

**In:** KSC-BC-2020-04  
The Specialist Prosecutor v. Pjetër Shala

**Before:** Trial Panel I  
Judge Mappie Veldt-Foglia, Presiding Judge  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Victims' Counsel

**Date:** 25 March 2024

**Language:** English

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**Public Redacted Version of Victims' Counsel's Statement on the impact of the  
alleged crimes on victims participating in the proceedings in Case 04**

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## I. INTRODUCTION

1. Pursuant to the directions given by the Trial Panel,<sup>1</sup> Article 22(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 114(a) and 134(c) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), Victims' Counsel hereby submits this statement of impact of the alleged crimes on victims participating in the proceedings ("Impact Statement" and "VPPs", respectively).
2. VPPs appreciate the possibility to have their harm openly expressed, recognized, and acknowledged in the course of these proceedings. This document details the evidence of both the direct and indirect harm that has been caused to the VPPs in this case, the evidence that the crimes committed in the Kukës Metal Factory were the cause of that harm, and the part that the Accused played in those crimes. Finally, as instructed by the Panel,<sup>2</sup> submissions as to sentencing are made.

## II. CLASSIFICATION

3. This submission is filed as confidential pursuant to Rule 82(4) as it contains information that could identify VPPs.

## III. PROCEDURAL HISTORY

4. The Accused is charged with the war crimes of arbitrary detention, cruel treatment, torture, and murder at the Kukës Metal Factory.<sup>3</sup> [REDACTED] VPPs have been admitted to participate in the proceedings.<sup>4</sup>

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<sup>1</sup> *Specialist Prosecutor v. Pjetër Shala*, KSC-BC-2020-04/F00795, Decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements, 9 February 2024, paras 41-43, 52(h) ("Directions").

<sup>2</sup> Directions, paras 52(k) and 48.

<sup>3</sup> KSC-BC-2020-04/F00098/A01, ANNEX 1 to Submission of Corrected Indictment, 1 November 2021; KSC-BC-2020-04/F00007, Confidential Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala, 12 June 2020 ("Decision on the Confirmation of the Indictment").

<sup>4</sup> KSC-BC-2020-04/F00123, First Decision on Victims' Participation, 15 December 2021, para. 50(a); KSC-BC-2020-04/F00249, Second Decision on Victims' Participation, 11 August 2022, para. 43(b); KSC-BC-2020-04/F00279, Third Decision on Victims' Participation, 19 September 2022, para. 43(a).

5. On 8 November 2022, Victims' Counsel submitted that reparations proceedings in this case should be conducted in writing and in parallel with the trial and that, in the event of conviction(s), the Panel should not refer victims in the case to civil litigation proceedings in Kosovo, but rather issue a reparations order under Article 22(8) and 44(6) of the Law; and pursuant to Article 22(7) requested that, in the event of an acquittal, the Panel should include in its judgment a decision on the scope and extent of any damage, loss and injury.<sup>5</sup>
6. On 30 June 2023, Victims' Counsel filed his submissions concerning the presentation of evidence on behalf of VPPs.<sup>6</sup> Victims' Counsel requested, *inter alia*, the admission into evidence of two expert reports – one relating to the mental harm caused to V01/04<sup>7</sup> and one setting out the economic loss incurred by all VPPs in the case.<sup>8</sup> In this submission, Victims' Counsel also provided his proposals for the manner in which the harm should be assessed for each VPP.<sup>9</sup>
7. On 11 October 2023, the Defence submitted questions concerning the Expert Report on Economic Loss, and the answers were filed on 27 October 2023.<sup>10</sup>

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<sup>5</sup> KSC-BC-2020/F00340, Victims' Counsels Submissions on reparation proceedings, 8 November 2022.

<sup>6</sup> KSC-BC-2020/04/F00558, Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel with six confidential annexes, 30 June 2023, paras 4, 22-54 ("Submissions of 30 June 2023").

<sup>7</sup> KSC-BC-2020/04/F00558/A01, Annex one to Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel with six confidential annexes, Forensic Medical Examination dated 15 June 2023; V4010023-V4010044, Forensic Medical Examination of TW4-01, 15 June 2023 (Exhibit V00003) ("iMMO Report" or "Forensic Medical Examination").

<sup>8</sup> KSC-BC-2020/04/F00558/A04, Annex four to Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel with six confidential annexes, Calculation of material damage and economic loss in two cases dated 23 June 2023; V4000001-V4000075, Dr Lerz's report on the calculation of economic loss, 26 June 2023. ("Lerz Report" or "Expert Report on Economic Loss").

<sup>9</sup> Submissions of 30 June 2023, paras 22-54.

<sup>10</sup> KSC-BC-2020/04/F00687, Defence Submission of Written Questions for Victims' Counsel's Expert Witness with Confidential Annex I, 11 October 2023; KSC-BC-2020/04/F00696, ANNEX 1 to Victims' Counsel's Submission of Expert's Answers to Written Questions from the Defence with Confidential Annex 1, 27 October 2023 ("Lerz Answers").

8. During the course of the trial, the Panel heard the testimony of five VPPs, whose evidence is detailed in the submissions which follow. It also heard testimony from two mental health experts on 21 August 2023<sup>11</sup> and admitted the Forensic Medical Examination into evidence on 25 October 2023.<sup>12</sup>
9. On 13 November 2023, the Defence presented its own expert report concerning the economic loss of VPPs.<sup>13</sup> Victims' Counsel submitted questions to the Defence expert, and the answers were filed on 6 December 2023.<sup>14</sup>
10. On 9 February 2024, the Trial Panel directed Victims' Counsel to file his request for reparations by 4 March 2024, and this Impact Statement on 25 March 2024,<sup>15</sup> increasing its word limit to 30,000 words.<sup>16</sup>
11. On 4 March 2024, Victims' Counsel filed a request for reparations on behalf of the VPPs.<sup>17</sup>

#### IV. SUBMISSIONS

##### A. The role of harm in the applicable legal framework

12. Acknowledgement of the harm suffered by victims is among the fundamental rights of VPPs before the Specialist Chambers, as recognized by Article 22(3) of

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<sup>11</sup> T. 21 August 2023. See also, Section (IV)(B)(2) below.

<sup>12</sup> In Court – Oral Order, T. 25 October 2023, 3151:9-3153:8.

<sup>13</sup> KSC-BC-2020-04/F00716, Defence Submission of an Expert Report for the Purpose of the Reparations Proceedings with Confidential Annex 1, 13 November 2023; KSC-BC-2020-04/F00716/A01, Annex 1 to Defence Submission of an Expert Report for the Purposes of the Reparations Proceedings, Profit loss calculation report and opinion regarding Victim V01/04 and Victims V2/04 to V2/08; DPS01621-DPS01723, Expert report of [REDACTED] 'Profit loss calculation report and opinion regarding Victim V01/04 and Victims V2/04 to V2/08', 13 November 2023 ("Defence Expert Report").

<sup>14</sup> KSC-BC-2020-04/F00728/A01, Annex 1 to Victims' Counsel's questions for Defence expert with confidential annex 1, 27 November 2023; KSC-BC-2020-04/F00736, Defence Submission of Expert's Answers to Written Questions from Victims' Counsel, 6 December 2023, with confidential Annex 1.

<sup>15</sup> Directions, paras 41-43, 52(h) and paras 36-40, 52(g).

<sup>16</sup> Directions, para. 52(f).

<sup>17</sup> KSC-BC-2020-04/F00804, Victims' Counsel's Request for reparations to address the physical, mental, and material harm suffered by victims participating in the proceedings, 4 March 2024 ("Reparations Request").

the Law. The trial judgment is when this acknowledgement becomes the most meaningful and tangible.<sup>18</sup>

13. At the same time, the determination of harm resulting from the crimes charged against the Accused is necessary for a full and comprehensive determination of the truth about what happened, and who was responsible for it.<sup>19</sup> The Impact Statement and evidence on harm are intended to assist the Panel in its determination of this truth.

14. Evidence of harm is relevant to material elements of the crimes charged. Evidence on harm resulting from the murder charge in this case comes from eyewitnesses to that crime and is intertwined with the evidence concerning the specific facts and circumstances of its commission.<sup>20</sup> Circumstances and conditions of detention, which are extensively discussed by the VPPs, are relevant for determining the crime of arbitrary detention and its consequences<sup>21</sup>

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<sup>18</sup> UN General Assembly resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 15 December 2005, Art. IX(22)(b), (d), and (f) (“UN Basic Principles on Reparations”). See also, ECCC *KAINING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC, F28, Appeal Judgement, 3 February 2012, para. 661.

<sup>19</sup> KSC-BC-2020-04/F00433, Decision on victims’ procedural rights during trial and related matters, 24 February 2023, paras 26-27. See also, *Prosecutor v. Sali Mustafa*, KSC-BC-2020-05/F00152, Decision on victims’ procedural rights during trial, 12 July 2021, paras 17-18. In this Decision Trial Panel I referred to the Judgment of the Grand Chamber of the European Court of Human Rights in the *El-Masri* case: “The Grand Chamber underlined the importance of the right to truth not only for the victim and his family but also for other victims in similar cases and the general public who had the right to know what happened. It concluded that the applicant was deprived “of being informed of what had happened, including getting an accurate account of the suffering he had allegedly endured and the role of those responsible for his alleged ordeal” and that therefore, there had been a violation of the procedural head of Article 3 of the ECHR. The Panel is of the view that acknowledgment of serious breaches of human rights and international humanitarian law is a form of remedy that is as important, or even more important than, the right to compensation.”

<sup>20</sup> International Criminal Court (“ICC”), Elements of Crimes, definition of war crime of murder, Article 8(2)(c)(i)-1. See also, Decision on the Confirmation of the Indictment, para. 61.

<sup>21</sup> Rule 99 of the ICRC Customary International Humanitarian Law Study, Volume II, Chapter 32, Section L. See also, Decision on the Confirmation of the Indictment, paras 49-52.

whereas inflicting “severe physical or mental pain or suffering” is a constitutive material element of the war crimes of cruel treatment<sup>22</sup> and torture.<sup>23</sup>

15. In case of conviction, the harm suffered by the VPPs is of relevance for sentencing purposes. As noted by the Trial Panel, the “gravity of the crime and its consequences are key considerations in imposing the sentence”,<sup>24</sup> and indicators of gravity include “the number of victims, the vulnerability of the victims, the age of the victims, the extent of the victims’ suffering and the impact on the victims’ relatives”.<sup>25</sup>
16. Finally, findings on harm suffered by the VPPs can also be independent from the Panel’s determination on the individual criminal liability of the Accused. Pursuant to Article 22(7), the Trial Panel may include a decision on the scope and extent of any damage, loss and injury to, or in respect of, victims, even in case of an acquittal.

## B. Relevant evidence

### 1. *The testimony of VPPs and W04733*

17. The primary source of evidence on the impact of the crimes at Kukës comes from the victims themselves.
18. V01/04 gave evidence over the course of five days.<sup>26</sup> Victims’ Counsel submits that the essential aspects of his account – namely the grave mistreatment that he [REDACTED] experienced, [REDACTED], and the fact that the Accused was involved [REDACTED] – are true and should be accepted by the Panel.

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<sup>22</sup> ICC, Elements of Crimes, definition of war crime of cruel treatment, Article 8(2)(c)(i)-3. See also, Decision on the Confirmation of the Indictment, paras 54-56.

<sup>23</sup> ICC, Elements of Crimes, definition of war crime of torture, Article 8(2)(c)(i)-4. See also, Decision on the Confirmation of the Indictment, paras 58-59.

<sup>24</sup> Mustafa Trial Judgment, para. 787.

<sup>25</sup> Mustafa Trial Judgment, para. 789. See further at paras 185-188 below.

<sup>26</sup> Between 30 May-06 June 2023 under the pseudonym TW4-01.



19. At times, V01/04's testimony was obviously an ordeal for him. The Panel will want to take into account [REDACTED] in assessing his evidence. [REDACTED],<sup>27</sup> are, on the unchallenged expert evidence, part of that condition.
20. V03/04,<sup>28</sup> V07/04,<sup>29</sup> V08/04,<sup>30</sup> and V09/04<sup>31</sup> also testified. They provided evidence of relevant events prior to the abduction and detention of W04733, their father/husband. They also testified to the accounts that he gave them on his release, and of the harm done both to him, and indirectly to them, by the crimes at Kukës. They were, it is submitted, an obviously truthful group of witnesses.
21. W04733 died on [REDACTED].<sup>32</sup> His evidence has been admitted under Rule 155.<sup>33</sup> His accounts provide the best insight into the harm that he suffered at Kukës, and thereby, an understanding of the indirect harm suffered by his family.
22. In all their cases, their testimony is available to the Panel both for the assessment of the liability of the Accused and as evidence of the impact on the alleged crimes upon them.

## ***2. Forensic Medical Examination and expert testimony***

23. The Panel heard testimony from two mental health experts, Karin Duhne-Prinsen and Dr Chayèn Lozano Parra, on 21 August 2023. Their report<sup>34</sup> and CVs are available to the Panel.<sup>35</sup>

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<sup>27</sup> See Forensic Medical Evaluation, Section 8, V4010043.

<sup>28</sup> On 29 March 2023 under the pseudonym TW4-06.

<sup>29</sup> On 27 and 28 March 2023 under the pseudonym TW4-08.

<sup>30</sup> On 29 and 30 March 2023 under the pseudonym TW4-07.

<sup>31</sup> On 30 March 2023 under the pseudonym TW4-09.

<sup>32</sup> KSC-BC-2020-04/F00463/A01, Annex 1 to Prosecution motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-6, item no. 2 (official death certificate of W04733, ERN 106419-106419); T. 31 May 2023, 1575:17, 1575:22, 1576:7-9; Lerz Report, V4000005.

<sup>33</sup> KSC-BC-2020-04/F00562, Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules, 4 July 2023, para. 70 (b).

<sup>34</sup> Forensic Medical Examination, V4010023-V4010044.

<sup>35</sup> Forensic Medical Examination, V4010045-V4010048.

24. Dr Chayèn Lozano Parra is a psychiatrist who has diagnosed or treated hundreds of patients suffering from trauma.
25. Karin Duhne-Prinsen is a psychologist who has diagnosed or treated over a hundred patients suffering from trauma.
26. Of particular relevance to this case, both experts have substantial experience of carrying out medico-legal assessments for the *Instituut voor Mensenrechten en Medisch Onderzoek* (iMMO) (the Netherlands Institute for Human Rights and Medical Assessment). This work is conducted in accordance with the Istanbul Protocol, the United Nation's standard for carrying out medico-legal assessments of alleged victims of torture.
27. The two experts co-authored a report in the case of *The Specialist Prosecutor vs. Salih Mustafa* which was relied upon by Trial Panel I in its reparations order in that case.<sup>36</sup>
28. Although primarily relevant in relation to V01/04, it also has value in understanding the impact of the crimes on W04733, and thereby, the harm to his family. For example, the experts report that the most common psychological symptoms resulting from torture include flashbacks, irritability, negative changes in thoughts and feelings, moroseness and atypical behaviour.<sup>37</sup> As set out at paragraphs 139-144, these terms aptly describe some of the changes experienced, not only by V01/04, but also by W04733, as observed by his family following his detention and mistreatment.<sup>38</sup>
29. The very clear conclusion of both experts is that V01/04 has "[REDACTED]".<sup>39</sup> The impact of that untreated and serious condition is addressed in detail at paragraphs 73-91 below.

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<sup>36</sup> KSC-BC-2020-05/F00517, *Specialist Prosecutor v. Salih Mustafa*, Corrected version of Public redacted version of Reparation Order against Salih Mustafa, 6 April 2023, para. 132 and *passim* ("Mustafa Reparation Order").

<sup>37</sup> Forensic Medical Examination, V4010027.

<sup>38</sup> See Section (C)(2)(c)(ii) and para. 156 below.

<sup>39</sup> Forensic Medical Examination, V4010024.

30. Further, the crucial role that V01/04's condition played in [REDACTED] is explained by the experts.<sup>40</sup>
31. Victims' Counsel notes that there was no serious challenge either to the qualifications of the two mental health experts from iMMO or to their conclusions. No evidence to the contrary was called.
32. Victims' Counsel invites the Trial Panel to accept the conclusions in the testimony and the report of the two experts as providing a highly credible and robust assessment of V01/04's psychological condition, its cause, [REDACTED], and its effects upon his life.

### 3. *Material harm*

33. Dr Stefan Lerz is an expert with extensive experience in the calculation of economic loss. The Lerz Report<sup>41</sup> provides an analysis of the economic harm suffered by V01/04 and the family of W04733. His CV is available to the panel.<sup>42</sup>
34. Dr Lerz was appointed by the Trial Panel to provide a report in the *Mustafa* case,<sup>43</sup> and his findings were subsequently relied upon by the Panel in determining the appropriate reparations in that case.<sup>44</sup>
35. His findings in this case, and those of the Defence expert, are addressed at paragraphs 32, 50 and 51 of the Reparations Request and are incorporated here by reference.
36. The issue of economic harm is addressed in respect of [REDACTED] VPPs at paragraphs 92-96 and 175-180 below.

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<sup>40</sup> Forensic Medical Examination, Section 3.4 at V4010031, Section 7 at V4010041, and Section 8.2.3 at V4010043.

<sup>41</sup> Lerz Report, V4000001-V4000075.

<sup>42</sup> KSC-BC-2020/04/F00588/A05, Annex five to Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel with six confidential annexes, Curriculum Vitae dated 6 June 2023.

<sup>43</sup> KSC-BC-2020-05/F00517/RED/COR, para. 44.

<sup>44</sup> *Ibid.*, para 229 and *passim*.

### C. Evidence of harm

37. The mutual evidential support offered by the testimony of the witnesses is very powerful both in terms of corroborating the harm suffered by the VPPs, and its cause. It is also highly incriminating evidence against the Accused, demonstrating that he bears responsibility for the criminal acts charged in this case. As will be expanded upon in Victims' Counsel's closing statement, it is not credible to suggest that evidence from these different and unconnected sources could have emerged other than as a result of it being true.

#### *1. Direct and indirect victim V01/04*

38. V01/04 is a direct victim of mistreatment at the Kukës Metal Factory [REDACTED].

39. V01/04 was born in [REDACTED]. [REDACTED]<sup>45</sup>

40. In 1999, V01/04 [REDACTED] arbitrarily detained at the Kukës Metal Factory, a KLA facility. [REDACTED] never properly informed about the reasons for [REDACTED] arrest or who had ordered it.<sup>46</sup>

41. V01/04 was detained in inhumane conditions [REDACTED]. During that time, he was tortured and mistreated at the hands of members of the KLA, including by the Accused. V01/04 survived this inhumane cruelty, [REDACTED]. [REDACTED]. As a result of what happened to him at the Kukës Metal Factory, V01/04 suffered and continues to suffer physical, psychological, and material harm.

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<sup>45</sup> T. 31 May 2023, 1569:8-23.

<sup>46</sup> T. 30 May 2023, 1419:8-12 ("Q. Did they tell you who had ordered your arrest? Did they give you any information in that regard? A. No. I asked about the reason of my arrest, and I said, 'Can I know who ordered this?' And the response I got was: 'You will learn about this later.' They didn't tell me").

**(a) Immediate physical and psychological mistreatment - harm**

**(i) Inhumane conditions of detention**

42. V01/04 was detained in an unfurnished room of about 9m<sup>3</sup> with other detainees (from six to seven, and at one point twelve other people).<sup>47</sup> V01/04's hands were tied most of the time.<sup>48</sup> The room had a cracked concrete floor with two windows with just metal bars and no glass.<sup>49</sup> For the first couple of days, they had blankets to sleep, then nothing. The detainees were given very little food and water<sup>50</sup> – V01/04 stated that he lost a significant amount of weight after his release.<sup>51</sup> [REDACTED].<sup>52</sup> [REDACTED].<sup>53</sup> Detainees were not permitted to speak with one another and were questioned and beaten if they did.<sup>54</sup>

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<sup>47</sup> T.30 May 2023, 1432:6-11, 1431:15-16.

<sup>48</sup> T. 30 May 2023, 1447: 7-11 (“Q. The question -- you earlier told us that when you were arrested you were put some restraints, some military bootlaces on your hands. While you were detained in room 1, were your hands restrained? Were you restrained in any way? A. I was personally -- I had my hands tied most of the time.”); 30.05.2023, T. 1447: 15-17 (“Q. And do you recall if the other detainees were tied or untied? A. No, no one else was tied apart from me. I was the only one to have hands tied, and I don't know the reason why.”).

<sup>49</sup> T. 30 May 2023, 1430:14-1431:21.

<sup>50</sup> T. 30 May 2023, 1432:6-11.

<sup>51</sup> T. 31 May 2023, 1552:22 (“A. When I went back home, I didn't weigh more than 45 or so kilos.”).

<sup>52</sup> T. 30 May 2023, 1447:18-1448: 3 (“Q. During your detention, were you provided with any soap for personal hygiene? [REDACTED] a guard -- a new guard who had come to replace someone else, he took us outside. There was no soap but some cold water and a sheet covering an area where we went in to wash ourselves, but only using water nothing else. Just to remove the blood. Q. Were you allowed to wash before [REDACTED] A. No, no, never. We couldn't wash our face or wash our bodies. Q. A toothbrush? A. We didn't even see such items.”).

<sup>53</sup> T. 30 May 2023, 1448:4-5 (“Q. Were you given any changes of clothes? A. No, nothing.”).

<sup>54</sup> T. 30 May 2023, 1448:8-13 (“Q. During your stay in that room, could you talk freely to the other detainees? A. In secret, we could talk. If we did that openly, they could maltreat us and were just for nothing asking us, ‘Why did you talk to him? What did you say?’ And then this would be followed by beatings. They would question us. They would ask those interacting, ‘What did you say? What kind of information did you give to one another?’ and then this would be followed by beatings.”).

(ii) Physical and psychological mistreatment

43. V01/04 described how the detainees at the Kukës metal factory were regularly beaten.<sup>55</sup> Throughout his detention, V01/04 often witnessed the mistreatment and suffering of other detainees (including W04733). [REDACTED].<sup>56</sup>
44. On several occasions, KLA perpetrators, including [REDACTED], forced him to hit others, and he witnessed similar pressure being applied to other detainees.<sup>57</sup>
45. The number of times V01/04 [REDACTED] were beaten made it difficult for him to list and separate all instances of his mistreatment.<sup>58</sup> During [REDACTED] detention, V01/04 [REDACTED] subjected to several sessions of severe mistreatment that lasted for long hours. These usually happened [REDACTED].<sup>59</sup>

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<sup>55</sup> T. 31 May 2023, 1524:22-1525:2 ("I don't remember, but we were maltreated virtually every day. Every time the important people came, Xhemshit and Sabit and others came, they would come into the room and maltreat us. They would come with people, soldiers, and do this. They would just kill time with us there. Because the front line was at the headquarters, not in Kosovo.").

<sup>56</sup> T. 31 May 2023, 1512:15-22 ("Q. You have mentioned other people who were detained with you yesterday, including, for instance, people of -- three Romas. Did you ever see anything happening to them in the detention room? A. Yes, they beat them. They beat me. They beat others that were in the room. Whenever they would enter the room, in general they would beat all of us up. Nobody would be saved, spared. Q. Were the detainees ever ordered to do anything to one another? A. Yes. They were ordered to hit one another, to slap one another."); T. 30 May 2023, 1477:20-24 ("[REDACTED]"); T. 31 May 2023, 1538:18-24 ("They took the person from Drenica and the one from Suhareke. The one from Suhareke was very badly beaten. Once in the office, they brought to the corridor near the room number 2, beat him up again there. And when he was brought back later in the evening to the room, I removed his shirt and actually a part of his skin came off with the shirt. He was tall. He had a moustache. He was in his 50s"); T. 30 May 2023, 1452:2-1454:2 [REDACTED]; T. 30 May 2023, 1454:10-19 ("[REDACTED]").

<sup>57</sup> T. 30 May 2023, 1454:3-10 ("[REDACTED]"), T. 31 May 2023, 1513:1-3 ("We were beaten up so many times. Sometimes the one group would come, the next another group. I know that they made us slap each other.").

<sup>58</sup> T. 30 May 2023, 1419:15-18 ("A. I don't know. I think on that same evening they brought in someone else who was beaten up, and I also was hit four -- four, five times. While I was lying down, hands tied, they hit me or gave me a few blows"); T. 30 May 2023, 1457:20-1458:6; T. 31 May 2023, 1507:16-23 ("[REDACTED] A. On the second occasion they beat me as much as they could. Now I can't remember the exact names. They were in a group, important people, but I don't remember the names. I went through so much ill-treatment and frequently that I can't now clearly distinguish when and how.").

<sup>59</sup> T. 30 May 2023, 1459:5-15 ("[REDACTED]").

46. The first time that he was subjected to a sustained beating, [REDACTED].<sup>60</sup>

V01/04 went on to describe how during that incident he felt [REDACTED],<sup>61</sup> how he could [REDACTED],<sup>62</sup> and how afterwards [REDACTED], “[...] [REDACTED]”.<sup>63</sup>

47. V01/04 describes how that night his perpetrators also tortured him by means of [REDACTED], and their casual cruelty. V01/04 stated that he would not treat his worst enemy in this way, [REDACTED]:

[REDACTED].<sup>64</sup>

48. This mistreatment [REDACTED].<sup>65</sup> [REDACTED].<sup>66</sup> At the same time, [REDACTED].<sup>67</sup>

49. [REDACTED].<sup>68</sup> V01/04 [REDACTED] again abused in a similar way, again, for several hours [REDACTED]:

On the second occasion they beat me as much as they could. Now I can't remember the exact names. They were in a group, important people, but I don't remember the names. I went through so much ill-treatment and frequently that I can't now clearly distinguish when and how.<sup>69</sup> [...] I remember them beating me, using every sort of instrument, iron rods, truncheons. So on the second occasion they did to me almost the same thing they did to me the first time.<sup>70</sup>

50. While V01/04's memory was less clear at trial, he has previously identified [REDACTED].<sup>71</sup>

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<sup>60</sup> T. 30 May 2023, 1457:20-1458:6 (“[REDACTED].”); T. 30 May 2023, 1458:10-12; T. 30 May 2023, 1461:19-1462:4 (“[REDACTED].”); T. 30 May 2023, 1468:17-19 (“[REDACTED]”).

<sup>61</sup> T. 30 May 2023, 1458:15-19 (“[REDACTED].”).

<sup>62</sup> T. 30 May 2023, 1464:11-13 (“[REDACTED].”).

<sup>63</sup> T. 30 May 2023, 1464:11-16, 21-24 (“[REDACTED].”).

<sup>64</sup> T. 30 May 2023, 1465:12-18, 22-25.

<sup>65</sup> T. 30 May 2023, 1472:12-23 (“[REDACTED].”).

<sup>66</sup> T. 30 May 2023, 1467:22-1468:19 (“[REDACTED].”).

<sup>67</sup> T. 30 May 2023, 1469:14-25 (“[REDACTED]”).

<sup>68</sup> T. 31 May 2023, 1497:20-24 (“[REDACTED].”).

<sup>69</sup> T. 31 May 2023, 1507:19-23.

<sup>70</sup> T. 31 May 2023, 1508:1-3.

<sup>71</sup> T. 31 May 2023, 1505:17-1506:24 (“[REDACTED].”), T. 31 May 2023, 1509:1-1510:3 (“[REDACTED].”).



51. [REDACTED].<sup>72</sup> V01/04 described:

[REDACTED].<sup>73</sup>

52. [REDACTED]. [REDACTED].<sup>74</sup>

53. The following evening, V01/04 [REDACTED] again subjected to severe maltreatment:

[REDACTED]<sup>75</sup>

54. [REDACTED].<sup>76</sup> All this was [REDACTED].<sup>77</sup>

[REDACTED].<sup>78</sup>

55. A quarter of a century after these events, V01/04 describes in detail the agony that [REDACTED]; how [REDACTED];<sup>79</sup> how [REDACTED].<sup>80</sup>

## **(b) Long-term physical harm**

56. This mistreatment has significantly and permanently changed V01/04's life.

57. After his release, V01/04 required medical treatment as a result of the injuries sustained during his detention and mistreatment:

[REDACTED].<sup>81</sup>

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<sup>72</sup> T. 31 May 2023, 1522:6-1523:8 ("[REDACTED].").

<sup>73</sup> T. 31 May 2023, 1522:10-12.

<sup>74</sup> T. 31 May 2023, 1522:24-1523:8; 1525:14-18 ("[REDACTED].").

<sup>75</sup> T. 31 May 2023, 1526:8-14 ("[REDACTED].").

<sup>76</sup> T. 31 May 2023, 1526:8-14.

<sup>77</sup> T. 31 May 2023, 1526:20-1527:2 ("[REDACTED]."), 1537:2-9 ("[REDACTED] In between this time, did you see the accused, Pjeter Shala, on other occasions? A. No, as far as I can remember. I'm not quite sure. I think I didn't. I don't know. Because many incidents happened there, and I can't remember everything. It's a bit of a problem to be able to remember everything.").

<sup>78</sup> T. 31 May 2023, 1527:5-23.

<sup>79</sup> T. 31 May 2023, 1528: 14-23 ("[REDACTED]."); 1529:9-19 ("[REDACTED]."); 1535:23-1536:1 ("[REDACTED]."); T. 2 June 2023, 1675:2011 ("[REDACTED].").

<sup>80</sup> T. 31 May 2023, 1529:17-19 ("[REDACTED]."); T. 31 May 2023, 1530:25-1531:2 ("[REDACTED].").

<sup>81</sup> T. 31 May 2023, 1553:16-22.



58. However, what he had experienced at the Kukës Metal Factory has left him unable to trust even doctors:

[REDACTED].<sup>82</sup>

59. In 2023, twenty-four years after the events, he described his injuries: “[REDACTED].”<sup>83</sup>

60. As a result of [REDACTED] all the beatings, he continues to suffer from pain in his leg, his bones still ache, he has headaches and rib pain.<sup>84</sup> Specifically, as a result of [REDACTED], V01/04 states: “[REDACTED]”.<sup>85</sup>

61. In summary, V01/04’s enduring physical harm is significant.

### **(c) Psychological harm**

62. V01/04’s psychological trauma is of a profound and debilitating kind. It stems from the different types of mistreatment that he was subjected to, the awful events that he witnessed and their aftermath in the years following the war. Victims’ Counsel submits that one can identify the following events as the cause of V01/04’s psychological harm:

- i) his own experience of physical and psychological mistreatment, and conditions in which he was detained;
- ii) being a witness to the mistreatment and suffering of other detainees;
- iii) [REDACTED];

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<sup>82</sup> T. 31 May 2023, 1544:4-19.

<sup>83</sup> T. 31 May 2023, 1475:7-10.

<sup>84</sup> T. 31 May 2023, 1570:2-12 (“But I do want to ask you this question: Do you still suffer pain as a result of the beatings [REDACTED]? You told us already about the ribs. You don't need to repeat that. But apart from your ribs, do you still suffer pain as a result of the beatings [REDACTED]? A. I have headaches, pain in my leg. When the weather is changing, my pain increases. I suffer from stress, nervous breakdowns. When I sleep, I have to at least wake up and change my clothes because I get completely wet because of sweating because of anxiety. I need to even change my bedsheets. If you came to my hotel room now, you would see my clothes and my pillow all wet.”); T. 30 May 2023, 1472:12-1475:10; Forensic Medical Report, V4010030.

<sup>85</sup> T. 31 May 2023, 1523:16-17.

- iv) [REDACTED];
- v) [REDACTED];
- vi) being called a spy and collaborator;
- vii) [REDACTED].

63. The scale of the physical violence used against V01/04 at the Kukës Metal Factory was in itself traumatizing:

For us what was important were the injuries. We were expecting to be killed at every moment. Even soldiers coming back from the front line wanted to come and beat us up in the room. We were counting the minutes when we will die. We would close our eyes to sleep, but we actually did not sleep. Could not sleep. I don't know if we could actually sleep for five minutes. You would have people coming and swearing at you, using offensive language against you through the window. They would say things like, "We will come and do this and that to you." So we were expecting at every moment that the door will open and that the beating will begin.<sup>86</sup>

64. It is clear that the trauma of these events will never leave V01/04. He suffers from frequent flashbacks of the events that took place at Kukës. His life has changed forever. Fear and anxiety are stuck in his head. He suffers from stress and describes himself as "short-tempered". He openly states that he is constantly afraid [REDACTED].<sup>87</sup> [REDACTED]:

[REDACTED].<sup>88</sup>

65. V01/04 clarified what he meant by stating that he "died once so I cannot die twice":

You can't kill a human being in any other different shape or form. They killed me and took my soul slowly, step by step. A human being cannot die in a different manner. [REDACTED]. I know what being beaten is. I know what pain from beatings is. No one can cause me greater pain than they did. It can only be less pain. So I have lived through this. I have experienced everything. Some people say when you experience things like in movies, they are just movies. I have – I went through

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<sup>86</sup> T. 31 May 2023, 1539:5-14.

<sup>87</sup> T. 31 May 2023, 1572:8-1575:4.

<sup>88</sup> T. 31 May 2023, 1527:23-1528:9.

things that are worse than things you see in movies. What I've seen, what I've experienced, I wouldn't wish that to anyone. Even if someone could be in my shoes for even five minutes, they would do anything to escape that reality. I never thought that this could happen to anyone. I would never be able to even imagine doing these things to other people. Killing somebody, yes. Doing this, torturing people, and tormenting them while joking, I would never be able to even think of doing that. I would be – I can say anything about a human being but not think of doing this. I've left this in the hands of God.<sup>89</sup>

66. V01/04 further explained what [REDACTED] meant to him:

[REDACTED].<sup>90</sup>

67. Following his release from detention, V01/04 [REDACTED]:<sup>91</sup>

[REDACTED].<sup>92</sup>

[REDACTED].<sup>93</sup>

68. Based on V01/04's statements, it is clear that he was also deeply harmed by being accused by his captors, [REDACTED], of spying and/or collaborating with the Serbs. [REDACTED].

[REDACTED].<sup>94</sup>

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<sup>89</sup> T. 31 May 2023, 1570:22- 1571:15.

<sup>90</sup> T. 31 May 2023, 1569:8-23.

<sup>91</sup> T. 31 May 2023, 1545:2-1547:21.

<sup>92</sup> T. 31 May 2023, 1545:2-1546:8.

<sup>93</sup> T. 31 May 2023, 1546:1-19.

<sup>94</sup> T. 30 May 2023, 1461:15-18. See also, T. 30 May 2023, 1459:24-1461:1 ("[REDACTED]."), 1466:18-1467:12 ("Were you ever accused of being a spy during your detention there at the Kukes headquarters? A. No. When people walked by the window, they would insult our mothers and say, 'Spies' and everything that they would think of, because they had lied to everybody else about us. Now, I don't know what I spied about, whom did I cause any torts or any harm. Can they just present one fact, even one single fact, and then I would admit to everything, irrespective of the fact that I never did any wrong-doings and -- but just one fact. There were people coming from the front line wounded, and they wanted to come into the room to just cut us open because of what they had been told by them. And it was only thanks to the guards that we're still alive. The guard protected us and didn't let them in. Because you had people whose family members had been slaughtered, so they wouldn't think or reflect on the matter. They were perfectly right. When told like this and having been lied to, they were legitimately trying to take revenge. And, actually, I would have done probably the same thing. But you don't do that to somebody who has not done any harm to you."); 1475:14-1476:17 ("[...] [REDACTED]").

And,

[REDACTED].<sup>95</sup>

69. In the course of the trial, V01/04 has expressed [REDACTED]. From V01/04's statements, [REDACTED]. This trauma was magnified by what V01/04 considered to be [REDACTED],<sup>96</sup> [REDACTED], and V01/04's sense of fear and insecurity, [REDACTED].<sup>97</sup>

(i) Expert evidence on harm suffered by V01/04

70. On [REDACTED], two mental health experts from iMMO conducted a forensic medical evaluation of V01/04.<sup>98</sup>

71. The Forensic Medical Examination and expert testimony address the harm suffered by V01/04, its origins and its impact on his life. The examination revealed that V01/04:

[REDACTED].<sup>99</sup>

72. The mental health experts explained in their testimony:

And what we -- what we saw is that based on all this data, [REDACTED].<sup>100</sup>

(ii) Harm: long-term and short-term impacts

73. The mental health experts explained that "torture and inhumane treatment may lead to a range of physical and psychological problems and symptoms. And it has been revealed that especially the psychological symptoms can be more long-

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<sup>95</sup> T. 31 May 2023, 1571:18-1572:5.

<sup>96</sup> T. 6 June 2023, 1867:2-15 ("[REDACTED]").

<sup>97</sup> T. 31 May 2023, 1557:18-1559:15, 1594:13-24, 1595:7-1596:20.

<sup>98</sup> T. 21 August 2023, 2259:10-2260:2, 2266:4-21. See also, paras 23-27 and 29-32 above.

<sup>99</sup> Forensic Medical Examination, V4010024.

<sup>100</sup> T. 21 August 2023, 2267:8-2268:3.

lasting than the physical ones.”<sup>101</sup> The symptoms suffered by V01/04 are chronic and have manifested themselves in the ways described under the following five headings.

**[REDACTED]**

74. [REDACTED]. [REDACTED].<sup>102</sup>

75. The mental health experts explained to the Panel that [REDACTED] and that a consequence of it is that “[REDACTED].”<sup>103</sup>

76. [REDACTED]<sup>104</sup> The mental health experts recommended [REDACTED]<sup>105</sup>

**[REDACTED]**

77. The mental health experts considered [REDACTED] as a symptom of [REDACTED] arising out of his mistreatment in 1999. They explained that V01/04:

[REDACTED].<sup>106</sup>

78. The mental health experts described [REDACTED] from which V01/04 suffers:

[REDACTED].<sup>107</sup>

79. The mental health experts reported [REDACTED]:

[REDACTED].<sup>108</sup>

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<sup>101</sup> T. 21 August 2023, 2264:7-10.

<sup>102</sup> Forensic Medical Examination, V4010032.

<sup>103</sup> T. 21 August 2023, 2270:25-2271:26.

<sup>104</sup> Forensic Medical Examination, V4010044.

<sup>105</sup> Forensic Medical Examination, V4010044.

<sup>106</sup> T. 21 August 2023, 2275:19-25.

<sup>107</sup> T. 21 August 2023, 2276:1-15.

<sup>108</sup> Forensic Medical Examination, V4010036.

*[REDACTED]*

80. [REDACTED].

81. [REDACTED]. The mental health experts explained:

[REDACTED].<sup>109</sup>

82. The mental health experts explained that “[REDACTED].”<sup>110</sup>

*[REDACTED]*

83. [REDACTED]. The mental health experts described:

[REDACTED]<sup>111</sup>

84. In their Report, the mental health experts explained in detail:

[REDACTED].<sup>112</sup>

85. [REDACTED]. The mental health experts found that, because of [REDACTED].<sup>113</sup>

*[REDACTED]*

86. [REDACTED].<sup>114</sup> The mental health experts explained:

[REDACTED].<sup>115</sup>

87. The mental health experts concluded that [REDACTED].<sup>116</sup>

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<sup>109</sup> Forensic Medical Examination, V4010042.

<sup>110</sup> T. 21 August 2023, 2276:16-20.

<sup>111</sup> T. 21 August 2023, 2281:21-2282:2.

<sup>112</sup> Forensic Medical Examination, V4010041- V4010042.

<sup>113</sup> Forensic Medical Examination, V4010042.

<sup>114</sup> T. 21 August 2023, 2279:24-2280:8, 2281:14-20.

<sup>115</sup> T. 21 August 2023, 2273:11-20.

<sup>116</sup> T. 21 August 2023, 2281:14-2282:14.

88. [REDACTED] suffered during his detention in Kukës, [REDACTED], caused him to become “[REDACTED]”, and that he felt as though “[REDACTED].”<sup>117</sup> The mental health experts explained that:

[REDACTED].<sup>118</sup>

89. According to the mental health experts, V01/04 experienced an “extensive loss of control”:

During the account he gave about his detention period, he described he was totally subjected to whatever people had planned for him during his detention. So he was not able to get out of the room, he was not able to say when or where he needed anything, and he felt his life was in danger, and he was tortured, as he explained, so there was no way for him to control any of the things that happened to him. So that's what we mean by "extensive loss of control." [REDACTED].<sup>119</sup>

90. The mental health experts linked this fear specifically to V01/04's experiences in 1999:

So the subject has experienced extensive mistrust and that has started since the alleged experiences he had in 1999. And he said he was detained because he was unjustly accused of being a traitor, and he felt very strongly that this was the reason for him to be detained and to be tortured. [REDACTED], he had the constant thought that people were thinking of him as a traitor or as someone who is not trustworthy. Especially this subject had that idea with other men. So his experiences in 1999 were with predominantly men. So since then he had -- he has continuously thought that every man he sees thinks of him as a traitor or a bad person, and, therefore, he does not trust anyone.

[REDACTED].<sup>120</sup>

91. [REDACTED]:

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<sup>117</sup> T. 21 August 2023, 2281:25-2282:4.

<sup>118</sup> T. 21 August 2023, 2282:5-14.

<sup>119</sup> T. 21 August 2023, 2283:1-13.

<sup>120</sup> T. 21 August 2023, 2283:19-2284:11.

[REDACTED].<sup>121</sup>

**(d) Material harm**

92. Prior to the war, [REDACTED].<sup>122</sup> Because of [REDACTED], V01/04 has been unable to work.<sup>123</sup> V01/04 explained:

[REDACTED].<sup>124</sup>

[...]

[REDACTED].<sup>125</sup>

[...]

[REDACTED].<sup>126</sup>

93. [REDACTED]:

[REDACTED].<sup>127</sup>

94. [REDACTED].<sup>128</sup>

95. The Economic Loss Expert provided two estimates with respect to V01/04's lost earnings.<sup>129</sup> The Defence Expert Report provided a third estimate.<sup>130</sup> These amounts are discussed in further detail in the Reparations Request. However, it is appropriate here to elaborate on what material harm V01/04 has experienced and what it means in his life and to his future.

96. The calculations of the experts demonstrate just how much material harm V01/04 has suffered. In losing the ability to function in a workplace, V01/04 has also lost

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<sup>121</sup> T. 21 August 2023, 2287:15-2288:20.

<sup>122</sup> T. 31 May 2023, 1575:5-23.

<sup>123</sup> See Section (C)(1)(c) above, esp. paras 74-76; T. 30 May 2023, 1387:19-1388:1.

<sup>124</sup> T. 31 May 2023, 1576:25-1577:5.

<sup>125</sup> T. 31 May 2023, 1577:8-15.

<sup>126</sup> T. 31 May 2023, 1577:18-23.

<sup>127</sup> T. 31 May 2023, 1578:3-12.

<sup>128</sup> T. 31 May 2023, 1587:14-19 ("[REDACTED].").

<sup>129</sup> Lertz Report, V4000005 et seq.

<sup>130</sup> Defence Expert Report, DPS01640.



the ability to earn a living, save for old age, [REDACTED], and regain financial independence. He testified, “[REDACTED].”<sup>131</sup>

**(e) Causation**

97. It is clear from V01/04’s evidence that the physical pain he experienced at Kukës and continued to experience after his release was caused by the severe mistreatment he endured. This is not contradicted by the physical examination [REDACTED].<sup>132</sup>

98. There is no question that V01/04’s psychological harm, specifically his [REDACTED] and its life altering symptoms, originates from his experiences at the Kukës Metal Factory in 1999.<sup>133</sup> The mental health experts were clear that the symptoms they observed in V01/04 first arose in 1999.<sup>134</sup> As a result of the mistreatment V01/04 suffered, [REDACTED], he has been relegated to a life of [REDACTED].<sup>135</sup> During his forensic examination, the mental health experts reported that V01/04 “[REDACTED].”<sup>136</sup>

99. The mental health experts explained (emphasis their own):

[REDACTED].<sup>137</sup>

100. The mental health experts elaborated before the Panel that:

[REDACTED].<sup>138</sup>

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<sup>131</sup> T. 31 May 2023, 1576:13-14.

<sup>132</sup> [REDACTED].

<sup>133</sup> T. 21 August 2023, 2267:18-2268:3.

<sup>134</sup> T. 21 August 2023, 2267:18-2268:3, 2275:1-10.

<sup>135</sup> Forensic Medical Examination, V4010041.

<sup>136</sup> Forensic Medical Examination, V4010036.

<sup>137</sup> Forensic Medical Examination, V4010024, V4010043. See also, T. 21 August 2023, 2264:11-2265:1.

<sup>138</sup> T. 21 August 2023, 2276:21-2277:2.

101. V01/04's [REDACTED] symptoms interfere with his daily life such that he is no longer able to provide for himself [REDACTED], resulting in significant economic loss, as detailed in the Reparations Request.<sup>139</sup>

102. It is submitted that V01/04's physical and mental wellbeing, his entire life and prospects have been dramatically changed by the crimes charged against the Accused. He is a deeply injured man who considers himself dead among the living.

## *2. Indirect victims [REDACTED]*

103. [REDACTED] (also "[REDACTED]") are all indirect victims of crimes committed against W04733.

104. The relationship between these [REDACTED] VPPs and the deceased W04733 is as follows:

- V02/04 (TW4-09): son, [REDACTED]
- V03/04 (TW4-06): wife, [REDACTED]<sup>140</sup>

[REDACTED]

- V07/04 (TW4-08): son, [REDACTED]
- V08/04 (TW4-07): son, [REDACTED]

105. In the [REDACTED], W04733 was abducted by armed members of the KLA. After being detained for a short period at another location, he was taken to the Kukës Metal Factory. There, he was subjected to a cruel and brutal regime of mistreatment amounting to torture at the hands of senior members of the KLA at the facility, including the Accused.

106. Neither he, nor the rest of his family, ever fully recovered from the impact of his detention and mistreatment.

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<sup>139</sup> Reparations Request, paras 28, 31-32; Forensic Medical Examination, V4010032, V4010034-5, V4010037, V4010039, V4010043; Lerz Report, V4000005, V40000010, V40000014; T. 31 May 2023, 1575:17-22, 1576:7-9.

<sup>140</sup> T. 28 March 2023, 828:15-19.

107. The harm suffered by W04733's family is multi-faceted, and to present it comprehensively, it is set below under the following headings:

- a) W04733 before the crimes at Kukës
- b) W04733's arbitrary detention, cruel treatment, and torture at the Kukës Metal Factory by senior figures within the KLA hierarchy, including the Accused
- c) The grave consequences, both physical and mental, suffered by W04733 as a result of these crimes
- d) The impact of the harm caused to W04733 on his family

108. The severity of W04733's mistreatment and suffering is reflected in the extent of the harm that his family continues to endure. Therefore, understanding W04733's harm is a prerequisite for understanding theirs. For that reason, a detailed review of the evidence in relation to his harm is necessary and included here. It is also important for W04733's family that his harm is understood and acknowledged by this Court.

**(a) W04733 before the crimes at Kukës**

109. To understand the loss that the abuse of W04733 caused to his family, it is first necessary to know something of the man he was before he was detained and tortured.

110. He was a man who was loved and respected by his wife and children. He was held in high esteem by his community and had many friends. [REDACTED].<sup>141</sup>

111. His wife described him in these words:

My husband, as much as I can assess as a spouse and our entire family, was a man who upheld all human values and that a human being has. He was a decent husband and a good father.<sup>142</sup>

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<sup>141</sup> [REDACTED].

<sup>142</sup> T. 29 March 2023, 842:22-24.

112. His son V02/04 remembered him in this way:

I would describe my father as a very honest, sincere man. Very affectionate to his family, to himself, friends, community, the community, surrounded by friends, many friends.<sup>143</sup>

113. [REDACTED], W04733 was a man who had respect for the law. His wife observed that he never behaved unlawfully.<sup>144</sup>

**(b) W04733's arbitrary detention, cruel treatment, and torture at the Kukës Metal Factory by senior figures within the KLA hierarchy, including the Accused**

114. The evidence of what happened to W04733 in Kukës comes from W04733's accounts to investigators and his family, and is supported by testimony of other detainees and medical evidence.

115. In summary, the evidence establishes that W04733 was abducted [REDACTED].<sup>145</sup> He was ultimately taken to the Kukës Metal Factory where he was arbitrarily detained in inhumane conditions and subjected to mistreatment amounting to torture. The Accused played a full part in the commission of these crimes.

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<sup>143</sup> T. 30 March 2023, 973:19-22.

<sup>144</sup> T. 29 March 2023, 842:2-3.

<sup>145</sup> [REDACTED].

(i) Inhumane conditions of detention

116. The conditions in the room used by the KLA to house their prisoners at Kukës were harsh and inhumane,<sup>146</sup> the food provided was inadequate,<sup>147</sup> and the hygiene facilities were poor.<sup>148</sup> The conditions were such that W04733 later recalled his apologetic remark to one of those involved in freeing him at the end of his ordeal at the Metal Factory:

[REDACTED].<sup>149</sup>

117. Access to medical care was almost non-existent. On the one occasion [REDACTED].<sup>150</sup>

(ii) Mistreatment

118. While in Kukës, W04733 was repeatedly subjected to severe mistreatment.<sup>151</sup>

In his description of an early encounter with his captors, W04733 vividly conveys

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<sup>146</sup> SPOE00185335-00185363 RED3, at SPOE00185344, (“[REDACTED].”), T. 27 March 2023, 683:15-18 (“A. Yes. It was a room that had three windows with metal bars but no glass. The room was concrete, had concrete floors. Some had some mattresses to sleep on. They could not wash themselves. And they all stayed in the same room.”); T. 29 March 2023, 906:17-20 (They then took him to Kukës, placed him in that prison where there was nothing, no bed, nothing. No place to lie down, to sleep on. Just the floor. Concrete floor, nothing else. No food, insufficient food, insufficient water.”); T. 28 March 2023, 816:8-13 (“Q. Did your husband provide any other details about the treatment he received there? A. Yes. They applied all forms of torture. On top of that, he -- they wanted to cut his veins on the wrists. He would sleep on concrete floor. He had no clean clothes, no conditions to clean himself, little to eat.”).

<sup>147</sup> SPOE00013793-SPOE00013847 RED2, p. 31, (“[REDACTED].”).

<sup>148</sup> SPOE00013793-SPOE00013847 RED2, p. 31 (“[REDACTED].”).

<sup>149</sup> 082892-TR-AT-ET Part 7, p. 13.

<sup>150</sup> SPOE00013793-SPOE00013847 RED2, p. 34 (“[REDACTED].”).

<sup>151</sup> T. 30 March 2023, 980:9-22 (“Q. Thank you. Did your father ever tell you what has happened after he arrived in Kukës? A. Yes, he told me. On one occasion, he told me because I couldn't hear what he was telling me often. But he told me that he was mistreated brutally there, with cruelty. Q. I am aware that this must be difficult for you to talk about, but could you give us, if you have more details, about how he was treated in Kukës? A. He said that they were beaten up with rubber batons, iron bars, wooden batons. They would cut them with knives. Beat him up until he would lose consciousness. Q. Was this a single incident that he and others apparently were beaten or this happened more than once? A. No, this happened on several occasions.”). See also, T. 28 March 2023, 816:8-13 (“Q. Did your husband provide any other details about the treatment he received there? A. Yes. They applied all forms of torture. On top of that, he -- they wanted to cut his veins on the wrists. He would sleep on

the sense of vulnerability and powerlessness of a person now at the mercy of violent and malicious men:

[REDACTED].<sup>152</sup>

119. Soon, the beating began:

[REDACTED].<sup>153</sup>

120. W04733 feared that he was about to be killed by his captors:

[REDACTED].<sup>154</sup>

121. The same offender also [REDACTED].<sup>155</sup> The scar from this assault was still visible when W04733 was examined a decade later.<sup>156</sup>

122. The grave mistreatment of W04733 is corroborated by V01/04 and by another witness, W01448, who was also a detainee at Kukës. He saw for himself the brutality meted out to W04733:

[REDACTED].<sup>157</sup>

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concrete floor. He had no clean clothes, no conditions to clean himself, little to eat.”); T. 29 March 2023, 906:20-907:4 (“Maltreatment, beatings, as we say, using baseball bats, iron -- metal bars, in Kukës at the metal factory. Q. I can imagine that this is very difficult to speak about for you, Witness. But do you remember any more details what your father told you about the mistreatments in Kukës? A. The mistreatment, they beat them up, as my father said. They would go in there and beat them up, all of them, my father and the others, night and day. There were other prisoners there as well, not only my father. This is what my father said.”); T. 28 March 2023, 816:3-7 (“At the metal factory in Kukës, he experienced further torture. He was tortured with blunt objects, metal bars. He had his left arm broken, his leg. All over his body and on his back he was physically tortured. And he was hit with a metal bar on his head. His clothes were covered in blood, from top to bottom.”).

<sup>152</sup> SITF00013181-SITF00013189 RED3, at SITF00013186.

<sup>153</sup> SITF00013181-SITF00013189 RED3, at SITF00013186.

<sup>154</sup> SITF00018740-00018767 RED, at SITF00018744.

<sup>155</sup> 082892-TR-AT-ET Part 5 RED2, p. 4.

<sup>156</sup> See para. 138 below.

<sup>157</sup> SITF00013852-00013869 RED6, at SITF0013856- SITF0013857.

123. Beatings were administered to W04733 regularly, day and night, throughout his detention [REDACTED].<sup>158</sup> The beatings took place in the context of what were ostensibly “interrogations”.<sup>159</sup> In reality, the premise of the questions was so outlandish that, in W04733’s view, they were intended to be provocative rather than informative:

[REDACTED].<sup>160</sup>

124. To be falsely accused of [REDACTED],<sup>161</sup> can only have added to W04733’s ordeal. Furthermore, W04733 was also told, [REDACTED]:

[REDACTED].<sup>162</sup>

125. While enduring his own physical abuse, W04733 (like V01/04) suffered the further pain and distress of [REDACTED],<sup>163</sup> including by the Accused, and the humiliation of having his own beating being witnessed by them:

[REDACTED].<sup>164</sup>

[...]

[REDACTED].<sup>165</sup>

[...]

[REDACTED].<sup>166</sup>

[...]

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<sup>158</sup> 082892-TR-AT-ET Part 8 RED2, p. 29 (“[REDACTED]”).

<sup>159</sup> SPOE00013793-SPOE00013847 RED2, p. 31 (“[REDACTED].”).

<sup>160</sup> 082892-TR-AT-ET Part 5 RED2, p. 34. See also, [REDACTED] (“[REDACTED].”).

<sup>161</sup> See, e.g., 082892-TR-AT-ET Part 5 RED2, p. 10.

<sup>162</sup> 082892-TR-AT-ET Part 6, p. 5.

<sup>163</sup> SITF00018740-00018767 RED, at SITF00018745-6 (“[REDACTED].”). See also, T. 29 March 2023, 908:25-909:3 (“A. All detainees present there were beaten up. They beat them up as they pleased to. They would go inside, beat them up, leave them on the ground. And others as well. Among the persons who beat them up was Pjeter Shala and Xhemshit Krasniqi and Sabit Geci.”).

<sup>164</sup> SITF00018740-00018767 RED, at SITF00018744.

<sup>165</sup> SITF00018740-00018767 RED, at SITF00018744.

<sup>166</sup> SITF00018740-00018767 RED, at SITF00018745.

[REDACTED].<sup>167</sup>

126. W04733 described how [REDACTED]<sup>168</sup> V01/04 also recalled detainees being told to assault one another.<sup>169</sup> He confirms both the severity of the mistreatment of W04733 at the Metal Factory, and the participation of the Accused in it.<sup>170</sup>
127. This mistreatment took place in the generally hostile environment of the Kukës Metal Factory, which is well illustrated in the account that W04733 gave of an episode in which the lives of the prisoners were directly threatened by angry KLA soldiers.<sup>171</sup>
128. The evidence shows beyond any reasonable doubt that the Accused played a full part in what was done to W04733.<sup>172</sup> He was part of the group that transferred W04733 from his first place of detention to the Kukës Metal Factory.<sup>173</sup> This was obviously unlawful conduct. The Accused was taking W04733 to a place that he must have known was, at the very least, a place in which the crime of arbitrary detention was being committed. Thereafter, he took part in detaining W04733 arbitrarily, and in his cruel treatment and torture. The fact that he personally engaged in the physical abuse of W04733 at the same time as others demonstrates his full participation in these crimes.
129. W04733 gave these two summaries of the Accused's behaviour, first in terms of his physical actions:

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<sup>167</sup> SITF00018740-00018767 RED, at SITF00018746.

<sup>168</sup> 082892-TR-AT-ET Part 5 RED2, p. 11.

<sup>169</sup> T. 31 May 2023, 1512:21-22 ("Q. Were the detainees ever ordered to do anything to one another? A. Yes. They were ordered to hit one another, to slap one another."). See also, paras 43-44 above. Further corroboration for this is to be found in the testimony of W04366 who testified that detainees were made to "slap" one another (T. 2 May 2023, 1233:18-20).

<sup>170</sup> T. 30 May 2023, 1454:8-19 ("[REDACTED]").

<sup>171</sup> 082892-TR-AT-ET Part 8 RED2, pp. 25-26 ("[REDACTED]").

<sup>172</sup> T. 30 March 2023, 980:23-T981:4 ("Q. Did your father ever tell you who took part in these beatings? A. Yes. He would always take three persons whom he could identify positively, with 100 per cent certainty. Q. Can you please provide the names. A. Yes, yes. Pjeter Shala, Sabit Geci, and the other one was - I'm sorry - Krasniqi, Xhemshit Krasniqi. My father always told about these three persons.").

<sup>173</sup> See, e.g., 082892-TR-AT-ET Part 3 RED2, pp. 7-9.



[REDACTED].<sup>174</sup>

and then in terms of his ferocity:

[REDACTED].<sup>175</sup>

130. W04733 also gave detailed and graphic accounts of the Accused's violence:

[REDACTED].<sup>176</sup>

**(c) The grave consequences, both physical and mental, suffered by W04733 as a result of the crimes at the Metal Factory**

**(i) Physical consequences**

131. V03/04 described the very poor physical condition of her husband and the damage that his body sustained during his detention, including having broken

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<sup>174</sup> 106978-107020, at 106980 (p. 3).

<sup>175</sup> 082892-TR-AT-ET Part 3 RED2, p. 11. See also, T. 28 March 2023, 817:24-818:1 ("Now, did your husband ever tell you who mistreated him, who did those things that you just described to him? [...] Yes. May I say the names? These persons were Sabit Geci, Xhemshit Krasniqi. There were others as well amongst them. Pjeter Shala.").

<sup>176</sup> 082892-TR-AT-ET Part 5 RED2, p. 10. See also, 082892-TR-AT-ET Part 5 RED2, p. 11 ("[REDACTED]"); SITF00018740-00018767 RED, at SITF00018743 ("[REDACTED]"); U003-2283-U003-2289 RED2, at U003-2286 ("[REDACTED]."); SITF00013181-SITF00013189 RED3, at SITF00013186 ("[REDACTED].").

teeth,<sup>177</sup> weight loss, broken bones, wounds, and scars.<sup>178</sup> V03/04 echoed the description given by his mother, giving additional details.<sup>179</sup>

132. W04733's own summary of his physical condition indicates both the extent of his injuries, and notably, their enduring nature:

[REDACTED].<sup>180</sup>

133. In [REDACTED], W04733 described having "[REDACTED]" after a beating administered by the Accused [REDACTED].<sup>181</sup> This legacy of his torture was apparent in the [REDACTED]:

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<sup>177</sup> T. 28 March 2023, 818:15-18 ("My husband had his teeth broken during the time he was kept in the metal factory in Kukës.").

<sup>178</sup> T. 28 March 2023, 824:12-825:6 ("So when your husband came back, what was his physical condition? How did you find him? A. In a very poor physical condition. He had lost weight. He was pale in his face because of the stress, of the tortures, the fact that he did not sleep. They were afraid to even go to sleep because of the conditions. Everything had a negative impact on him. [REDACTED] He was in a very bad physical shape. His arm and leg broken. There was a scar and wound on his head. He was covered in blood from top to bottom on his clothes. He was in unclean clothes. But with the care that we showed as a family, he overcame that condition. Q. Did you see any other scar in his body? A. Yes. There were scars on his legs, and this was confirmed by international medical organisation in Prishtine. When he went to give a statement, they took photographs and assessed the damages that his body suffered. He also suffered stress, from stress and trauma, nightmares. Q. And, Madam Witness, how did your husband get those marks, those scars? A. He got them from the tortures he suffered at the metal factory in Kukës.").

<sup>179</sup> T. 29 March 2023, 911:6-17 ("Q. Did you observe anything else about his physical condition? A. You mean on his body? He had lost weight. He had lost weight. Then he showed other marks on his hand. His wrist had been cut off. And other brutal things, using cigarettes, salt on the wounds. Inhuman things. Beating, cutting his veins, his wrists. Q. You referred to cigarettes. Was that something you saw or was that something your father told you? A. To be honest, they burned him using cigarettes. They cut his wrists, veins. Q. So you said you saw the scars from cutting his wrists. Did you also see burns on his body then? A. Yes." ). Note that V02/04 was also told by his father about the use of cigarettes to burn him (T. 30 March 2023, 989:7-8) and that W04733 gave some additional detail [REDACTED] respect of this aspect of his harm: "[REDACTED]." (SPOE00185335-00185363 RED3, at SPOE00185340). See also, T. 29 March 2023, 909:24-910:4 ("[...]my father had marks of being hit on the head. I asked what happened to him. These were marks from the beatings. And then my father told me himself what had happened to him. Q. What kind of marks did you see on him? A. He had here a visible mark, an injury, on the head here, as a result of having been hit [...]").

<sup>180</sup> 082892-TR-AT-ET Part 9 RED2, pp. 17-18.

<sup>181</sup> See paras 129-130 above.

[REDACTED].<sup>182</sup>

134. He was unable to [REDACTED].<sup>183</sup>

135. Dealing specifically with his [REDACTED], W04733 explained that the cause [REDACTED] was identified by [REDACTED] as his mistreatment in Kukës. He went on to describe [REDACTED].<sup>184</sup>

136. These specific injuries and disabilities were accompanied by a general decline in W04733's health:

[REDACTED].<sup>185</sup>

And,

[REDACTED].<sup>186</sup>

137. His mistreatment had also, in his view, aggravated his [REDACTED]:

[REDACTED].<sup>187</sup>

138. The medical examination that was conducted [REDACTED].<sup>188</sup> It is submitted that, taken together with the descriptions provided by the family of the injuries that they saw on W04733's release from Kukës<sup>189</sup> and photographs of the injuries,<sup>190</sup> the medical evidence provides some additional support for the proposition that he was harmed there.

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<sup>182</sup> [REDACTED].

<sup>183</sup> SITF00018740-00018767 RED, at SITF00018743.

<sup>184</sup> 082892-TR-AT-ET Part 9 RED2, pp. 21-22 ("[REDACTED]"). Later in this interview, W04733 clarifies that [REDACTED]. See 082892-TR-AT-ET Part 10 RED2, p. 16 lines 20-21. See also, SPOE00013793-SPOE00013847 RED2, p. 6 ("[REDACTED]"); SPOE00013793-SPOE00013847 RED2, p. 41 ("[REDACTED]").

<sup>185</sup> 082892-TR-AT-ET Part 9 RED2, p. 22.

<sup>186</sup> 082892-TR-AT-ET Part 9 RED2, p. 23.

<sup>187</sup> SPOE00013793-SPOE00013847 RED2, p. 40.

<sup>188</sup> [REDACTED].

<sup>189</sup> See paras 131-134 above.

<sup>190</sup> SITF00018740-00018767 RED, photographs at SITF00018749-55, explanation of W04733 at SITF00018743.

(ii) Psychological consequences

139. The ongoing effects on W04733 were psychological as well as physical:

[REDACTED].<sup>191</sup>

140. V07/04 recalled:

It had an emotional effect. My father had psychological traumas. He was destroyed because of his detention in Kukës.<sup>192</sup> [...] Everything changed. He became more aggressive, psychological effects. That all had an effect on him.<sup>193</sup>

And,

The changes, of course, had an effect on his illness. His health deteriorated, and so on.<sup>194</sup>

141. V08/04 explained how his father had changed psychologically after his detention and mistreatment:

[H]e was not the one I used to know before. And he wasn't psychologically the same. And then after that, he had traumas.<sup>195</sup>

142. Regarding his father's personality, V08/04 further recalled:

His character was not the same. He would become angry. He was not the same person as before.<sup>196</sup>

143. V02/04 saw similar changes:

[...] He was in a very difficult psychological state. He was constantly in a pensive mood. Sometimes he would look at something without reacting - I noticed this - which was not the case before.

Q. Were you aware of any changes to his sleep and to how he was in the night?

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<sup>191</sup> 082892-TR-AT-ET Part 9 RED2, p. 24.

<sup>192</sup> T. 27 March 2023, 686:14-16.

<sup>193</sup> T. 27 March 2023, 687:3-5.

<sup>194</sup> T. 27 March 2023, 686:14-18.

<sup>195</sup> T. 29 March 2023, 911:18-25.

<sup>196</sup> T. 29 March 2023, 912:2-6.

A. I only heard about this from my mother; that he would shout in his sleep at nights, mention names, wake up abruptly. This would happen often.<sup>197</sup>

144. V02/04 described the totality of the changes that he witnessed in his father:

A. The first time I saw my father after the events was in 1999, in December 1999.

Q. Was your father in any way different than before his abduction?

A. Quite different.

Q. In what way?

A. He used to be strong physically, and he had lost a lot of weight and appeared weakened. [...] He was the person he used to be character-wise, but he was broken. Physically, he was weak. [...] I could notice it because often I would find him just pondering on things, thinking, lost in thoughts.<sup>198</sup>

**(d) The impact on his family of the harm caused to W04733**

145. Unsurprisingly, the impact of W04733's trauma and physical deterioration had a very significant impact on his immediate family. The man who returned from Kukës was not the same man as the one who had been taken. He was diminished physically, his temperament had changed, he couldn't work to provide for his family, he was not at peace with the world, and he had a pervasive desire for justice to be done: this came at its own additional cost to the well-being of the family.

146. There is a natural overlap between the different aspects of harm suffered by the family, but in order to describe it as comprehensively as possible, it is set out below under five headings that distinguish different stages of the events and the consequences of the crimes committed against W04733.

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<sup>197</sup> T. 30 March 2023, 994:10-17.

<sup>198</sup> T. 30 March 2023, 989:10-17.

(i) The period of arrest and detention

147. In the period of W04733's detention, his family had no way of knowing what was happening to him. The last time that any of them had seen him, he was being abducted at gunpoint and driven away.<sup>199</sup> The family reported the abduction to the police, but apart from a brief call in which W04733 was only able to say he was alive and not his location, they heard nothing until he was returned a fortnight later.<sup>200</sup>

148. Their inevitable anxiety and fear during this period are easy to understand. V07/04 described the way they felt in these words:

Badly. Psychologically, we were all in a very bad condition. We didn't know anything about him. We had no information until he was brought to the apartment where we were staying by the [REDACTED].<sup>201</sup>

149. As V02/04 recalled it:

I was deeply concerned, worried, sleepless nights, looking for help in any direction, trying to find my father. These were very hard, difficult days, those 12, 13, or 15 days.<sup>202</sup>

(ii) The period immediately following the release of W04733's

150. When W04733 returned to the family home and in the days and weeks following, the family suffered distress at the condition that he was in.<sup>203</sup> V03/04 described her first sight of the shocking condition in which her husband's detention had left him:

And that is where we saw him for the first time in a very terrible condition. He was almost fainting. He was covered in blood.<sup>204</sup>

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<sup>199</sup> T. 27 March 2023, 659:7-24; T. 27 March 2023, 559:16-660:2.

<sup>200</sup> T. 28 March 2023, 807:22-809:1.

<sup>201</sup> T. 27 March 2023, 687:18-24.

<sup>202</sup> T. 30 March 2023, 993:19-21.

<sup>203</sup> T. 28 March 2023, 824:12-825:6, 825:10-20

<sup>204</sup> T. 28 March 2023, 808:25.

151. V07/04 described that moment in the following way:

Q. What was your father' s condition when he was brought back?

A. When my father came back, he was in a completely inhuman state. He stunk; that is, he was not clean. He had wounds on his head. His elbow was injured. He had lost weight. And when he came inside, we also noticed other things, such as burn marks on his chest. You could see that he was brutally beaten from the state that he was in.

Q. And did you personally see these marks that you are now describing to the Panel?

A. I saw all of them personally.<sup>205</sup>

152. The family was now confronted with what had happened to W04733, and their lives were changed from that moment onwards:

We took him inside. He was unwashed. He was covered in blood. He had a bad odour. He was wearing a black T-shirt. They told him, "You will now work for us." Whatever they could think of. Things that they could only think of. That was a very difficult moment for us psychologically, mentally. My sons, my daughters were crying. The rest of us, of course. We tried to encourage him, to support him. Whoever is a human being cannot do this onto the others, unless they are criminals. We cleaned him.<sup>206</sup>

153. W04733 described:

[REDACTED].<sup>207</sup>

154. His wife and children nursed him, preparing special food for him and lending him moral support and encouragement:

He was quite full of -- emotional. He was weak, looked as if he was going to faint. His teeth were missing. With the medical care provided upon our return from Albania to Kosovo, with the care from the family and the food that was especially prepared for him, and the good words and support that we showed, saying to him that this can happen to anyone when they fall into the hands of culprits and people who do such things, don' t worry. Because he was very distressed. But all of us in the family encouraged him, told him that justice will prevail, it will come. Don't

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<sup>205</sup> T. 27.03.2023, 667:6:14.

<sup>206</sup> T.28 March 2023, 809:4-13

<sup>207</sup> 082892-TR-AT-ET Part 9 RED2, p. 17.

worry, we will leave it to justice. And we did leave it to justice to prevent any blood feud.<sup>208</sup>

- (iii) Long-term effects of W04733's trauma and disability on the family's wellbeing

155. W04733 never fully recovered from what had been done to him. His family suffered long-lasting mental effects as they had to learn to live with his trauma and injuries. The family felt W04733's pain, and experienced their own as a result. In this way, the harm done to W04733 was transmitted to those who loved him.

156. V07/04 described how it was to live with his father after surviving Kukës:

The experience was harrowing because we all suffered the effects. And the experience was harrowing, in all aspects. [...] It was harrowing because we felt the condition that was caused to him. He mostly experienced difficult nights. He was not how he was before, before the war. His condition changed dramatically afterwards.<sup>209</sup>

157. V03/04's described the impact of her husband's condition on the family in the following words:

The entire family, myself, all of my children, suffered a lot of stress. What befell on us will stay with us and we will never be able to erase it. [...] It greatly affected us physically, mentally. It affected our economic conditions. It affected my husband's health and the health of the entire family because we were also traumatised, used therapies, medicine. But as I said, this will never be erased from our memory.<sup>210</sup>

158. As illustrated above, W04733's wife and children heard, in detail, his accounts of what happened to him at the Kukës Metal Factory, which must have added another layer to the pain that they suffered as they listened to the harms that befell a person they loved. This retelling began very soon after his release:

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<sup>208</sup> T. 28 March 2023, 825:10-20.

<sup>209</sup> T. 27 March 2023, 687:7-17.

<sup>210</sup> T. 28 March 2023, 825:24-826:10.



Later, or the following day, he told us of other cases as well as or of other things that happened to them, to him. He told us that those 13 days were very difficult, had very little to eat, could not clean himself up. They only had a thin mattress to rest on, had very little water to drink, and similar. And, of course, he described the tortures that he experienced by other soldiers, KLA soldiers.<sup>211</sup>

(iv) The shadow cast by the detention of W04733 and the false allegations made against him

159. Part of the impact on the whole family, as a direct result of what had happened to W04733 in Kukës, was that their view of the world and of their place in it was changed. They felt that a real injustice had been visited upon them all, and it was hard for them to bear:

Q. In what way, if in any, did your father's abduction and what he experienced during his detention in Kukës affect you and your family?

A. It did largely affect our lives. We never thought that one day we would be mistreated in that way, because the family never deserved that. If we talk about contribution to Kosovo, we gave more contribution than many who were in the Kukës camp. And this was very difficult for us to get in terms with.<sup>212</sup>

160. In addition to this sense of having been mistreated, their lives were now circumscribed by fear for their safety and security as a result of the crimes at Kukës.

161. V03/04 testified about how these safety concerns ended [REDACTED] educations after the war:

[REDACTED].<sup>213</sup>

And,

[REDACTED].<sup>214</sup>

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<sup>211</sup> T. 28 March 2023, 809:13-19.

<sup>212</sup> T. 30 March 2023, 989:22-990:3.

<sup>213</sup> [REDACTED].

<sup>214</sup> [REDACTED].

162. V07/04 confirmed the causal link between the crimes at the Metal Factory and the premature end of [REDACTED] schooling:

[REDACTED].<sup>215</sup>

163. V08/04's view was that there was "no future" for the children of the family after what had happened to their father:

[REDACTED].<sup>216</sup>

164. V03/04 also explained the safety concerns the family experienced from living in the same community as the direct perpetrators of the crimes against her husband:

We felt unsafe. We didn't know what could possibly happen to us every day. Despite the fact that certain individuals, those individuals had committed crimes, criminal offences, we still expected from them and even -- even other worse things committed by them to us. But this was in respect specific persons, not everybody or -- I'm not referring to KLA soldiers in general but these persons, in particular, who had committed criminal acts and who were able to commit again every day.<sup>217</sup>

165. Part of the legacy for W04733 of the crimes perpetrated against him was an understandable bitterness which he channelled into [REDACTED]:

[REDACTED].<sup>218</sup>

166. [REDACTED]:

[REDACTED].<sup>219</sup>

167. [REDACTED].

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<sup>215</sup> [REDACTED].

<sup>216</sup> [REDACTED].

<sup>217</sup> T. 29 March 2023, 847:24-848:6.

<sup>218</sup> SPOE00013793-SPOE00013847 RED2, p. 41.

<sup>219</sup> [REDACTED].

168. This was evident, for example, in W04733's concerns [REDACTED]:

[REDACTED].<sup>220</sup>

169. The same perverse logic is to be seen in W04733's description of [REDACTED].<sup>221</sup>

170. The ongoing effects on the family were obvious. [REDACTED].<sup>222</sup>

171. W04733 explained how these effects had endured until [REDACTED]:

[REDACTED].<sup>223</sup>

172. On the same theme, V08/04 explained to the Trial Panel how he and his brothers had pursued careers with the police, but felt unsafe continuing down that path:

JUDGE BITTI: Good morning, Mr. Witness. I have one question about what you said yesterday, and it was at page 80, line 6. You said the following: "But also for us boys, perspectives were not the same." What do you mean by that? And what do you mean by "perspectives," and perspectives where? Thank you.

A. The perspective means that we were not working, we were unemployed. My eldest brother was working with the police, and sometime in 2006 or 2007, he quit, because he felt somehow unsafe.

JUDGE BITTI: Okay. So you link all of that to what happened to your father?

A. Yes.

JUDGE BITTI: Okay. All those perspectives are linked to Kosovo. You are speaking about the perspectives in Kosovo?

A. Yes, in Kosovo.

JUDGE BITTI: How much time was your older brother working with the police after the events concerning your father?

A. For six years. Or seven; I'm not sure.

JUDGE BITTI: And it was more difficult for the other brothers, including yourself, to find work?

A. I was also to the police. My name came up that I had been admitted, selected, but then later on it was removed, meaning my name.

JUDGE BITTI: So actually you were barred from entering police forces in Kosovo?

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<sup>220</sup> SPOE00185335-00185363 RED3, at SPOE00185342.

<sup>221</sup> 082892-TR-AT-ET Part 1 RED3, p. 46 lines 5-19.

<sup>222</sup> SPOE00185335-00185363 RED3, at SPOE00185337.

<sup>223</sup> 082892-TR-AT-ET Part 1 RED3, p. 54.

A. Something along those lines, like that. I mean, when your name comes up as a selected -- so my name came up as a selected candidate. My eldest brother saw it even, and then this was removed for some reason publicly.

JUDGE BITTI: Okay. And all those consequences, you link them to what happened to your father?

A. I'm not sure about this. It is possible, however, people who knew each other.

JUDGE BITTI: Because your brother was in the police, so did he tell you something about that?

A. No. He didn't have any such information.

JUDGE BITTI: So you were unemployed for how much time after the war?

A. I didn't work at all after the war, at all.<sup>224</sup>

173. W04733's wife and children each suffered. For V03/04, she lost her chosen life partner and her dreams for their children's futures. For [REDACTED], they made employment decisions based on fear that they would not have otherwise made. For [REDACTED], fear kept them from completing their educations, which significantly affected their future prospects. For [REDACTED], she was unable to secure employment [REDACTED] because of the stigma associated with her father.

174. This evidence shows that significant transgenerational harm was caused to W04733's children as indirect victims of the crimes committed against him. Having each been born between [REDACTED], W04733's children were in their [REDACTED] when their father returned to them after having been detained and mistreated at the Kukës Metal Factory. [REDACTED]. For [REDACTED], their lives now took altered courses as they experienced psychosocial harms and perceived stigmatisation as a result of the condition that their father was in, and the accusations made against him.<sup>225</sup>

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<sup>224</sup> T. 30 March 2023, 961:1-25-962:1-2.

<sup>225</sup> See ICC, *The Prosecutor v. Dominic Ongwen*, Public with Confidential Ex Parte Annex I only available to the Legal Representatives of Victims, the Common Legal Representative of Victims, the Defence, and the Registry and Public Annexes II and III Reparations Order, ICC-02/04-01/15-2074, 28 February 2024 ("Ongwen Reparations Order"), paras 206-207, 408-409.

(v) Material harm<sup>226</sup>

175. In 1999, W04733 was [REDACTED] years old. He had led a law-abiding and industrious life and could reasonably have expected to continue in paid employment, supporting his wife and family for many years to come.

176. In summary, he was diminished both physically and psychologically. He was now a man with [REDACTED]. There were scars to his body and scars to his mind. He was psychologically “broken”. He was lost in his thoughts in the day and suffered terrors by night. He was pre-occupied with thoughts of seeking justice, and sometimes would now be aggressive. It is no surprise that he was unable to re-join the workforce.

177. The result was that his mistreatment in Kukës brought his working life to an end, with obvious financial consequences to his family.

178. As his wife described the family’s situation:

We also lost a lot of financial income because of the medical condition my husband was in, because he could not work. He only could -- was able to work a little bit by harvesting or in agriculture. But because of his medical condition, he could not -- he could no longer work to provide for the family, to become a main source of income so that we could be financially supported. And this was all impacted -- this all had an impact on us.<sup>227</sup>

179. V02/04 confirmed that W04733 did not have paid employment after his release from Kukës.<sup>228</sup> This meant that V02/04, and later his brother, provided financial support for the family until 2008.<sup>229</sup>

180. The material impact on the family was exacerbated by the need to pay for medical treatment for W04733.<sup>230</sup>

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<sup>226</sup> This topic is dealt with more fully, including with relevant figures for the family’s loss, in the Reparation Request at paras 48-55 which are incorporated here by reference.

<sup>227</sup> T. 29 March 2023, 875:24-876:5.

<sup>228</sup> T. 30 March 2023, 994:21-25.

<sup>229</sup> T. 30 March 2023, 995:9-24.

<sup>230</sup> Further details are provided in the Reparations Request (at para. 52) and are not repeated here.

### (e) Causation

181. W04733 endured mistreatment at the hands of the Accused and his co-perpetrators which had a profound effect on his life. But for the crimes committed against W04733 his family would not have experienced the harms described above.
182. Bearing in mind all of the physical, emotional, and psychological impacts detailed above, it is the submission of Victims' Counsel that the word "broken" (a word used both by W04733 and one of his sons)<sup>231</sup> is an apt description of the harm done to W04733.
183. Both W04733 and his family had to live with the consequences of him having been "broken". For the family it meant more than two decades of daily reminders of the man that they had lost, of supporting him physically, emotionally, and financially, and having the course of their lives completely changed. One man was subjected to these crimes, but there were in reality [REDACTED] victims. With regard specifically to W04733's children, these effects are a manifestation of transgenerational harm.<sup>232</sup>

### D. Submissions on sentencing

184. Articles 42, 44(1), (2) and (5) of the Law and Rules 158(9) and 163(1)-(4) and (6) regulate the sentencing regime at the KSC.
185. In the *Mustafa* case, the Panel stated that the relevant factors for determining the sentence pursuant to Article 44(5) and Rule 163(1) are "the gravity of the crime and its consequences, the convicted person's personal contribution to the crime, the individual circumstances of the convicted person, and the mitigating and aggravating circumstances related to those factors".<sup>233</sup>

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<sup>231</sup> See paras 132, 144 above.

<sup>232</sup> Ongwen Reparations Order, paras 206-207.

<sup>233</sup> Mustafa Trial Judgment, paras 782-783.

186. The Panel in that case explained that the “gravity of the crime and its consequences are key considerations in imposing the sentence”;<sup>234</sup> and “[i]ndicators of gravity include, *inter alia*, the scale of the crime, the number of victims, the vulnerability of the victims, the age of the victims, the extent of the victims’ suffering and the impact on the victims’ relatives”.<sup>235</sup> The Appeals Panel further listed among the relevant factors for sentencing “the accused’s individual culpability”.<sup>236</sup>
187. Given the non-exhaustive list of factors relevant for sentencing, including aggravating circumstances listed under Rule 163(1) and the specific circumstances of the crimes charged in this case, it is worth noting the relevant provision of the Rules of Procedure and Evidence of the International Criminal Court (“ICC RPE” or “ICC Rules”). These Rules include among the factors to be considered, “the extent of the damage caused, in particular the harm caused to the victims and their families” (Rule 145(1)(c) ICC RPE). Furthermore, the ICC RPE list among aggravating circumstances: commission of the crime where the victim is particularly defenceless, commission of the crime with particular cruelty, or where there were multiple victims.<sup>237</sup>
188. Noting that factors considered under the gravity of the crime cannot be considered as separate aggravating circumstances and vice versa,<sup>238</sup> Victims’ Counsel highlights the following relevant factors for the purposes of sentencing in this case, recognizing that some of these factors can be considered as both.

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<sup>234</sup> Mustafa Trial Judgment, para. 787.

<sup>235</sup> Mustafa Trial Judgment, para. 789.

<sup>236</sup> Mustafa Appeal Judgment, para. 478.

<sup>237</sup> Article 21(3) of the Rome Statute: The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

<sup>238</sup> Mustafa Trial Judgment, para. 789.

### *1. Gravity of the crimes and their consequences*

189. The crimes charged against the Accused – war crimes of murder, torture, cruel treatment and arbitrary detention – are, without a doubt, grave crimes. So were their consequences on the lives of victims as individuals. These crimes were committed with particular cruelty against completely defenceless individuals who were entirely at the mercy of the will of the perpetrators.
190. V01/04, [REDACTED] and W04733 were deprived of their liberty without any legal basis, were held without respect to their basic rights, were frequently and violently assaulted in a manner that amounted to torture, and were held in inhumane conditions. The physical mistreatment took place in conditions that were harsh, with inadequate food and accommodation, with salt applied to wounds, and [REDACTED]. [REDACTED].
191. The life changing consequences of these crimes on the VPPs are set out extensively above and are not repeated here save in brief summary. For V01/04, physical pain both immediate and long-lasting, psychological harm, including [REDACTED] are the legacy of his detention at Kukës.
192. The family of W04733 shared the burden of suffering that he brought home from Kukës. Their lives were profoundly affected by the knowledge of what had been done to W04733, and by the changes, physical and mental, that it had wrought upon him.
193. The mistreatment that V01/04 and W04733 experienced was aggravated by its particular cruelty, involving premeditated violence and humiliation – and at times, for the amusement of the perpetrators.
194. The case is further aggravated by the fact that the detainees had been rendered highly vulnerable and defenceless by their detention, and this vulnerability was ruthlessly exploited by their persecutors. The circumstances of their detention meant that they were powerless to escape the brutal whims of their captors: they



had no hope of accessing a proper judicial mechanism, no clear sense of how long their captivity would last, or whether they would survive it.

## *2. The personal contribution of the Accused and lack of remorse*

195. The Accused's position within the KLA hierarchy at the Metal Factory, whilst not that of a commandant, was undoubtedly a senior and influential one.<sup>239</sup> At no stage did he attempt to intervene to prevent or limit the violence being visited upon the detainees at Kukës. To the contrary, he actively participated in it, inflicting beatings and joining in the terrifying [REDACTED]. By this conduct, he provided support and encouragement to other perpetrators and a malign example for subordinates to follow. With regard to the crimes committed against W04733, Victims' Counsel notes the Accused's direct involvement in W04733's mistreatment. Therefore, Victims' Counsel invites the Panel to reflect Pjetër Shala's culpability for these crimes in the sentence of imprisonment that is imposed.

196. Finally, Victims' Counsel draws the Panel's attention to the fact that at no point in the course of these proceedings has the Accused apologised to the victims or shown any sign of remorse.

## *3. Conclusion on sentencing*

197. At Kukës, arbitrary deprivation of liberty and detention in inhumane conditions lay the ground for cruel treatment and torture that continue to affect peoples' lives even today, 25 years later. There is and can be no justification for these crimes; crimes that were committed because of unfounded/hearsay

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<sup>239</sup> See, for example, the evidence of W04755 who confirmed that the Accused was someone who, as a result of his connections within the higher echelons of the KLA, including Ramush Haradinaj, could come and go from the Metal Factory without apparent permission to do so (T. 1 May 2023, 1126:18-21, and earlier discussion from 1110:21-1126:13).

allegations of collaboration or criminality. These were pointless and unnecessary crimes committed with extreme cruelty against defenceless victims.

198. It is hoped that the determination of the truth of what happened, acknowledgement of the harm and suffering of victims, and an adequate sentence in case of conviction, will bring some measure of justice to the victims. In this regard, Victims' Counsel recalls that the sentence imposed on the Accused must adequately consider that the primary purpose of sentencing is, as recognized by this Panel and other international criminal tribunals, retribution and deterrence,<sup>240</sup> but also "affirmative prevention":<sup>241</sup>

One of the main purposes of a sentence imposed by an international tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody. 'All persons shall be equal before the courts and tribunals.' This fundamental rule fosters the internalisation of these laws and rules in the minds of legislators and the general public.<sup>242</sup>

199. Should the Panel decide to acquit the accused, Victims' Counsel reiterates his submissions of 8 November 2022 in which he requested the Panel to include in its judgment a decision on the scope and extent of any damage, loss and injury to, or in respect of, victims, even in case of acquittal.<sup>243</sup> This request is grounded in Article 22(7) of the Law.<sup>244</sup> As demonstrated throughout the trial, and echoed

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<sup>240</sup> See Article 38 of Code no. 06/L-074, Criminal Code of Republic of Kosovo, Official Gazette of the Republic of Kosovo/No. 2/ 14 January 2019, Pristina, Mustafa Trial Judgment, paras 772-773; ICC, *Prosecutor v. Bosco Ntaganda*, Sentencing Judgment, ICC-01/04-02/06-2442, 7 November 2019, paras 9-10.

<sup>241</sup> ECCC, Case 002, Case 002/02, Appeal Judgment, F76, 23 December 2022, para. 1984, citing *Prosecutor v. Dario Kordić & Mario Čerkez*, IT-95-14/2-A, Appeal Judgment, 17 December 2004, paras 1073, 1080.

<sup>242</sup> ICTY, *Prosecutor v. Dragan Nikolić*, IT-94-2-S, Sentencing Judgment, 18 December 2003, para. 139.

<sup>243</sup> KSC-BC-2020-04/F00340, Victims' Counsel Submissions on Reparation Proceedings, 8 November 2022, paras 4 and 21(c).

<sup>244</sup> Article 22(7) of the Law: In its judgment, a Trial Panel may, either upon request or on its own motion in exceptional circumstances, include a decision on the scope and extent of any damage, loss and injury to, or in respect of, Victims and will state the principles on which it is acting. Alternatively, if such a decision would unduly prolong the criminal proceedings, a Trial Panel may limit its decision to the identity of Victims of any crimes established in its judgment.

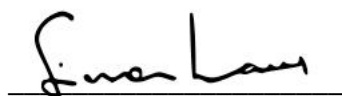
in these submissions, the Panel has more than sufficient evidence to determine the scope and extent of harm suffered by the VPPs as a result of the crimes charged in this case.

## **V. RELIEF**

200. For the foregoing reasons, and should convictions(s) be entered, Victims' Counsel requests the Trial Panel to:

- (i) Recognize and acknowledge the harm suffered by the VPPs;
- (ii) Consider evidence of harm for the purpose of factual and legal findings;
- (iii) Take into account these submissions in determining the relief requested by the Reparations Request;
- (iv) When considering the appropriate sentence to be imposed on the Accused, consider, in particular: the gravity of the crimes charged, committed in violation of peremptory norms of international law; the extreme cruelty with which these crimes were committed; and the extent of harm that they caused to the VPPs and its enduring nature, as identified and discussed in this Impact Statement.

**Word count: 27,336**



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