



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The 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 Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 11 December 2024

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Motion for the Admission of
the Evidence of Witnesses W01234, W01338, W01743, W04423, W04570, W04696,
W04812, W04859, and W04860 Pursuant to Rule 153 and Related Defence Motion
to Exclude Evidence**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21, 37 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138, 141(1) and 153 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 24 July 2024, the Specialist Prosecutor’s Office (“SPO”) filed a motion for the admission of the evidence of witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 (“Witnesses”) pursuant to Rule 153 (“Rule 153 Motion”).¹
2. On 30 July 2024, the Defence teams for all four Accused (collectively, “Defence”) filed a joint motion to exclude the evidence of W01234, W04859, W04860 and W04570 (“Motion to Exclude”).²
3. On 26 August 2024, the SPO, with leave from the Panel,³ responded to the Motion to Exclude (“Response to the Motion to Exclude”).⁴
4. On 30 August 2024, the Defence, with leave from the Panel,⁵ responded to, *inter alia*, the Rule 153 Motion (“Rule 153 Response”).⁶

¹ F02469, Specialist Prosecutor, *Prosecution Motion for the Admission of the Evidence of Witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 Pursuant to Rule 153*, 24 July 2024, confidential, with Annexes 1-9, confidential (a public redacted version was filed on the same day, F02469/RED).

² F02478, Specialist Counsel, *Joint Defence Motion to Exclude the Evidence of W01234, W04859, W04860 and W04570*, 30 July 2024, confidential.

³ F02484, Panel, *Decision on Prosecution Request for Extension of Time to Respond to Filing F02478*, 5 August 2024, para. 9.

⁴ F02508, Specialist Prosecutor, *Prosecution Response to Joint Defence Motion to Exclude Rule 153 Evidence (F02478)*, 26 August 2024, confidential (a public redacted version was filed on the same day, F02508/RED).

⁵ See Transcript of Hearing, 17 July 2024, confidential p. 18381, lines 19-21.

⁶ F02523, Specialist Counsel, *Joint Defence Response to Prosecution Rule 153 Motions F02465 and F02469*, 30 August 2024, confidential (a public redacted version was filed on 6 September 2024, F02523/RED).

5. On 2 September 2024, the Defence replied to the Response to the Motion to Exclude (“Reply to the Motion to Exclude”).⁷

6. On 9 September 2024, the SPO replied to the Rule 153 Response (“Rule 153 Reply”).⁸

II. SUBMISSIONS

7. The submissions relating both to the Rule 153 Motion and the Motion to Exclude are summarised here in chronological order. In the Rule 153 Motion, the SPO submits that the statements, together with the associated exhibits of the Witnesses (“Rule 153 Statements” and “Associated Exhibits”, respectively), meet the requirements of Rules 138 and 153, are relevant, *prima facie* authentic and reliable, and have probative value which is not outweighed by any prejudice.⁹ The SPO requests that the Panel admit the Rule 153 Statements and Associated Exhibits of the Witnesses (“Proposed Evidence”) into evidence pursuant to Rule 153.¹⁰

8. In the Motion to Exclude, the Defence invites the Panel to exclude the evidence of W01234, W04859, W04860 and W04570 (“Four Witnesses”) for lack of sufficient relevance and probative value.¹¹

9. In the Rule 153 Response, the Defence: (i) does not object to the admission, pursuant to Rule 153, of the Proposed Evidence of W01338, W01743, W04423, and W04696;¹² (ii) does not object to the admission of W04812’s Rule 153 Statements,

⁷ F02524, Specialist Counsel, *Joint Defence Reply to Prosecution Response to Joint Defence Motion to Exclude the Evidence of W01234, W04859, W04860 and W04570*, 2 September 2024, confidential.

⁸ F02538, Specialist Prosecutor, *Prosecution Reply Relating to Rule 153 Motions F02465 and F02469*, 9 September 2024, confidential (a public redacted version was filed on the same day, F02538/RED).

⁹ Rule 153 Motion, para. 1. *See also* Rule 153 Motion, paras 3-7.

¹⁰ Rule 153 Motion, paras 1, 7, 43.

¹¹ Motion to Exclude, para. 34.

¹² Rule 153 Response, para. 2(a).

provided that another statement is also admitted;¹³ (iii) objects to the admission, through Rule 153, of the Proposed Evidence of the Four Witnesses.¹⁴ The Defence repeats its submission that the Four Witnesses should be withdrawn from the SPO witness list due to their low relevance to the SPO's case and the SPO's duty to streamline its case.¹⁵ The Defence requests that the Panel: (i) deny the admission of the Proposed Evidence of the Four Witnesses; (ii) should it exercise its discretion to admit W04570's Proposed Evidence, to also admit another statement of W04570;¹⁶ and (iii) should it exercise its discretion to admit W04812's Proposed Evidence under Rule 153, to also admit another statement of that witness.¹⁷

10. In the Response to the Motion to Exclude, the SPO submits that the Motion to Exclude should be rejected.¹⁸ The SPO argues that: (i) the Rule 153 Motion is not inconsistent with streamlining the SPO's case;¹⁹ and (ii) the Proposed Evidence of the Four Witnesses is relevant and appropriate for admission through Rule 153.²⁰

11. In the Rule 153 Reply, the SPO replies that the Rule 153 Response fails to show why the Rule 153 Motion should not be granted in its entirety.²¹ The SPO submits that the Defence: (i) misunderstands and/or misstates the general requirements for admissibility as well as the purpose and effect of Rule 153; and (ii) misconstrues the Witnesses' Proposed Evidence.²² The SPO asserts that admission of the Witnesses' Proposed Evidence in lieu of oral testimony will save court time and will likely generate less of an evidentiary record.²³ The SPO submits that the

¹³ Rule 153 Response, para. 2(b).

¹⁴ Rule 153 Response, paras 2(c)10-13, 21 (b)-(c).

¹⁵ Rule 153 Response, para. 2(c). *See also* Motion to Exclude.

¹⁶ Rule 153 Response, para. 2(c), *referring to* [REDACTED].

¹⁷ Rule 153 Response, para. 21, *referring to* SITF00240132-00240134.

¹⁸ Response to the Motion to Exclude, paras 1, 16.

¹⁹ Response to the Motion to Exclude, paras 2, 5-7.

²⁰ Response to the Motion to Exclude, paras 8-14.

²¹ Rule 153 Reply, para. 1.

²² Rule 153 Reply, paras 5-6.

²³ Rule 153 Reply, para. 7.

Defence's submissions that the Four Witnesses should be withdrawn from the SPO witness list are meritless.²⁴

12. In the Reply to the Motion to Exclude, the Defence clarifies that it filed the Motion to Exclude in response to recent guidance issued by the Panel.²⁵ The Defence reiterates that the Proposed Evidence of the Four Witnesses fails to meet the criteria of Rules 153 and 138 and should therefore be excluded.²⁶

III. APPLICABLE LAW

13. The Panel incorporates by reference the applicable law as set out in its First Rule 153 Decision as well as the law applicable to the admission of evidence, generally, in its First Rule 154 Decision and First Bar Table Decision.²⁷

²⁴ Rule 153 Reply, para. 8.

²⁵ Reply to Motion to Exclude, para. 3 referring to F02421, Panel, *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*, 2 July 2024, confidential, para. 23 (a public redacted version was filed on the same day, F02421/RED).

²⁶ Reply to Motion to Exclude, paras 5-6.

²⁷ F01904, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153* ("First Rule 153 Decision"), 3 November 2023, confidential, paras 8-10, 12-13 (a public redacted version was filed on 27 November 2023, F01904/RED); F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* ("First Rule 154 Decision"), 16 March 2023, confidential, paras 11-25 (a public redacted version was filed on 7 November 2023, F01380/RED); F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Decision"), 31 March 2023, confidential, paras 8-13.

IV. DISCUSSION

14. At the outset, the Panel notes that the Motion to Exclude and the Rule 153 Motion (collectively, “Motions”) overlap in relation to the Four Witnesses. The SPO seeks admission of their Proposed Evidence pursuant to Rule 153.²⁸ The Defence seeks exclusion and non-admission of their Proposed Evidence and asks that the Four Witnesses be removed from the SPO witness list. The Panel notes the Defence’s invitation to determine the Motion to Exclude in advance of the Rule 153 Motion.²⁹ The Panel accepts that, if the Motion to Exclude were to be granted, the related parts of the Rule 153 Motion would become moot. However, the Panel observes that the criteria which the Defence and the SPO ask the Panel to take into consideration in order to assess whether the relevant evidence should be excluded or admitted are the same: relevance, authenticity, and probative value. The Panel further notes that the decision whether to admit or not written statements, transcripts and associated exhibits offered pursuant to Rule 153 is regulated by Rules 138 and 153. For this reason, the Panel will decide the admissibility of the relevant proposed evidence in light of all relevant submissions. The Panel need not determine here if and under what circumstances it would have the authority to exclude evidence before it is offered for admission.

A. W01234

15. The SPO submits that W01234’s Proposed Evidence³⁰ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.³¹

²⁸ See generally Motion to Exclude; Rule 153 Motion.

²⁹ Motion to Exclude, para. 4.

³⁰ W01234’s Proposed Evidence consists of [REDACTED] including any translations thereof (“W01234’s Statement”). See Annex 1 to the Rule 153 Motion.

³¹ Rule 153 Motion, paras 8-11. See also Response to the Motion to Exclude, paras 3, 8-10.

16. The Defence opposes admission of W01234's Proposed Evidence in light of its low relevance and submits that W01234 should be withdrawn from the SPO list of witnesses in light of the SPO's duty to streamline its case.³² The Defence argues that W01234's Proposed Evidence: (i) is neither sufficiently relevant nor sufficiently probative; (ii) concerns events outside the temporal scope of the Indictment; (iii) does not go to a live issue in the case and will not assist the Panel in deliberating on the ultimate issues of the case; and (iv) will unnecessarily bloat the record.³³ The Defence submits that the suggestion that W01234's Proposed Evidence would be indicative of "a pattern of conduct and the ongoing commission of crimes" is insufficient to render it admissible.³⁴

17. The SPO replies that the Defence misunderstands or misstates the admissibility requirements, the purpose, and the effect of Rule 153.³⁵ The SPO avers that W01234's Proposed Evidence: (i) is relevant because it is connected to elements of the offences and modes of liability pleaded in the Indictment; and (ii) has probative value because it will assist the Panel in reaching conclusions about material facts and in assessing the reliability of other evidence.³⁶ The SPO argues that, instead of bloating the record, admission of W01234's Proposed Evidence pursuant to Rule 153: (i) will save court time and resources; and (ii) will likely generate less evidentiary record than if W01234 would testify live or pursuant to Rule 154.³⁷ Lastly, the SPO argues that the Defence's submission that W01234 should be withdrawn from the SPO witness list should be dismissed as meritless.³⁸

³² Motion to Exclude, paras 2-3, 10-13, 15, 21, 34; Rule 153 Response, paras 2(c), 10-11, 21(b). *See also* Reply to Motion to Exclude, paras 5-6; and Rule 153 Response, paras 2(c), 11.

³³ Motion to Exclude, paras 15-17, 21-22, 34; Rule 153 Response, para. 10. *See also* Motion to Exclude, paras 18-20.

³⁴ Motion to Exclude, para. 21.

³⁵ Rule 153 Reply, para. 5.

³⁶ Rule 153 Reply, para. 6.

³⁷ Rule 153 Reply, para. 7.

³⁸ Rule 153 Reply, para. 8.

18. As regards relevance, the Panel notes that the SPO intends to rely on W01234's Rule 153 Statement in relation to, *inter alia*: (i) W01234 being stopped twice by Kosovo Liberation Army ("KLA") members at KLA checkpoints; (ii) W01234's subsequent interrogation and release by KLA members; (iii) W01234's second arrest by KLA members dressed in camouflage uniforms at a KLA checkpoint and subsequent detention in a nearby KLA house; (iv) W01234's observations on the poor condition of another individual detained there; (v) W01234's questioning by KLA members in uniform; and (vi) that W01234 never saw the detained individual again.³⁹

19. The Panel notes that the charged time frame for the relevant detention site is April to July 1998,⁴⁰ and that W01234's Proposed Evidence concerns the arrest, detention and mistreatment by KLA members of certain individuals from an identified location at a particular KLA detention facility close to one year after the charged time frame for this site. While the incidents are not charged as separate crimes, the Proposed Evidence is relevant, *inter alia*, to establishing the existence, if any, of a pattern of conduct by relevant actors and the ongoing commission of crimes at and around a relevant location during the timeframe relevant to the charges allegedly committed by members of the KLA. To this extent, the Panel considers that W01234's Proposed Evidence is relevant to the charges in the Indictment.⁴¹

20. As regards *prima facie* authenticity, the Panel notes that W01234's Rule 153 Statement, which consists of the witness's written statement before an

³⁹ Rule 153 Motion, para. 9.

⁴⁰ Indictment, para. [REDACTED].

⁴¹ See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 16-31, 59-61, [REDACTED]; see also F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("SPO Pre-Trial Brief"), 9 June 2023, confidential, paras [REDACTED], 703.

international jurisdiction⁴² bears various indicia of authenticity, including: (i) it was taken and signed by a duly empowered investigator; (ii) it contains W01234's acknowledgment; (iii) it includes an interpreter's certification; and (iv) the witness's signature appears on each page.⁴³ The Panel also notes that the Defence does not challenge the authenticity of W01234's Rule 153 Statement. The Panel is satisfied that W01234's Rule 153 Statement is *prima facie* authentic.

21. Regarding the probative value of W01234's Rule 153 Statement and its suitability for admission pursuant to Rule 153, the SPO submits that: (i) W01234 provides mostly crime-base and contextual evidence in relation to a charged detention site;⁴⁴ (ii) W01234 provides evidence which is largely cumulative of, and corroborated by, evidence of other witnesses concerning the detention, interrogation, and mistreatment of perceived opponents by KLA members in the relevant area;⁴⁵ (iii) W01234's Rule 153 Statement is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated facts.⁴⁶ The Panel also notes that W01234's Rule 153 Statement is limited in length, is not unduly repetitive, and provides evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel rejects the Defence's submissions that admission of the five pages (in English) constituting W01234's Rule 153 Statement would bloat the record.⁴⁷ The Panel further recalls its findings regarding the *prima facie* authenticity of W01234's Rule 153 Statement.⁴⁸ In particular, the Panel notes that the witness and others present during the questioning of the witness signed each page of

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ Rule 153 Motion, para. 11.

⁴⁵ See Rule 153 Motion, para. 11, fn. 8 referring to [REDACTED].

⁴⁶ See Rule 153 Motion, para. 11, fn. 9-10 referring to [REDACTED] and F01534/A01, Panel, *Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* ("Adjudicated Facts"), 17 May 2023, confidential, facts [REDACTED].

⁴⁷ Rule 153 Response, para. 10.

⁴⁸ See above para. 20.

W01234's written statement.⁴⁹ The Panel is therefore satisfied that W01234's Rule 153 Statement meets the requirements under Rule 153(2).

22. For these reasons, the Panel finds that W01234's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination, and rejects the Defence's requests that W01234 be withdrawn from the SPO witness list and that W02134's Proposed Evidence be excluded.

B. W01338

23. The SPO submits that W01338's Proposed Evidence⁵⁰ is relevant, authentic, reliable, and suitable for Rule admission pursuant to Rule 153 and that its probative value is not outweighed by any prejudice.⁵¹

24. The Defence does not object to the admission of W01338's Proposed Evidence pursuant to Rule 153.⁵²

25. As regards relevance, the Panel notes that W01338 was allegedly beaten, arrested and taken to a building described as a KLA headquarters during the relevant timeframe. The Panel notes that the SPO intends to rely on W01338's Rule 153 Statements in relation to, *inter alia*: (i) the alleged detention, interrogation and mistreatment of the witness by KLA forces; (ii) the witness's co-detainees; and (iii) the command structure at this site.⁵³ Having reviewed W01338's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.⁵⁴

⁴⁹ See [REDACTED].

⁵⁰ W01338's Proposed Evidence consists of the following items, including any translation thereof: (i) 074238-TR-ET Parts 1-3 RED; (ii) 074238b Parts 1-2 RED; 074238b Part 3; (iii) 028946-028958-ET RED2; and (iv) 028974-028974-ET RED ("W01338's Rule 153 Statements"). See Annex 2 to the Rule 153 Motion.

⁵¹ Rule 153 Motion, paras 12-14.

⁵² Rule 153 Response, para. 2(a).

⁵³ Rule 153 Motion, para. 12.

⁵⁴ See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

26. As regards authenticity, the Panel notes that W01338's Rule 153 Statements comprise the transcript of the witness's SPO interview, a transcript of the witness's prior testimony before another jurisdiction, and a prior written statement.⁵⁵ The Panel also notes that the SPO interview and the prior testimony consist of verbatim, signed and/or official transcripts, and that W01338 was duly advised of his rights as a witness and confirmed that his statements were true, accurate and given voluntarily.⁵⁶ The Panel also notes that the SPO interview was audio-visually recorded.⁵⁷ The Panel observes that the Defence does not challenge the authenticity of W01338's Rule 153 Statements.⁵⁸ The Panel is satisfied that W01338's Rule 153 Statements are *prima facie* authentic.

27. As regards probative value and suitability for admission pursuant to Rule 153, the SPO submits that W01338's Rule 153 Statements: (i) relate to the crime base; (ii) complement each other and enable a fuller assessment of W01338's evidence over time; and (iii) are corroborated by a witness whom the Accused have cross-examined.⁵⁹ The Panel agrees that W01338's Rule 153 Statements are limited in length, are not unduly repetitive, and provide primarily crime-base evidence, which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel recalls its findings on *prima facie* authenticity.⁶⁰ In particular, the Panel notes that W01338's prior written statement is signed by both the witness and the authorised official present during the questioning of the witness.⁶¹ The Panel is therefore satisfied that W01338's Rule 153 Statements meet the requirements of Rule 153(2).

⁵⁵ 074238-TR-ET Parts 1-3 RED; 074238b Parts 1-2 RED; 074238b Part 3; 028946-028958-ET RED2; 028974-028974-ET RED.

⁵⁶ See e.g. 074238-TR-ET Part 1 RED, pp. 3-4; 074238-TR-ET Part 3 RED, p.23. See also Annex 2 to the Rule 153 Motion, pp. 1-3.

⁵⁷ See e.g. 074238-TR-ET Part 1 RED, p. 1. See also Annex 2 to the Rule 153 Motion, p. 1.

⁵⁸ Rule 153 Response, para. 2(a).

⁵⁹ See Rule 153 Motion, para. 14, referring to [REDACTED].

⁶⁰ See *supra* para. 26.

⁶¹ See 028974-028974-ET RED.

28. For these reasons, the Panel finds that W01338's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

C. W01743

29. The SPO submits that W01743's Proposed Evidence⁶² is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁶³

30. The Defence does not object to the admission of W01743's Proposed Evidence pursuant to Rule 153.⁶⁴

31. As regards relevance, the Panel notes that the SPO intends to rely on W01743's Rule 153 Proposed Evidence in relation to, *inter alia*: (i) the alleged arrest of the witness's relative by KLA military police members in June 1999; (ii) the subsequent interview of such relative by KLA members; (iii) the release of some prisoners from KLA detention ; (iv) the absence of the witness's relative from the released prisoners; and (v) the suggestion that the witness was informed that there was a deceased prisoner inside the detention site and later learnt that the deceased person was her relative.⁶⁵ The Panel further notes that the Defence does not challenge the relevance of W01743's Rule 153 Statements. Having reviewed W01743's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.⁶⁶

⁶² W01743's Proposed Evidence consists of five statements, including any translations thereof: (i) 041326-TR-ET Parts 1-2 RED2; (ii) 041326b Parts 1-2 RED; (iii) SITF00033989-SITF00033992 RED2; (iv) SITF00034501-SITF00034504 RED2; and (v) SITF00034473-SITF00034475-ET RED2 (collectively, "W01743's Rule 153 Statements"). See Annex 3 to the Rule 153 Motion. The Panel notes that a Serbian language version of "041326-TR Part 1 RED" and "041326-TR Part 2 RED" should *also* be listed for admission. See Rule 153 Reply, para. 2.

⁶³ Rule 153 Motion, paras 15-17.

⁶⁴ Rule 153 Response, para. 2(a).

⁶⁵ Rule 153 Motion, para. 15.

⁶⁶ See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

32. As regards authenticity, the Panel notes that W01743's Rule 153 Statements consist of: (i) the audio-video recorded and verbatim transcript of W01743's SPO interview, during which the witness was duly advised of her rights and obligations as a witness and confirmed that the contents of her statements are true and accurate;⁶⁷ and (ii) prior written statements which include the witness's personal details, the identity of those in attendance during the questioning of the witness, a confirmation by the witness that the contents are accurate or that she had no objections or remarks, as well as the witness's rights.⁶⁸ The Panel further notes that the Defence does not challenge the authenticity of W01743's Rule 153 Statements. The Panel is satisfied that W01743's Rule 153 Statements are *prima facie* authentic.

33. As regards probative value and suitability for admission pursuant to Rule 153, the Panel observes that W01743's Proposed Evidence: (i) is primarily crime-base evidence; (ii) is largely cumulative to other witness and documentary evidence concerning the detention of civilians at the given site; and (iii) is corroborated by witnesses whom the Accused have confronted, or will be able to confront, through cross-examination.⁶⁹ The Panel also notes that W01743's Proposed Evidence is limited in length and is not unduly repetitive. The Panel recalls its finding that W01743's Rule 153 Statements are *prima facie* authentic.⁷⁰ In particular, the Panel observes that W01743 signed his prior written statements.⁷¹ The Panel is therefore satisfied that W01743's Proposed Evidence meets the requirements of Rule 153(2).

⁶⁷ 041326-TR-ET Part 1 RED2, pp. 1-3; 041326-TR-ET Part 2 RED2, pp. 20-21. *See also* Annex 3 to the Rule 153 Motion, p. 1.

⁶⁸ *See e.g.* SITF00033989-SITF00033992 RED2; 041326-TR-ET Part 1 RED2, pp. 4-9.

⁶⁹ *See* Rule 153 Motion, para. 17 referring to [REDACTED].

⁷⁰ *See supra* para. 32.

⁷¹ SITF00033989-SITF00033992 RED2; SITF00034501-SITF00034504 RED2; SITF00034473-SITF00034475-ET RED2, p. SITF00034475.

34. For these reasons, the Panel finds that W01743's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

D. W04423

35. The SPO submits that W04423's Proposed Evidence⁷² is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁷³

36. The Defence does not object to the admission of W04423's Proposed Evidence pursuant to Rule 153.⁷⁴

37. As regards relevance, the Panel notes that the SPO intends to rely on W04423's Rule 153 Statements in relation to, *inter alia*: (i) the 1999 alleged abduction and subsequent detention of an individual by KLA members; (ii) attempts to locate the individual; and (iii) the suffering caused by this event.⁷⁵ The Panel also notes that the Defence does not challenge the relevance of W04423's Rule 153 Statements. Having reviewed W04423's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.⁷⁶

38. As regards authenticity, the Panel notes that W04423's Rule 153 Statements consist of the transcript of the witness's SPO interview as well as prior written statements from other jurisdictions.⁷⁷ The Panel observes that W04423's SPO

⁷² W04423's Proposed Evidence consists of four statements, including any translations thereof: (i) 092763-TR-ET Part 1 RED2; (ii) 092763b Part 1 RED; (iii) SPOE00122645-SPOE00122657 RED2; and (iv) SPOE00119512-00119533 RED2 ("W04423's Rule 153 Statements"). See Annex 4 to the Rule 153 Motion. The Panel notes that the item listed as "092646-TR-AT Part 1 RED2" in Annex 4 to the Rule 153 Motion should instead be "092763-TR-AT Part 1 RED2", see Reply, para. 2.

⁷³ Rule 153 Motion, paras 18-20.

⁷⁴ Rule 153 Response, para. 2(a).

⁷⁵ Rule 153 Motion, para. 18.

⁷⁶ See Indictment, paras [REDACTED]; See Pre-Trial Brief, paras [REDACTED].

⁷⁷ 092763-TR-ET Part 1 RED2; SPOE00122645-SPOE00122657 RED2; SPOE00119512-00119533 RED2, pp. 1-12.

interview was audio-visually recorded and documented in a verbatim transcript,⁷⁸ and that during the interview, W04423 was advised of the rights and duties of a witness,⁷⁹ and confirmed that the content of the statement was true, accurate and given voluntarily.⁸⁰ The Panel further observes that W04432's prior written statements contain various indicia of authenticity, such as: (i) the date, time and case number and participants;⁸¹ (ii) W04423's acknowledgments of her obligations as a witness;⁸² or (iii) W04423's confirmation, in the SPO interview, of the accuracy and truthfulness of her prior statements.⁸³ Lastly, the Panel observes that the Defence does not challenge the authenticity of W04423's Rule 153 Statements.⁸⁴ The Panel is satisfied that W04423's Rule 153 Statements are *prima facie* authentic.

39. As regards probative value and suitability for admission pursuant to Rule 153, the SPO submits that W04423's Proposed Evidence: (i) is primarily crime-base related; (ii) is largely cumulative of other witness and documentary evidence concerning the relevant detention sites; (iii) is corroborated by witnesses whom the Accused had, or will have, the opportunity to cross-examine;⁸⁵ and (iv) complements relevant adjudicated facts.⁸⁶ The Panel is satisfied that W04423's Proposed Evidence is not unduly repetitive and provides relevant evidence that goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel recalls its finding that W04423's Rule 153 Statements are *prima facie* authentic.⁸⁷ The Panel notes that one of the prior written statements is signed by the witness and the relevant officials present during the questioning

⁷⁸ 092763-TR-ET Part 1 RED2, pp. 1-2.

⁷⁹ 092763-TR-ET Part 1 RED2, pp. 2-3.

⁸⁰ 092763-TR-ET Part 1 RED2, pp. 28-29.

⁸¹ SPOE00122645-SPOE00122657 RED2, p. 1; SPOE00119512-SPOE00119523 RED2, p. 1.

⁸² SPOE00122645-SPOE00122657 RED2, p.1; SPOE00119512-00119523 RED2, p. 3

⁸³ 092763-TR-ET Part 1 RED2 pp. 6-10.

⁸⁴ Rule 153 Response, para. 2(a).

⁸⁵ Rule 153 Motion, para. 20, *referring to* [REDACTED].

⁸⁶ *See e.g.* Adjudicated Facts [REDACTED].

⁸⁷ *See supra* para. 38.

of the witness.⁸⁸ The Panel is therefore satisfied that W04423's Proposed Evidence meets the requirements of Rule 153(2).

40. For these reasons, the Panel finds that W04423's Proposed Evidence is admissible pursuant to Rules 138(1) and 153, without cross-examination.

E. W04570

41. The SPO submits that W04570's Proposed Evidence⁸⁹ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁹⁰

42. The Defence objects to the admission of W04570's Proposed Evidence.⁹¹ The Defence submits that, in light of the SPO's duty to streamline its case, W04570 should be withdrawn from the SPO witness list.⁹² The Defence argues that W04570's Proposed Evidence: (i) is insufficiently relevant or probative; (ii) does not go to a live issue in the case and will not assist the Panel in deliberating on the ultimate issues of the case; (iii) does not concern crimes charged or victims named in the Indictment; (iv) is not relied upon by the SPO in their Pre-Trial Brief in any substantive way; and (v) will unnecessarily bloat the record.⁹³ The Defence further argues that, by not seeking to admit some of W04570's prior evidence ("W04570's Additional Evidence"),⁹⁴ the SPO misrepresents the nature, probative value and relevance of W04570's evidence.⁹⁵ The Defence submits that, when considered

⁸⁸ SPOE00122645-SPOE00122657 RED2.

⁸⁹ W04570's Proposed Evidence consists of the following, including any translations thereof: (i) [REDACTED] ("W04570's Rule 153 Statement"); and (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED] ("W04570's Associated Exhibits"). *See also* Annex 5 to the Rule 153 Motion.

⁹⁰ Rule 153 Motion, paras 21-24.

⁹¹ Motion to Exclude, paras 15, 17, 34. *See also* Rule 153 Response, para. 12.

⁹² Motion to Exclude, para. 2. *See also* Motion to Exclude, paras 3, 10-13, 15, 34; Rule 153 Response, paras 2(c), 12-13, 21(c).

⁹³ Motion to Exclude, paras 15-17, 21-22, 34. *See also* Rule 153 Response, para. 12.

⁹⁴ [REDACTED].

⁹⁵ Motion to Exclude, paras 29-31.

together with W04570's Additional Evidence, W04570's Proposed Evidence is not reliable and should not be admitted.⁹⁶ Should the Panel decline to exclude W04570's Proposed Evidence, the Defence objects, for the same reasons, to the admission of W04570's Proposed Evidence pursuant to Rule 153.⁹⁷ Finally, should the Panel be minded to admit W04570's Proposed Evidence, the Defence submits that W04570's Additional Evidence should also be admitted.⁹⁸

43. The SPO replies that the Defence misunderstands or misstates the admissibility requirements, the purpose, and the effect of Rule 153.⁹⁹ The SPO avers that W04570's Proposed Evidence: (i) is relevant because it is connected to elements of the offences and modes of liability pleaded in the Indictment; (ii) has probative value because it will assist the Panel in reaching conclusions about material facts and in assessing the reliability of other evidence; and (iii) provides evidence pertaining to noticed adjudicated facts in dispute between the Parties.¹⁰⁰ The SPO argues that, instead of bloating the record, admission of W04570's Proposed Evidence will: (i) save court time and resources; and (ii) likely generate less evidentiary record than if W04570 would testify live or pursuant to Rule 154.¹⁰¹ Lastly, the SPO argues that the Defence's submission that W04570 should be withdrawn from the SPO witness list should be dismissed as meritless.¹⁰²

44. As regards relevance, the Panel notes that the SPO intends to rely on W04570's Rule 153 Statement in relation to the arrest, detention, interrogation, mistreatment and consequences thereof, by alleged KLA members, of the witness and two relatives, at a relevant location during the Indictment period. The Panel notes the

⁹⁶ Motion to Exclude, paras 32-33.

⁹⁷ Rule 153 Response, paras 2(c), 12.

⁹⁸ Rule 153 Response, paras 2(c), 13.

⁹⁹ Rule 153 Reply, para. 5.

¹⁰⁰ Rule 153 Reply, para. 6; Response to the Motion to Exclude, paras 12-13.

¹⁰¹ Rule 153 Reply, para. 7.

¹⁰² Rule 153 Reply, para. 8.

Defence's assertion that W04570's Proposed Evidence lacks relevance.¹⁰³ While the location of the events is not one of the site in which offences charged in the Indictment are alleged, it is mentioned several times in the SPO Pre-Trial Brief as being a location relevant to the case.¹⁰⁴ Further, W04570's Proposed Evidence appears to corroborate: (i) some of the adjudicated facts judicially noticed by the Panel; and (ii) the evidence of at least one other witness, who has already testified.¹⁰⁵ The Panel considers that W04570's Rule 153 Statement is relevant to certain contextual elements relevant to this case and to certain patterns of conduct which might be relevant to the charges. Having reviewed W04570's Rule 153 Statement, the Panel is therefore satisfied that it contains evidence relevant to the charges in the Indictment.¹⁰⁶

45. As regards authenticity, the Panel notes that W04570's Rule 153 Statement comprises his 2002 written statement before another jurisdiction. The Panel observes that the written statement contains several indicia of authenticity such as: (i) the date, time, place, and the attendees;¹⁰⁷ (ii) the assistance of an interpreter in a language understood by the witness;¹⁰⁸ (iii) the signature and initials of the witness on each page; and (vi) the witness's confirmation that the contents of the statement were true, accurate, and given voluntarily.¹⁰⁹ The Panel is satisfied that W04570's Rule 153 Statement is *prima facie* authentic.

46. As regards probative value and suitability for admission pursuant to Rule 153, the SPO submits that W04570's Rule 153 Statement: (i) provides contextual and crime-base evidence; (ii) is largely cumulative to, and

¹⁰³ Rule 153 Response, para. 12. Motion to Exclude, para. 32.

¹⁰⁴ See SPO Pre-Trial Brief, paras [REDACTED].

¹⁰⁵ See Adjudicated Facts [REDACTED]; Transcript of Hearing, [REDACTED] 2024, pp. [REDACTED].

¹⁰⁶ Indictment, paras 17, 59; SPO Pre-Trial Brief, paras [REDACTED], 267, 702-707.

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ [REDACTED].

corroborative of, adjudicated facts;¹¹⁰ (iii) is relevant to proof of a pattern, the existence of a widespread or systematic attack, and the existence and implementation of the alleged common criminal purpose and/or campaign of persecution.¹¹¹ The SPO further submits that, while W04570's Proposed Evidence overlaps with certain adjudicated facts and other witnesses of the same events whom have been removed from the witness list for that reason, W04570's Proposed Evidence provides relevant additional and complementary detail concerning his detention and mistreatment.¹¹² The Panel agrees that W04570's Rule 153 Statement is relatively limited in length, not unduly repetitive as it provides additional detail, and provides primarily crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W04570's Rule 153 Statement.¹¹³ In particular, the Panel notes that W04570's Rule 153 Statement is signed by the witness and the interpreter.¹¹⁴ Accordingly, the Panel finds that W04570's Rule 153 Statement meets the requirements under Rule 153(2).

47. Turning to W04570's Associated Exhibits, the Panel notes that they consist of items relating to, *inter alia*, the injuries sustained by W04570.¹¹⁵ The Panel notes that the newspaper article ("Article"),¹¹⁶ is discussed in W04570's Rule 153 Statement.¹¹⁷ The Panel is therefore satisfied that it forms an inseparable and indispensable part of W04570's Rule 153 Statement. However, the Panel agrees with the Defence that the remaining items are not discussed in W04570's Rule 153

¹¹⁰ Adjudicated Facts [REDACTED].

¹¹¹ Rule 153 Motion, para. 23.

¹¹² Rule 153 Motion, para. 23.

¹¹³ *See above* para. 45.

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED]; [REDACTED]; [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

Statement.¹¹⁸ It follows that, save for the Article, the items do not form an inseparable and indispensable part of W04570's Rule 153 Statement and are not admissible as associated exhibits.

48. Turning to the Defence application for the admission of W04570's Additional Evidence which consists of the transcript of W04570's prior testimony before another jurisdiction,¹¹⁹ the Panel notes that responses are not the correct procedural vehicle in which to seek extraneous relief. The Panel also notes that Rule 153 does not condition the admission of a statement of a witness on the admission of all of that witness's statements. Furthermore, it is for the moving party to establish the conditions of admission for any statement which it seeks to have admitted. Therefore, the Panel declines to entertain at this stage the Defence's request for admission of W04570's Additional Evidence. The Defence is at liberty to seek the admission of this evidence in accordance with the requirements of the relevant Rules. The Panel notes in that regard that the SPO does not appear to be opposed to the admission of the items concerned.

49. For these reasons, the Panel finds that W04570's Rule 153 Statement and the Article are admissible pursuant to Rules 138(1) and 153 without cross-examination, and rejects the Defence's requests that W04570 be withdrawn from the SPO witness list and that W04570's Proposed Evidence be excluded.

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

F. W04696

50. The SPO submits that W04696's Proposed Evidence¹²⁰ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹²¹

51. The Defence does not object to the admission, pursuant to Rule 153, of W04696's Proposed Evidence.¹²²

52. As regards relevance, the Panel notes that the SPO intends to rely on W04696's Rule 153 Statements in relation to W04696's alleged detention, interrogation and mistreatment by KLA members at a relevant detention site.¹²³ The Panel further notes that the Defence does not challenge the relevance of W04696's Rule 153 Statements. Having reviewed W04696's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.¹²⁴

53. As regards authenticity, the Panel notes that W04696's Rule 153 Statements comprise: (i) the verbatim transcripts of the witness's audio-visually recorded SPO interview, during which he was duly advised of his rights as a witness and confirmed that the contents of his statement are true accurate and given voluntarily;¹²⁵ and (ii) a verbatim transcript of W04696's witness interview before another jurisdiction,¹²⁶ which contains the date and place of interview, and the names of the participants.¹²⁷ The Panel further notes that in the course of his SPO interview, W04696 reviewed the content of his other witness interview and

¹²⁰ W04696's Proposed Evidence consists of three statements, including any translations thereof: (i) 076248-TR-ST Parts 1-3 Revised-ET RED; (ii) 076248b Parts 1-3 RED; and (iii) SITF00195888-SITF00195912-ET RED ("W04696's Rule 153 Statements"). See Annex 6 to the Rule 153 Motion.

¹²¹ Rule 153 Motion, paras 25-27.

¹²² Rule 153 Response, para. 2(a).

¹²³ Rule 153 Motion, para. 25.

¹²⁴ See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

¹²⁵ See 076248-TR-ST Part 1 Revised 1-ET RED, pp. 2-3; 076248-TR-ST Part 3 Revised 1-ET RED, p. 14.

¹²⁶ SITF00195888-SITF00195912-ET RED, pp. 1-2.

¹²⁷ SITF00195888-SITF00195912-ET RED, pp. 1-2, 13, 25.

confirmed its content and accuracy to the best of his memory.¹²⁸ Lastly, the Panel notes that the Defence does not challenge the authenticity of W04696's Rule 153 Statements.¹²⁹ The Panel is satisfied that W04696's Rule 153 Statements are *prima facie* authentic.

54. As regards probative value and suitability for admission, the Panel agrees with the SPO that W04696's Rule 153 Statements: (i) relate solely to the crime-base; and (ii) are cumulative to, and corroborated by, other witness or documentary evidence concerning detention and mistreatment at the relevant KLA site, including witnesses whom the Accused were, or will be, able to cross-examine.¹³⁰ The Panel notes that W04696's Proposed Evidence is relatively limited in length and is not unduly repetitive. The Panel recalls its finding that W04696's Rule 153 Statements are *prima facie* authentic.¹³¹ In particular, the Panel notes that W04696's prior written statement was signed by the witness and the relevant officials.¹³² The Panel is satisfied that W04696's Proposed Evidence meets the requirements of Rule 153(2).

55. For these reasons, the Panel finds that W04696's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

¹²⁸ See 076248-TR-ST Part 1 Revised 1-ET RED, p. 11; 076248-TR-ST Part 3 Revised 1-ET RED, pp. 1-2, 13-14.

¹²⁹ See Rule 153 Response, para. 2(a).

¹³⁰ See Rule 153 Motion, para. 27, referring to [REDACTED].

¹³¹ See *supra* para. 53.

¹³² SITF00195888-SITF00195912-ET RED.

G. W04812

56. The SPO submits that W04812's Proposed Evidence¹³³ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹³⁴

57. The Defence does not object to the admission of W04812's Proposed Evidence pursuant to Rule 153, provided that an additional statement¹³⁵ ("W04812's Additional Statement") is also admitted either pursuant to Rule 153 or from the bar table.¹³⁶ The Defence submits that W04812's Additional Statement: (i) is relevant; (ii) has probative value; (iii) is not unduly prejudicial within the meaning of Rule 138(1); (iv) is suitable for admission pursuant to Rule 153(1)(a); (v) corroborates and clarifies W04812's subsequent evidence; (vi) would have been put to W04812 during cross-examination had the witness testified live; and (vii) is intrinsically linked to W04812's Proposed Evidence in which the witness confirmed the truthfulness of the Additional Statement.¹³⁷

58. The SPO did not reply.

59. As regards relevance, the Panel notes that the SPO intends to rely on W04812's evidence in relation to, *inter alia*: (i) the abduction of W04812's relative by armed and masked KLA soldiers in 1999; (ii) W04812's subsequent visits to a KLA headquarters and discussion with a KLA commander in an attempt to obtain information regarding her relative; (iii) W04812's subsequent meeting with her relative who told her about his detention conditions; (iv) W04812's reporting of

¹³³ W04812's Proposed Evidence consists of the following items, including any translations thereof: (i) 092646-TR-ET Part 1 Revised RED, (ii) 092646b Part 1 RED, and (iii) SPOE00122578-00122606 ("W04812's Rule 153 Statements"); and SITF00240136-SITF00240136-ET; SITF00240138-SITF00240138-ET; SITF00240148-SITF00240148-ET; SITF00240154-SITF00240154-ET ("W04812's Associated Exhibit"). See Annex 7 to the Rule 153 Motion.

¹³⁴ Rule 153 Motion, paras 28-31.

¹³⁵ SITF00240132-00240134.

¹³⁶ Rule 153 Response, paras 2(b), 4, 9.

¹³⁷ Rule 153 Response, paras 6-8.

the case to the Organization for Security and Co-operation in Europe and KFOR and further attempts to obtain information from KLA commanders; and (v) W04812's assertion that she never saw her relative again.¹³⁸ The Panel notes that the Defence does not challenge the relevance of W04812's Rule 153 Statements. Having reviewed the content of W04812's Rule 153 Statements, the Panel is satisfied that they are relevant to the charges in the Indictment.¹³⁹

60. As regards authenticity, the Panel notes that W04812's Rule 153 Statements comprise W04812's SPO interview and a prior statement from 2002.¹⁴⁰ Regarding W04812's SPO interview, the Panel observes that: (i) it was recorded audio-visually and in a verbatim transcript; (ii) during the interview, W04812 was duly advised of her rights as a witness; and (iii) W04812 confirmed that the content of her statement was true, accurate and given voluntarily.¹⁴¹ Regarding the 2002 prior statement, the Panel observes that it was audio-recorded, it contains the witness's obligations, and the signatures of the participants.¹⁴² The Panel also observes that, during her SPO interview, W04812 confirmed the accuracy and truthfulness of the content of her 2002 statement.¹⁴³ The Panel further notes that the Defence does not challenge the authenticity of W04812's Rule 153 Statements.

61. Turning to W04812's Associated Exhibit, the Panel notes that it consists of a photograph line-up shown to W04812 on which she identified persons involved in the abduction and detention of her relative.¹⁴⁴ The Panel notes that the line-up is discussed in both of W04812's Rule 153 Statements.¹⁴⁵ The Panel is satisfied that W04812's Associated Exhibit forms an indispensable and inseparable part of

¹³⁸ Rule 153 Motion, para. 28.

¹³⁹ See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

¹⁴⁰ 092646-TR-ET Part 1 Revised RED; 092646b Part 1 RED; SPOE00122578-00122606.

¹⁴¹ 092646-TR-ET Part 1 Revised RED, see in particular, pp. 1-3, 33-36.

¹⁴² SPOE00122578-001225606, pp. 1, 28.

¹⁴³ 092646-TR-ET Part 1 Revised RED, pp. 11-15.

¹⁴⁴ SITF00240136-SITF00240136-ET; SITF00240138-SITF00240138-ET; SITF00240148-SITF00240148-ET; SITF00240154-SITF00240154-ET.

¹⁴⁵ 092646-TR-ET Part 1 RED2, pp. 10-11; SPOE00122578-00122606, pp. SPOE00122604-00122605.

W04812's Rule 153 Statements, which the Defence does not challenge. The Panel is also satisfied that W04812's Associated Exhibit: (i) is relevant and provides relevant context to the written records in which it is discussed; and (ii) bears sufficient indicia of *prima facie* authenticity.

62. As regards probative value and suitability pursuant to Rule 153, the Panel agrees with the SPO that W04812's Proposed Evidence: (i) relates to the crime-base; (ii) the statements complement each other; (iii) is largely cumulative to other witness and documentary evidence relation to the relevant detention sites; (iv) is corroborated by witnesses whom the Accused have or will be able to cross-examine;¹⁴⁶ and (v) complements certain adjudicated facts.¹⁴⁷ Moreover, W04812's Proposed Evidence is limited in length, not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment.

63. The Panel recalls its findings regarding the *prima facie* authenticity of W04812's Proposed Evidence.¹⁴⁸ In particular, the Panel notes that the prior written statement from 2002 is signed.¹⁴⁹ The Panel is therefore satisfied that W04812's Proposed Evidence meet the requirements under Rule 153(2). Accordingly, the Panel is satisfied that W04812's Proposed Evidence and Additional Statement are: (i) probative and their admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

64. Turning to the Defence request for the admission of W04812's Additional Statement, the Panel has observed above that a response is not the correct vehicle in which to seek admission of items of evidence. It is for the Party seeking the admission of evidence to establish the conditions for its admission according to

¹⁴⁶ Motion, para. 30 referring to [REDACTED].

¹⁴⁷ Motion, para. 30 referring to Adjudicated Facts [REDACTED].

¹⁴⁸ See above paras 60-61. See also Annex 7 to the Rule 153 Motion.

¹⁴⁹ SPOE00122578-00122606.

the Rule(s) pursuant to which it is being offered. The Panel will entertain a request by the Defence for the admission of W04812's Additional Statement when it is made in a manner compliant with the Rules.

65. For these reasons, the Panel finds that W04812's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

H. W04859

66. The SPO submits that W04859's Proposed Evidence¹⁵⁰ is relevant, authentic, reliable, suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹⁵¹

67. The Defence objects to the admission of W04859's Proposed Evidence in light of what it says is its low relevance. The Defence also submits that W04859 should be withdrawn from the SPO witness list in light of the SPO's duty to streamline its case.¹⁵² The Defence argues that W04859's Proposed Evidence: (i) is duplicative and insufficiently relevant to render it admissible; (ii) does not concern crimes charged in the Indictment; (iii) is not meaningfully or substantially relied upon by the SPO in their Pre-Trial Brief; (iv) does not go to live issue in the case; (v) is neither probative nor relevant to the charges in the Indictment; and (vi) will unnecessarily bloat the record of the trial.¹⁵³

¹⁵⁰ W04859's Proposed Evidence consists of the following two statements, including any translations thereof: (i) [REDACTED]; and (ii) [REDACTED] ("W04859's Rule 153 Statements"). See Annex 8 to the Rule 153 Motion.

¹⁵¹ Rule 153 Motion, paras 32-34.

¹⁵² Motion to Exclude, paras 2-3, 10-13, 15, 25, 34; Rule 153 Response, paras 2(c), 10-11, 21(b). See also Reply to Motion to Exclude, paras 5-6. See also Rule 153 Response, para. 2(c).

¹⁵³ Motion to Exclude, paras 15-17, 25-26, 34; Rule 153 Response, para. 10. See also Motion to Exclude, paras 18-20.

68. The SPO replies that the Defence misunderstands or misstates the admissibility requirements, the purpose, and the effect of Rule 153.¹⁵⁴ The SPO avers that W04859's Proposed Evidence: (i) is relevant because it is connected to elements of the offences and modes of liability pleaded in the Indictment; and (ii) has probative value because it will assist the Panel in reaching conclusions about material facts and in assessing the reliability of other evidence.¹⁵⁵ The SPO argues that, instead of bloating the record, admission of W04859's Proposed Evidence will: (i) save court time and resources; and (ii) likely generate less evidentiary record than if W04859 would testify live or pursuant to Rule 154.¹⁵⁶ Lastly, the SPO argues that the Defence's submission that W04859 should be withdrawn from the SPO witness list should be dismissed as meritless.¹⁵⁷

69. As regards relevance, the Panel notes that the SPO intends to rely on W04859's Rule 153 Statements in relation to: (i) the alleged arrest of W04859's father by KLA soldiers; and (ii) subsequent disappearance of W04859's father.¹⁵⁸ The Panel notes that the Defence challenges the relevance of W04859's Rule 153 Statement.¹⁵⁹ The Panel also takes note that the SPO submits that W04859's Proposed Evidence: (i) is relevant to the count of persecution and to the contextual elements, notably to proof of a pattern, widespread or systematic attack, existence and implementation of the alleged common criminal purpose, and/or campaign of persecution; (ii) is cumulative to and corroborative of other witness and documentary evidence concerning the abduction and disappearance of individuals by KLA members in and around a relevant location, including W04859's father; and (iii) complements adjudicated facts judicially noticed by the Panel, which concern W04859's father's

¹⁵⁴ Rule 153 Reply, para. 5.

¹⁵⁵ Rule 153 Reply, para. 6.

¹⁵⁶ Rule 153 Reply, para. 7.

¹⁵⁷ Rule 153 Reply, para. 8.

¹⁵⁸ Rule 153 Motion, para. 32.

¹⁵⁹ Motion to Exclude, paras 15, 23-26; Rule 153 Response, paras 10-11.

abduction.¹⁶⁰ The Panel is satisfied that W04859's Rule 153 Statements are relevant to the charges in the Indictment.¹⁶¹

70. As regards authenticity, the Panel notes that W04859's Rule 153 Statements comprise W04859's 2003 and 2004 statements.¹⁶² The Panel notes that each statement contains indicia of authenticity, including: (i) the signature of the witness on each page;¹⁶³ (ii) the signature of a duly empowered investigator;¹⁶⁴ (iii) certification by an interpreter;¹⁶⁵ and (iv) acknowledgment of rights by the witness.¹⁶⁶ The Panel is satisfied that W04859's Rule 153 Statements are *prima facie* authentic.

71. As regards probative value and suitability for admission, the Panel notes that W04859's Rule 153 Statements: (i) provide principally contextual elements and crime-base evidence; (ii) are relevant to proof of patterns of attacks against certain categories of individuals; (iii) are cumulative to, and corroborated by, documentary and witnesses evidence concerning the abduction and disappearance of individuals by alleged KLA members, including witnesses whom the Accused were able to cross-examine; and (iv) complement relevant adjudicated facts.¹⁶⁷ The Panel also notes that W04859's Rule 153 Statements are limited in length, are not unduly repetitive, and provide primarily crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel observes that W04859's Rule 153 Statements are respectively five and seven pages in English. The Panel rejects the

¹⁶⁰ Rule 153 Motion, paras 32, 34, referring to Indictment, paras 16-31, 59-60; Pre-Trial Brief, paras [REDACTED], 703-704; [REDACTED]; Adjudicated Facts [REDACTED].

¹⁶¹ See Indictment, paras 16-31, 59-60; see also SPO Pre-Trial Brief, paras [REDACTED], 703-704.

¹⁶² [REDACTED]; [REDACTED].

¹⁶³ *Ibid idem.*

¹⁶⁴ [REDACTED].

¹⁶⁵ *Ibid idem.*

¹⁶⁶ *Ibid idem.*

¹⁶⁷ See Rule 153 Motion, para. 34 referring to [REDACTED] and Adjudicated Facts [REDACTED].

Defence's submission that their admission would bloat the record. The Panel recalls its findings that W04859's Rule 153 Statements are *prima facie* authentic.¹⁶⁸ In particular, the Panel notes that both statements contain the signatures of the witness and of the authorised official, the initials of others present at the questioning of the witness on each page, and a signed interpreter certification.¹⁶⁹ The Panel is therefore satisfied that W04859's Rule 153 Statements meet the requirements of Rule 153(2).

72. For these reasons, the Panel finds that W04859's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination, and rejects the Defence's requests that W04859 be withdrawn from the SPO witness list and that W04859's Proposed Evidence be excluded.

I. W04860

73. The SPO submits that W04860's Proposed Evidence¹⁷⁰ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹⁷¹

74. The Defence objects to the admission of W04860's Proposed Evidence in light of what it says is its low relevance and submits that W04860 should be withdrawn from the SPO witness list in light of the SPO's duty to streamline its case.¹⁷² The Defence argues that W04860's Proposed Evidence: (i) is neither sufficiently relevant nor probative; (ii) concerns events outside the temporal scope of the Indictment; (iii) does not go to a live issue in the case; (iv) will not assist the Panel

¹⁶⁸ See *supra* para. 70.

¹⁶⁹ [REDACTED].

¹⁷⁰ W04860's Proposed Evidence consists of one statement, including any translations thereof: U009-2600-U009-2604 ("W04860's Rule 153 Statement"). See Annex 9 to the Rule 153 Motion.

¹⁷¹ Rule 153 Motion, paras 35-37.

¹⁷² Motion to Exclude, paras 2-3, 10-13, 15, 21, 34; Rule 153 Response, paras 2(c), 10-11, 21(b). See also Reply to Motion to Exclude, paras 5-6. See also Rule 153 Response, para. 2(c).

in deliberating on the ultimate issues of the case; and (v) will unnecessarily bloat the record.¹⁷³ Lastly, the Defence submits that the fact that W04860's Proposed Evidence would be indicative of "a pattern of conduct and the ongoing commission of crimes" is insufficient to render it admissible.¹⁷⁴

75. The SPO replies that the Defence misunderstands or misstates the admissibility requirements, the purpose, and the effect of Rule 153.¹⁷⁵ The SPO avers that W04860's Proposed Evidence: (i) is relevant because it is connected to elements of offences and modes of liability pleaded in the Indictment; and (ii) has probative value because it will assist the Panel in reaching conclusions about material facts and in assessing the reliability of other evidence.¹⁷⁶ The SPO argues that, instead of bloating the record, admission of W04860's Proposed Evidence will: (i) save court time and resources; and (ii) likely generate less of an evidentiary record than if W04860 would testify live or pursuant to Rule 154.¹⁷⁷ Lastly, the SPO argues that the Defence's submission that W04860 should be withdrawn from the SPO witness list should be dismissed as meritless.¹⁷⁸

76. As regards relevance, the Panel notes that the SPO intends to rely on W04860's Rule 153 Statement in relation to, *inter alia*: (i) the circumstances of the alleged arrest, interrogation, and detention by KLA members of W04860 and other individuals in the summer of 1999; (ii) W04860's observations on the condition of another detainee; (iii) the mistreatment of W04860's husband during his interrogation by KLA members; (iv) the release of W04860 and other individuals;

¹⁷³ Motion to Exclude, paras 15-17, 21-22, 34; Rule 153 Response, para. 10. *See also* Motion to Exclude, paras 18-20.

¹⁷⁴ Motion to Exclude, para. 21.

¹⁷⁵ Rule 153 Reply, para. 5.

¹⁷⁶ Rule 153 Reply, para. 6.

¹⁷⁷ Rule 153 Reply, para. 7.

¹⁷⁸ Rule 153 Reply, para. 8.

and (v) the disappearance of two individuals whom W04860 heard from KLA members would be released.¹⁷⁹

77. The Panel notes that the Defence challenges the relevance of W04860's proposed evidence, notably on the ground that it concerns events outside the charged timeframe at the relevant detention site.¹⁸⁰ The Panel notes that W04860's Proposed Evidence concerns an area relevant to this case. The Panel recalls that the charged time frame for the detention site at that location covers a period of four month in 1998.¹⁸¹ W04860's Proposed Evidence concerns the alleged arrest, detention and mistreatment by KLA members of individuals from a certain group from a location in the area of concern in June 1999, i.e. close to one year after the time frame said to be relevant to crimes alleged at the detention site. While the incidents in question are not therefore incidents that form the basis of charged crimes in the Indictment, the Panel finds that W04860's Proposed Evidence is relevant to, *inter alia*: (i) the count of persecution; (ii) the contextual elements; and (iii) establishing a pattern of conduct and commission of crimes by alleged members of the KLA as might relevant to establishing such a pattern. The Panel also notes that W04860's Proposed Evidence is cumulative to, and corroborative of, other witness and documentary evidence concerning the detention, interrogation and mistreatment of perceived opponents by KLA members in the relevant area; and complements and supplements facts judicially noticed by the Panel.¹⁸² For these reasons, the Panel is satisfied that the proposed evidence is relevant for the purpose of assessing the existence, if any, of a pattern of conduct and the ongoing commission of crimes at and around the relevant location. The Panel therefore considers that the content of W04860's Rule 153 Statement is

¹⁷⁹ Rule 153 Motion, para. 35.

¹⁸⁰ Rule 153 Response, paras 2(c), 10; Motion to Exclude, paras 15, 21, 34.

¹⁸¹ Indictment, para. [REDACTED].

¹⁸² Rule 153 Motion, paras 35, 37 *referring to* Indictment, paras 16-31, 59-61, 63; SPO Pre-Trial Brief, paras [REDACTED], 703; [REDACTED]; Adjudicated Facts [REDACTED].

connected to elements of the offences and modes of liability pleaded in the Indictment, and is therefore relevant to the charges in the Indictment.¹⁸³

78. As regards authenticity, the Panel notes that W04860's Rule 153 Statement is a written statement provided by W04860 to an international jurisdiction. The Panel observes that W04860's Rule 153 Statement contains: (i) the signature of a duly empowered investigator; (ii) the acknowledgement by the witness of her rights; (iii) the certification by an interpreter; and (iv) the witness's name and signature on each page.¹⁸⁴ The Panel further notes that the Defence does not challenge the authenticity of W04860's Rule 153 Statement. The Panel is satisfied that W04860's Rule 153 Statement is *prima facie* authentic.

79. As regards probative value and suitability for admission, the Panel notes that W04860's Rule 153 Statement: (i) provides primarily crime-base and contextual evidence; (ii) is cumulative to, and corroborated by, the evidence of other witnesses, several of whom the Accused were able to cross-examine; and (iii) complements relevant adjudicated facts.¹⁸⁵ The Panel also notes that W04860's Rule 153 Statement is limited in length, is not unduly repetitive, and provides largely crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel observes that W04860's Rule 153 Statement contains five pages in English. The Panel rejects the Defence's submission that its admission would bloat the record. The Panel recalls its finding that W04860's Rule 153 Statement is *prima facie* authentic.¹⁸⁶ In particular, the Panel notes that W04860's Rule 153 Statement is signed by the witness, the authorised official, the interpreter, and others present.¹⁸⁷ The Panel is

¹⁸³ See Indictment, paras 16-31, 59-61, 63. See also SPO Pre-Trial Brief, paras [REDACTED], 703.

¹⁸⁴ [REDACTED]. See also Annex 9 to the Rule 153 Motion, p. 1.

¹⁸⁵ See Rule 153 Motion, para. 36, referring to [REDACTED] and Adjudicated Facts [REDACTED].

¹⁸⁶ See *supra* para. 78.

¹⁸⁷ [REDACTED].

therefore satisfied that W04860's Rule 153 Statement meets the requirements of Rule 153(2).

80. For these reasons, the Panel finds that W04860's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination, and rejects the Defence's requests that W04860 be withdrawn from the SPO witness list and that W04860's Proposed Evidence be excluded.

V. DISPOSITION

81. For these reasons, the Panel hereby:

- (i) **GRANTS** the Rule 153 Motion in part;
- (ii) **ADMITS** into evidence without cross-examination the following items, including any translations thereof: (i) W01234's Proposed Evidence;¹⁸⁸ (ii) W01338's Proposed Evidence;¹⁸⁹ (iii) W01743's Proposed Evidence;¹⁹⁰ (iv) W04423's Proposed Evidence;¹⁹¹ (v) W04570's Rule 153 Statement and the Article;¹⁹² (vi) W04696's Proposed Evidence;¹⁹³ (vii) W04812's Proposed Evidence;¹⁹⁴ (viii) W04859's Proposed Evidence;¹⁹⁵ and (ix) W04860's Proposed Evidence;¹⁹⁶
- (iii) **DENIES** the remainder of the Motions;
- (iv) **ORDERS** the SPO to tender the video- and/or audio-recording of admitted statements where available; and

¹⁸⁸ See above footnote 30.

¹⁸⁹ See above footnote 50.

¹⁹⁰ See above footnote 62.

¹⁹¹ See above footnote 72.

¹⁹² See above footnotes 89(i) and 89(iv). See also footnote 116.

¹⁹³ See above footnote 120.

¹⁹⁴ See above footnotes 133.

¹⁹⁵ See above footnote 150.

¹⁹⁶ See above footnote 170.

- (v) **DIRECTS** the Registrar to assign exhibit numbers to the items referred to in paragraph 81(ii), linking the Associated Exhibits with the relevant Rule 153 Statements as indicated in footnotes 89 and 133.



Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 11 December 2024

At The Hague, the Netherlands.