



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 26 September 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution motion for the admission of the evidence of witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 pursuant to Rule 153 with confidential Annexes 1-8'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law¹ and Rules 137-138, 141(1), and 153 of the Rules,² the Specialist Prosecutor's Office ('SPO') seeks the admission in lieu of oral testimony of the written statements, transcripts, and associated exhibits of witnesses W01679,³ W03593, W04391, W04394, W04432, W04433, W04591, and W04858. The proposed evidence is relevant, *prima facie* reliable, has probative value which is not outweighed by any prejudice, and meets all the conditions of Rule 153. Admission pursuant to Rule 153 is therefore in the interests of justice.⁴

2. In addition to the submissions on admissibility made herein, the annexes to this motion identify the statement(s)⁵ tendered through each witness (collectively, 'Rule 153 Statement'), and the indicia of authenticity and reliability for each. The annexes also list exhibits associated with the Rule 153 Statements, identifying where such exhibits are discussed, and describing in more detail how each meets the conditions for admission.

II. SUBMISSIONS

A. GENERAL SUBMISSIONS ON ADMISSIBILITY

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

- (i) is relevant to the crimes charged in the Indictment;

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

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

³ As foreshadowed, W01679, who was initially a Rule 154 witness, is now proposed under Rule 153. See [REDACTED].

⁴ The applicable law has been set out previously. See Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153', KSC-BC-2020-06/F01658/RED, 17 November 2023, paras 6-12; Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904/RED, 27 November 2023, paras 7-12.

⁵ As indicated in the annexes, the SPO has also tendered any audio/video records corresponding to these statements.

- (ii) is *prima facie* reliable, containing sufficient indicia of authenticity;
- (iii) has probative value which is not outweighed by any prejudicial effect; and
- (iv) meets all of Rule 153's requirements for admission.

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

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

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

6. In addition to fulfilling the letter of Rule 153, admission of the tendered evidence in lieu of oral testimony will serve the spirit of the Rule by not only avoiding repetitive testimony and saving valuable court-time, but also by sparing these witnesses the burden of testifying live, and avoiding the unnecessary stress, expense, and other disruptions to the witnesses' lives including the likelihood of retraumatisation.

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

B. SPECIFIC SUBMISSIONS ON ADMISSIBILITY

1. [REDACTED] Witnesses

8. Four witnesses who are subject of this motion⁶ provide evidence relevant to the KLA detention site in [REDACTED] during [REDACTED] 1998 and [REDACTED] 1999. As set out in more detail below, their evidence corroborates and complements the evidence of several Rule 154⁷ and Rule 155⁸ witnesses; documentary evidence;⁹ and adjudicated facts.¹⁰

9. Together, the proposed evidence and relevant facts of these witnesses constitute an interconnected and compelling account of the circumstances of the charged victims' abduction, detention, and mistreatment at the [REDACTED] detention site. In addition to corroborating the evidence listed above, these witnesses provide complementary evidence of their own backgrounds, the crimes perpetrated against them, and the impact of these crimes on them and their family members.

(a) W01679

10. *Relevance.* W01679 joined the KLA in [REDACTED] in late [REDACTED] 1999 as part of the [REDACTED]. In [REDACTED] 1999, he was taken by four armed KLA soldiers to a house where he was interrogated and beaten by [REDACTED], who ordered other KLA soldiers to beat him. W01679 lost consciousness from the beatings. W01679 was then taken to the basement where he was held for [REDACTED] with

⁶ W01679, W03593, W04391, W04394.

⁷ See e.g. [REDACTED]. As indicated in Section III below, the SPO has decided to convert W04393 to Rule 154, taking into account the Defence's position on this witness, his circumstances, and the circumstance of his evidence.

⁸ See e.g. [REDACTED].

⁹ See e.g. [REDACTED]. See KSC-BC-2020-06/F02178/A01, item 130.

¹⁰ See e.g. [REDACTED].

other detainees. During his time in detention, W01679 was tortured with [REDACTED]. W01679 saw other detainees being beaten, including [REDACTED] and a [REDACTED], and heard screams and loud noises from others who were being beaten. W01679 was released on or about [REDACTED] 1999. W01679's evidence is therefore relevant to crimes charged in the Indictment,¹¹ and to assessing related evidence.

11. *Authenticity and Reliability.* W01679's Rule 153 Statement comprises the witness's SPO interview¹² and testimony in [REDACTED].¹³ The SPO interview and court testimony are documented in verbatim transcripts. During W01679's SPO interview, which was audio-visually recorded,¹⁴ W01679 was advised of his rights and obligations as a witness; and confirmed his statement was true, accurate, and voluntary.¹⁵ In the [REDACTED] case, W01679 testified under oath,¹⁶ and was subject to cross-examination.¹⁷

12. *Suitability for Rule 153 Admission.* W01679's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base and his prior testimony has been tested through cross-examination [REDACTED]. The statements comprising the Rule 153 Statement also complement each other and enable a fuller assessment of W01679's evidence over time. W01679's evidence is also corroborated by documentary evidence and witnesses whom the Accused have

¹¹ See, *inter alia*, Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022 ('Indictment'), paras [REDACTED]; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), paras [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

confronted or will be able to confront, including through cross-examination,¹⁸ and complements a number of adjudicated facts.¹⁹

13. *Admissibility of the Associated Exhibits.* The photographs marked and sketches drawn by W01679, as well as the Official Note of a meeting with W01679 were all referenced and discussed with the witness during his SPO interview and/or prior testimony to the extent they form an inseparable and indispensable part of his evidence and should therefore be admitted as associated exhibits.

(b) W03593

14. *Relevance.* In early [REDACTED] 1999, W03593 was taken from the village of [REDACTED] by armed KLA military police who told him that he was wanted for questioning. The KLA soldiers put W03593 into a jeep with a sack over his head, punched him in the face, and took him to [REDACTED]. That night, W03593 was beaten by several KLA soldiers, causing him to lose consciousness. A KLA member called [REDACTED] beat W03593 the most, ordered the other soldiers to beat him, and said they would kill him. The soldiers accused W03593 of being a Serb spy. [REDACTED] pushed W03593 against a wall, pointed a revolver at his head, and pulled the trigger but the revolver did not fire. W03593 was detained in a guarded barn with several other detainees including [REDACTED] and [REDACTED]. The detainees slept on the floor in muddy water, were not given enough food or water, and used a bucket as a toilet. W03593 saw and heard that the other detainees were beaten, burned, electrocuted, and interrogated about being spies. W03593 remained in detention until around [REDACTED] 1999, when [REDACTED]. W03593's evidence is therefore relevant to crimes charged in the Indictment,²⁰ and to assessing related evidence.

¹⁸ See e.g. [REDACTED].

¹⁹ See e.g. [REDACTED].

²⁰ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

15. *Authenticity and Reliability.* W03593's Rule 153 Statement comprises his SPO interview²¹ and his testimony in [REDACTED],²² which were both documented in verbatim transcripts. During the audio-visually recorded SPO interview, W03593 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.²³ In the [REDACTED] case, W03593 testified under oath²⁴ and was subject to cross-examination.²⁵

16. *Suitability for Rule 153 Admission.* W03593's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base and his prior testimony has been tested through cross-examination [REDACTED]. W03593's evidence is also largely cumulative with other witness and documentary evidence concerning victims who were detained and mistreated by the KLA at the [REDACTED] detention site.²⁶ W03593's evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination,²⁷ and complements a number of adjudicated facts.²⁸

17. *Admissibility of the Associated Exhibits.* The photographs marked and sketches drawn by W03593, as well as his medical records, were referenced and discussed with the witness during his SPO interview and/or prior testimony to the extent that they form an inseparable and indispensable part of his evidence and should therefore be admitted as associated exhibits.

(c) W04391

18. *Relevance.* On [REDACTED] 1999, [REDACTED], [REDACTED], and another KLA soldier came to [REDACTED] and asked W04391 where [REDACTED] was. The

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ See e.g. [REDACTED].

²⁷ See e.g. [REDACTED].

²⁸ See e.g. [REDACTED].

next day, W04391 heard that the soldiers had found [REDACTED] in [REDACTED] and taken him for questioning. In the following weeks, W04391 and [REDACTED]. On one of these occasions, [REDACTED] told [REDACTED] and [REDACTED] that [REDACTED]. On [REDACTED] 1999, [REDACTED] had been detained in [REDACTED] with [REDACTED], who remained in detention and had been severely maltreated by KLA soldiers. [REDACTED] and, around [REDACTED] 1999, found his body in a shallow grave [REDACTED] with the body of another man. When the grave was exhumed, [REDACTED] had [REDACTED] and [REDACTED]. W04391's evidence is therefore relevant to crimes charged in the Indictment,²⁹ and to assessing related evidence.

19. *Authenticity and Reliability.* W04391's Rule 153 Statement comprises his [REDACTED] SPO interview,³⁰ his [REDACTED] SPO interview,³¹ and his testimony in [REDACTED],³² which were all documented in verbatim transcripts. During the audio-visually recorded SPO interviews, W04391 was advised of his rights and obligations as a witness, and on both occasions confirmed his statement to be truthful, accurate, and voluntary.³³ In the [REDACTED] case, W04391 testified under oath³⁴ and was subject to cross-examination.³⁵

20. *Suitability for Rule 153 Admission.* W04391's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base and his prior testimony has been tested through cross-examination [REDACTED]. W04391's evidence is also largely cumulative with other witness and documentary evidence concerning [REDACTED]'s detention, mistreatment, and death at the [REDACTED]

²⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

detention site.³⁶ His evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination,³⁷ and complements a number of adjudicated facts.³⁸

21. *Admissibility of the Associated Exhibits.* The associated exhibits comprise a marked map and sketches done by W04391, his contemporaneous notes about the events, photo line-ups identifying KLA soldiers, [REDACTED], and the death certificates of [REDACTED]. These materials were referenced and discussed with W04391 during his SPO interviews and/or prior testimony to the extent that they form an inseparable and indispensable part of his evidence and should, therefore, be admitted as associated exhibits.

(d) W04394

22. *Relevance.* In [REDACTED] 1998, W04394 was informed by [REDACTED] that [REDACTED] had been forced into a car by three men that morning. Suspecting that [REDACTED] may have been kidnapped due to his political beliefs, W04394 and [REDACTED] decided to contact [REDACTED], who they knew had contacts with the KLA, resulting in [REDACTED] travelling with [REDACTED] to the [REDACTED] to lobby for the release of [REDACTED]. W04394 was subsequently informed by [REDACTED] that enquiries would be made about [REDACTED]. After [REDACTED] was released, he told W04394 that he had been abducted because of his political beliefs and detained in [REDACTED]. W04394's evidence is therefore relevant to the crimes charged in the Indictment.³⁹

23. *Authenticity and Reliability.* W04394's Rule 153 Statement consists of his audio-visually recorded SPO interview which was documented in a verbatim transcript.⁴⁰

³⁶ See e.g. [REDACTED].

³⁷ See e.g. [REDACTED].

³⁸ See e.g. [REDACTED].

³⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED].

⁴⁰ 061011-TR-ET Parts 1 and 2 RED2.

W04394 was advised of his rights and duties as a witness,⁴¹ and confirmed that his statement was truthful, accurate, and voluntary.⁴²

24. *Suitability for Rule 153 Admission.* W04394 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W04394's evidence is largely cumulative to the evidence of other witnesses concerning victims who were detained and mistreated by the KLA at the [REDACTED] detention site. His evidence is also corroborated by documentary evidence and witnesses whom the Accused have confronted or will be able to confront, including through cross-examination,⁴³ and complements a number of adjudicated facts.⁴⁴

2. [REDACTED] Witnesses

25. The remaining four witnesses who are subject of this motion provide evidence relevant to the [REDACTED] during [REDACTED] 1998 and [REDACTED] 1999. As set out in more detail below, their evidence corroborates and complements the evidence of several live and Rule 154,⁴⁵ and Rule 155⁴⁶ witnesses; documentary evidence;⁴⁷ and adjudicated facts.⁴⁸

26. Together, the proposed evidence and relevant facts of these witnesses constitute an interconnected and compelling account of the circumstances of the charged victims' abduction, detention, mistreatment, and execution in or around the [REDACTED]. In addition to corroborating the evidence listed above, these witnesses provide complementary evidence of their own backgrounds, the crimes perpetrated against them, and the impact of these crimes on them and their family members.

⁴¹ 061011-TR-ET Part 1 RED2, p.2.

⁴² 061011-TR-ET Part 2 RED2, p.3.

⁴³ See e.g. [REDACTED]. See also [REDACTED].

⁴⁴ See e.g. [REDACTED].

⁴⁵ See e.g. [REDACTED].

⁴⁶ See e.g. [REDACTED].

⁴⁷ See e.g. [REDACTED].

⁴⁸ See e.g. [REDACTED].

(a) W04432

27. W04432, a [REDACTED] from the village of [REDACTED], was abducted by a group of KLA soldiers on [REDACTED] 1998. The soldiers drove W04432 along with other abductees to the village of [REDACTED] where they were detained in a cellar. W04432 later recognised one of these soldiers to be [REDACTED]. After about an hour, the soldiers drove them to [REDACTED] where W04432, [REDACTED], and [REDACTED] were detained in a storage room along with many others. The detainees were kept in harsh, unsanitary conditions and were regularly taken away and beaten, with some never returning. On one occasion, [REDACTED] and two other KLA soldiers made W04432 and [REDACTED]. W04432 was detained until [REDACTED] on or about [REDACTED] 1998, when W04432's group was released. W04432's evidence is therefore relevant to the crimes charged in the Indictment⁴⁹ and to assessing related evidence.

28. *Authenticity and reliability.* W04432's Rule 153 Statement comprises his [REDACTED] statement⁵⁰ and testimony in [REDACTED].⁵¹ W04432's statement was taken by a duly empowered investigator;⁵² contains a witness acknowledgement and interpreter certification,⁵³ and was signed by the witness.⁵⁴ W04432's testimony was audio-visually recorded and documented in verbatim transcripts. W04432 also testified under oath⁵⁵ and was cross-examined.⁵⁶

29. *Suitability for Rule 153 Admission.* W04432's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base and his prior [REDACTED]. W04432's evidence is largely cumulative with other witness

⁴⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F0099/A01, paras [REDACTED] Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁵⁰ SITF00325722-00325734 RED.

⁵¹ [REDACTED].

⁵² SITF00325722-00325734 RED, p.1.

⁵³ SITF00325722-00325734 RED, p.11.

⁵⁴ SITF00325722-00325734 RED, pp.2-11.

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

evidence concerning the abduction, detention, and mistreatment of victims at the [REDACTED].⁵⁷ W04432's evidence is also corroborated by witnesses whom the Accused will be able to confront, including through cross-examination,⁵⁸ and complements a number of adjudicated facts.⁵⁹

30. *Admissibility of the Associated Exhibits.* The virtual reality presentation of [REDACTED], booklet of locations, [REDACTED], hand-drawn sketches, and photographs were referenced and discussed with W04432 during his [REDACTED] to the extent they form an inseparable and indispensable part of his evidence and should therefore be admitted as associated exhibits.

(b) W04433

31. *Relevance.* In [REDACTED] 1998, W04433, a [REDACTED] from the village of [REDACTED], learned that [REDACTED] had been abducted by the KLA. Two weeks later, armed KLA soldiers came to W04433's house, ordered him into their car at gunpoint, and took him to [REDACTED]. At the [REDACTED], W04433 and other detainees were mistreated, deprived of food, and detained in harsh and unsanitary conditions. On the last day of his detention, W04433 and other detainees were ordered [REDACTED]. [REDACTED]. Later, [REDACTED] and the KLA soldiers [REDACTED]. W04433's evidence is therefore relevant to crimes charged in the Indictment,⁶⁰ and to assessing related evidence.

32. *Authenticity and Reliability.* W04433's Rule 153 Statement comprises the witness's [REDACTED] statements⁶¹ and testimony in [REDACTED].⁶² W04433's statements were taken by a duly empowered investigator;⁶³ contain witness acknowledgments

⁵⁷ See e.g. [REDACTED].

⁵⁸ See e.g. [REDACTED].

⁵⁹ See e.g. [REDACTED].

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

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

and interpreter certifications,⁶⁴ and were signed by the witness.⁶⁵ W04433's testimony was audio-visually recorded and documented in verbatim transcripts. W04433 also testified under oath⁶⁶ and was cross-examined.⁶⁷

33. *Suitability for Rule 153 Admission.* W04433's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base and his prior testimony has been [REDACTED]. W04433's evidence is cumulative to other witness evidence concerning the abduction, detention, and mistreatment of victims at the [REDACTED], as well as [REDACTED].⁶⁸ W04433's evidence is also corroborated by witnesses whom the Accused have or will be able to confront, including through cross-examination;⁶⁹ and complements certain adjudicated facts.⁷⁰

34. *Admissibility of the Associated Exhibits.* The [REDACTED], maps, photo line-ups, sketches, lists of names, and photos of the [REDACTED] were referenced and discussed with W04433 during his [REDACTED] to the extent they form an inseparable and indispensable part of his evidence and should therefore be admitted as associated exhibits.

(c) W04591

35. *Relevance.* In [REDACTED] 1998, W04591, [REDACTED], was stopped by KLA soldiers and forced to drive to [REDACTED]. There, [REDACTED], also known as [REDACTED], interrogated him, accused him of being a Serb collaborator, and ordered a soldier to beat him. After the beating, W04591 was driven to the [REDACTED] where he was kept in a room with others. After two nights, two KLA soldiers moved W04591 to another room with 12 other detainees. The next day,

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ See e.g. [REDACTED].

⁶⁹ See e.g. [REDACTED].

⁷⁰ See e.g. [REDACTED].

[REDACTED] arrived and ordered that W04591 be taken back to the first room. [REDACTED] told W04591 that he would be released and made him sign a pledge not to disclose what he had seen in the [REDACTED]. W04591 was then released. W04591's evidence is therefore relevant to allegations in the Indictment,⁷¹ and to assessing related evidence.

36. *Authenticity and Reliability.* W04591's Rule 153 Statement comprises his SPO interview⁷² and testimony in [REDACTED].⁷³ W04591's audio-visually recorded SPO interview was documented in a verbatim transcript. W04591 was advised of his rights and duties as a witness,⁷⁴ and confirmed that his statement was true, accurate, and voluntary.⁷⁵ W04591's audio-visually recorded testimony was also documented in verbatim transcripts. W04591 also testified under oath⁷⁶ and was cross-examined.⁷⁷ Additionally, during his SPO interview, W04591 confirmed that he provided his testimony voluntarily and to the best of his recollection.⁷⁸

37. *Suitability for Rule 153 Admission.* W04591's evidence is particularly suitable for admission in writing in lieu of oral testimony as it relates to the crime base and his prior testimony has been [REDACTED]. The statements comprising the Rule 153 Statement also complement each other. W04591's SPO interview is the most recent reconfirmation of his prior statements and provides additional details and clarifications, whereas his [REDACTED] testimony contains his full account of the events. Moreover, W04591's evidence is largely cumulative to other witness and documentary evidence concerning the [REDACTED].⁷⁹ W04591's evidence is also

⁷¹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁷² 078242-TR-ET Parts 1-2 RED.

⁷³ [REDACTED].

⁷⁴ 078242-TR-ET Part 1 RED, pp.2-7.

⁷⁵ 078242-TR-ET Part 2 RED, pp.9-10.

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ 078242-TR-ET Part 1 RED, p.9.

⁷⁹ See *e.g.* [REDACTED]; SITF00010900-00010915 RED.

corroborated by witnesses whom the Accused have or will be able to confront, including through cross-examination;⁸⁰ and complements certain adjudicated facts.⁸¹

38. *Admissibility of the Associated Exhibits.* W04591's prior [REDACTED] and [REDACTED] statements, the sketch and map he annotated, and the pictures of the [REDACTED], were referenced and discussed in W04591's Rule 153 Statement to the extent they form an inseparable and indispensable part of his evidence and should, therefore, be admitted as associated exhibits.

(d) W04858

39. *Relevance.* W04858 was a [REDACTED] In [REDACTED] 1998, KLA soldiers asked for the [REDACTED]'s assistance in organising a meeting in [REDACTED] to seek cooperation from the [REDACTED] and the villagers. [REDACTED] and [REDACTED] were present at the meeting. After the meeting, [REDACTED], approached W04858 because [REDACTED] had been kidnapped, and asked W04858 for the names of KLA individuals present at the meeting. In [REDACTED] 1999, [REDACTED], W04858 visited the KLA Commander [REDACTED] to ask for an [REDACTED]. [REDACTED] disagreed with W04858 and told him that he[REDACTED]. A few days later, W04858 was picked up by KLA soldiers in [REDACTED] and brought to [REDACTED] at the KLA HQ in [REDACTED]. [REDACTED] accused W04858 of being a traitor and threatened him at gunpoint. [REDACTED] ordered the KLA soldiers to chain W04858 who was then hit and lost consciousness. When he woke up, W04858 saw [REDACTED] outside the window, including [REDACTED]. [REDACTED] demanded W04858's release, which [REDACTED] eventually ordered. W04858's evidence is therefore relevant to crimes charges in the Indictment,⁸² and to assessing related evidence.

⁸⁰ See e.g. [REDACTED].

⁸¹ See e.g. [REDACTED].

⁸² See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06-F01594/A03, para. [REDACTED].

40. *Authenticity and Reliability.* W04858's Rule 153 Statement consists of his [REDACTED] statement from April 2002.⁸³ W04858's [REDACTED] statement was taken by a duly empowered investigator using official templates which include the witness's personal details and the identities of those in attendance,⁸⁴ and was signed by the investigator taking the statement.⁸⁵ Furthermore, W04858 was advised of his rights and obligations as a witness.⁸⁶

41. *Suitable for Rule 153 Admission.* W04858 provides purely contextual and crime-base evidence, which is particularly suitable for admission in writing in lieu of oral testimony. W04858's evidence is also generally cumulative with and corroborated by other witness and documentary evidence concerning the abduction and mistreatment of individuals by KLA members in and around [REDACTED].⁸⁷ W04858's evidence is also corroborated by witnesses whom the Accused have or will be able to confront, including through cross-examination;⁸⁸ and complements certain adjudicated facts.⁸⁹

III. *INTER PARTES* CORRESPONDENCE

42. As instructed by the Panel, the SPO, Defence, and Victims' Counsel have engaged in *inter partes* correspondence in an effort to agree on the evidence subject of the present motion.⁹⁰

43. The Defence agrees to the admission of the evidence of witnesses W03593, W04391, W04394, and W04858 pursuant to Rule 153. However, the Defence objects to certain evidence and witnesses, as set out below, followed by the SPO's initial responses:

⁸³ SPOE00185393-00185400, pp.1, 4.

⁸⁴ SPOE00185393-00185400, pp.1.

⁸⁵ SPOE00185393-00185400, p.1.

⁸⁶ SPOE00185393-00185400, p.1.

⁸⁷ [REDACTED].

⁸⁸ See e.g. [REDACTED].

⁸⁹ See e.g. [REDACTED].

⁹⁰ Order on the Conduct of the Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 39, 51, 73.

- (i) The four Defence teams object to the admission of the evidence of witnesses W01679, W04432, and W04591 on the basis that it is largely duplicative of adjudicated facts and, therefore, submit that the witnesses should be removed from the witness list. However, these submissions seek alternative and additional relief beyond the question of the admissibility of the proposed evidence pursuant to Rule 153.⁹¹ As set out above, the evidence of each witness is admissible as it is relevant, *prima facie* reliable, and of probative value which is not outweighed by any prejudice. Moreover, while certain of the evidence is, in part, duplicative of adjudicated facts, no Defence team has indicated that it agrees with or does not dispute such facts. In the circumstances, the Panel has found that it is important that such evidence be tendered to permit the Panel to fulfil its fact-finding functions.⁹² As set out above, the evidence of these witnesses also complements and contextualises noticed adjudicated facts, and is therefore also relevant for this purpose.
- (ii) With regard to W01679, the Defence also objects to the admission of document 105373-105375 RED2. However, as set out in Annex 1, this associated exhibit was commented on and discussed during the witness's testimony on [REDACTED] and forms an inseparable and indispensable part thereof.
- (iii) With regard to W04591, the Defence seeks assurance from the SPO that it will not seek to rely on the witness's identification of an individual with missing fingers as [REDACTED].⁹³ The SPO hereby confirms that it does not seek to rely on this part of the witness's evidence.

⁹¹ Public Redacted Version of Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 Pursuant to Rule 153, KSC-BC-2020-06/F02421/RED, 2 July 2024, para.23.

⁹² Second Adjudicated Facts Decision, KSC-BC-2020-06/F02365, para.25.

⁹³ See 078242-TR-ET Part 1, pp. 18-20.

(iv) The Defence objects to the admission of W04393's and W04433's evidence pursuant to Rule 153, wishing to cross-examine them. Taking into account the Defence's position and the circumstances of the witness and his evidence, the SPO has decided to convert W04393 from Rule 153 to Rule 154. However, as set out above, the evidence of W04433 is admissible as it is relevant, *prima facie* reliable, and of probative value which is not outweighed by any prejudice.

44. In sum, the evidence of each witness tendered in this motion is entirely suitable for admission in writing in lieu of oral testimony and should, therefore, be admitted pursuant to Rule 153.


IV. CLASSIFICATION

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

V. RELIEF REQUESTED

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

Word count: 5430



Kimberly P. West

Specialist Prosecutor

Thursday, 26 September 2024

At The Hague, the Netherlands.