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'ANNEX 1 to Submission of Prosecution Pre-Trial Brief,
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KSC-BC-2023-10, *Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala*
Pre-Trial Brief pursuant to Rule 95(4)(a)

In: **KSC-BC-2023-10**
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 16 February 2024

Language: English

Classification: Public

Public redacted version of 'Prosecution Pre-Trial Brief'

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I. Introduction

1. Between approximately 5 and 12 April 2023, Ismet BAHTIJARI, Sabit JANUZI, and Haxhi SHALA (collectively, the 'Accused') coordinated with one another, and others, to try to prevent [REDACTED] ('Witness 1') from testifying before the Kosovo Specialist Chambers ('KSC').

2. To those ends, BAHTIJARI and JANUZI – in consultation with, and directed by SHALA - individually approached Witness 1: BAHTIJARI on 5 April 2023 (the 'First Approach') and JANUZI on 12 April 2023 (the 'Second Approach') (collectively, the 'Approaches').

3. During the Approaches, BAHTIJARI and JANUZI indicated that they had heard Witness 1 is a witness [REDACTED].¹ In the First Approach, BAHTIJARI confirmed to Witness 1 that if he were to testify, his life, and that of a family member, would be under threat. When the success of the First Approach was unclear, JANUZI made the Second Approach to Witness 1 and conveyed an offer to 'help' and 'meet any of [Witness 1]'s needs' if he committed to withdrawing his testimony [REDACTED]. In short, in order to intimidate Witness 1 into agreeing to withdraw his testimony, the Accused both seriously threatened Witness 1 and offered him generous benefits for compliance.

4. Through these same actions, the Accused attempted to obstruct the conduct of proceedings before the KSC, and prosecutors, Judges, and other official persons at the Specialist Prosecutor's Office ('SPO') and KSC from performing official duties.

¹ 112906-TR-AT Part 1 Revised 1-ET RED, pp.22-24; 112769-112772 RED, paras 5-6; 116623-01-TR-AT-ET, pp.5, 7, 9, 31.

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5. The Accused's intent in undertaking these unlawful actions can be discerned through their acts and statements leading up to, during, and after the First and Second Approaches.

6. The evidence will establish beyond a reasonable doubt that their actions amounted to the following crimes:

- a. Count 1: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES, by serious threat, between at least 5 and 12 April 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under 2019 Kosovo Criminal Code, Law No. 06/L-074 ('KCC') Articles 17, 21, 28, 31, 33, 35, and 401(1) and (5), and Articles 15(2) and 16(3) of the Law;
- b. Count 2: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES, by participating in the common action of a group, between at least 5 and 12 April 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 28, 33, 35, and 401(2) and (5), and Articles 15(2) and 16(3) of the Law; and
- c. Count 3: INTIMIDATION DURING CRIMINAL PROCEEDINGS, between at least 5 and 12 April 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21, 31, 33, 35, and 387, and Articles 15(2) and 16(3) of the Law.

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II. Statement of Facts

7. SHALA is the former commander of BAHTIJARI and JANUZI in the 121 Brigade of the Kosovo Liberation Army ('KLA').² All three have remained in contact since the war, with JANUZI considering SHALA a friend with whom he maintains frequent contact and to whom he provides political support.³

A. First Approach

8. On 5 April 2023, at approximately 10:32, SHALA called JANUZI,⁴ [REDACTED].⁵ Approximately two hours later, BAHTIJARI (also known as 'Shema'),⁶ [REDACTED],⁷ also called JANUZI.⁸

9. Approximately three hours after BAHTIJARI called JANUZI, BAHTIJARI called Witness 1 via Facebook Messenger.⁹ Witness 1's partner, [REDACTED], answered, and BAHTIJARI asked for Witness 1.¹⁰ [REDACTED] said that he was napping and asked if she should wake him, and BAHTIJARI responded in the negative.¹¹

10. WITNESS 1 and BAHTIJARI [REDACTED].¹²

² 116063-TR-ET Part 1, pp.9-10; 116065-TR-ET Part 1 RED, pp.7-9.

³ 116063-TR-ET Part 1, pp.9-13, 116063-TR-ET Part 4, p.4; 116065-TR-ET Part 1 RED, pp.7-9.

⁴ SPOE00339009-00339013 RED, p.SPOE00339011 (Call Log #3).

⁵ 112906-TR-AT Part 1 Revised 1-ET RED, p.14.

⁶ 112769-112772 RED, p.112769; 112906-TR-AT Part 1 Revised 1-ET RED, pp.10-12; 116063-TR-ET Part 1, pp.18,20.

⁷ 112906-TR-AT Part 1 Revised 1-ET RED, p.4.

⁸ SPOE00339014-00339017, p.SPOE00339016 (Call Log #1-2); SPOE00339033-00339038, pp.SPOE00339037 (Call Log #1), SPOE00339038 (Chats #1).

⁹ SPOE00339024-00339027 RED, p.SPOE00339026 (Call Log #1-2); 113310-113320 RED, p.113320.

¹⁰ 112906-TR-AT Part 1 Revised 1-ET RED, pp.24-25.

¹¹ 112906-TR-AT Part 1 Revised 1-ET RED, pp.24-25.

¹² 112769-112772 RED, para.15; 112909-TR-ET Part 1, pp.5, 7.

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11. Approximately half an hour after the call, BAHTIJARI arrived at the home of Witness 1.¹³ Members of Witness 1's family ([REDACTED]) were present during the conversation with BAHTIJARI.¹⁴

12. BAHTIJARI informed Witness 1 that he had not come for a good purpose and added an Albanian phrase generally meaning that his purpose was a bad one, as he was acting as the 'mouthpiece' or 'advocate' of 'the devil.'¹⁵ BAHTIJARI said he had been sent by SHALA (also known as 'Topi')¹⁶ to deliver the message that 'they' know that Witness 1 was a harmful witness [REDACTED] and Witness 1 should withdraw his testimony.¹⁷

13. Specifically, BAHTIJARI told Witness 1 that SHALA had recently approached BAHTIJARI at a café which BAHTIJARI frequents, and SHALA told BAHTIJARI to go and tell Witness 1 that 'they' had heard that Witness 1 is a witness with harmful evidence [REDACTED] and that he should withdraw.¹⁸ Witness 1 believed that SHALA's message instructing him to withdraw his testimony originated from [REDACTED] and the families of [REDACTED].¹⁹ [REDACTED].²⁰

14. BAHTIJARI appeared nervous and uncomfortable to Witness 1.²¹ Witness 1 asked BAHTIJARI whether 'they' had told BAHTIJARI that 'they' would kill Witness

¹³ 112769-112772 RED, para.4.

¹⁴ 112769-112772 RED, para.12; 112909-TR-ET Part 1, pp.6, 8. *See also* 116065-TR-ET Part 1 RED, p.17.

¹⁵ 112906-TR-AT Part 1 Revised 1-ET RED, p.22; 112769-112772 RED, para.5. Any quotations in this Rule 86(3)(b) Outline are translations of Albanian to English and subject to revision.

¹⁶ 112768-112768 RED, para.2.

¹⁷ 112906-TR-AT Part 1 Revised 1-ET RED, pp.22-24; 112769-112772 RED, para.5. *See also* 116623-01-TR-AT-ET, pp.3-4, 7.

¹⁸ 112906-TR-AT Part 1 Revised 1-ET RED, pp.22-24; 112769-112772 RED, paras 5-6; 113354-113355 RED, para.8.

¹⁹ 112906-TR-AT Part 1 Revised 1-ET RED, pp.22-23; 112769-112772 RED, para.6.

²⁰ [REDACTED].

²¹ 112906-TR-AT Part 1 Revised 1-ET RED, pp.13, 22; 112769-112772 RED, para.7.

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1 or his son if Witness 1 testified, and BAHTIJARI kept his head down and replied in the affirmative.²² By 'they,' Witness 1 was referring to SHALA, [REDACTED].²³

15. Witness 1 then told BAHTIJARI to tell [REDACTED] that if he were to go to The Hague, he would 'fuck all of their mothers' and to tell them that if Witness 1 saw them, that Witness 1 would kill them if they did not kill Witness 1 first.²⁴

16. According to Witness 1, [REDACTED].²⁵ Specifically, according to Witness 1, [REDACTED].²⁶ Witness 1 related that after that incident, [REDACTED].²⁷ Witness 1 was later told that SHALA, [REDACTED], had also given an order that he be killed.²⁸ [REDACTED].²⁹

17. BAHTIJARI left Witness 1's house and walked down the street towards a car waiting approximately 200 meters away.³⁰ Two men entered the car, with a third person in the driver's seat.³¹ Witness 1 concluded that these persons had been outside watching his home while BAHTIJARI was with him.³²

18. As a result of the First Approach, Witness 1 became very concerned for the safety of [REDACTED] and his children, including whether he would be able to defend his family against someone coming to their home to harm Witness 1 and/or his family.³³

²² 112769-112772 RED, para.8. *See also* 112906-TR-AT Part 1 Revised 1-ET RED, pp.13, 22-24 (different wording); 116623-01-TR-AT-ET, p.28.

²³ 112906-TR-AT Part 1 Revised 1-ET RED, pp.21-22; 112769-112772 RED, para.8.

²⁴ 112906-TR-AT Part 1 Revised 1-ET RED, p.13; 112769-112772 RED, para.9.

²⁵ [REDACTED]; 112769-112772 RED, para.9. *See also* 112906-TR-AT Part 1 Revised 1-ET RED, p.26.

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ *See* [REDACTED].

³⁰ 112769-112772 RED, para.11.

³¹ 112769-112772 RED, para.11.

³² 112769-112772 RED, para.11.

³³ 112906-TR-AT Part 1 Revised 1-ET RED, p.27; 112769-112772 RED, para.13.

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19. Shortly after BAHTIJARI's visit to Witness 1 and then throughout the evening of 5 April 2023, SHALA and JANUZI and JANUZI and BAHTIJARI had numerous text message and phone contacts:

- i. First, JANUZI called SHALA three times over the span of an hour with no answer, before sending SHALA a text message asking him to call.³⁴ SHALA then called JANUZI, which JANUZI missed, and then JANUZI called back and connected with SHALA.³⁵
- ii. Almost immediately after his call with SHALA, JANUZI called BAHTIJARI.³⁶
- iii. A short time later, SHALA texted JANUZI, writing, 'Tomorrow, Sabit,' to which JANUZI responded, 'Ok, I will let them know.'³⁷ SHALA almost immediately replied, 'Wait a bit more,' and, within seconds, SHALA called JANUZI.³⁸ SHALA and JANUZI then discussed meeting in person over text messages, with JANUZI at one point indicating that the meeting must be at or close to his home because he did not have his car.³⁹
- iv. Shortly after texting with SHALA to arrange a meeting, JANUZI called BAHTIJARI three times without answer and also sent BAHTIJARI two text messages.⁴⁰ BAHTIJARI ultimately called JANUZI back several times, connecting briefly each time.⁴¹

³⁴ SPOE00339009-00339013 RED, pp.SPOE00339011 (Call Log #4-6), SPOE00339012 (Chats #1); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #2).

³⁵ SPOE00339009-00339013 RED, pp.SPOE00339011 (Call Log #7-8), SPOE00339012 (Chats #2-3); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #3).

³⁶ SPOE00339014-00339017, pp.SPOE00339016 (Call Log #3), SPOE00339017 (Chats #2).

³⁷ SPOE00339009-00339013 RED, p.SPOE00339012 (Chats #4-5); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #4-5).

³⁸ SPOE00339009-00339013 RED, pp.SPOE00339011 (Call Log #9), SPOE00339012 (Chats #6-7); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #6).

³⁹ SPOE00339009-00339013 RED, p.SPOE00339012 (Chats #8-15); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #7-14).

⁴⁰ SPOE00339014-00339017, pp.SPOE00339016 (Call Log #4-6), SPOE00339017 (Chats #3-7); SPOE00339033-00339038, p.SPOE00339038 (Chats #2-7).

⁴¹ SPOE00339014-00339017, pp.SPOE00339016 (Call Log #7-10), SPOE00339017 (Chats #8-9); SPOE00339033-00339038, p.SPOE00339038 (Chats #8-9).

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- v. Within an hour of BAHTIJARI's last call to JANUZI, SHALA called JANUZI,⁴² and then JANUZI called BAHTIJARI.⁴³
 - vi. Finally, a short time later, SHALA sent two text messages to JANUZI, writing 'come out' and 'where are you'.⁴⁴
20. In the following days, SHALA and JANUZI remained in contact, including speaking by phone at least four times between 6 April and 9 April 2023.⁴⁵

B. Second Approach

21. On 12 April 2023, JANUZI sent a series of text messages to [REDACTED] ('Person 1'), [REDACTED], to ask if Person 1 could arrange a meeting between JANUZI and Witness 1, while specifying that he 'did not want to tell everyone'.⁴⁶ A short time later, JANUZI and Person 1 connected on a Facebook Messenger voice call, and JANUZI sent a message to Person 1 containing JANUZI's phone number.⁴⁷
22. Later on 12 April 2023, Person 1 informed Witness 1 that JANUZI wanted to get in touch with him and gave Witness 1 JANUZI's phone number.⁴⁸ Within the hour, Witness 1 spoke to JANUZI by telephone – [REDACTED].⁴⁹ JANUZI said that he would come to Witness 1's place to meet within an hour.⁵⁰
23. Within minutes of speaking to Witness 1, JANUZI called SHALA.⁵¹

⁴² SPOE00339009-00339013 RED, p.SPOE00339011 (Call Log #11).

⁴³ SPOE00339014-00339017, p.SPOE00339016 (Call Log #11).

⁴⁴ SPOE00339009-00339013 RED, pp.SPOE00339012-00339013 (Chats #17-18); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #15-16).

⁴⁵ SPOE00339009-00339013 RED, pp.SPOE00339011 (Call Log #12-15), SPOE00339013 (Chats #19-22); SPOE00339028-00339032 RED, p.SPOE00339032 (Chats #17).

⁴⁶ SPOE00339018-00339023 RED, p.SPOE00339022 (Chats #9-20); 112906-TR-AT Part 1 Revised 1-ET RED, pp.5-6; 116063-TR-ET Part 1, p.32; 116063-TR-ET Part 2, pp.7-8.

⁴⁷ SPOE00339018-00339023 RED, pp.SPOE00339023 (Chats #21-22).

⁴⁸ 112906-TR-AT Part 1 Revised 1-ET RED, pp.6, 16; 113310-113320 RED, pp.113310-113315. *See also* 112909-TR-ET Part 1, p.9.

⁴⁹ 112906-TR-AT Part 1 Revised 1-ET RED, pp.6-7, 13-14; 113310-113320 RED, pp.113310-113315.

⁵⁰ 112906-TR-AT Part 1 Revised 1-ET RED, p.7.

⁵¹ SPOE00339009-00339013 RED, p.SPOE00339011 (Call Log #16).

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24. After arriving at Witness 1's home, JANUZI told Witness 1 that SHALA had sent him to follow up from BAHTIJARI's meeting with Witness 1 to see how things stood with Witness 1 as a result of that meeting.⁵² JANUZI initially indicated that he had sent BAHTIJARI⁵³ but ultimately confirmed that the request had originated with SHALA.⁵⁴

25. Specifically, JANUZI confirmed that BAHTIJARI met with SHALA after the First Approach and that SHALA had told JANUZI that he did not know how things stood as a result of the First Approach.⁵⁵ As a result, SHALA sent JANUZI to follow-up, [REDACTED].⁵⁶

26. JANUZI brought up the issue of Witness 1's testimony.⁵⁷ Specifically, JANUZI recounted SHALA having told him that Witness 1 was a witness [REDACTED].⁵⁸ JANUZI conveyed a message from SHALA that if Witness 1 agreed not to testify, then, in return, SHALA and others would help Witness 1.⁵⁹ JANUZI quoted SHALA as having said: 'Our request to him is to let us know whether there is a possibility for him to withdraw, and we would be ready to meet any of [Witness 1]'s needs.'⁶⁰ JANUZI also recounted SHALA as having said that he personally had no issues with Witness 1, but he did not know what relationship 'the others' had with him.⁶¹

⁵² 112906-TR-AT Part 1 Revised 1-ET RED, pp.7-8, 10-11, 20-21; 116623-01-TR-AT-ET, pp.4-10.

⁵³ 116623-01-TR-AT-ET, p.3.

⁵⁴ 116623-01-TR-AT-ET, p.4.

⁵⁵ 116623-01-TR-AT-ET, pp.6, 26.

⁵⁶ 116623-01-TR-AT-ET, pp.6, 8, 26, 31, 46.

⁵⁷ 116623-01-TR-AT-ET, pp.5, 7, 9, 31.

⁵⁸ 116623-01-TR-AT-ET, p.7.

⁵⁹ 116623-01-TR-AT-ET, pp.7, 9.

⁶⁰ 116623-01-TR-AT-ET, p.7.

⁶¹ 116623-01-TR-AT-ET, p.31.

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27. Witness 1 expressed his concern to JANUZI that [REDACTED] or others would kill him or have him killed.⁶² [REDACTED].⁶³ Witness 1 also recounted to JANUZI the death threat that he received through BAHTIJARI.⁶⁴

28. Witness 1 did not confirm or deny being a witness.⁶⁵ Witness 1 told JANUZI that if SHALA offered him 200,000 euros, they would have a deal.⁶⁶

29. JANUZI told Witness 1 that he would tell SHALA⁶⁷ and 'them'⁶⁸ what Witness 1 had said. JANUZI said that he does not speak on the phone about these matters and would return with an answer to Witness 1's request.⁶⁹ JANUZI acknowledged mistreatment and injustices against Witness 1, and added that if 'they' wanted to lower tensions, he felt they should reward Witness 1 for the damage 'they' have caused.⁷⁰

30. This meeting between JANUZI and Witness 1 took place in the presence of the family of Witness 1.⁷¹

31. After the meeting, JANUZI called SHALA.⁷² Less than an hour later, SHALA called JANUZI.⁷³

32. As a result of this meeting, Witness 1 was further concerned for his safety and that of his family.⁷⁴ The prospect of the meeting itself had already raised security concerns for Witness 1, reflected in the fact that he had sent one his sons outside to

⁶² 116623-01-TR-AT-ET, p.21.

⁶³ 116623-01-TR-AT-ET, pp.16, 18, 21, 23-24.

⁶⁴ 116623-01-TR-AT-ET, p.28.

⁶⁵ 112906-TR-AT Part 1 Revised 1-ET RED, p.10.

⁶⁶ 116623-01-TR-AT-ET, pp.21, 25, 26.

⁶⁷ 116623-01-TR-AT-ET, pp.45-46.

⁶⁸ 116623-01-TR-AT-ET, p.27.

⁶⁹ 116623-01-TR-AT-ET, pp.45-46.

⁷⁰ 116623-01-TR-AT-ET, pp.8, 22, 47.

⁷¹ 116623-01-TR-AT-ET, pp.3, 47; 112906-TR-AT Part 1 Revised 1-ET RED, pp.19-20. *See also* 112909-TR-ET Part 1, p.10; 116063-TR-ET Part 1, p.17; 116063-TR-ET Part 4, p.2.

⁷² SPOE00339009-00339013 RED, p.SPOE00339011 (Call Log #17).

⁷³ SPOE00339009-00339013 RED, p.SPOE00339011 (Call Log #18).

⁷⁴ 112906-TR-AT Part 1 Revised 1-ET RED, p.27.

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greet JANUZI, to avoid going out himself and potentially being ambushed and/or shot.⁷⁵ Witness 1 also believed that he may have been offered a benefit simply to distract him by getting him to think that he was not in danger.⁷⁶

C. Coordination after the Approaches

33. On 4 October 2023, JANUZI gave a voluntary interview to the SPO, wherein he denied having taken any criminal action but also confirmed several pieces of inculpatory information.⁷⁷ Most notably, JANUZI confirmed that he had met with Witness 1 at the approximate time and place indicated above;⁷⁸ that he had had discussions, including in-person meetings, with BAHTIJARI,⁷⁹ SHALA,⁸⁰ and Witness 1⁸¹ about Witness 1's witness status with the KSC; and that he had contacted at least one [REDACTED] in an effort to arrange a meeting with Witness 1.⁸² JANUZI also confirmed that SHALA was his commander during the war,⁸³ and that he considers him a friend and maintains frequent contact with him,⁸⁴ including providing political support.⁸⁵ JANUZI also admitted that he had discussed the potential payment of 200,000 euros with SHALA.⁸⁶

⁷⁵ 112906-TR-AT Part 1 Revised 1-ET RED, p.27.

⁷⁶ 112906-TR-AT Part 1 Revised 1-ET RED, p.20.

⁷⁷ 116063-TR-ET Parts 1-4.

⁷⁸ 116063-TR-ET Part 1, pp.16-18.

⁷⁹ 116063-TR-ET Part 1, pp.18-24, 30, 36; 116063-TR-ET Part 2, pp.6-7; 116063-TR-ET Part 3, pp.6-7.

⁸⁰ 116063-TR-ET Part 1, pp.27-32; 116063-TR-ET Part 3, pp.9-10.

⁸¹ 116063-TR-ET Part 1, pp.25-27, 29, 33-35, 37; 116063-TR-ET Part 2, pp.3,5; 116063-TR-ET Part 3, pp.11-13; 116063-TR-ET Part 4, pp.2-6.

⁸² 116063-TR-ET Part 2, pp.7-9.

⁸³ 116063 TR ET Part 1, pp.9-10.

⁸⁴ 116063 TR ET Part 1, pp.10-11.

⁸⁵ 116063 TR ET Part 1, p.12; 116063-TR-ET Part 4, p.4.

⁸⁶ 116063-TR-ET Part 1, p.27.

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34. Directly after giving this interview, JANUZI and his legal counsel during the voluntary interview, [REDACTED],⁸⁷ met in person with SHALA.⁸⁸

35. On 5 October 2023, BAHTIJARI gave a voluntary post-arrest interview to the SPO, wherein he denied having taken any criminal action but also confirmed several pieces of inculpatory information.⁸⁹ Most notably, BAHTIJARI confirmed that he had met with Witness 1 at the place and approximate time indicated above, at around the same time that he met with SHALA.⁹⁰ BAHTIJARI also confirmed that SHALA was his commander during the war, with whom he and his family have maintained contact until at least 2023.⁹¹

36. Mitigating the potential consequences of the Approaches required the expenditure of additional SPO/KSC time and resources, including: the involvement of multiple SPO/KSC staff in otherwise unnecessary additional contacts with Witness 1 in order to ensure Witness 1's safety and ability to testify; the expenditure of SPO resources to investigate the Approaches and surrounding events and communications; and the expenditure of SPO/KSC time and resources to take new security-related measures, [REDACTED].⁹²

III. The Accused Committed the Crimes Charged in the Indictment

A. The Accused Intimidated a Witness during Criminal Proceedings (Count 3)

⁸⁷ 116063 TR-ET Part 1, p.1.

⁸⁸ 116158-01.

⁸⁹ 116065-TR-ET Part 1.

⁹⁰ 116065-TR-ET Part 1, pp.9-11, 13-14.

⁹¹ 116065-TR-ET Part 1 RED, pp.7-9.

⁹² See e.g. 112768-112768 RED, 112769-112772 RED, 113310-113320 RED, 113181-113182 RED, 113354-113355 RED, 113356-113356 RED, and 113434-113436 RED.

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i. The conduct of the Accused satisfies the material elements

37. The evidence set out in the Statement of Facts,⁹³ including as further elaborated in relation to Counts 1-2,⁹⁴ establishes that between at least 5 and 12 April 2023, and contrary to Article 387 of the KCC,⁹⁵ the Accused employed a serious threat⁹⁶ and a promise of a gift or any other form of benefit⁹⁷ to induce Witness 1 to refrain from giving testimony before the KSC.

38. In particular, JANUZI and BAHTIJARI, in co-ordination with each other and SHALA, within days of each other, attempted to intimidate Witness 1 with the express intention of getting him to withdraw his testimony [REDACTED]. BAHTIJARI confirmed to Witness 1 that failure to withdraw his testimony could result in Witness 1 or his son being killed. JANUZI conveyed, from SHALA, an offer to 'help' and 'meet any of [Witness 1]'s needs' by providing unspecified benefits if Witness committed to withdraw his testimony.⁹⁸

39. The intimidating nature of the messages conveyed to Witness 1 was reinforced by several circumstances.

40. Above all, the threat was particularly extreme: death to Witness 1 or a family member if he did not withdraw his testimony. This threat was made explicitly by

⁹³ See Section II.

⁹⁴ See Section III B-C.

⁹⁵ *Specialist Prosecutor v. Shala*, Decision on the Confirmation of Indictment, KSC-BC-2023-11/F00005/RED, 4 December 2023 ('Case 11 Confirmation Decision'), para.26 citing *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074/RED, 11 December 2020 ('Case 07 Confirmation Decision'), paras 58-65; Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2020, ('Case 07 Trial Judgment'), paras 109, 112-115, 119-124; Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023 ('Case 07 Appeal Judgment'), paras 221, 224-226; Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED, 2 October 2023 ('Case 10 Confirmation Decision'), paras 27-35.

⁹⁶ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.29. See similarly Case 07 Appeal Judgment, KSC-CA-2022-01/F00114, para.224; Case 07 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.60; Case 10 Confirmation Decision KSC-BC-2023-10/F00008/RED, para.29.

⁹⁷ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.29

⁹⁸ See Section II.

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BAHTIJARI in the First Approach.⁹⁹ BAHTIJARI openly foreshadowed the ominous nature of his visit by stating early on during the First Approach that he was acting as the advocate or mouth piece for the ‘devil,’ and he appeared nervous and uncomfortable to Witness 1.¹⁰⁰

41. While at certain points during the Second Approach JANUZI appeared to attempt to reassure Witness 1 regarding his safety,¹⁰¹ when Witness 1 specifically informed JANUZI of the death threat made by BAHTIJARI, JANUZI did not refute or deny it.¹⁰² Indeed, Witness 1 considered that the Second Approach could have been intended to distract him from thinking he was in danger.¹⁰³

42. The threat was also credible. The Approaches took place at the home of Witness 1 while his family was present, demonstrating that the Accused, [REDACTED], had ready access to Witness 1 and his family. This is particularly significant in context, given [REDACTED].¹⁰⁴ Witness 1 demonstrated that he understood the threat to be credible and took it seriously when, at the commencement of the Second Approach, he sent his son outside to guard against being ambushed or killed.¹⁰⁵ Witness 1 discussed the past threats and acts of violence against him with JANUZI, who acknowledged that Witness 1 had been mistreated.¹⁰⁶

43. The intimidation was also amplified by the fact of repeated approaches to Witness 1, and the clear involvement of a group. BAHTIJARI was accompanied by three men, who waited in a car and outside the home of Witness 1 during the First

⁹⁹ See Section II.

¹⁰⁰ See Section II.

¹⁰¹ See 116623-TR-ET Part 1, p.21.

¹⁰² See Section II.

¹⁰³ See Section II.

¹⁰⁴ See Section II.

¹⁰⁵ See Section II.

¹⁰⁶ See Section II.

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Approach.¹⁰⁷ JANUZI and BAHTIJARI referred to each other and to SHALA during the Approaches.¹⁰⁸ Further, JANUZI related that SHALA had referenced unknown others who were also involved, including in being prepared to offer Witness 1 benefits in exchange for his compliance.¹⁰⁹

44. Finally, that a serious threat was communicated during both Approaches and the additional promise of a benefit offered during the Second Approach, underscored the determination of the Accused as they shifted from making threats to also promising a benefit. The Accused thus demonstrated a resolve to apply any means necessary to achieve their goal of preventing Witness 1's testimony – a threatening circumstance in and of itself. Indeed, taken in context, Witness 1 believed that the promise of a benefit extended during the Second Approach could have been a ruse to lull him into a false sense of security so that he and/or his family could be more easily harmed.¹¹⁰

ii. The Accused carried out their actions with the required intent

45. That the Accused carried out their actions with the required intent is borne out both by their express statements and actions as recounted above, and by the deliberate, coordinated, repeated, and persistent manner in which the Accused attempted to induce Witness 1 to refrain from testifying in KSC proceedings.

46. First, BAHTIJARI coordinated his behaviour with JANUZI and SHALA before and after the First Approach through in-person meetings with SHALA and JANUZI, and numerous phone communications with JANUZI, as outlined above.¹¹¹

¹⁰⁷ See Section II.

¹⁰⁸ See Section II.

¹⁰⁹ See Section II.

¹¹⁰ See Section II.

¹¹¹ See Section II.

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47. BAHTIJARI showed persistence in his behaviour. First, he directly contacted Witness 1 via Facebook Messenger – [REDACTED] – in order to arrange the First Approach when he delivered the message from SHALA.¹¹² He then arrived at the home of Witness 1, after making sure that Witness 1 was in fact at home, even though he had been told that Witness 1 was asleep.¹¹³

48. During the First Approach, BAHTIJARI told Witness 1 that, according to SHALA, Witness 1 is a witness in the case [REDACTED] and that he should withdraw his testimony in that case.¹¹⁴ He explicitly revealed to Witness 1 that he had been instructed by SHALA to convey that message to Witness 1.¹¹⁵ Also, when prompted by Witness 1, BAHTIJARI did not hesitate to confirm that Witness 1 or his son risked being killed if he did not withdraw his testimony.¹¹⁶

49. Finally, during the First Approach, BAHTIJARI signalled his knowledge of the illicit nature of the threatening and intimidating nature of the message by appearing nervous and uncomfortable and admitting directly that he had not come for good but rather for a bad purpose.¹¹⁷

50. Similarly, JANUZI demonstrated persistence by showing up at the home of Witness 1, only approximately a week after BAHTIJARI had been there, although JANUZI was not in touch with Witness 1.¹¹⁸ In order to even gain access to Witness 1, he had to engage with Person 1, [REDACTED], to establish contact.¹¹⁹ [REDACTED].¹²⁰

¹¹² See Section II.

¹¹³ See Section II.

¹¹⁴ See Section II.

¹¹⁵ See Section II.

¹¹⁶ See Section II.

¹¹⁷ See Section II.

¹¹⁸ See Section II.

¹¹⁹ See Section II.

¹²⁰ See Section II.

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51. JANUZI demonstrated deliberate, coordinated, and persistent behaviour by engaging in communications with SHALA and BAHTIJARI before and after the Approaches.¹²¹ In addition, JANUZI explicitly told Witness 1 that he was visiting him to follow-up on BAHTIJARI's First Approach, thereby showing that JANUZI had direct knowledge of the First Approach and its purpose.¹²² Further, JANUZI explicitly stated that Witness 1's position as to whether Witness 1 would withdraw his potential testimony was not clear after the First Approach and that JANUZI had been sent by SHALA and 'others' to clarify Witness 1's position in that respect.¹²³ JANUZI even indicated that other unknown individuals were involved with SHALA in this coordinated effort to prevent Witness 1's testimony [REDACTED].¹²⁴ Finally, JANUZI stated to Witness 1 that he would convey Witness 1's position back to SHALA and return to Witness 1 with an answer, and JANUZI, in fact, admitted to discussing this position with SHALA during his SPO interview.¹²⁵

52. JANUZI also underscored the persistence of those determined to stop Witness 1 from testifying by then offering 'help' and 'to meet any of [Witness 1]'s needs' if he withdrew his testimony [REDACTED].¹²⁶

53. Finally, JANUZI signalled knowledge of the illicit nature of the endeavour by (i) indicating to Witness 1 his reluctance to be involved in the matter, and (ii) telling Witness 1 that he would not discuss it over the phone.¹²⁷

¹²¹ See Section II.

¹²² See Section II.

¹²³ See Section II.

¹²⁴ See Section II. For example, JANUZI quotes SHALA as relating to him 'our request' and that 'we [would] help him'. JANUZI tells Witness 1 that he would tell SHALA and 'them' what Witness 1 had said, and that if 'they' wanted to lower tensions, 'they' should reward Witness 1 for the damage 'they' have caused.

¹²⁵ See Section II.

¹²⁶ See Section II.

¹²⁷ See Section II.

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54. SHALA's actions were also clearly deliberate and coordinated. He met with and/or engaged in communications with both BAHTIJARI and JANUZI, both relatives of Witness 1, before and after setting into motion the Approaches.¹²⁸

55. SHALA's choices in intermediaries showed obvious deliberation. To ensure maximum effectiveness, he purposefully targeted [REDACTED], who [REDACTED] and would thus be better suited to persuade Witness 1 to withdraw his testimony.¹²⁹ Further, JANUZI and BAHTIJARI were SHALA's former direct KLA subordinates, thereby assuring, to the maximum extent possible, that any directives SHALA issued, regardless of legality, would be followed.¹³⁰

56. Moreover, SHALA expressly told BAHTIJARI and JANUZI that Witness 1 is a witness [REDACTED], and tasked them with getting Witness 1 to withdraw his testimony.¹³¹ In orchestrating the First Approach, SHALA showed up unsolicited and personally met BAHTIJARI at a location that BAHTIJARI is known to frequent, despite BAHTIJARI indicating that SHALA was not a regular visitor there himself.¹³²

57. In addition to being deliberate, SHALA's actions were persistent, showing a willingness to achieve his goal by any means necessary. SHALA originally directed BAHTIJARI's First Approach to Witness 1, during which BAHTIJARI confirmed that Witness 1 and his son faced the threat of death if he did not withdraw his testimony [REDACTED].¹³³ Subsequently, when that approach did not appear to have secured the withdrawal of Witness 1's testimony, SHALA met in person with JANUZI, specifically after making sure that JANUZI [REDACTED], to direct JANUZI to offer

¹²⁸ See Section II.

¹²⁹ See Section II.

¹³⁰ See Section II.

¹³¹ See Section II.

¹³² See Section II.

¹³³ See Section II.

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'help' and 'to meet any of [Witness 1]'s needs' in exchange for withdrawing his testimony [REDACTED].¹³⁴

58. Finally, the fact that SHALA used such indirect means to achieve his ends – directing the intimidation of Witness 1 through his intermediaries JANUZI and BAHTIJARI rather than in person himself – further highlights his awareness that the endeavour was illegal.¹³⁵

59. The evidence set out above establishes that the Accused were aware of, and desired to, induce Witness 1 to refrain from making a statement or to make a false statement or otherwise fail to state true information to the SPO and/or KSC; alternatively, the Accused were aware that, as a result of their actions, this prohibited consequence might ensue, and they acceded to the occurrence of this prohibited consequence.

B. The Accused, by Serious Threat, Attempted to Obstruct Official Persons
in Performing Official Duties (Count 1)

i. The conduct of the Accused satisfies the material elements

60. The evidence set out in the Statement of Facts,¹³⁶ including as further elaborated in relation to Counts 2 and 3,¹³⁷ establishes that between at least 5 and 12 April 2023, the Accused, through the acts described therein, which, considered alone or together, constituted serious threats, attempted to obstruct KSC proceedings. These actions were carried out directly by serious threats directed at Witness 1. Further, the actions of the Accused were also against KSC officials, including prosecutors, Judges and others.

¹³⁴ See Section II.

¹³⁵ See Section II.

¹³⁶ See Section II.

¹³⁷ See Sections III A, C.

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61. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(1) of the KCC, is committed (i) through the use of force or serious threat resulting¹³⁸ in the (ii) obstruction¹³⁹ or attempted obstruction of an official person¹⁴⁰ in performing official duties,¹⁴¹ or the compelling of that person to perform official duties.¹⁴²

62. The serious threat to Witness 1 recounted above: (i) created serious fears and concerns for Witness 1 and his family, thereby constituting a strong disincentive for Witness 1 to provide (further) information about any crimes under the jurisdiction of the KSC; (ii) threatened the ability of the SPO and the KSC to effectively investigate and prosecute crimes, including obtaining relevant evidence from potential witnesses; and (iii) thus compelled the SPO and the KSC to divert resources and time to address actual and potential consequences to Witness 1 and his family.¹⁴³

63. Further, it is both logical and well-established that such conduct could, in principle, hinder and/or delay the work of SPO/KSC Officials, namely SPO prosecutors and investigators, as well as KSC staff members, in the context of KSC

¹³⁸ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.43 *citing* Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.148; Case 07 Appeal Judgment, KSC-CA-2022-01/F00114, paras 282-283; Decision on Request for Protection of Legality, KSC-SC-2023-01/F00021, 18 September 2023, para.49; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.43.

¹³⁹ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.42 *citing* Case 07 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.70; Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, paras 145-148; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.42.

¹⁴⁰ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.41.

¹⁴¹ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.41 *citing* Case 07 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.69; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.41.

¹⁴² Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.38 *citing* Case 07 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.67; Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.141; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.38.

¹⁴³ *See* Section II.

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proceedings.¹⁴⁴ For instance, as a result of the serious threat, Witness 1 could have decided that he no longer wished to cooperate with and provide evidence to the SPO, [REDACTED].¹⁴⁵

ii. The Accused carried out their actions with the required intent

64. That the Accused carried out their actions with the required intent is borne out by the deliberate, coordinated, and persistent manner in which the Accused attempted to obstruct the work of SPO/KSC Officials in the context of KSC proceedings, and by their stated purpose in approaching Witness 1.

65. In particular, as recounted above: (i) SHALA clearly took care in choosing intermediaries loyal to him [REDACTED]; (ii) the Accused engaged in numerous and successive communications ahead of and after the Approaches; (iii) the purpose of the Approaches was clear, express and deliberate – SHALA outright told BAHTIJARI and JANUZI that Witness 1 is a witness [REDACTED] and that Witness 1 ought to withdraw his testimony in that case; and (iv) the Approaches showed persistence and adaptability.¹⁴⁶

66. This conduct constitutes a clear and deliberate attempt to prevent Witness 1 from testifying [REDACTED]. That the Accused were aware of this and the illicit nature of their coordinated actions is demonstrated by their words and conduct described above.¹⁴⁷

67. The evidence set out above¹⁴⁸ establishes that the Accused – before, during and after the Approaches – had the requisite intent to obstruct the work of SPO/KSC

¹⁴⁴ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.108. *See similarly* Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.647; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.102.

¹⁴⁵ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.108.

¹⁴⁶ *See* Section III A.

¹⁴⁷ *See* Section III.

¹⁴⁸ *See* Section III B(ii).

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Officials within the context of KSC proceedings. In conveying the serious threat to Witness 1, the Accused acted with a desire to deter Witness 1 from cooperating with the SPO/KSC, and from providing evidence in ongoing proceedings, thereby obstructing the integrity and progress of proceedings and the work of SPO/KSC Officials, in particular SPO prosecutors, investigators and KSC judges. In the alternative, the Accused were aware that, as a result of their coordinated and concerted efforts, Witness 1 could be deterred from cooperating with the SPO/KSC, and, this could, ultimately, obstruct the work of the SPO/KSC Officials, in particular SPO prosecutors, investigators and KSC judges, within the context of ongoing KSC proceedings.

C. The Accused, by Participating in the Common Action of a Group, Obstructed Official Persons in Performing Official Duties (Count 2)

i. The conduct of the Accused satisfies the material elements

68. The evidence set out in the Statement of Facts,¹⁴⁹ including as elaborated in Counts 1 and 3,¹⁵⁰ also establishes that between at least 5 and 12 April 2023, the Accused participated in a group¹⁵¹ of persons, composed of the Accused and others, whose common action¹⁵² obstructed or attempted to obstruct one or more official persons in performing official duties. Crucially, Article 401(2) of the KCC penalises any conduct of the perpetrator who partakes in the group that contributes to or

¹⁴⁹ See Section II.

¹⁵⁰ See Section III A-B.

¹⁵¹ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.49 citing Case 07 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.75; Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.161; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.49.

¹⁵² Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.49 citing Case 07 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.75; Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.162; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.49.

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enables in some other form the common action; it does not require that the actions of *each* participant in the group contribute directly to the obstructive purpose.¹⁵³

69. The following actions of the Accused are particularly indicative of a joint, coordinated, and concerted endeavour to prevent Witness 1 from testifying in KSC Proceedings: (i) SHALA communicated with both BAHTIJARI and JANUZI before their respective Approaches to Witness 1, and BAHTIJARI and JANUZI communicated before and after the First Approach, including discussing Witness 1's alleged status as a witness before the KSC; (ii) during the First Approach, BAHTIJARI identified SHALA as the source of the threatening and intimidating message against Witness 1, while JANUZI referenced both SHALA and BAHTIJARI and the First Approach, demonstrating that both approaches originated with SHALA and were executed by JANUZI and BAHTIJARI; (iii) the timing, sequence, and frequency of communications between the Accused, in particular in relation to the Approaches; (iv) the clear division of tasks between the Accused, with SHALA acting as the conveyor of instructions and JANUZI and BAHTIJARI as the intermediaries who personally executed those instructions and then reported back to SHALA.¹⁵⁴

iii. The Accused carried out their actions with the required intent

70. Evidence indicative of the fact that the Accused carried out their actions with the required intent is set out above.¹⁵⁵

IV. The Accused are Individually Criminally Responsible for their Actions

A. The Accused Committed the Crimes

¹⁵³ Case 11 Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.49 *citing* Case 07 Trial Judgment, KSC-BC-2020-07/F00611/RED, para.163; Case 07 Appeal Judgment, KSC-CA-2022-01/F00114, para.307; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.49.

¹⁵⁴ *See* Sections II; III A, B.

¹⁵⁵ *See* Section III B(ii).

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71. The facts set out above¹⁵⁶ establish that the Accused, with the required intent,¹⁵⁷ committed the crime of intimidation during criminal proceedings (Count 3).

B. The Accused Attempted to Commit the Crimes

72. The acts set out above¹⁵⁸ establish that the Accused, with the required intent,¹⁵⁹ took action toward the commission of the crimes of obstructing official persons in performing official duties by serious threat (Count 1) and by common action of a group (Count 2), and Count 3, and, as such, attempted to commit them.

C. The Accused Committed the Crimes Jointly

73. The acts set out above¹⁶⁰ establish that the Accused, with the required intent,¹⁶¹ together participated in, or substantially contributed in any other way to, the commission of the crimes charged in Counts 1 and 3.

74. The fact that there was an express or implied agreement to commit a crime is demonstrated by the common purpose, shared by the Accused to intimidate Witness 1 and obstruct the work of the SPO/KSC.¹⁶² The express or implied agreement to commit a crime is also demonstrated by the concerted nature of the actions of the Accused, established, *inter alia*, by the same acts, which also establish that they participated in the commission of the crimes as charged in Counts 1 through 3 or substantially contributed to the commission of the crimes.¹⁶³

D. The Accused Agreed to Commit the Crimes

¹⁵⁶ See Sections II, III A(i).

¹⁵⁷ See Section III A(ii)

¹⁵⁸ See Sections II, III A(i), B(i), C(i).

¹⁵⁹ See Sections III A(ii), B(ii), C(ii).

¹⁶⁰ See Sections II, III A(i), C(i).

¹⁶¹ See Sections III A(ii), C(ii).

¹⁶² See Sections III A(ii), C(ii).

¹⁶³ See Sections II, III A(i), C(i).

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75. The acts set out above¹⁶⁴ establish that the Accused, with the required intent,¹⁶⁵ agreed together to commit the crimes charged in Counts 1-3 and took substantial acts towards the commission of these crimes.

76. The agreement between two or more of the Accused to commit the crimes as well as that one or more such persons undertook any substantial acts towards the commission of the crimes is further demonstrated by the evidence and factors supporting co-perpetration.¹⁶⁶

E. The Accused Assisted the Commission of the Crimes

77. The acts set out above¹⁶⁷ establish that the Accused, with the required intent,¹⁶⁸ assisted in the commission of the crimes charged in Counts 1-3.

V. Conclusion

78. The evidence set out above shows that the Accused engaged in a deliberate, coordinated, and persistent campaign to intimidate Witness 1 into withdrawing his testimony [REDACTED], and to obstruct the work of the SPO/KSC, to which end they were willing to employ whatever means necessary.

79. The Accused must be held responsible for the serious crimes they committed, the proof of which is largely evidenced by their own words, including as captured contemporaneously. This and other evidence which will be presented at trial will establish, beyond reasonable doubt, the responsibility of the Accused for the charged crimes.

Word Count: 6,800

¹⁶⁴ See Sections II, III A(i), B(i), C(i).

¹⁶⁵ See Sections II, III A(ii), B(ii), C(ii).

¹⁶⁶ See Sections II, III A, C.

¹⁶⁷ See Sections II, III A(i), B(i), C(i).

¹⁶⁸ See Sections II, III A(ii), B(ii), C(ii).

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Kimberly P. West

Specialist Prosecutor

Friday, 16 February 2024
At The Hague, the Netherlands.