** a bribery payment of at least one million Kenyan Shillings (1,000,000 KES) or at least one million and four hundred thousand Kenyan Shillings (1,400,000 KES) in exchange for the witness's withdrawal as a Prosecution witness, committed from May to August 2013.

- b) **ISSUES A WARRANT OF ARREST** against **Philip Kipkoech BETT**, also known as "Kipseng'erya"; hailing from [REDACTED], Kenya; appearing to be resident in [REDACTED], Kenya;

allegedly criminally responsible for the following offences against the administration of justice:

Count 1

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(d), or 25(3)(c) of the Statute.

Philip Kipkoech BETT is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article

25(3)(d) for contributing in any other way to the commission or attempted commission by a group of persons acting with a common purpose, or article 25(3)(c) for aiding, abetting or otherwise assisting in the commission or attempted commission, for the purpose of facilitating the commission, of the crime of corruptly influencing a witness, by paying **Witness P-397** one million Kenyan Shillings (1,000,000 KES) and by offering to pay the witness five million Kenyan shillings (5,000,000 KES) in order to influence the witness to withdraw as a Prosecution witness, committed from April 2013 to January 2014 and at Eldoret, Kenya.

Count 2

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(d), or 25(3)(c) of the Statute.

Philip Kipkoech BETT is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(d) for contributing in any other way to the commission or attempted commission by a group of persons acting with a common purpose, or article 25(3)(c) for aiding, abetting or otherwise assisting in the commission or attempted commission, for the purpose of facilitating the commission, of the crime of corruptly influencing a witness, by offering to pay **Witness P-613** a bribe and job offer inducement in order to influence the witness to withdraw as a Prosecution witness, committed from April to September 2013 and, *inter alia*, at Eldoret, Kenya.

Count 3

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(d), or 25(3)(c) of the Statute.

Philip Kipkoech BETT is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(d) for contributing in any other way to the commission or attempted commission by a group of persons acting with a common purpose, or article 25(3)(c) for aiding, abetting or otherwise assisting in the commission or attempted commission, for the purpose of facilitating the commission of the crime of corruptly influencing a witness, by offering to pay **Witness P-800**

a bribery payment of between one million five hundred thousand (1,500,000 KES), and two million and five hundred thousand Kenyan Shillings (2,500,000 KES) in order to influence the witness to withdraw as a Prosecution witness, committed in or around July 2013 and, *inter alia*, in Kenya.

Count 4

Corruptly influencing a witness – article 70(1)(c) of the Statute read in conjunction with articles 25(3)(a), or alternatively 25(3)(d), or 25(3)(c) of the Statute.

Philip Kipkoech BETT is criminally responsible under article 25(3)(a) as a direct co-perpetrator, or alternatively under article 25(3)(d) for contributing in any other way to the commission or attempted commission by a group of persons acting with a common purpose, or article 25(3)(c) for aiding, abetting or otherwise assisting in the commission or attempted commission, for the purpose of facilitating the commission of the crime of corruptly influencing a witness, by offering **Witness P-495** a bribery payment of two and a half million Kenyan Shillings (2,500,000 KES) and a job offer inducement in exchange for the witness's withdrawal as a Prosecution witness, committed in or around September 2013 in Kenya.

- c) **ORDERS** the Registrar to prepare, in consultation and coordination with the Prosecutor, and transmit a request for the arrest and surrender of Paul Gicheru and Philip Kipkoech Bett, in accordance with articles 89(1) and 91 of the Statute, to the competent authorities of the Republic of Kenya, or any other State to which it is believed that they intend to travel; or to prepare and transmit, if the circumstances so require, a request for their provisional arrest in accordance with article 92 of the Statute;
- d) **ORDERS** the Registrar to prepare, in consultation and coordination with the Prosecutor, and transmit a request for cooperation to the relevant State(s), in accordance with articles 93(1) and 99(1) of the Statute, requesting such State(s) to take appropriate measures for:

- (i) the body/personal search of Paul Gicheru and Philip Kipkoech Bett and any premises where they may be arrested, their residences at the time of their arrests, and any such offices utilised by them;
- (ii) the seizure of any relevant evidence, such as cell phones, computers or PDAs, diaries, address books, notes or records of meetings or conversations, financial or banking records and/or cash which are, on reasonable grounds, believed to be used in, connected with, or to provide evidence of, the offences for which these warrants of arrest are issued;
- (iii) the permission for an investigator from the Office of the Prosecutor to be present during the execution of any such searches; and
- (iv) the transmission of any such seized evidence to the Court.

Done in both English and French, the English version being authoritative.

[signed]

Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 10 March 2015

At The Hague, The Netherlands