



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public Redacted Version of 'Prosecution motion for the admission of the evidence of witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 pursuant to Rule 153 with confidential Annexes 1-9'

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law¹ and Rules 137-138, 141(1), and 153 of the Rules,² the Specialist Prosecutor's Office ('SPO') seeks the admission in lieu of oral testimony of the written statements, transcripts, and associated exhibits of witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860. The proposed evidence is relevant, *prima facie* reliable, has probative value which is not outweighed by any prejudice, and meets all the conditions of Rule 153. Admission pursuant to Rule 153 is therefore in the interests of justice.³

2. In addition to the submissions on admissibility made herein, the annexes to this motion identify the statement(s)⁴ tendered through each witness (collectively, 'Rule 153 Statement'), and the indicia of authenticity and reliability for each. The annexes also list exhibits associated with the Rule 153 Statements, identifying where such exhibits are discussed, and describing in more detail how each meets the conditions for admission.

II. SUBMISSIONS

A. GENERAL SUBMISSIONS ON ADMISSIBILITY

3. The evidence tendered for each witness should be admitted in lieu of oral testimony because it:

- (i) is relevant to the crimes charged in the Indictment;
- (ii) is *prima facie* reliable, containing sufficient indicia of authenticity;

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

³ The applicable law has been set out previously. *See* Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153', KSC-BC-2020-06/F01658/RED, 17 November 2023, paras 6-12; Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904/RED, 27 November 2023, paras 7-12.

⁴ As indicated in the annexes, the SPO has also tendered any audio/video records corresponding to these statements.

- (iii) has probative value which is not outweighed by any prejudicial effect;
and
- (iv) meets all of Rule 153's requirements for admission.

4. As set out in more detail below, numerous Rule 153(1)(a) factors apply to the tendered evidence, weighing heavily in favour of admission. The proposed evidence:

- (i) is of a cumulative nature, in that other witnesses have given or will give oral testimony on similar facts;
- (ii) is corroborated by evidence which the Accused has confronted or will be able to effectively confront, including through cross-examination;
- (iii) relates to, *inter alia*, the crime-base, contextual elements, and the relevant historical, political, or military background;
- (iv) complements adjudicated facts;
- (v) concerns the impact of crimes on victims; and
- (vi) was recorded or documented in a manner enabling the Parties and Panel to assess each witness's demeanour and/or credibility.

5. Moreover, the tendered evidence meets the requirements set out in Rule 153(2) in that the witness statements and testimonies are either signed or otherwise attested to by the witnesses and/or others participating in the questioning of the witnesses. Additionally, the official records of these statements and testimonies note, where applicable, the date, time, place, and identities of those present during questioning.

6. In addition to fulfilling the letter of Rule 153, admission of the tendered evidence in lieu of oral testimony will serve the spirit of the Rule by not only avoiding repetitive testimony and saving valuable court-time, but also by sparing these witnesses the

burden of testifying live, and avoiding the unnecessary stress, expense, and other disruptions to the witnesses' lives including the likelihood of retraumatisation.

7. For all of these reasons, pursuant to Rule 153(3), and as set out in more detail below, the necessities of a fair and expeditious trial warrant the admission of the tendered evidence in written form, without cross-examination.

B. SPECIFIC SUBMISSIONS ON ADMISSIBILITY

1. W01234

8. *Relevance.* W01234, a [REDACTED], witnessed on [REDACTED] 1999, two uniformed KLA members informing [REDACTED] that his relatives in [REDACTED] were looking for him. The next day, W01234 [REDACTED], joined [REDACTED] and [REDACTED] on their drive to [REDACTED]. The group was stopped twice at KLA checkpoints close to [REDACTED]. At the second checkpoint, they were kept for approximately 1.5 hours and [REDACTED] was interrogated by KLA members and then released. Unable to find [REDACTED], the group tried to return to [REDACTED], now joined by [REDACTED]. On their way back, they were stopped by KLA members dressed in camouflage uniforms at the [REDACTED] checkpoint. [REDACTED] was taken away.

9. Later, [REDACTED] and W01234 were brought to a KLA house located approximately 4-5 km away from the checkpoint, between [REDACTED]. W01234 found [REDACTED] inside, heavily beaten and unable to speak. Members of the group were then interrogated by the KLA individually. W01234 was questioned and slapped by two people dressed in uniform. During the night, [REDACTED] were separated from the group. The next day, the group was released and made to walk

back to [REDACTED]. W01234 never saw [REDACTED] again. W01234's evidence is therefore relevant to allegations in the Indictment,⁵ and to assessing related evidence.

10. *Authenticity and Reliability.* W01234's Rule 153 Statement consists of his ICTY statement which was taken and signed by a duly empowered investigator; contains a witness acknowledgement and interpreter certification; and the witness signed each page.⁶

11. *Suitability for Rule 153 Admission.* W01234 provides purely crime-base and contextual evidence which is particularly suitable for admission in writing in lieu of oral testimony. In this respect, while W01234's evidence takes place outside the charged timeframe for the [REDACTED] detention site, it is relevant to, *inter alia*, a pattern of conduct and the ongoing commission of crimes at and around this location.⁷ W01234's evidence is also cumulative to other witnesses' evidence concerning the detention, interrogation, and mistreatment of perceived opponents by KLA members in the [REDACTED] area.⁸ Furthermore, his evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁹ and complements certain adjudicated facts.¹⁰

⁵ See, *inter alia*, Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, ('Indictment'), paras 16-31, 59-61, 63; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), paras [REDACTED], 703.

⁶ [REDACTED].

⁷ See also Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.703.

⁸ See e.g. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. All of these witnesses provide evidence concerning crimes in and around [REDACTED] during and after the charged timeframe for this site.

⁹ See e.g. [REDACTED]; [REDACTED]; [REDACTED]. In particular, [REDACTED] provided corroborating evidence concerning the events detailed by W01234. See e.g. [REDACTED] (Confidential), pp.6-8.

¹⁰ See e.g. Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023 ('Adjudicated Facts'), Facts [REDACTED].

2. W01338

12. *Relevance.* W01338 is [REDACTED] who worked [REDACTED] in [REDACTED] 1999. W01338 recounts how, on [REDACTED] 1999, he was arrested by [REDACTED] uniformed, armed persons with KLA armbands, after being beaten in the presence of [REDACTED]; and taken to a building in [REDACTED]. W01338 was blindfolded, interrogated, and also beaten. He was detained with [REDACTED] other people, [REDACTED], who were also beaten during their detention. W01338 heard some KLA members mention the presence of their commander, and was himself interrogated by a man whom he considered to be a commander. On [REDACTED] 1999, the [REDACTED] detainees including W01338 [REDACTED]. W01338's evidence is therefore relevant to crimes charged in the Indictment,¹¹ and to assessing related evidence.

13. *Authenticity and Reliability.* W01338's Rule 153 Statement comprises the witness's 2019 SPO interview,¹² [REDACTED],¹³ and [REDACTED] statement to the [REDACTED].¹⁴ The SPO interview and [REDACTED] are documented in verbatim transcripts. During W01338's SPO interview, which was audio-visually recorded,¹⁵ W01338 was advised of his rights and obligations as a witness; and confirmed his statement was true, accurate, and given voluntarily.¹⁶ During his [REDACTED], W01338 was advised of his rights and duties as a witness;¹⁷ and questioned by an

¹¹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

¹² 074238-TR-ET Part 1-3 RED.

¹³ 028946-028958-ET RED2.

¹⁴ 028974-028974-ET RED.

¹⁵ 074238-TR-ET Part 1 RED, p.1.

¹⁶ 074238-TR-ET Part 1 RED, pp.3-4; 074238-TR-ET Part 3 RED, p.23.

¹⁷ 028946-028958-ET RED2, p.1.

investigating judge and a prosecutor.¹⁸ W01338's [REDACTED] statement also contains the witness's acknowledgement and signature.¹⁹

14. *Suitability for Rule 153 Admission.* W01338's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base. The statements comprising the Rule 153 Statement complement each other and enable a fuller assessment of W01338's evidence over time. W01338's evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.²⁰

3. W01743

15. *Relevance.* On 17 June 1999, [REDACTED] was arrested at his house by KLA military police members, one of whom told W01743 they were taking [REDACTED] to the police station for an interview, and that he could pick up him up later that day. When W01743 went to the police station, he was told the interview was not completed. The following day, W01743 learned the [REDACTED] had been taken over by KFOR. W01743 saw prisoners being released, but not [REDACTED]. W01743 was told there was a deceased prisoner inside the building whom he later learned was [REDACTED]. W01743's evidence is therefore relevant to crimes charged in the Indictment,²¹ and to assessing related evidence.

16. *Authenticity and Reliability.* W01743's Rule 153 statement comprises the witness's SPO interview;²² an [REDACTED] statement from [REDACTED];²³ and two

¹⁸ 028946-028958-ET RED2.

¹⁹ 028974-028974-ET RED, p.2.

²⁰ See e.g. [REDACTED].

²¹ See e.g. Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²² 041326-TR-ET Part 1 RED2; 041326-TR-ET Part 2 RED2.

²³ SITF00033989-SITF00033992 RED2.

statements given to the [REDACTED].²⁴ W01743's SPO interview was audio-visually recorded and documented in verbatim transcripts.²⁵ During the interview, W01743 was advised of his rights and obligations as a witness; and confirmed his statement was true, accurate, and given voluntarily.²⁶ W01743's [REDACTED] statement was taken using official templates which include the witness's personal details and the identities of those in attendance.²⁷ Furthermore, W01743 confirmed this statement was true and accurate during his SPO interview.²⁸ Similarly, the [REDACTED] statements contain witness warnings and rights; the witness confirmed having reviewed the minutes of the statements and that he had no objections or remarks.²⁹

17. *Suitability for Rule 153 Admission.* W01743 provides purely crime-base evidence, which is particularly suitable for admission in writing in lieu of oral testimony. W01743's evidence is also largely cumulative to other witness and documentary evidence concerning, *inter alia*, the detention of civilians in [REDACTED].³⁰ His evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.³¹

4. W04423

18. *Relevance.* W04423 is the [REDACTED]. W04423's evidence provides details regarding [REDACTED] 1999 abduction and subsequent detention, including what various KLA commanders told [REDACTED] who were attempting to locate and help him. W04423 describes [REDACTED]: once when [REDACTED]; and once when

²⁴ SITF00034473-SITF00034475-ET RED2; SITF00034501-SITF00034504 RED2.

²⁵ 041326-TR-ET Part 1 RED2; 041326-TR-ET Part 2 RED2.

²⁶ 041326-TR-ET Part 1 RED2, pp.1-3; 041326-TR-ET Part 2 RED2, pp.20-21.

²⁷ SITF00033989-SITF00033992 RED2.

²⁸ 041326-TR-ET Part 1 RED2, pp.4-9.

²⁹ SITF00034473-SITF00034475-ET RED2, p.3; SITF00034501-SITF00034504 RED2, p.1.

³⁰ See e.g. [REDACTED].

³¹ See e.g. [REDACTED].

[REDACTED]. W04423 relates what she observed [REDACTED] and what he said [REDACTED]. W04423 recalls that [REDACTED] were that [REDACTED] was responsible for his condition. Later, [REDACTED], and [REDACTED] was the one who dealt with it. All of these events caused extreme suffering [REDACTED]. W04423's evidence is therefore relevant to charged crimes in the Indictment,³² and to assessing related evidence.

19. *Authenticity and Reliability.* W04423's Rule 153 Statement comprises her SPO interview;³³ and statements given to [REDACTED]³⁴ and [REDACTED]³⁵ [REDACTED]. W04423's audio-visually recorded SPO interview was documented in a verbatim transcript.³⁶ W04423 was advised of her rights and duties as a witness,³⁷ and confirmed that her statement was true, accurate, and given voluntarily.³⁸ W04423's statements to [REDACTED] indicate the date, time, case number, and participants.³⁹ In both statements, W04423 also acknowledged her obligations as a witness.⁴⁰ W04423 also confirmed the accuracy and truthfulness of these prior statements during her SPO interview.⁴¹

20. *Suitability for Rule 153 Admission.* W04423's evidence is suitable for admission in writing in lieu of oral testimony as it relates primarily to the crime-base. The statements comprising the Rule 153 Statement also complement each other. W04423's

³² See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

³³ 092763-TR-ET Part 1 RED2.

³⁴ SPOE00122645-SPOE00122657 RED2.

³⁵ SPOE00119512-00119533 RED2, pp.1-12. [REDACTED].

³⁶ 092763-TR-ET Part 1 RED2, pp.1-2.

³⁷ 092763-TR-ET Part 1 RED2, pp.2-3.

³⁸ 092763-TR-ET Part 1 RED2, pp.28-29.

³⁹ SPOE00122645-SPOE00122657 RED2, p.1; SPOE00119512-SPOE00119523 RED2, p.1.

⁴⁰ SPOE00122645-SPOE00122657 RED2, p.1; SPOE00119512-00119523 RED2, p.3.

⁴¹ 092763-TR-ET Part 1 RED2 pp.6-10.

page; and confirmed that the contents of the statement were true, accurate, and given voluntarily.⁴⁹

23. *Suitability for Rule 153 Admission.* W04570 provides purely contextual and crime-base evidence, which is particularly suitable for admission in writing in lieu of oral testimony. W04570's evidence is largely cumulative to and corroborative of adjudicated facts,⁵⁰ and is relevant to proof of a pattern; the existence of a widespread or systematic attack; and the existence and implementation of the alleged common criminal purpose and/or campaign of persecution. In this respect, while W04570's evidence largely overlaps with noticed adjudicated facts and other witnesses of the same events have been removed from the witness list for that reason, W04570's evidence provides relevant additional and complementary detail, in particular, concerning the contemporaneous [REDACTED] detention and mistreatment.⁵¹

24. *Admissibility of the Associated Exhibits.* The [REDACTED] and the 1998 [REDACTED] were each referenced and discussed during W04570's 2002 statement to the extent they form an inseparable and indispensable part of W04570's evidence and should, therefore, be admitted as associated exhibits. To the extent the Panel considers that any of these associated exhibits are not an inseparable and indispensable part of the Rule 153 Statement, they should still be admitted because they are, when read together with W04570's evidence, *prima facie* relevant, authentic, and of probative value which is not outweighed by any prejudice.

6. W04696

25. W04696 was a [REDACTED] who lived and worked in [REDACTED]. At the end of July 1999, while at work in [REDACTED], he was approached by a familiar

⁴⁹ [REDACTED].

⁵⁰ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts [REDACTED]. Further, it is relevant to the evidence of other witnesses, for example, [REDACTED], who testified about his own mistreatment at [REDACTED].

⁵¹ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.707, fn.3005 (citing [REDACTED]). See also [REDACTED].

Albanian man and told to give a statement. W04696 agreed to accompany the man to the KLA detention site at [REDACTED]. There, W04969 was searched and taken to the basement. He was told he should move to Serbia, and then was interrogated by a group of people as to whether he had any weapons, knew about certain individuals in the Serbian military, or was involved with the military himself. During this interrogation, three men beat, punched and kicked W04696. A weapon was also aimed at him. W04696 was released due to, he believes, the intervention of an Albanian man who recognised him as the [REDACTED]. W04696's evidence is therefore relevant to crimes charged in the Indictment,⁵² and assessing related evidence.

26. *Authenticity and Reliability.* W04696's Rule 153 statement comprises his 2020 SPO interview and 2011 witness interview before [REDACTED]. W04696's audio-visually recorded SPO interview was also documented in a verbatim transcript.⁵³ W04696 was advised of his rights and obligations as a witness;⁵⁴ and confirmed his SPO statement to be true, accurate, and given voluntarily.⁵⁵ During his SPO interview, W04696 also had an opportunity to review his prior statements and confirmed that he provided them in a truthful manner to the best of his recollection at the time.⁵⁶ W04696's 2011 witness interview was also documented in verbatim transcripts;⁵⁷

⁵² See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁵³ 076248-TR-ST Part 1 Revised 1-ET RED.

⁵⁴ 076248-TR-ST Part 1 Revised 1-ET RED, pp.2-3.

⁵⁵ 076248-TR-ST Part 3 Revised 1-ET RED, p.14.

⁵⁶ 076248-TR-ST Part 1 Revised 1-ET RED, p.11; 076248-TR-ST Part 1 Revised 1-ET RED, p.11; 076248-TR-ST Part 3 Revised 1-ET RED, pp.1-2, 13-14.

⁵⁷ SITF00195888-SITF00195912-ET RED, pp.1-2.

includes details such as the date, place, and names of all participants;⁵⁸ and was signed by the [REDACTED].⁵⁹

27. *Suitability for Rule 153 Admission.* W04696's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates solely to the crime-base. W04696's evidence is also cumulative to other witness and documentary evidence concerning detentions and mistreatment at the [REDACTED].⁶⁰ W04696's evidence is corroborated by witnesses from this same site whom the Accused were, or will be, able to confront including through cross-examination.⁶¹

7. W04812

28. *Relevance.* W04812, [REDACTED], recounts how [REDACTED] armed, masked KLA soldiers [REDACTED] on [REDACTED] 1999, [REDACTED], asked about [REDACTED], and [REDACTED] without explaining why. The next day, W04812 went with [REDACTED]⁶² [REDACTED] to KLA headquarters in [REDACTED], but could not get any information about [REDACTED]. They then went to [REDACTED], where KLA commander [REDACTED] told them that [REDACTED]. In [REDACTED] 1999, KLA commander [REDACTED], told W04812 that [REDACTED] was being detained and beaten in [REDACTED]. A few days later, [REDACTED] allowed W04812 [REDACTED] to briefly meet with him. [REDACTED] described conditions at the prison, said [REDACTED], and that [REDACTED]. W04812 never saw [REDACTED] alive again. She reported the case to the OSCE and KFOR and also spoke with KLA commanders [REDACTED] in her attempts to get information.

⁵⁸ SITF00195888-SITF00195912-ET RED, pp.1-2, 13, 25.

⁵⁹ SITF00195888-SITF00195912-ET RED, p.25.

⁶⁰ See e.g. [REDACTED]; [REDACTED]; [REDACTED].

⁶¹ See e.g. [REDACTED].

⁶² [REDACTED] and [REDACTED].

W04812 describes the subsequent [REDACTED] from [REDACTED]. W04812's evidence is therefore relevant to charged crimes in the Indictment,⁶³ and to assessing related evidence.

29. *Authenticity and Reliability.* W04812's Rule 153 Statement comprises her 2021 SPO interview,⁶⁴ and 2002 witness interview before [REDACTED].⁶⁵ W04812's SPO interview was audio-visually recorded and documented in a verbatim transcript.⁶⁶ W04812 was duly advised of her rights as a witness⁶⁷ and confirmed that her statement was true, accurate, and given voluntarily.⁶⁸ W04812's 2002 witness interview was also audio-recorded, the witness was advised of her obligations, and the record was signed by the participants.⁶⁹ W04812 also confirmed the accuracy and truthfulness of this prior statement during her SPO interview.⁷⁰

30. *Suitability for Rule 153 Admission.* W04812's evidence is suitable for admission in writing in lieu of oral testimony as it relates to the crime-base. The statements also complement each other, as the 2002 witness interview provides a detailed account of events, and the SPO interview clarifies that account while also explaining the impact the crimes had on W04812 [REDACTED]. W04812's evidence is largely cumulative to other witness and documentary evidence relating to the detention sites in

⁶³ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁶⁴ 092646-TR-ET Part 1 Revised RED.

⁶⁵ SPOE00122578-001225606.

⁶⁶ 092646-TR-ET Part 1 Revised RED, pp.1-2.

⁶⁷ 092646-TR-ET Part 1 Revised RED, pp.2-3.

⁶⁸ 092646-TR-ET Part 1 Revised RED, pp.33-36.

⁶⁹ SPOE00122578-00122606, pp.1, 28.

⁷⁰ 092646-TR-ET Part 1 Revised RED, pp.11-15.

[REDACTED].⁷¹ Her evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁷² and complements certain adjudicated facts.⁷³

31. *Admissibility of the Associated Exhibit.* The photo line-up was used during W04812's 2002 witness interview to identify KLA members involved in the abduction and detention of [REDACTED].⁷⁴ The line-up is therefore an inseparable and indispensable part of W04812's evidence and should be admitted as an associated exhibit.

8. W04859

32. *Relevance.* W04859, a [REDACTED], provides evidence about the abduction and disappearance of his father [REDACTED] in Kosovo on [REDACTED]. W04859 explains how, in 1998, he and his father joined the KLA after [REDACTED] ordered the villagers of [REDACTED] to either join or financially support the KLA. The village later handed over their arms after an ultimatum from the 'Serbs'. W04859 recounts how, on [REDACTED], several KLA soldiers arrested his father. One of the soldiers stated the order of arrest came from the KLA headquarters in [REDACTED]. The soldiers also searched for and seized weapons from several houses in the village. As the soldiers left the village with W04859's father, one of them declared that they would

⁷¹ *See e.g.* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁷² *See e.g.* [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

⁷³ *See e.g.* Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts [REDACTED].

⁷⁴ Albanian original: SITF00240136-SITF00240154; English translations: SITF00240136-SITF00240136-ET; SITF00240138-SITF00240138-ET; SITF00240148-SITF00240148-ET; SITF00240154-SITF00240154-ET; SPOE00122578-00122606, pp.27-28.

kill him. W04859's father has not been seen since. W04859's evidence is therefore relevant to allegations in the Indictment,⁷⁵ and to assessing related evidence.

33. *Authenticity and Reliability.* W04859's Rule 153 Statement comprises his 2003 and 2004 ICTY statements,⁷⁶ which were taken and signed by a duly empowered investigator; contain witness acknowledgements and interpreter certifications;⁷⁷ and were signed by the witness on each page.⁷⁸

34. *Suitability for Rule 153 Admission.* W04859 provides contextual elements and crime-base evidence which is especially suitable for admission in writing in lieu of oral testimony. In this respect, W04859's evidence is relevant to proof of a pattern, widespread or systematic attack, existence and implementation of the alleged common criminal purpose, and/or campaign of persecution. Considered in this context, W04859's evidence is also generally cumulative with and corroborative of other witness and documentary evidence concerning the abduction and disappearance of individuals by KLA members in and around [REDACTED], including W04859's father.⁷⁹ W04859's evidence also complements certain adjudicated facts, which concern his father's abduction.⁸⁰

9. W04860

35. *Relevance.* W04860, a [REDACTED], recounts how on around 15 June 1999, two uniformed KLA members informed [REDACTED] that his relatives in [REDACTED] were looking for him. The next day, W04860, together with [REDACTED], joined [REDACTED] and [REDACTED] on their drive to [REDACTED]. The group was stopped twice at KLA checkpoints close to [REDACTED]. At the second checkpoint,

⁷⁵ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-60; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED], 703-704.

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ See *e.g.* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁸⁰ See *e.g.* Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts [REDACTED].

they were kept for approximately 1.5 hours and [REDACTED] was interrogated by KLA members and released. Unable to find his relatives, [REDACTED] and the group, now joined by W04860's husband, [REDACTED], decided to return to [REDACTED]. On their way back, they were again stopped by KLA members at the [REDACTED] checkpoint. [REDACTED] was first taken away and later [REDACTED], and W04860 were brought to a KLA house located approximately 4-5 km away from the checkpoint, between [REDACTED]. W04860 and others found [REDACTED] inside, in a very bad condition and unable to speak. The group was interrogated individually by the KLA. W04860 was interrogated about her reasons for travelling to the area. W04860's husband told her that he had been beaten during his interrogation. The next day, the group was released and forced to walk back to [REDACTED]. They were told by the KLA that [REDACTED] would be released, but W04860 never saw them again. W04860's evidence is therefore relevant to allegations in the Indictment,⁸¹ and to assessing related evidence.

36. *Authenticity and Reliability.* W04860's Rule 153 Statement consists of her ICTY statement which was taken and signed by a duly empowered investigator; contains a witness acknowledgement and interpreter certification; and the witness signed each page.⁸²

37. *Suitability for Rule 153 Admission.* W04860 provides purely crime-base and contextual evidence which is particularly suitable for admission in writing in lieu of oral testimony. In this respect, while W04860's evidence concerns events outside the charged timeframe for the [REDACTED] detention site, it is relevant to, *inter alia*, a

⁸¹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-61, 63; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED], 703.

⁸² [REDACTED].

pattern of conduct and the ongoing commission of crimes at and around this location.⁸³ W04860's evidence is also cumulative to and corroborative of the evidence of other witnesses concerning the detention, interrogation, and mistreatment of perceived opponents by KLA members in the [REDACTED] area.⁸⁴ Furthermore, her evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁸⁵ and complements certain adjudicated facts.⁸⁶

III. *INTER PARTES* CORRESPONDENCE

38. As instructed by the Panel, the SPO, Defence, and Victims' Counsel have engaged in *inter partes* correspondence in an effort to agree on the evidence subject of the present motion.⁸⁷

39. Victims' Counsel does not object to any of the tendered evidence being admitted pursuant to Rule 153.

40. The four Defence teams:

- a. agree to the admission of the evidence of witnesses W01338, W01743, W04423, and W04696;
- b. agree to the admission of the evidence of witness W04812, provided that an additional statement⁸⁸ is also tendered; and

⁸³ See also Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.703.

⁸⁴ See e.g. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. All of these witnesses provide evidence concerning crimes in and around [REDACTED] during and after the charged timeframe for this site.

⁸⁵ See e.g. [REDACTED]; [REDACTED]; [REDACTED]. In particular, [REDACTED] provided corroborating evidence concerning the events detailed by W04860. See e.g. [REDACTED] (Confidential), pp.6-8.

⁸⁶ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts [REDACTED].

⁸⁷ Order on the Conduct of the Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 39, 51, 73.

⁸⁸ SITF00240132-00240134.

- c. object to the admission of the evidence of witnesses W01234, W04859, W04860, and W04570 – whom the Defence submits, *inter alia*, should all be withdrawn from the Witness List due to a lack of relevance and, with regard to W04570, that the proposed evidence is incomplete without his [REDACTED].

41. The Defence submissions that certain witnesses should be removed from the Witness List and that additional documents should be admitted seek alternative and additional relief beyond the question of the admissibility of the proposed Rule 153 Statements and associated exhibits pursuant to Rule 153.⁸⁹ As set out above, the evidence of each witness is admissible as it is relevant, *prima facie* reliable, and of probative value which is not outweighed by any prejudice. The evidence of each witness is also entirely suitable for admission in writing in lieu of oral testimony and should, therefore, be admitted pursuant to Rule 153.

IV. CLASSIFICATION

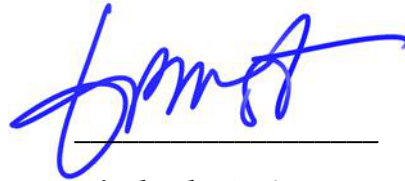
42. This submission and its annexes are confidential as they contain information concerning witnesses with protective measures, and witnesses whose identities are not public at this time.

V. RELIEF REQUESTED

43. For the foregoing reasons, the Trial Panel should admit the tendered Rule 153 Statements and associated exhibits pursuant to Rule 153.

⁸⁹ Public Redacted Version of Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 Pursuant to Rule 153, KSC-BC-2020-06/F02421/RED, 2 July 2024, para.23.

Word count: 5,003



Kimberly P. West

Specialist Prosecutor

Wednesday, 24 July 2024

At The Hague, the Netherlands.