



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 fifth motion for admission of evidence pursuant to Rule 155

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 Law,¹ and Rules 137-138 and 155 of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,³ together with associated exhibits and/or other written records where applicable,⁴ of seven witnesses: W00016,⁵ W01473,⁶ W04252,⁷ W04381,⁸ W04431⁹, W04648,¹⁰ and W04825¹¹ (collectively, 'Rule 155 Witnesses').

2. The Proposed Evidence should be admitted because: (i) the Rule 155 Witnesses are unavailable;¹² and (ii) the Proposed Evidence is relevant, authentic, reliable, and has probative value, which is not outweighed by any prejudice.¹³ As these admissibility criteria are satisfied, admission is in the interests of justice.¹⁴

3. Attached to this Motion are eight Annexes. Annexes 1-7, one for each of the Rule 155 Witnesses, contain a table identifying the Proposed Evidence for that witness, which includes the Rule 155 Statement¹⁵ and, where applicable, tendered associated

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article(s)' are to the Law, unless otherwise specified. The Panel granted a 1,000 word extension for purposes of this motion. *See* Transcript, 17 September 2024, p.19763.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ The account of each witness tendered for admission is the 'Rule 155 Statement'.

⁴ *See* Annexes 1-7. The Rule 155 Statements and, where applicable, associated exhibits/other written records for each witness are the 'Proposed Evidence.'

⁵ *See* Annex 6, items 1-3. The annexes are numbered consistent with the order in which the witnesses are discussed in this motion.

⁶ *See* Annex 1, items 1-12

⁷ *See* Annex 3, items 1-2.

⁸ *See* Annex 5, items 1-4.

⁹ *See* Annex 2, items 1-4.

¹⁰ *See* Annex 4, items 1-3.

¹¹ *See* Annex 7, items 1-4.

¹² Rule 155(1)(a).

¹³ Rules 137-138, 155(1)(b).

¹⁴ The applicable law has been set out in prior submissions and decisions in this case. *See e.g.* Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential ('First Decision'), paras 10-19.

¹⁵ As indicated in the Annexes, where an audio-video recording exists, the SPO also tenders it along with the relevant written statement pursuant to the Trial Panel's fourth oral order of 15 January 2024, Transcript, 15 January 2024, p.11022. *See also* Decision on Prosecution Third Motion for Admission of

exhibits and/or other written records.¹⁶ Annex 8 contains the documents supporting the unavailability of the Rule 155 Witnesses.

II. SUBMISSIONS

4. Witnesses W00016, W01473, W04252, W04431, W04648, and W04825 are unavailable since they are deceased, as confirmed by the supporting proof of death documents presented in Annex 8. W04381 is unavailable because he is not fit to testify due to health reasons.¹⁷ Accordingly, Rule 155(1)(a) is satisfied and the Proposed Evidence should be admitted as it also satisfies the admissibility criteria under Rules 137-138 and 155(1)(b).

5. Considering available counterbalancing factors and the ability of the Defence to challenge the Proposed Evidence,¹⁸ there is the opportunity for a fair and proper assessment. At the end of the trial, and in considering the weight to be assigned, relevant factors include whether – as here – the statement of an unavailable witness corroborates or is corroborated by: (i) statements of other witnesses about the same events; (ii) documentary evidence; (iii) evidence of similar acts; and (iv) evidence of a consistent pattern of conduct.¹⁹ Further, the Proposed Evidence also complements noticed adjudicated facts relating to, *inter alia*, Llapushnik/Lapušnik, Cahan (Albania), Llapashticë/Lapaštica and Zllash/Zlaš,²⁰ which either independently or together with

Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023 ('Third Decision'), para.65(e); Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, Confidential ('Second Decision') para.97(d).

¹⁶ For each item, the Annexes provide a description, date of the document, relevant ERNs, and indicia of reliability, or relevance. *See* First Decision, KSC-BC-2020-06/F01603, paras 63-64, 101 (setting out indicia of authenticity and reliability).

¹⁷ *See* para.37 below.

¹⁸ *See* ECtHR, *Schatschaschwili v. Germany* [GC], 9154/10, Judgment, 15 December 2015 ('*Schatschaschwili* Judgment'), paras 126-131.

¹⁹ *See e.g.* ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Judgment, 30 January 2015, para.104; *Schatschaschwili* Judgment, para.128.

²⁰ Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023, Confidential, pp.107-126, 134-136, 165-179; Annex 1 to Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F02498/A01, 21 August 2024, Confidential, pp.7-9, 22-23.

complementary evidence, including of unavailable witnesses, are sufficient to ground a conviction.²¹

6. More generally, evidence going to proof of the Accused's acts and conduct is admissible under Rule 155.²² Even where the Defence suggests that certain evidence is uncorroborated, it should not be excluded at the point of a Rule 155 decision, but should instead be considered at the end of trial in light of the entire evidentiary record.²³ Similarly, the absence of an opportunity for the Defence to confront a witness whose evidence is tendered through Rule 155 does not bar its admission, but is a factor that goes to the assessment of the weight of this evidence.²⁴ Discrepancies and contradictions between accounts of the same and/or different witnesses are matters pertaining to the weight of the evidence, and do not *per se* render the evidence inadmissible.²⁵

²¹ See e.g. IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgement, 20 March 2019, para.459, fn.1206.

²² First Decision, KSC-BC-2020-06/F01603, paras 15, 116; Second Decision, KSC-BC-2020-06/F01864, para.41; Third Decision, KSC-BC-2020-06/F02013, para.54; Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02283, 3 May 2024 ('Fourth Decision'), paras 14, 51.

²³ First Decision, KSC-BC-2020-06/F01603, paras 86, 88, 137; Second Decision, KSC-BC-2020-06/F01864, para.46; Third Decision, KSC-BC-2020-06/F02013, para.33; Fourth Decision, KSC-BC-2020-06/F02283, para.14. See, similarly, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, paras 52-53, 62. For purposes of considering the reliability of the statement, as well as of other corroborative evidence, the whole statement should be admitted, including any specific allegations contained therein (even those that go to the acts and conduct of the Accused) that are not corroborated. See e.g. ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*, 3 February 2009, para.31; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Redacted Version of 'Decision on Behalf of Drago Nikolić Seeking Admission of Evidence Pursuant to Rule 92 *quater*', 19 February 2009, paras 47-50.

²⁴ Second Decision, KSC-BC-2020-06/F01864, paras 11, 72; Third Decision, KSC-BC-2020-06/F02013, para.30; Fourth Decision, KSC-BC-2020-06/F02283, para.52

²⁵ Second Decision, KSC-BC-2020-06/F01864, paras 83, 92; Third Decision, KSC-BC-2020-06/F02013, paras 13, 27, 51, 55; Fourth Decision, KSC-BC-2020-06/F02283, para.54

A. LLAPUSHNIK/LAPUŠNIK

7. The evidence of W01473 and W04431 is relevant to prove the charges in the Indictment related to Llapushnik/Lapušnik.²⁶

1. W01473

8. *Relevance.* W01473, a Kosovar Albanian, now deceased,²⁷ was arrested by a group of KLA soldiers in his house in the village of [REDACTED] on [REDACTED] 1998.²⁸ With their hands tied and heads covered,²⁹ W01473 and [REDACTED] were taken to Llapushnik/Lapušnik, having been beaten on the way.³⁰ Upon arrival, [REDACTED], also known as [REDACTED], took W01473 [REDACTED] to a cowshed and took away their possessions.³¹ [REDACTED] repeatedly hit [REDACTED] on the head until he lost consciousness.³²

9. W01473 described harsh detention conditions,³³ being chained with other prisoners and regularly beaten by [REDACTED].³⁴ W01473 was imprisoned for approximately 28 days.³⁵ He provided names of co-prisoners he remembered.³⁶ W01473 identified 'Commander Celiku' as the prison camp commander, later recognising him as Fatmir LIMAJ.³⁷ At one point during his detention, [REDACTED] took W01473 to [REDACTED], including a co-detainee.³⁸

²⁶ Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras 59-61, 64, 96-98, 101, 136-138, 145-146; Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), paras 303-337.

²⁷ Annex 8, item 1: 122541-122541.

²⁸ Annex 1, item 1: [REDACTED]; item 2: [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED]; Annex 1, item 4: [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

10. On or about 26 July 1998, guard 'Murrizi' ordered prisoners to walk towards the Berishë/Beriša mountains.³⁹ There, Murrizi and Haradin BALA divided prisoners into two groups.⁴⁰ W01473's group of about 11 people, [REDACTED], was told by Murrizi they would be released.⁴¹ W01473 received a paper containing a release order bearing his name and Commander Celiku's name.⁴² W01473's group was released; the other group remained.⁴³ W01473's group reached the village of [REDACTED] by tractor, where they were kept overnight and released the following morning.⁴⁴ Their release papers were collected before everyone departed, with W01473 walking home.⁴⁵

11. *Authenticity and reliability.* The Proposed Evidence, with individualized explanation of circumstances supporting its *prima facie* reliability, is listed in Confidential Annex 1. W01473's [REDACTED] was taken by a duly empowered investigator and orally translated into a language understood by the witness.⁴⁶ The statement contains a witness acknowledgement and interpreter certification, is signed by the witness, and initialed on all pages.⁴⁷ W01473 was duly advised of his rights as a witness.⁴⁸ W01473 confirmed that the contents of his statement were true and accurate, that his statement was given voluntarily, and that he had no objections to the manner or process by which the statement was taken.⁴⁹

12. The transcripts of the witness's audio-video recorded [REDACTED] are official verbatim transcripts.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ See [REDACTED].

⁴⁷ See: [REDACTED].

⁴⁸ See [REDACTED].

⁴⁹ See [REDACTED].

13. *Associated Exhibits.* The associated exhibits, part of the Proposed Evidence in Confidential Annex 1 – namely, a virtual reality presentation of Llapushnik/Lapušnik, booklet of locations, photograph, pseudonym sheet, and a list of names, should be admitted – as they are used and explained in W01473’s evidence. The Associated Exhibits are an inseparable and indispensable part of the Proposed Evidence.

14. *Fairness.* The probative value of the Proposed Evidence is not outweighed by any prejudice. This evidence (i) does not go to proof of the Accused’s acts and conduct;⁵⁰ (ii) may not be relied upon to a sole or decisive extent in reaching a conviction;⁵¹ (iii) was recorded in a manner that enables the Parties and Panel to assess the witness’s demeanour and credibility;⁵² (iv) is consistent, corroborated by, and/or complementary to adjudicated facts⁵³ and other testimonial and documentary evidence,⁵⁴ including witnesses that have been or will be available for cross-examination by the Defence;⁵⁵ and (v) the Defence is aware of the witness’s identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

2. W04431

15. *Relevance.* W04431, a Kosovar-Albanian now deceased,⁵⁶ was an LDK supporter living in the village of [REDACTED] during the summer of 1998.⁵⁷ One night, a group

⁵⁰ Cf. Rule 155(5).

⁵¹ Rule 140(4)(a).

⁵² In this respect, the [REDACTED] – during which the witness affirmed and discussed the other relevant Proposed Evidence – was audio and video recorded. See [REDACTED].

⁵³ See e.g. KSC-BC-2020-06/F01534/A01, Facts 393-404, 410-414, 419-421, 432-433, 437-438, 447-452.

⁵⁴ See e.g. [REDACTED] (on W01473’s arrest and release; [REDACTED] (on W01473’s arrest and release); [REDACTED] (on W01473’s detention conditions in the cowshed); [REDACTED] (on W01473’s detention conditions in the cowshed).

⁵⁵ See e.g. [REDACTED].

⁵⁶ Annex 8, item 2: 106406-106406-ET.

⁵⁷ Annex 2, item 2: [REDACTED].

of armed KLA soldiers arrived at W04431's home and ordered him [REDACTED], to go with them.⁵⁸ [REDACTED].⁵⁹ [REDACTED].⁶⁰

16. After this beating, W04431 [REDACTED] were put in the trunk of another car and taken to Llapushnik/Lapušnik.⁶¹ A KLA guard [REDACTED], brought W04431 [REDACTED] to a cowshed filled with manure and other prisoners, and chained them together to a wall.⁶² They were not allowed to leave to use the toilet, and were infrequently fed, sometimes only once every few days.⁶³ W04431 and the other prisoners were beaten daily with sticks, often at night by KLA soldiers.⁶⁴ On one occasion, W04431 was taken out of the cowshed during the day by [REDACTED] and brought into another building where he was beaten by four people, including a person called 'Qerqiz', until he lost consciousness.⁶⁵

17. After about one month in detention, W04431 heard explosions nearby and all of the prisoners were ordered out of the cowshed by Haradin BALA.⁶⁶ Together with another guard called 'Murrizi', the prisoners were marched towards the Berishë/Beriša mountains.⁶⁷ After approximately two hours, Haradin BALA split the prisoners into two groups.⁶⁸ One group, which included W04431 [REDACTED], was given pieces of paper with their names on it and told to walk to the village of Kazharek and report to the KLA.⁶⁹ From Kazharek, W04431 [REDACTED] went to the village of

⁵⁸ Annex 2, item 3: [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

[REDACTED] where they were kept for one night before being released.⁷⁰ The other group was kept behind; W04431 did not know what happened to them.⁷¹

18. *Authenticity and reliability.* W04431's Proposed Evidence with an individualised explanation of indicia of reliability and relevance, is listed in Confidential Annex 2. W04431's statement of [REDACTED] was taken by duly empowered investigators of the United Nation Mission in Kosovo ('UNMIK').⁷² W04431 was duly advised of his rights and obligations. The statement was signed by the interviewers and the witness, and was given voluntarily and freely.⁷³ During the [REDACTED] interview, taken on [REDACTED] by a duly empowered investigator, and orally translated into a language understood by the witness, W04431 confirmed that he was providing the statement voluntarily.⁷⁴ The statement contains a witness acknowledgement and interpreter certification, is signed by the witness and initialled on all pages.⁷⁵ Further, in W04431's audio-video recorded [REDACTED], recorded in a verbatim transcript, W04431 solemnly declared to tell the truth.⁷⁶ It is necessary to tender all of the statements listed in Annex 2, as each contains specific and complementary details, which considered together and with corroborating evidence further demonstrate their reliability.⁷⁷

19. *Associated Exhibits.* Annex 2 also lists one exhibit associated to the Rule 155 statement: a compilation of photographs of the Llapushnik/Lapušnik detention site discussed with the witness during [REDACTED]. This exhibit should be admitted as

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² All statements of W04431 were taken within the framework of UNMIK investigation [REDACTED].

⁷³ See Annex 2, Indicia of Reliability for item 1.

⁷⁴ [REDACTED].

⁷⁵ See [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

an inseparable and indispensable part of Rule 155 Statement, which would be less comprehensible or have lesser probative value without such exhibit.

20. *Fairness.* The probative value of W04431's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence: (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's demeanour and credibility;⁷⁸ and (iv) is consistent with, corroborated by, and/or complementary of adjudicated facts,⁷⁹ and statements of other witnesses in the case as well as other documentary evidence, including witnesses that have been or will be available for cross-examination.⁸⁰

B. LLAP OPERATIONAL ZONE

21. The evidence of W04252 and W04648 is relevant to prove the charges in the Indictment related to Llapashticë/Lapaštica and Zllash/Zlaš.⁸¹

3. W04252

22. *Relevance.* In 1998, W04252, a Serb, now deceased,⁸² lived with his family in Llapashticë/Lapaštica. On 18 December 1998, four uniformed and masked KLA members⁸³ with long-barrelled weapons⁸⁴ ransacked W04252's family home,⁸⁵ beat him,⁸⁶ and took him to a nearby KLA location⁸⁷ in Llapashticë/Lapaštica.⁸⁸ Once there,

⁷⁸ In this respect, the [REDACTED] – during which the witness affirmed and discussed the other relevant Proposed Evidence – was audio and video recorded.

⁷⁹ See e.g. KSC-BC-2020-06/F01534/A01, facts 393-404, 410-414, 419-421, 432-433, 437-438, 447-452.

⁸⁰ See e.g. [REDACTED].

⁸¹ See Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 71, 75, 96-98, 107, 109, 136-137; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 428-432, 438-457.

⁸² Annex 8, item 3: 120848-120849-ET.

⁸³ Annex 3, item 1: SITF00348368-SITF00348369-ET RED2, p.SITF00348368; item 2: 069667-TR-ET Part 1 RED2, pp.15, 27-28.

⁸⁴ SITF00348368-SITF00348369-ET RED2, p.SITF00348368.

⁸⁵ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, p.14.

⁸⁶ 069667-TR-ET Part 1 RED2, pp.12-13, 15.

⁸⁷ 069667-TR-ET Part 1 RED2, p.15.

⁸⁸ 069667-TR-ET Part 1 RED2, pp.15-16.

W04252 was placed in a room with covered windows and a metal door.⁸⁹ He was then interrogated on the whereabouts of the police and military troops,⁹⁰ but was not accused of anything. He was punched, kicked, and beaten with a truncheon,⁹¹ and had a pistol barrel pressed against the back of his head.⁹² He was then handcuffed to a dripping pipe and left there overnight.⁹³

23. On the next day, after having been briefly taken to his family home,⁹⁴ W04252 was returned to the same location in Llapashticë/Lapaštica, but placed in a different room,⁹⁵ used for feeding cattle.⁹⁶ The place was overcrowded, cold and there was no light.⁹⁷ W04252, as well as other detainees,⁹⁸ were beaten three times a day.⁹⁹ Although detainees were not allowed to speak with each other,¹⁰⁰ and were threatened with death if they disobeyed orders,¹⁰¹ W04252 did exchange a few words with one detainee, who was bloated and very swollen.¹⁰² Other detainees also had injuries.¹⁰³ On 31 December 1998,¹⁰⁴ W04252 was released to the OSCE,¹⁰⁵ and was later treated in hospital for his injuries.¹⁰⁶

24. *Authenticity and reliability.* W04252's Proposed Evidence, with an individualised explanation of circumstances militating for their *prima facie* reliability,

⁸⁹ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, p.18.

⁹⁰ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, pp.16, 25.

⁹¹ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, pp.24-25.

⁹² SITF00348368-SITF00348369-ET RED2, p.SITF00348368.

⁹³ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, pp.17-18.,

⁹⁴ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, pp.17, 19.

⁹⁵ SITF00348368-SITF00348369-ET RED2, p.SITF00348368; 069667-TR-ET Part 1 RED2, p.19.

⁹⁶ 069667-TR-ET Part 1 RED2, p.20.

⁹⁷ 069667-TR-ET Part 1 RED2, p.21.

⁹⁸ SITF00348368-SITF00348369-ET RED2, p.SITF00348369.

⁹⁹ 069667-TR-ET Part 1 RED2, pp.3, 22-23.

¹⁰⁰ SITF00348368-SITF00348369-ET RED2, p.SITF00348369; 069667-TR-ET Part 1 RED2, pp.20, 33.

¹⁰¹ 069667-TR-ET Part 1 RED2, p.20.

¹⁰² 069667-TR-ET Part 1 RED2, pp.22-23, 29.

¹⁰³ 069667-TR-ET Part 1 RED2, p.23.

¹⁰⁴ SITF00348368-SITF00348369-ET RED2, p.SITF00348369.

¹⁰⁵ SITF00348368-SITF00348369-ET RED2, p.SITF00348369; 069667-TR-ET Part 1 RED2, pp.24-25, 32.

¹⁰⁶ 069667-TR-ET Part 1 RED2, pp.30-31, 34.

is listed in Annex 3. The Proposed Evidence consists of: (i) W04252's statement before the Pristina SUP dated 4 February 2004,¹⁰⁷ and (ii) W04252's SPO interview dated 19 November 2019.¹⁰⁸ The statements bear sufficient indicia of reliability.¹⁰⁹ W04252's statement before the Pristina SUP was taken by authorised officials and includes details such as the date, time and attendees.¹¹⁰ W04252's SPO interview consists of verbatim transcripts of the audio-video recording.¹¹¹ W04252 confirmed that his answers during this interview are true and accurate.¹¹² During the SPO interview, W04252 had an opportunity to review his Pristina SUP statement and confirmed that it correctly reflects his evidence.¹¹³

25. *Fairness.* The probative value of W04252's Proposed Evidence is not outweighed by any prejudice. The evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner—including by different law enforcement bodies and at different times—that enables the Parties and Panel to assess the witness's credibility; (iv) is consistent with, complementary to, and/or corroborated by statements and associated exhibits of other witnesses in the case,¹¹⁴ including witnesses who testified in court and were available for cross-examination,¹¹⁵ and other documentary evidence and adjudicated facts;¹¹⁶ and (v) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and

¹⁰⁷ SITF00348368-SITF00348369-ET RED.

¹⁰⁸ 069667-TR-ET Part 1 RED2.

¹⁰⁹ For an individualised assessment of reliability, *see* Annex 3, items 1-2.

¹¹⁰ SITF00348368-SITF00348369-ET RED.

¹¹¹ 069667b Part 1.

¹¹² 069667-TR-ET Part 1 RED2, p.35.

¹¹³ 069667-TR-ET Part 1 RED2, pp.7-10.

¹¹⁴ *See* [REDACTED] admitted in Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, paras 43-57, 220.

¹¹⁵ *See e.g.* [REDACTED].

¹¹⁶ *See* P00738 regarding W04252's co-detainees ([REDACTED], origins and periods of detention correspond to W04252's account); P00225; KSC-BC-2020-06/F01534/A01, *inter alia*, fact 488.

has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

4. W04648

26. *Relevance.* W04648, a Kosovar-Albanian, now deceased,¹¹⁷ was [REDACTED].¹¹⁸ In [REDACTED] April 1999, three men wearing black uniforms, [REDACTED], came to the house where W04648 was staying [REDACTED].¹¹⁹ W04648 learned that the three men then went to [REDACTED].¹²⁰ [REDACTED] was subsequently detained in a basement in Zllash/Zlaš with others.¹²¹ On 19 April 1999, seven of the Zllash/Zlaš detainees were released, while [REDACTED] were kept behind.¹²²

27. In the following months, [REDACTED].¹²³ On one occasion, [REDACTED].¹²⁴ [REDACTED].¹²⁵

28. On 4 July 1999, W04648 and [REDACTED] discovered [REDACTED] body alongside another corpse in a shallow grave in Zllash/Zlaš.¹²⁶ W04648 recognised [REDACTED] body immediately [REDACTED].¹²⁷ [REDACTED] had been shot twice in the stomach, while the other corpse was shot in the head.¹²⁸ The hands of both

¹¹⁷ Annex 8, item 4: 077825-077825 RED3.

¹¹⁸ See Indictment, KSC-BC-2020-06/F00999/A01, pp.67, 70 (victim 25.1 and 2.1).

¹¹⁹ Annex 4, item 1: SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128335.

¹²⁰ SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128335; Annex 4, item 3: SPOE00130685-00130687 RED3, pp.SPOE00130685-SPOE00130686.

¹²¹ SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128336; SPOE00130685-00130687 RED3, p.SPOE00130685.

¹²² SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128335; Annex 4, item 2: SPOE00128069-00128086 RED3, p.SPOE00128072.

¹²³ SPOE00128061-00128068 RED3, p.SPOE00128063.

¹²⁴ SPOE00128333-00128343 RED3, pp.SPOE00128334, SPOE00128337-SPOE00128338; SPOE00128061-00128068 RED3, p.SPOE00128064; SPOE00128069-00128086 RED3, SPOE00128074.

¹²⁵ SPOE00130685-00130687 RED3, p.SPOE00130685.

¹²⁶ SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128336; SPOE00128069-00128086 RED3, p.SPOE00128072.

¹²⁷ SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128336; SPOE00128069-00128086 RED3, p.SPOE00128072.

¹²⁸ SPOE00128333-00128343 RED3, pp.SPOE00128334, SPOE00128337.

bodies were still bound with rope.¹²⁹ W04648 [REDACTED] took [REDACTED] and buried him in [REDACTED].¹³⁰

29. *Authenticity and reliability.* The Proposed Evidence for W04648 is listed in Annex 4, and consists of three [REDACTED] statements, one from [REDACTED], and two from [REDACTED], and a letter. All three statements record the date the respective interviews took place, and include a witness acknowledgement signed by W04648.¹³¹ [REDACTED].¹³²

30. The consistency of the Proposed Evidence – considered together and with corroborating evidence – further demonstrates its reliability. W04648’s proposed statements permit an assessment of this deceased witness’s evidence and credibility.

31. *Fairness.* The probative value of W04648’s Proposed Evidence is not outweighed by any prejudice. The evidence does not go to proof of the acts and conduct of the Accused, as W04648 provides purely crime-base evidence. Further, the Proposed Evidence is consistent with and corroborated by adjudicated facts,¹³³ and the statements of other witnesses,¹³⁴ including witnesses who will be available for cross-examination.¹³⁵

C. CAHAN, ALBANIA

32. The evidence of W04381 is relevant to prove the charges in the Indictment related to Cahan, Albania.¹³⁶

¹²⁹ SPOE00128333-00128343 RED3, pp.SPOE00128334, SPOE00128337.

¹³⁰ SPOE00128333-00128343 RED3, pp.SPOE00128333, SPOE00128337.

¹³¹ See Annex 4, items 1-2 – Indicia of reliability.

¹³² See Annex 4, item 3 – Indicia of reliability.

¹³³ KSC-BC-2020-06/F02498/A01, facts 804-805, 812, 814, 895-896, 898-900, 910-923, 927, 932.

¹³⁴ See e.g. [REDACTED].

¹³⁵ See e.g. [REDACTED].

¹³⁶ See Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 81, 96-98, 118; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 536, 539-542, 548.

5. W04381

33. *Relevance.* On [REDACTED], W04381, a [REDACTED] from [REDACTED], was taken from [REDACTED] in [REDACTED] by KLA members.¹³⁷ W04381 was [REDACTED] taken to [REDACTED], where he was interrogated under the threat of violence.¹³⁸ He was then handcuffed and [REDACTED] to the KLA detention site at the [REDACTED].¹³⁹ While detained there, he was severely beaten [REDACTED].¹⁴⁰ After this beating, W04381 was [REDACTED].¹⁴¹ [REDACTED].¹⁴² [REDACTED].¹⁴³ W04381's evidence is therefore relevant to crimes charged in the Indictment,¹⁴⁴ and to assessing related evidence.

34. *Authenticity and reliability.* W04381's Rule 155 Statement comprises his [REDACTED] witness interview;¹⁴⁵ his [REDACTED];¹⁴⁶ and an [REDACTED] photoboard report.¹⁴⁷ W04381's witness interview and [REDACTED] were documented in verbatim transcripts. W04381 was also advised of his rights and duties as a witness and confirmed his evidence was true, accurate, and given voluntarily.¹⁴⁸ The photoboard report was taken and signed by a duly empowered [REDACTED] investigator as well as being signed by W04381 and the interpreter.¹⁴⁹

¹³⁷ Annex 5, item 1: SITF00013515-00013550 RED2, pp.SITF00013517, SITF00013518.

¹³⁸ SITF00013515-00013550 RED2, pp.SITF00013517-SITF00013519.

¹³⁹ SITF00013515-00013550 RED2, pp.SITF00013519-SITF00013521.

¹⁴⁰ SITF00013515-00013550 RED2, p.SITF00013522.

¹⁴¹ SITF00013515-00013550 RED2, pp.SITF00013522-SITF00013523.

¹⁴² SITF00013515-00013550 RED2, p.SITF00013525.

¹⁴³ SITF00013515-00013550 RED2, pp.SITF00013526-SITF00013527.

¹⁴⁴ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

¹⁴⁵ SITF00013515-00013550 RED2.

¹⁴⁶ Annex 5, item 3: SITF00015744-00015815 RED2, pp.SITF00015744-00015776.

¹⁴⁷ Annex 5, item 2: SITF00013587-00013592 RED2. pp. SITF00013587-00013588, 00013591-00013592.

¹⁴⁸ SITF00013515-00013550 RED2, p.SITF00013515; SITF00015744-00015815 RED2, pp.SITF00015745-SITF00015746.

¹⁴⁹ SITF00013587-00013592 RED2, p.SITF00013588.

35. *Associated Exhibits.* The [REDACTED] shown to W04381 during his witness interview forms an inseparable and indispensable part of W04381's evidence and should therefore be admitted as an associated exhibit.¹⁵⁰

36. *Fairness.* The probative value of the Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies and at different times – that enables the Parties and Panel to assess the witness's demeanour and credibility; and (iv) is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination,¹⁵¹ and complements certain adjudicated facts.¹⁵²

37. *Unavailability.* W04381 is unavailable¹⁵³ as his health condition effectively prevents him from testifying orally.¹⁵⁴ In particular, the WPSO assessment reveals

¹⁵⁰ See SITF00013515-00013550 RED2; Annex 5, item 4: SITF00013570-00013584.

¹⁵¹ See e.g. [REDACTED].

¹⁵² See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts [REDACTED].

¹⁵³ See also Annex 1 to WPSO Observations Regarding Assessment of Fitness to Testify for W04381, KSC-BC-2020-06/F02176/A01, 13 March 2024, Strictly Confidential and *Ex Parte* ('Observations'). This filing is strictly confidential and *ex parte* and consistent with the submissions therein by the filing participant; the SPO does not object to reclassification as confidential. Since the filing is based on information which is in line with the information referred to in this Rule 155 application, the Defence is in a position to meaningfully respond to this request.

¹⁵⁴ See First Decision, KSC-BC-2020-06/F01603, para.123; Decision on Thaçi, Veseli & Krasniqi Defence Request for Certification to Appeal the 'Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155', KSC-BC-2020-06/F01671, 13 July 2023, paras 18-19. See also ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on the Admission of Statements of Four Witnesses pursuant to Rule 92 *quater*, 24 July 2008, para.16; ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on the Admission of Statements of Two Witnesses and Associated Documents pursuant to Rule 92 *quater*, 16 January 2009, paras 8, 10; ICTY, *Prosecutor v. Hadžić*, IT-95-5/18-T, Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits pursuant to Rule 92 *quater*, 30 November 2009, para.5; ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater* and Prosecution Motion for the Admission of the Evidence of GH-083 Pursuant to rule 92 *quater*, 9 May 2013, paras 23, 29, 41, 95, 101; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-1588-Red, Public redacted version of Decision on the introduction into evidence of P0570's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 11 August 2021, paras 18-20; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision Admitting Witness PRH437's Statements Under Rule 158 and Granting Protective Measures, 28 February 2017, paras 12-14.

severe health issues, indicating a physical state which is incompatible with testifying, even with the application of special measures aimed at protecting his wellbeing and dignity.¹⁵⁵

D. POST JUNE 1999

38. The evidence of W00016 and W04825 is relevant to prove the charges in the Indictment related to the events in Gnjilan/Gnjilane.¹⁵⁶

6. W00016

39. *Relevance.* W00016, a Kosovar-Serb, now deceased,¹⁵⁷ was living in the city of Gnjilan/Gnjilane in July 1999.¹⁵⁸ On 12 July 1999, she visited Mirko JOVIĆ's apartment.¹⁵⁹ At one point, Mirko JOVIĆ entered the apartment with three or four KLA men wearing black uniforms and was accompanied by their neighbour.¹⁶⁰ The KLA members searched the apartment for weapons.¹⁶¹ Mirko JOVIĆ was told that he needed to get a free movement pass, and that he should go with the KLA members to get one.¹⁶² Subsequently, another neighbour drove, *inter alia*, W00016, Mirko JOVIĆ, and a KLA member to the Dormitory in Gjilan/Gnjilane.¹⁶³ The other KLA members followed them in a separate car.¹⁶⁴ The cars parked in front of a high school, across the road from the Dormitory.¹⁶⁵ One of the KLA members told them to wait for the commander, who at that time was in Malishevo/Mališevo, a village near

¹⁵⁵ While WPSO could not make a conclusive recommendation on the witness's fitness to testify, its assessment is based, *inter alia*, on recent medical documentation from 2022/2023. See Observations, KSC-BC-2020-06/F02176/A01, p.KSC-BC-2020-06/F02176/A01/2.

¹⁵⁶ Indictment, KSC-BC-2020-06/F00999/A01, paras 32-61, 92, 96-98, 133 and 172; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 665-670 and 674-677.

¹⁵⁷ Annex 8, item 5: 123009-123010-ET RED.

¹⁵⁸ Annex 6, item 2: 082037-TR-ET Part 1 RED, p.6; item 1: SITF00269109-SITF00269112-ET, p.1.

¹⁵⁹ 082037-TR-ET Part 1 RED, pp.6-8; SITF00269109-SITF00269112-ET, p.1.

¹⁶⁰ 082037-TR-ET Part 1 RED, pp.8-9; SITF00269109-SITF00269112-ET, p.1.

¹⁶¹ SITF00269109-SITF00269112-ET, p.2.

¹⁶² 082037-TR-ET Part 1 RED, pp.12-13; SITF00269109-SITF00269112-ET, p.1.

¹⁶³ 082037-TR-ET Part 1 RED, pp.14, 16; SITF00269109-SITF00269112-ET, pp.2-3.

¹⁶⁴ 082037-TR-ET Part 1 RED, p.17; SITF00269109-SITF00269112-ET, p.3.

¹⁶⁵ 082037-TR-ET Part 1 RED, p.17; SITF00269109-SITF00269112-ET, p.3.

Gjilan/Gnjilane.¹⁶⁶ Eventually, W00016 was told to go home, whereas Mirko JOVIĆ was taken by the KLA members, accompanying him on each side, in the direction of the Dormitory.¹⁶⁷ W00016 never saw Mirko JOVIĆ again after that evening.¹⁶⁸ The next morning, W00016 and a friend of hers reported the abduction to the Serbian Orthodox Church, the UN, and KFOR.¹⁶⁹

40. *Authenticity and reliability.* The Proposed Evidence for W00016, with an individualised explanation of the indicia of reliability, is listed in Annex 6. W00016's SPO interview, which is recorded in verbatim transcripts,¹⁷⁰ was conducted with an interpreter understood by the witness, who was duly advised of her rights and obligations as a witness.¹⁷¹ The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.¹⁷² W00016 confirmed that the contents of her statement are true and accurate, that her statement was given voluntarily, and that she had no objections to the manner or process by which the statement was taken.¹⁷³ Other related records, including a handwritten statement given by W00016, dated 11 October 2002,¹⁷⁴ are discussed in the SPO interview and were confirmed by the witness,¹⁷⁵ thus constituting an integral part of that interview.

41. *Fairness.* The probative value of W00016's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of nearly 20 years – that

¹⁶⁶ 082037-TR-ET Part 1 RED, pp.17-18; SITF00269109-SITF00269112-ET, p.3.

¹⁶⁷ 082037-TR-ET Part 1 RED, p.21 and Part 2 RED, p.5.

¹⁶⁸ 082037-TR-ET Part 2 RED, p.5.

¹⁶⁹ 082037-TR-ET Part 2 RED, pp.8-9; SITF00269109-SITF00269112-ET, p.4.

¹⁷⁰ Annex 6, items 2-3.

¹⁷¹ 082037-TR-ET Part 1 RED, pp.1-3, 082037a.

¹⁷² 082037-TR-ET Part 1 RED, pp.1-3; 082037-TR-ET Part 2 RED, p.1; 082037a Parts 1 and 2.

¹⁷³ 082037-TR-ET Part 2 RED, pp.33-34; 082037a Part 2.

¹⁷⁴ SITF00269109-SITF00269112-ET.

¹⁷⁵ 082037-TR-ET Part 2 RED, pp.21-32.

enables the Parties and Panel to assess the witness's demeanour and credibility;¹⁷⁶ (iv) is consistent with, and corroborated by documentary evidence,¹⁷⁷ and the statements of other witnesses in the case,¹⁷⁸ some of whom have been¹⁷⁹ and will be available for cross-examination.¹⁸⁰

7. W04825

42. *Relevance.* W04825, a Kosovar-Serb civilian – now deceased¹⁸¹ – was living in Gnjilan/Gnjilane in 1999.¹⁸² On or around 23 June 1999, W04825 was abducted from his home by four or five armed men, some in uniforms, wearing KLA insignia.¹⁸³ The leader of the group was a man nicknamed 'Builder'.¹⁸⁴ W04825 was put into a car and driven to the nearby Dormitory in Gnjilan/Gnjilane.¹⁸⁵ During the ride, his hands were tied and a knife and a pistol were pressed on his body.¹⁸⁶ In the Dormitory, and despite the fact that it was nighttime, W04825 saw many people, including some in uniforms with KLA insignia.¹⁸⁷ Immediately upon arrival, he was punched in the chest and taken upstairs into a room where his details were taken.¹⁸⁸ He heard screams from the basement, and he later saw a man being dragged up the stairs by two people.¹⁸⁹ Then, for approximately five hours, W04825 was beaten by six or seven people, including

¹⁷⁶ In this respect, the SPO interview – during which the witness affirmed and discussed the other relevant Proposed Evidence – was audio/video recorded.

¹⁷⁷ SITF00030155-SITF00030184 RED; SITF00030130-SITF00030134 RED; SITF00030186-SITF00030200-ET RED; SITF00030202-SITF00030205-ET RED; SITF00308430-00308434; SITF00308392-00308393.

¹⁷⁸ See e.g. W02486.

¹⁷⁹ See e.g. W04824; W04868.

¹⁸⁰ See e.g. [REDACTED].

¹⁸¹ Annex 8, item 6: 120852-120853-ET.

¹⁸² Annex 7, item 2: 092974-TR-ET Part 1 RED, pp.4, 7; item 1: SITF00161883-SITF00161892-ET, p.1-2.

¹⁸³ 092974-TR-ET Part 1 RED2, pp.7-14; SITF00161883-SITF00161892-ET, p.2.

¹⁸⁴ 092974-TR-ET Part 1 RED2, pp.14-15; SITF00161883-SITF00161892-ET, p.3.

¹⁸⁵ 092974-TR-ET Part 1 RED2, pp.10, 12, 15; 092974-TR-ET Part 2 Revised RED, p.2; SITF00161883-SITF00161892-ET, p.2.

¹⁸⁶ 092974-TR-ET Part 1 RED2, pp.9-10, 15, 18.

¹⁸⁷ 092974-TR-ET Part 2 Revised RED, pp.2-4, 12, 13; SITF00161883-SITF00161892-ET, p.5.

¹⁸⁸ 092974-TR-ET Part 2 Revised RED, pp.5-6, 13; SITF00161883-SITF00161892-ET, pp.4-5.

¹⁸⁹ 092974-TR-ET Part 2 Revised RED, pp.5, 7-10, 15-16; SITF00161883-SITF00161892-ET, pp.4, 7-8.

the 'Builder', with batons, and with cables on his soles and back.¹⁹⁰ Cigarettes were extinguished on him.¹⁹¹ The 'Builder', who was in charge of the others, also forced him to kiss his boots.¹⁹² W04825 was released on the same day.¹⁹³ After being taken outside of the Dormitory, before being released, he heard weapons being loaded by escorting KLA members, and then heard several clicks when 'they fired those false shots'.¹⁹⁴ Shortly after W04825's release, his house was burnt.¹⁹⁵ Due to safety reasons, he and his family left Kosovo.¹⁹⁶

43. *Authenticity and reliability.* W04825's Proposed Evidence, with an individualised explanation of the indicia of reliability, is listed in Annex 7. W04825's SPO interview – as audio/video recorded and transcribed¹⁹⁷ – was conducted with an interpreter understood by the witness, who was duly advised of his rights and obligations.¹⁹⁸ The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.¹⁹⁹ W04825 confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily, and that he had no objections to the manner or process by which the statement was taken.²⁰⁰

44. W04825's testimony given before the court in Belgrade indicates the date and place of the hearing, case number, witness's personal details, details of other persons participating in the hearing, and witness warnings and solemn declaration.²⁰¹

¹⁹⁰ 092974-TR-ET Part 2 Revised RED, pp.13, 14, 16; SITF00161883-SITF00161892-ET, pp.2-4.

¹⁹¹ 092974-TR-ET Part 2 Revised RED, p.14.

¹⁹² 092974-TR-ET Part 2 Revised RED, pp.13, 16.

¹⁹³ 092974-TR-ET Part 2 Revised RED, p.17; SITF00161883-SITF00161892-ET, p.2.

¹⁹⁴ 092974-TR-ET Part 2 Revised RED, pp.17-19.

¹⁹⁵ 092974-TR-ET Part 2 Revised RED, p.20; SITF00161883-SITF00161892-ET, pp.5, 8.

¹⁹⁶ 092974-TR-ET Part 2 Revised RED, p.19; SITF00161883-SITF00161892-ET, p.2.

¹⁹⁷ Annex 7, item 2.

¹⁹⁸ 092974-TR-ET Part 1 RED, pp.1-3, 092974b Part 1.

¹⁹⁹ 092974-TR-ET Part 1 RED, p.1; 092974-TR-ET Part 2 RED, p.1; 092974b Parts 1-2.

²⁰⁰ 092974-TR-ET Part 2 RED, p.27; 092974b Part 2.

²⁰¹ SITF00161883-SITF00161892-ET, pp.1-10.

45. *Associated Exhibits.* The photographs of various locations in Gnjilan/Gnjilane,²⁰² discussed with the witness during the SPO interview,²⁰³ should be admitted as an inseparable and indispensable part of Rule 155 Statement, which would be less comprehensible or have lesser probative value without such exhibit.

46. *Fairness.* The probative value of W04825's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's demeanour and credibility;²⁰⁴ and (iv) is consistent with, and corroborated by documentary evidence,²⁰⁵ and the statements of other witnesses in the case,²⁰⁶ some of whom have been or will be available for cross-examination.²⁰⁷

III. CLASSIFICATION

47. This motion and the Annexes are confidential as they contain information concerning witnesses with protective measures.

IV. RELIEF REQUESTED

48. For the foregoing reasons, the SPO requests that the Trial Panel admit the Proposed Evidence as identified in Annexes 1-7.

²⁰² Annex 7, item 4: 092970-092973.

²⁰³ 092974-TR-ET Part 2 Revised RED, pp.22-25.

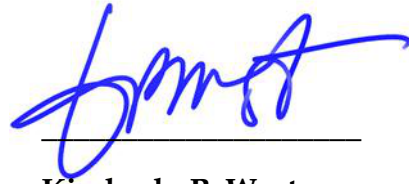
²⁰⁴ In this respect, the SPO interview – during which the witness affirmed and discussed the other relevant Proposed Evidence – was audio and video recorded.

²⁰⁵ 105816-106095, pp.10-12; P00005; P01537, p.3; P01538, p.2. *See also* P00743.2, pp.5-6, 8.

²⁰⁶ *See e.g.* evidence of witnesses W04824, W04696, W04238, [REDACTED], concerning their detention at the Dormitory in Gnjilan/Gnjilane during the periods surrounding W04825's detention at that location. *See also* evidence of W00016 and W02486 (whose evidence was admitted under Rule 153, after the Defence waived their right to cross-examination; *see* Transcript of 7 May 2024, pp.15467-15468).

²⁰⁷ W04824; W04868; [REDACTED].

Word Count: 6,710



Kimberly P. West

Specialist Prosecutor

Thursday, 26 September 2024

At The Hague, the Netherlands.