

**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:** 4 March 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of Victims' Counsel's Request for reparations to address the physical, mental, and material harm suffered by victims participating in the proceedings**

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## I. INTRODUCTION

1. Pursuant to the directions given by the Trial Panel,<sup>1</sup> Articles 22(3), 22(8), and 44(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 114(a) and 168 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), Victims' Counsel hereby submits this Request for reparations to address the physical, mental, and material harm suffered by each of the eight victims participating in the proceedings ("VPPs") to be considered in the event of conviction(s) in this case.
2. At the outset, it is important to state clearly that the VPPs have not pursued this case for the sake of reparations. No form of reparation can heal the harms that they have suffered. For each of them, justice and finding out the truth of what happened, and why, has been the driving force behind their participation. However, the Law entitles them to reparations and that is the basis upon which this Request is made.
3. Having consulted with the VPPs on the possibility of receiving reparations, Victims' Counsel requests that their harm is specifically acknowledged as a form of reparation in its own right and that monetary compensation is made to each of them.
4. This Request is based on the applicable law and principles on reparations stated by the Trial Panel in *The Specialist Prosecutor v. Salih Mustafa* ("the Mustafa case"),<sup>2</sup> the Submissions of 30 June 2023,<sup>3</sup> the evidence in the case, including expert

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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> 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, paras 59-117 ("Mustafa Reparation Order").

<sup>3</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").

evidence on mental harm and economic loss, relevant jurisprudence, and consultations with the VPPs.

5. This Request will be supplemented by, and should be read together with, a statement on the impact of the alleged crimes on VPPs pursuant to Rule 134(c) (“Impact Statement”), which will be submitted by 25 March 2024.

## II. CLASSIFICATION

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

## III. PROCEDURAL HISTORY

7. Eight VPPs have been admitted to participate in the proceedings.<sup>4</sup>
8. On 30 June 2023, Victims’ Counsel filed his submissions concerning the presentation of evidence on behalf of VPPs requesting, *inter alia*, admission into evidence of two expert reports – one concerning the mental harm caused to V01/04<sup>5</sup> and one concerning the economic loss sustained by all VPPs in the case<sup>6</sup> – and provided his proposal for the assessment of harm suffered by each VPP and compensation.<sup>7</sup>

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<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).

<sup>5</sup> KSC-BC-2020/04/F00588/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>6</sup> KSC-BC-2020/04/F00588/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>7</sup> Submissions of 30 June 2023, paras 22-54.

9. 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>8</sup>
10. The Trial Panel heard the testimony of five VPPs during the course of the trial. It also heard the testimony of the iMMO experts on 21 August 2023<sup>9</sup> and admitted the Forensic Medical Examination into evidence on 25 October 2023.<sup>10</sup>
11. The Defence presented its own expert report concerning the economic loss of VPPs on 13 November 2023.<sup>11</sup> Victims' Counsel submitted questions to the Defence expert, and the answers were filed on 6 December 2023.<sup>12</sup>
12. On 9 February 2024, the Trial Panel directed Victims' Counsel to file his request for reparations by 4 March 2024 and statement of impact on 25 March 2024.<sup>13</sup>

#### IV. SUBMISSIONS

##### A. Legal framework for the assessment of harm and compensation

13. Victims Counsel adopts the law and principles applicable to reparations set out by Trial Panel I in the *Mustafa* case and reiterates his Submissions of 30 June 2023, in particular with regard to his proposal on modalities for the assessment of harm and compensation.<sup>14</sup>

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<sup>8</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").

<sup>9</sup> T. 21 August 2023.

<sup>10</sup> In Court – Oral Order, T. 25 October 2023, 3151:9-3153:8.

<sup>11</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>12</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>13</sup> Directions, paras 41-43, 52(h) and paras 36-40, 52(g).

<sup>14</sup> Submission of 30 June 2023, paras 22-34 (proposal on modalities for the assessment of harm), 35-54 (proposal on modalities for the assessment of compensation).

14. Specifically, with regard to the relevance of Kosovo legislation in assessing adequate reparations by the Trial Panel, Victims' Counsel notes the Guidelines for determining the indicative criteria and amount for compensation for non-material damages approved by the Supreme Court of Kosovo on 27 February 2023 ("the Kosovo Guidelines"),<sup>15</sup> referred to by the Defence expert.<sup>16</sup>
15. It is submitted that these Guidelines are not binding on this court: they are in fact stated by the Supreme Court to be only "guidelines", even for domestic courts in Kosovo.<sup>17</sup>
16. Due consideration must be given to the fact that the Kosovo Guidelines relate to domestic compensation proceedings brought in the civil courts of Kosovo and are therefore not directly transferable to reparations for war crimes and crimes against humanity before the Specialist Chambers. In this case, the nature of the acts that caused the harm to VPPs was extremely grave, and had the unique characteristic of having been inflicted by members of the Kosovo Liberation Army against other Kosovar Albanians, with all of the additional consequences in terms of community stigma that accompany such crimes.
17. For these reasons, Victims' Counsel submits that the Kosovo Guidelines should be considered as a reference point for the Trial Panel, particularly with regard to its assessment of monetary reparations in the economic context of Kosovo, but the Panel's determination is not limited by them.

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<sup>15</sup> See [Udhëzime për caktimin e kriterëve orientuese dhe lartësisë së shpërblimit të drejtë në të holla të dëmit ho material](#) (accessed 29 February 2024).

<sup>16</sup> Defence Expert Report, DPS01641.

<sup>17</sup> [Udhëzime për caktimin e kriterëve orientuese dhe lartësisë së shpërblimit të drejtë në të holla të dëmit ho material](#) (accessed 29 February 2024), p. 2 (VCT translation: "The guiding criteria do not represent a formula that would automatically serve in calculating a just financial indemnity. In applying the above-mentioned law, all the circumstances of the case should be always taken into account; among them the nature and effects of injuries, the duration and the intensity of physical pain, of fear, the psychological harm because of the diminishing of the active life, of physical deformity, of the death of a relative, are especially important, though not the only circumstances that the tribunal should take into account when determining the amount of a just financial indemnity for non-material damage").

## B. Reparation request for VPPs

### 1. *Scope and extent of harm suffered by V01/04*

18. V01/04 suffered harm in consequence of the crimes committed at the Kukës Metal Factory, [REDACTED]. Therefore, Victims' Counsel presents his harm holistically. It must be understood that the harm V01/04 suffered in Kukës, from his own mistreatment [REDACTED] that its component parts cannot be viewed in isolation and compound one another.
19. V01/04 was arbitrarily detained [REDACTED]<sup>18</sup> during which he suffered intense, long-lasting physical pain and psychological harm, rendering him a changed man for the rest of his life. This has impacted his ability to provide for himself [REDACTED].

#### (a) Physical harm

20. As further elaborated in the Impact Statement, V01/04 suffered very significant pain from mistreatment that amounted to torture. He endured [REDACTED],<sup>19</sup> [REDACTED],<sup>20</sup> [REDACTED],<sup>21</sup> [REDACTED],<sup>22</sup> [REDACTED],<sup>23</sup> and mistreated in various other ways, including [REDACTED].<sup>24</sup> All the while he was kept in inhumane conditions.
21. Even now, V01/04 continues to suffer physically.<sup>25</sup> He experiences pain in his legs and ribs, and suffers from headaches.<sup>26</sup> These symptoms are made worse in bad weather.<sup>27</sup>

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<sup>18</sup> T. 30 May 2023, 1422:8-11.

<sup>19</sup> For example, T. 30 May 2023, 1457:20-1459:

<sup>20</sup> For example, T. 31 May 2023, 1522:6-1523:8.

<sup>21</sup> For example, T. 30 May 2023, 1475:8-10; T. 31 May 2023, 1526:8-1527:21.

<sup>22</sup> For example, T. 30 May 2023, 1464:11-24.

<sup>23</sup> For example, T. 30 May 2023, 1467:22-1468:12.

<sup>24</sup> For example, T. 30 May 2023, 1465:5-18.

<sup>25</sup> For example, T. 30 May 2023, 1472:12-1475:10.

<sup>26</sup> For example, T. 31 May 2023, 1570:7-8; Forensic Medical Report, V4010030.

<sup>27</sup> For example, T. 31 May 2023, 1570:7-8.

### *Reparation for physical harm suffered by V01/04*

22. For V01/04's physical harm, Victims' Counsel requests a symbolic monetary reparation in the amount of €[REDACTED]. This amount is reasonable and appropriate when considering the Kosovo Guidelines and the amounts awarded to V09/05 and V10/05 in the *Mustafa* case for their physical harm, and finds support in just satisfaction ordered by the European Court of Human Rights in comparable cases of physical mistreatment.<sup>28</sup>

#### **(b) Mental harm**

23. V01/04 suffered both immediate and long-lasting psychological harm from his detention at the Kukës Metal Factory and from the mistreatment that he [REDACTED] endured there, including at the hands of the Accused.<sup>29</sup>

24. V01/04 suffered immediate fear from the threatening atmosphere at Kukës: from [REDACTED],<sup>30</sup> [REDACTED],<sup>31</sup> [REDACTED],<sup>32</sup> and [REDACTED].<sup>33</sup>

25. V01/04 suffered immediately from feelings of [REDACTED].<sup>34</sup>

26. He experienced [REDACTED],<sup>35</sup> especially as according to V01/04, [REDACTED].<sup>36</sup>

27. V01/04 suffered long-term harm following [REDACTED].<sup>37</sup> Later on, [REDACTED].<sup>38</sup>

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<sup>28</sup> See Victims' Counsel Submission of 30 June 2023, paras 43-44 (referring to the case of *Ochigava v. Georgia and the Milić and Nikezić v. Montenegro* case).

<sup>29</sup> T. 30 May 2023, 1457:20-1458:6, 1458:10-12, 1461:19-1462:4.

<sup>30</sup> For example, T. 30 May 2023, 1454:3-19.

<sup>31</sup> For example, T. 30 May 2023, 1457:20-1458:6, 1459:6-8, 1469:14-25; T. 31 May 2023, 1528:14-23.

<sup>32</sup> For example, T. 31 May 2023, 1526:8-14, 1527:5-23.

<sup>33</sup> For example, Forensic Medical Examination, V4010031; T. 31 May 2023, 1530:9-13.

<sup>34</sup> T. 31 May 2023, 1527:23-1528:9, 1529:9-19, 1530:25-1531:2; Forensic Medical Examination, V4010024, V4010031, V4010033, V4010042.

<sup>35</sup> T. 30 May 2023, 1461:15-18; T. 31 May 2023, 1571:18-1572:5.

<sup>36</sup> T. 30 May 2023, 1460:14-17, 20-25.

<sup>37</sup> Forensic Medical Examination, V4010030, V4010031.

<sup>38</sup> Forensic Medical Examination, V4010031, V4010032, V4010036, V4010040, V4010042. [REDACTED].



28. The long-lasting psychological impact on V01/04 is well-documented. He suffers from [REDACTED].<sup>39</sup> These symptoms have deprived him of his peace of mind and interfere with his daily life, impacting [REDACTED],<sup>40</sup> [REDACTED],<sup>41</sup> [REDACTED],<sup>42</sup> [REDACTED],<sup>43</sup> and [REDACTED].<sup>44</sup>

### *Reparation for mental harm suffered by V01/04*

29. For V01/04's psychological harm, Victims' Counsel notes that, according to the Kosovo Guidelines, an appropriate monetary reparation would amount to €[REDACTED] up to €[REDACTED].<sup>45</sup> Victims' Counsel further notes that monetary reparation for mental harm in the *Mustafa* case did not exceed €10,000. However, because V01/04 suffered compounded psychological harm [REDACTED], and his suffering was immediate and is long-lasting, a higher amount than that awarded in the *Mustafa* case is justified. Considering the principles governing reparations,<sup>46</sup> Victims' Counsel requests the amount of €[REDACTED] to redress V01/04's psychological harm [REDACTED].

30. This amount is reasonable and appropriate when considering the Kosovo Guidelines and finds support in just satisfaction orders by the European Court of Human Rights in comparable cases.<sup>47</sup>

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<sup>39</sup> T. 21 August 2023, 2267:8 - 2268:3; Forensic Medical Examination, at V4010024, V4010041, V4010042, V4010043. See also T. 21 August 2023, 2264:11-2265:1.

<sup>40</sup> Forensic Medical Examination, V4010034, V4010035.

<sup>41</sup> Forensic Medical Examination, V4010034, V4010037, V4010039, V4010043.

<sup>42</sup> Forensic Medical Examination, V4010032.

<sup>43</sup> Forensic Medical Examination, V4010032.

<sup>44</sup> Forensic Medical Examination, V4010032.

<sup>45</sup> The Kosovo Guidelines indicate that the following amounts would be appropriate: for fear related to physical injuries or of death – up to €7,000; for spiritual pain due to physical harm – up to €10,000; [REDACTED]. Non-material reparation for spiritual pain for the inability to continue with life activities is recommended to be €33,000 to €55,000.

<sup>46</sup> *Mustafa* Reparation Order, paras 66-81.

<sup>47</sup> See Victims' Counsel Submission of 30 June 2023, paras 43-48.

**(c) Material harm**

31. Since his detention and mistreatment at the Kukës Metal Factory, V01/04 – despite his efforts – was not able to re-establish himself professionally. Before the war and his detention, [REDACTED].<sup>48</sup> V01/04's [REDACTED] symptoms have made it impossible for him to conduct his life as he would have before, and in particular have meant that he is no longer able to provide for himself [REDACTED].<sup>49</sup>
32. Based on the information provided by V01/04 to Victims' Counsel and the available statistical data for Kosovo. Dr Lerz estimated the economic impact of the crimes on V01/04 in the form of income loss under two scenarios: €[REDACTED] under the first scenario, and €[REDACTED] under the second scenario.<sup>50</sup> Victims' Counsel notes that the Defence expert has estimated V01/04's material harm as amounting to €[REDACTED].<sup>51</sup> Victims' Counsel reiterates his earlier submission that the Defence Expert Report is of low probative value as a result of its errors and lack of clarity;<sup>52</sup> notwithstanding its deficiencies, it still arrives at a figure significantly in excess of what Victims' Counsel submits is appropriate in this case in the economic context Kosovo and the jurisprudence of the Specialist Chambers.
33. Recognising that reparations are not to be calculated in the same way as compensation in a comparable civil suit, and considering the principles governing reparations,<sup>53</sup> Victims' Counsel submits that the figures of the two experts are a helpful guide, but not of direct application.

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<sup>48</sup> T. 31 May 2023, 1575:17, 1575:22, 1576:7-9; Lerz Report, V4000005.

<sup>49</sup> Forensic Medical Report, V4010032, V4010040, V4010044.

<sup>50</sup> Lerz Report, V40000010.

<sup>51</sup> Lerz Report, V40000014.

<sup>52</sup> KSC-BC-2020-04/F00728/RED, Public Redacted Version of Victims' Counsel's questions for Defence expert with confidential annex 1, 27 November 2023, para. 5.

<sup>53</sup> Mustafa Reparation Order, paras 66-81.

### *Reparation for material harm suffered by V01/04*

34. Victims' Counsel has taken into consideration the Trial Panel's reparation order in the *Mustafa* case with respect to V09/05, whose ability to work was compromised as a result of detention and mistreatment.<sup>54</sup> A broadly similar symbolic reparation in the amount of €[REDACTED] would be appropriate in this case, having in mind that the crimes committed against V09/05 were found to have been not the only cause of his inability to pursue a career. In this case, the mental harm to V01/04 is the sole cause of his inability to work.

#### *2. Scope and extent of harm suffered by [REDACTED]*

35. [REDACTED] are relatives of W04733, a deceased witness who was detained and mistreated at the Kukës Metal Factory. In order to understand and determine the scope and extent of harm suffered by these indirect VPPs, it is first necessary to address the harm suffered by W04733.

36. W04733 suffered extreme physical, emotional and psychological consequences due to his detention and mistreatment in Kukës. He returned to his family as a "broken" man, a word used about him by both W04733 himself and by one of his sons during the trial.<sup>55</sup> Both he and his family had to live with the consequences. [REDACTED]. While W04733 suffered directly from the crimes charged against the Accused, these [REDACTED] VPPs have carried and continue to carry a burden even after his death, individually and as a family.

#### **(a) Mental harm**

37. It is presumed that immediate family members of direct victims also suffer mental harm.<sup>56</sup> It is, however, important for the VPPs concerned that their harm is

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<sup>54</sup> Mustafa Reparation Order, para. 142.

<sup>55</sup> 082892-TR-AT-ET Part 10 RED2 p.2; T. 30 March 2023, 989:10-17.

<sup>56</sup> Mustafa Reparation Order, para. 174.

articulated and officially recognised by this Panel after they have lived with it for 25 years.

38. V03/04 and her children were profoundly affected by what happened, at the time when the crimes were committed and during the many years that followed until W04733's death.<sup>57</sup>
39. First, the indirect VPPs suffered immediate mental harm. At the time of W04733's arrest and during his detention, the entire family suffered from anxiety, fear and stress, not knowing why and where their husband/father was taken, what was happening to him, and whether they would ever see him again. During that time, they made continuous attempts to find him.<sup>58</sup>
40. Second, upon W04733's return to the family home and in the days and weeks following, they suffered distress at the condition that he was in.<sup>59</sup> [REDACTED].<sup>60</sup>
41. Third, as W04733 never fully recovered, his family suffered long-lasting mental effects as they had to learn to live with his trauma and injuries. W04733 was a changed man, both physically and mentally. His family had to adapt to assist him in the long term in his new psychological state, and as he deteriorated physically over time.<sup>61</sup> They experienced changes in his personality and behaviour, and were exposed to various manifestations of his trauma.<sup>62</sup> His wife and children had to hear his detailed accounts of what had happened to him at the Kukës Metal Factory. V03/04 stated that what happened to her husband [REDACTED].<sup>63</sup>

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<sup>57</sup> For example, T. 28 March 2023, 825:24-826:10, and discussed in detail in the forthcoming Impact Statement.

<sup>58</sup> T. 27 March 2023, 687:18-24; T. 30 March 2023, 993:19-21.

<sup>59</sup> T. 28 March 2023, 808:25-809:19; T. 28 March 2023, 824:12-825:6; T. 28 March 2023, 825:10-20.

<sup>60</sup> 082892-TR-AT-ET Part 9 RED2, p. 17; T. 28 March 2023, 825:10-20; T. 28 March 2023, 824:12-825:6.

<sup>61</sup> T. 29 March 2023, 911:25-912:1; 082892-TR-AT-ET Part 9 RED2, pp. 21-22.

<sup>62</sup> T. 27 March 2023, 687:7-17; T. 28 March 2023, 825:24-826:10; T. 30 March 2023, 994:10-17; T. 29 March 2023, 912:2-6; T. 29 March 2023, 911:18-25; T. 30 March 2023, 989:10-17.

<sup>63</sup> T. 28 March 2023, 826:7-9. See also, T. 29 March 2023, 846:5-9 ("A. This affected us greatly, creating extraordinarily difficult moments. So many -- such difficult moments that I cannot even count them. Each one of them had a harder impact, tougher impact on me and my entire family. So this impacted us emotionally, psychologically. Our health was impacted and everything").

42. Fourth, the detention and allegations made against W04733 by members of the KLA cast a shadow over his wife and children. As a result, they felt a sense of fear and insecurity that prevented some of them from pursuing their chosen life paths.<sup>64</sup>
43. Fifth, W04733 had a strong desire for justice that was, and still is, shared by his wife and children who feel that the harm done to their husband/father was also done to them as a family.<sup>65</sup> [REDACTED].<sup>66</sup>
44. With regard specifically to W04733's children, these effects are a manifestation of transgenerational harm.<sup>67</sup>

***Reparation for mental harm suffered by [REDACTED]***

45. Victims' Counsel submits that the sum of €[REDACTED] reflects the scope and extent of harm suffered by V03/04 as the spouse of W04733. The mental harm suffered by her must be distinguished from that suffered by the other members of the family. V03/04 was married to W04733 for [REDACTED]<sup>68</sup> prior to his detention and mistreatment, they had built a life and brought up [REDACTED] children together.
46. [REDACTED] are the children of W04733. Victims' Counsel submits that each child should be awarded €[REDACTED]. Under the circumstances it would be inappropriate to differentiate amongst the children – they all suffered differently but equally.
47. These amounts are comparable to the sums awarded to indirect victims in the *Mustafa* case and they are within or, in case of the amount requested for V03/04, slightly above the amounts suggested by the Kosovo Guidelines. These amounts

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<sup>64</sup> T. 29 March 2023, 847:10-19, 847:24-846:6, 848:6, 877:18-20, 912:8-21; T. 27 March 2023, 687:25-688:5; 082892-TR-AT-ET Part 1 RED3, p. 46:5-19, and p. 47:6-19; SPOE00185335-00185363 RED3, p. 4.

<sup>65</sup> T. 30 March 2023, 989:22-990:3.

<sup>66</sup> T. 29 March 2023, 847:10-19; T. 27 March 2023, 687:25-688:5.

<sup>67</sup> 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.

<sup>68</sup> T. 28 March 2023, 828:19.

also find support in relevant jurisprudence of the European Court of Human Rights.<sup>69</sup> Finally, Victims' Counsel notes that in this case, the gravity and context of the crimes committed against W04733 by members of the KLA (paragraphs 16 and 42 above) and the harm endured by his family, justify the amounts requested.

**(b) Material harm**

48. It is well established that indirect victims may receive reparations for material harm.<sup>70</sup>

49. At the time of the events, W04733 was [REDACTED] years old. As a result of his mistreatment, he was rendered unable to provide for his family economically.<sup>71</sup> The physical injuries he sustained required ongoing treatment and hastened his physical decline.<sup>72</sup>

50. Dr Lerz made a cautious assessment of the loss of earning of W04733 in his Report.<sup>73</sup> This assessment assumes that W04733 would only have earned a salary equal to the Kosovan average. From that figure, the pension income has been deducted to produce an estimated figure, which, it is submitted, is an entirely reasonable one given its modest premise (namely that someone with W04733's

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<sup>69</sup> ECtHR, *Ochigava v. Georgia*, application no. 14142/15, Judgement, 16 February 2023, §66; ECtHR, *Milić and Nikezić v. Montenegro*, applications nos. 54999/10 and 10609/11, Judgement, 28 April 2015, §§ 42 and 110.

<sup>70</sup> See, for example, Ongwen Reparations Order, ICC-02/04-01/15-2074, 28 February 2024, para. 272 ("The Chamber underlines that, as noted by the Appeals Chamber in the Lubanga case, the harm suffered by indirect victims may include material deprivation that accompanies the loss of the direct victim's contributions."); *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 32; *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of "Decision on 'indirect victims'", ICC-01/04-01/06-1813, 8 April 2009, para. 50; *The Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute With one public annex (Annex I) and one confidential annex ex parte, Common Legal Representative of the Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga (Annex II), ICC-01/04-01/07-3728-tENG, 24 March 2017, para. 137.

<sup>71</sup> T. 29 March 2023, 875:24-876:5.

<sup>72</sup> 082892-TR-AT-ET Part 9 RED2, pp. 21-24; T. 686:14-18; SPOE00013793-SPOE00013847 RED2, pp. 40-41.

<sup>73</sup> Lerz Report, V40000016-V40000019.

experience and abilities would not have earned more than the average annual wage).

51. The result for the family's loss as a result of W04733's inability to work is a figure of €[REDACTED].<sup>74</sup> This figure is not undermined by the contents of the Defence Expert Report which does not address the calculations of Dr Lerz in this regard in any significant way.<sup>75</sup> V02/04 confirmed that his father did not have paid employment after his release from detention,<sup>76</sup> and that he and later his brother, provided financial support for the family until about 2008.<sup>77</sup>
52. W04733 testified that, following assaults at Kukës, the repair of [REDACTED] cost €[REDACTED]<sup>78</sup> and that his [REDACTED] surgery cost €[REDACTED].<sup>79</sup> V03/04 believed that the overall costs of W04733's medical treatments including surgeries was as high as €[REDACTED].<sup>80</sup> With regard to medical expenses, Victims' Counsel notes that it is not necessary for victims to "furnish data as to the costs of medical treatments or other harms that are of a financial or patrimonial nature".<sup>81</sup> Material harm can include costs associated with medical care provided in result of physical injuries of a direct victim. It is clear that the financial cost for medical treatment and caring for W04733 was borne by his wife and children.

### *Reparation for material harm suffered by [REDACTED]*

53. Victims' Counsel recognises that reparations in these proceedings are not expected to fully compensate for the cost of medical treatment. Victims' Counsel recognises

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<sup>74</sup> Lerz Report, V40000017.

<sup>75</sup> The Defence expert proposes no alternative figures for W04733's loss of income, but makes a note as to the use of Dutch life expectancy figures (see Defence Expert Report at 2.1: the reason for the irrelevance of this is provided by Dr Lerz at para. 10 of the Lerz Answers), and a query about the level of W04733's pension (that was answered by V03/04 in her testimony at T. 29 March 2023, 978:13-22).

<sup>76</sup> T. 30 March 2023, 994:21-25.

<sup>77</sup> T. 30 March 2023, 995:9-24.

<sup>78</sup> 082892-TR-AT-ET Part 9 RED2, p. 22.

<sup>79</sup> 082892-TR-AT-ET Part 9 RED2, p. 22.

<sup>80</sup> T. 29 March 2023, 876.

<sup>81</sup> Mustafa Reparation Order, para. 212.

further, and in fairness, that many years later it may not be possible to disentangle the individual aspects of W04733's physical decline from the pervasive deterioration in his health caused by his mistreatment, so as to account for each discrete health issue with specificity. Therefore, a symbolic award of approximately €[REDACTED] would be reasonable in order to compensate this particular harm on those left behind.

54. Taking the two figures for material harm to [REDACTED], i.e. €[REDACTED] (loss of earnings) and approximately €[REDACTED] (medical costs), Victims' Counsel submits that €[REDACTED] is an appropriate final sum by way of reparation for the economic loss sustained by these VPPs.
55. Victims' Counsel submits that reparation for material harm stemming from the loss of income and the costs of medical treatment should not be separately awarded to individual family members but to the family collectively and distributed to them in accordance with their instructions. This is because all of the family members have individually participated in different ways in bearing these costs and contributing to the family's economic wellbeing.

### **C. Causation**

56. In light of the above, it is plain that each of the harms suffered by the VPPs stems from the crimes charged in this case.
57. Victims' Counsel recalls his earlier submissions on causation,<sup>82</sup> and further submits that it is clear, as summarised above and as dealt with more fully in the Impact Statement, that the different harms addressed above would not have been caused but for the crimes committed against V01/04, [REDACTED] and W04733 in Kukës, in which the Accused played a full part.<sup>83</sup>

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<sup>82</sup> Submissions of 30 June 2023, paras 28-30.

<sup>83</sup> It is right to note that W04733 was also mistreated for a short period after his abduction and before his detention at Kukës ([REDACTED]) and that harm had already been caused to him prior to the crimes alleged in the indictment. Victims' Counsel submits that these are of no consequence in



## V. RELIEF

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

A) Acknowledge the individual harm of each VPP by determining in the Disposition of the Reparations Order that:

i) With regard to V01/04:

"V01/04 suffered harm in consequence of the crimes committed at the Kukës Metal Factory, [REDACTED]. V01/04 was arbitrarily detained [REDACTED], during which time he [REDACTED]. He suffered intense, long-lasting physical pain and psychological harm from these crimes rendering him a changed man for the rest of his life. This has impacted his ability to provide for himself and his family."

ii) With regard to [REDACTED]:

"[REDACTED] are relatives of a survivor of arbitrary detention, torture and inhumane treatment at the Kukës Metal Factory. They suffered immediate mental harm during the arrest and detention of their husband/father, not knowing why he was taken, what his fate was and whether they would ever see him again. Upon his return home, they suffered extreme distress at the condition that he was in, they nursed him for weeks before he was able to regain some of his physical ability. The man they knew from before was gone and never came back from Kukës. The injuries that he sustained required ongoing treatment and hastened his physical decline, rendering him unable to provide for his family economically. He never fully recovered and his family suffered long-lasting mental effects as they had to learn to live with his trauma, injuries and changed personality. The consequences for [REDACTED] included causing them to experience fear and insecurity that interrupted their chosen life paths. Even after the passing of their husband/father, they carry the weight of the crimes committed against him, continuing

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determining reparations for two reasons: i) the mistreatment at Kukës is not required to be the sole cause of harm, but must have contributed thereto, and ii) the fact that the harm inflicted upon him at Kukës was being inflicted upon a man who had already undergone torture can only have exacerbated the effects of the further crimes committed against him in Kukës.


his pursuit of justice. V03/04 endured the irremediable changes to the man to whom she had been married for a quarter of a century before his detention and continued to live with for another two decades.”

B) Order reparations in the form of compensation to the VPPs in this case in the following amounts:

[REDACTED].

The total order for reparations in this case should therefore be in the sum of €[REDACTED].

**Word count: 5,604**



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4 March 2024

At The Hague, the Netherlands.