

**Case No.:** KSC-BC-2020-04  
**Specialist Prosecutor v. Pjetër Shala**

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

**Registrar:** Dr Fidelma Donlon

**Date:** 25 March 2024

**Filing Party:** Specialist Defence Counsel

**Original Language:** English

**Classification:** Public

**THE SPECIALIST PROSECUTOR**

**v.**

**PJETËR SHALA**

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**Public Redacted Version of Defence Response to Victims' Counsel's Request for  
Reparations to Address the Physical, Mental, and Material Harm Suffered by  
Victims Participating in the Proceedings**

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## I. INTRODUCTION

1. Pursuant to the Trial Panel's instructions,<sup>1</sup> the Defence for Mr Pjetër Shala ("Defence" and "Accused", respectively) files its Response to the "Victims Counsel's Request for reparations to address the physical, mental, and material harm suffered by victims participating in the proceedings" ("Request").<sup>2</sup>
2. As outlined in the Submissions on Reparation Proceedings, the Defence considers that any claim for reparations should not be heard until after the conclusion of the criminal proceedings.<sup>3</sup> The Defence reserves its right to present additional submissions on the claims about reparation in the event that Mr Shala is convicted.
3. Considering that the right to claim reparations only materialises following the conviction of an accused for crimes that have directly caused harm to the victims, the Defence re-iterates that any claim for reparations should not be assessed until after the judgment has been issued.
4. In the Request, the Victims' Counsel claims that V01/04 suffered harm as a consequence of the crimes committed at the Kukës Metal Factory, [REDACTED] as a direct [REDACTED] victim.<sup>4</sup> To be eligible for reparations as [REDACTED] a direct [REDACTED] victim, V01/04 must demonstrate that he suffered personal harm as a direct result of at least one of the crimes for

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<sup>1</sup> KSC-BC-2020-04, F00795, Decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements, 9 February 2024 (confidential), paras. 41-43, 52(h). All further references to filings in this Response concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> F00804, Victims' Counsel's Request for reparations to address the physical, mental, and material harm suffered by victims participating in the proceedings, 4 March 2024 (confidential).

<sup>3</sup> F00347, Defence Submissions on Reparation Proceedings, 11 November 2022, para. 6.

<sup>4</sup> Request, para. 18.

which the Accused has been convicted. The Victims' Counsel has failed to demonstrate this.

5. In the Request, the Victims' Counsel also claims that V03/04 and her children were profoundly affected by what happened to W04733 and are entitled to reparations as a result.<sup>5</sup> To be eligible for reparations as indirect victims, V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04 must be able to demonstrate that they suffered personal harm as a result of the harm suffered by W04733, that was directly caused by a crime for which Mr Shala has been convicted. The Victims' Counsel has failed to demonstrate this.
6. Because the Victims' Counsel has failed to demonstrate how the crimes for which Mr Shala has been accused directly caused the harm allegedly suffered by V01/04 V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04, they are not eligible for reparations. As such, the Defence requests the Panel to reject the Victims' Counsel's Request and reject issuing a Reparations Order against the Accused to repair the harm allegedly suffered by the above victims.

## II. SUBMISSIONS

### *The Accused's Liability to Repair Alleged Harm*

7. The Accused's liability to repair is limited to harm directly caused by a crime for which he is convicted.
8. Article 22(8) of the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law") states that an order may be made directly against an accused specifying appropriate reparation "in respect of victims collectively or individually". Furthermore, as specified by Article 22(1), "a [v]ictim is a person

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<sup>5</sup> Request, para. 38.

who has personally suffered harm including physical, mental or material harm as a direct result of a crime within the jurisdiction of the Specialist Chambers”.

9. The requirement that an Accused is only liable to repair the harm directly caused by a crime for which he has been convicted is well established in the KSC and ICC case law.
10. In the *Mustafa* Reparations Order, the Panel noted “reparations can be described as individual when ensuing benefit is afforded for the crimes for which the accused was convicted”.<sup>6</sup>
11. In the *Lubanga* Judgment on Principles, the Trial Chamber indicated that “the obligation to repair harm arises from the individual criminal responsibility for the crimes which caused the harm and, accordingly, the person found to be criminally responsible for those crimes is the person to be held liable for reparations”.<sup>7</sup>
12. In the *Lubanga* Amended Reparations Order,<sup>8</sup> the Appeals Chamber noted “reparation orders are intrinsically linked to the individual whose criminal liability is established in a conviction and whose culpability for the criminal acts is determined in a sentence”.<sup>9</sup>
13. This notion was re-iterated in the *Ntaganda* Reparations Order, where the Trial Chamber indicated “Mr Ntaganda is liable to repair the harm caused to all, direct and indirect, victims of the crimes for which he was convicted. Reparation orders are intrinsically linked to the individual whose criminal

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<sup>6</sup> KSC-BC-2020-05, F00517, Reparation Order against Salih Mustafa, 6 April 2023 (“*Mustafa* Reparations Order”), para. 105.

<sup>7</sup> ICC, *The Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Judgment on Principles, 3 March 2015 (“*Lubanga* Judgment on Principles”), para. 99.

<sup>8</sup> ICC, *The Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Amended Reparations Order, 3 March 2015 (“*Lubanga* Amended Reparations Order”), para. 20.

<sup>9</sup> *Lubanga* Amended Reparations Order, para. 20.

liability is established in the conviction and must be proportionate to the harm caused".<sup>10</sup>

14. Similarly, in the *Ongwen* Reparations Order, the Trial Chamber re-iterated that "reparations are strictly limited in reach and scope to the Conviction Judgment and only victims of the crimes for which Mr Ongwen was convicted beyond reasonable doubt shall be entitled to reparations".<sup>11</sup>
15. In light of the above, as established in international jurisprudence, the Accused may only be held responsible to repair any harm directly caused by a crime for which he is convicted; he cannot be held responsible to repair the harm not directly caused by a crime for which he is convicted; nor can he be expected to repair any harm caused by crimes or acts carried out by other KLA members during the relevant time period.<sup>12</sup>
16. The Defence also recalls that a convicted persons liability for reparations "must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case".<sup>13</sup> This requirement is well established in international jurisprudence.<sup>14</sup> The Defence submits that all claims made by the Victims' Counsel relating to the harm alleged by the victims are excessive and disproportionate.

#### *Scope and Extent of Harm Suffered by V01/04*

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<sup>10</sup> ICC, *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06, Reparations Order, 8 March 2021 ("*Ntaganda* Reparations Order"), para. 215.

<sup>11</sup> ICC, *The Prosecutor v. Ongwen*, Case No. ICC-02/04-01/15, Reparations Order, 28 February 2024 ("*Ongwen* Reparations Order"), para. 62.

<sup>12</sup> *Lubanga* Amended Reparations Order, para. 20; *Ntaganda* Reparations Order, para. 215; *Ongwen* Reparations Order, para. 62

<sup>13</sup> *Lubanga* Amended Reparations Order, para. 21.

<sup>14</sup> *Lubanga* Amended Reparations Order, para. 21; *Ntaganda* Reparations Order, para 96; *Ongwen* Reparations Order, para. 72.

(a) Physical harm

17. In the Request, the Victim's Counsel indicates that V01/04 suffered "very significant pain from mistreatment that amounted to torture"<sup>15</sup> during his time at the Kukës Metal Factory. The Victims' Counsel notes that the causes of physical harm allegedly suffered by V01/04 include being:

- Beaten at all hours;
- [REDACTED];
- [REDACTED];
- Beaten on his wound;
- Having salt thrown in his eyes and open wounds;
- Being [REDACTED]; and
- Mistreated in various other ways including with the use of [REDACTED] techniques.

18. The Victims' Counsel further purports that V01/04 continues to experience pain in various parts of his body, including his legs and ribs and that he suffers from headaches.<sup>16</sup>

19. Whilst the Victims' Counsel outlines the causes of the alleged physical harm, it is not clear exactly what types of physical harm were suffered by V01/04. For instance, whilst the Victims' Counsel notes that:

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<sup>15</sup> Request, para. 20.

<sup>16</sup> Request, para. 21.

- V01/04 was beaten at all hours; in the Request he does not specify whether this resulted in physical wounds, bruises, etc.;
- V01/04 was [REDACTED]; he does not specify whether this resulted in internal injuries, wounds, bruises etc.;
- V01/04 was [REDACTED]; he does not specify whether this resulted in [REDACTED] wounds that required medical attention;
- V01/04 was beaten on his wound; he does not specify what act caused the wound;
- V01/04 had salt thrown in his eyes and open wounds; he does not specify who threw salt into his eyes and open wounds, or whether this resulted in ongoing physical pain in those areas;
- V01/04 was [REDACTED]; he does not specify to which part of the body was [REDACTED], whether it resulted in a wound, or who was involved in the [REDACTED]; and
- V01/04 was mistreated in various other ways including with the use of [REDACTED] techniques; he does not specify whether this caused short term or long-term physical harm.

20. In the Request, the Victim's Counsel has also failed to outline how the physical harm allegedly suffered by V01/04 is a direct result of any of the crimes for which Mr Shala has been accused. In fact, the Victims' Counsel does not even refer to the Accused or any of the crimes allegedly committed by him when outlining the physical harm allegedly suffered by V01/04.

21. The acts outlined above which allegedly resulted in V01/04 suffering physical harm, were not carried out by the Accused. It has not been demonstrated that they were carried out by the Accused. They may have been carried out by other

KLA members at the Kukës Metal Factory whose acts and/or omissions, if any, do not engage the Accused's liability.

22. As further elaborated in the Defence's Final Trial Brief, the evidence heard throughout the trial does not support the conclusion that:

- Mr Shala was involved in beating V01/04 repeatedly, as a matter of a "routine" throughout V01/04's alleged detention at Kukes;<sup>17</sup>
- Mr Shala was present during the [REDACTED] incident;<sup>18</sup> in fact, the Indictment excludes the Accused's presence from this incident;<sup>19</sup>
- Mr Shala beat V01/04 on his wounds;
- Mr Shala [REDACTED]; V01/04 testified that [REDACTED].<sup>20</sup> He further clarified that he [REDACTED]".<sup>21</sup> The evidence suggests that V01/04 was [REDACTED],<sup>22</sup> and when the pathologist Marek Gasior gave evidence, he testified that whilst it could not be excluded that the scar came from a [REDACTED] wound, it "[REDACTED]";<sup>23</sup>
- Mr Shala threw salt into V01/04's eyes; when asked whether salt was thrown on his wounds or eyes, V01/04 testified "yes they did", indicating that it was a group of KLA members who carried this out. At no point did V01/04 specify it was Mr Shala who committed this act;<sup>24</sup>

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<sup>17</sup> TW4-01, T. 31 May 2023 p. 1537.

<sup>18</sup> TW4-01, T. 6 June 2023 p. 1922.

<sup>19</sup> F00098, A01, ANNEX 1 to Submission of Corrected Indictment, 1 November 2021 ("Indictment"), para. 22.

<sup>20</sup> TW4-01, T. 31 May 2023 pp. 1526, 1527, 1529.

<sup>21</sup> TW4-01, T. 2 June 2023 p. 1663.

<sup>22</sup> Witness Gasior, [REDACTED]; ERN SITF00019134-SITF00019147 RED2, pp. 5, 9.

<sup>23</sup> Witness Gasior, [REDACTED].

<sup>24</sup> TW4-01, T. 30 May 2024 p. 1464.



- Mr Shala [REDACTED]; V01/04 testified that “[REDACTED]”;<sup>25</sup>
- Mr Shala engaged in [REDACTED] techniques against V01/04;<sup>26</sup> when V01/04 was asked about these techniques and who carried them out, he testified “I don’t remember. [...] they were all around”<sup>27</sup>; or
- Mr Shala’s actions caused the long-term injuries (ribs, bones hurting); V01/04 testified that the problems he has with his ribs were caused by the [REDACTED] incident.<sup>28</sup> As noted above, the Indictment excludes the Accused’s presence from this incident.<sup>29</sup>

23. Furthermore, the evidence put forward by the Victim’s Counsel does not support the conclusion that the physical harm allegedly suffered by V01/04 was directly caused by the crimes for which Mr Shala has been accused. Instead, it demonstrates that the physical harm was suffered as a result of the acts carried out by a group of KLA members at the Kukës Metal Factory.

24. In the Forensic Medical Examination (“Psychological Medical Examination”), carried out by Witnesses Chayen Lozano Parra and Karin Prinsen (“the examiners”) dated 15 June 2023 and put forward by the Victims’ Counsel, V01/04 details the treatment he was allegedly subjected to during his detention at the Kukës Metal Factory.<sup>30</sup>

25. Throughout the Psychological Medical Examination, V01/04 often refers to a group of KLA members when discussing the physical harm he allegedly suffered. The examiners reported that V01/04 said things like “they would not

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<sup>25</sup> TW4-01, T. 30 May 2023 pp. 1467, 1468.

<sup>26</sup> TW4-01, T. 30 May 2023 p. 1467.

<sup>27</sup> TW4-01, T. 30 May 2023 p. 1467.

<sup>28</sup> TW4-01, T. 31 May 2023 p. 1523.

<sup>29</sup> Indictment, para. 22.

<sup>30</sup> ERN V4010023-V4010044.

let him remain alive” and “you would not even treat animals the way they beat us”.<sup>31</sup>

26. The examiners noted when V01/04 described how he and [REDACTED] were treated, he indicated that on one occasion, [REDACTED].<sup>32</sup> V01/04 goes on to explain to the examiners that “they” stamped on their injuries.<sup>33</sup> While the Psychological Medical Examination specifically refers to the alleged acts committed by [REDACTED],<sup>34</sup> no mention of the Accused's involvement is made throughout the entire report.
27. Similarly, in the Department of Forensic Medicine Report of Physical Examination from [REDACTED] dated [REDACTED] (“Physical Examination Report”), V01/04 refers to a group of KLA members when discussing the physical harm he allegedly suffered during his time in detention. V01/04 noted that “they maltreated and beat me with [REDACTED]. They beat me in head and in the body. They [REDACTED].”<sup>35</sup>
28. As already discussed above, the Accused’s obligation to repair the harm arises from his individual criminal responsibility for the crimes that directly caused said harm.<sup>36</sup> The Accused can only be held responsible to repair the physical harm allegedly suffered by V01/04 as a direct result of a crime for which he has been convicted, and not for the physical harm caused by the crimes or acts carried out by other KLA members.
29. The Victim’s Counsel has failed to identify (i) the scope and extent of the physical harm suffered by V01/04 and (ii) how the physical harm suffered by

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<sup>31</sup> ERN V4010023-V4010044, p. 8.

<sup>32</sup> ERN V4010023-V4010044, p. 8.

<sup>33</sup> ERN V4010023-V4010044, p. 8.

<sup>34</sup> ERN V4010023-V4010044, pp. 8, 12.

<sup>35</sup> ERN SITF00372709-00372732 RED, p. 2.

<sup>36</sup> *Lubanga* Judgment on Principles, para. 99.

V01/04 was a direct result of the crimes for which Mr Shala has been accused. Given that the Victim's Counsel has failed to provide proof to the requisite standard of the physical harm, as well as the causal link between said harm and the crimes for which Mr Shala has been accused, the Defence contends that the Panel cannot conclude that Mr Shala should be held responsible to repair any physical harm allegedly suffered by V01/04.

(b) Mental harm

30. In the Request, Victims' Counsel claims that V01/04 suffered immediate fear from:

- witnessing and being asked to participate in the mistreatment of others;
- witnessing the mistreatment of [REDACTED];
- being repeatedly beaten and mistreated himself; and
- being threatened with death.<sup>37</sup>

31. The Victims' Counsel purports that V01/04 suffered from feelings of helplessness, anger and grief after the [REDACTED]; and feelings of confusion, betrayal and hurt at being called a spy which V01/04 alleges that the Accused knew to be untrue.<sup>38</sup> According to the Victims' Counsel, and as a result of the [REDACTED], V01/04 suffered mentally long-term and was retraumatised when in the course of the [REDACTED], [REDACTED].<sup>39</sup>

32. The Victim's Counsel has failed to outline how the mental harm allegedly suffered by V01/04 is a direct result of a crime for which Mr Shala has been

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<sup>37</sup> Request, para. 24.

<sup>38</sup> Request, paras. 25, 26.

<sup>39</sup> Request, para. 27.

accused. For instance, whilst the Victim's Counsel notes that V01/04 suffered immediate fear from:

- witnessing and being asked to participate in the mistreatment of others; he does not specify whether Mr Shala was involved in these acts, whether these acts relate to any of the crimes for which Mr Shala was accused, and whether the evidence heard during the trial supports the conclusion that Mr Shala was involved;
- witnessing the mistreatment of [REDACTED]; he does not specify whether Mr Shala was directly involved in the mistreatment of [REDACTED], or specify whether the evidence heard during the trial supports this point;
- being repeatedly beaten and mistreated; he does not specify whether Mr Shala was directly involved in the mistreatment against him, or whether the evidence heard during the trial supports the conclusion that Mr Shala was involved; and
- being threatened with death; he does not specify whether it was Mr Shala who threatened V01/04 with death, nor does he specify whether the evidence heard during the trial supports the conclusion that Mr Shala threatened him with death. In fact, the evidence does not support this conclusion and indicates he stated that it was Xhemshit Krasniqi.<sup>40</sup>

33. The Victim's Counsel has failed to outline how the long-term mental harm allegedly suffered by V01/04 as a result of [REDACTED] is a direct result of a crime for which Mr Shala has been accused.

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<sup>40</sup> TW4-01, T. 31 May 2023 p. 1530.

34. It is the Defence's position that the acts outlined above which allegedly resulted in V01/04 suffering mental harm, were not carried out by the Accused, but by other KLA members at the Kukës Metal Factory.
35. As further elaborated on in the Defence's Final Trial Brief, the evidence heard throughout the trial does not support the conclusion that:
- Mr Shala was involved in making V01/04 witness the mistreatment of others, or that he forced V01/04 to participate in the mistreatment of others;<sup>41</sup>
  - Mr Shala was involved in making V01/04 witness the mistreatment of [REDACTED];
  - Mr Shala was involved in the beating and mistreatment of V01/04; or
  - Mr Shala threatened with V01/04 death.<sup>42</sup>
36. Moreover, the evidence put forward by the Victims' Counsel does not support the conclusion that the mental harm allegedly suffered by V01/04 was caused by the crimes for which Mr Shala has been accused. In fact, when explaining the mental harm he allegedly suffered to the examiners during the Psychological Medical Examination, V01/04 often referred to the acts being carried out by a group of KLA members at the Kukës Metal Factory.
37. In the Psychological Medical Examination, the examiners outlined how V01/04 "is filled with hatred for these people that did this to him".<sup>43</sup> According to the examiners, V01/04 explained that his mental health symptoms commenced after the alleged mistreatment in 1999,<sup>44</sup> and that his friends had described him

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<sup>41</sup> TW4-01, T. 30 May 2023 p. 1454.

<sup>42</sup> TW4-01, T. 31 May 2023 p. 1530.

<sup>43</sup> ERN V4010023-V4010044, p. 12.

<sup>44</sup> ERN V4010023-V4010044, p. 11.

as aggressive which he explained to the examiners is because of what happened to him [REDACTED].<sup>45</sup>

38. The Defence highlights that most of the mental harm allegedly suffered by V01/04 relates to the [REDACTED]. In the Request, the Victims' Counsel notes that V01/04 has suffered long term harm following the [REDACTED].
39. The alleged mental harm suffered by V01/04 as a result of the [REDACTED] is also outlined in the Psychological Medical Examination. The examiners noted that when expressing the pain he felt as a result of [REDACTED], V01/04 stated that when they [REDACTED] "[REDACTED]".<sup>46</sup> V01/04 also told the examiners that [REDACTED],<sup>47</sup> and that he often thought about what he would do if he "[REDACTED]".<sup>48</sup> While the Psychological Medical Examination specifically refers to the alleged acts committed by [REDACTED], no mention of the Accused's involvement is made throughout the entire report.
40. In the Psychological Medical Examination, the examiners also noted that V01/04 expressed "deep hurt" as a result of the way in which [REDACTED].<sup>49</sup> According to the examiners, V01/04 indicated that he was "[REDACTED]".<sup>50</sup> The Defence emphasises that the Accused was not involved in the [REDACTED], nor was he responsible for how [REDACTED] and thus should not be held responsible to repair the mental harm suffered as a result. Mr Shala can only be held responsible to repair the mental harm suffered by V01/04 as a direct result of a crime for which he has been convicted.

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<sup>45</sup> ERN V4010023-V4010044, p. 11.

<sup>46</sup> ERN V4010023-V4010044, p. 11.

<sup>47</sup> ERN V4010023-V4010044, p. 12.

<sup>48</sup> ERN V4010023-V4010044, p. 12.

<sup>49</sup> ERN V4010023-V4010044, p. 9.

<sup>50</sup> ERN V4010023-V4010044, p. 10.

41. Whilst in the Request, the Victims' Counsel indicates that V01/04 suffered mental harm from the mistreatment that he [REDACTED] endured at the Kukës Metal Factory,<sup>51</sup> "including at the hands of the Accused",<sup>52</sup> the Victims' Counsel fails to outline or provide sufficient detail on the Accused's involvement. In fact, the language used by the Victims' Counsel, "including at the hands of the Accused", seems to suggest that the mental harm allegedly suffered by V01/04 was directly caused by the other KLA group members as well as the Accused. Yet it fails to distinguish how the crimes for which Mr Shala's has been accused of, directly caused the mental harm allegedly suffered by V01/04.
42. The Victims' Counsel has failed to identify how the mental harm suffered by V01/04 was a direct result of the crimes for which Mr Shala has been accused. Given the Victims' Counsel has failed to provide proof to the requisite standard of the mental harm, as well as the causal link between said harm and the crimes of which Mr Shala has been accused, the Defence contends that the Panel cannot conclude that Mr Shala should be held responsible to repair any mental harm allegedly suffered by V01/04.
- (c) Material Harm
43. In the Request, the Victims' Counsel claims that V01/04 has not been able to "re-establish himself professionally"<sup>53</sup> since his detention and mistreatment at the Kukës Metal Factory.<sup>54</sup> The Victims' Counsel claims that the "PTSD symptoms" have made it "impossible for him to conduct his life as he would

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<sup>51</sup> Request, para. 23.

<sup>52</sup> Request, para. 23.

<sup>53</sup> Request, para. 31.

<sup>54</sup> Request, para. 31.

have before”.<sup>55</sup> [REDACTED].<sup>56</sup> The fear of going back to work is evidently not caused by the Accused.

44. Because the physical and mental harm allegedly suffered by V01/04 is not a direct result of the crimes for which Mr Shala has been accused, the Accused cannot be held responsible to repair the material harm allegedly suffered.

*Concluding remarks on V01/04*

45. V01/04 is not eligible for reparations in this case as a direct victim, [REDACTED] as the Victims’ Counsel has failed to demonstrate, to the relevant standard of proof, that V01/04 suffered harm as a result of any of the crimes for which Mr Shala has been accused.

46. As such, the Defence requests that the Panel conclude that no Reparations Order against Mr Shala can be made to repair the harm allegedly suffered by V01/04.

*Scope and Extent of Harm suffered by V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04*

47. To be eligible for reparations, indirect victims must be able to demonstrate that the harm they suffered was the result of the harm suffered by the direct victim.<sup>57</sup>

48. Thus, the Defence purports that before it can assess whether V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04 have suffered harm as indirect victims because of the harm suffered by W04733, the Panel must first be satisfied that W04733 suffered harm that was directly caused by a crime for which Mr Shala has been accused.

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<sup>55</sup> Request, para. 31.

<sup>56</sup> [REDACTED].

<sup>57</sup> *Mustafa* Reparations Order, para. 98.



49. As is further elaborated in the Final Trial Brief, the Defence argues that the evidence provided during the trial proceedings does not support the conclusion that the Accused was involved in or contributed to any of the crimes that directly caused physical, mental, or material harm to W04733.
50. Instead, the evidence provided demonstrates that the physical, mental, and material harm allegedly suffered by W04733 was directly caused by other KLA members at the Kukës Metal Factory.
51. During his evidence, W04733 testified that he was beaten “not every night from time to time”.<sup>58</sup> He further explained that he was only beaten twice in the detention room but does not provide any names regarding these incidents.<sup>59</sup>
52. Furthermore, W04733 also stated that Xhemshit Krasniqi hit him on the head with a gun butt which resulted in a scar, that Xhemshit also broke his left elbow by slamming it with a rubber baton, and it was [REDACTED] who cut his wrist veins with a knife.<sup>60</sup> In the [REDACTED], W04733 confirmed that Xhemshit broke his elbow<sup>61</sup> and added that he had poor eyesight because of the hit with the gun handle, stating that “you can see the scar, the broken bone and the damages to the brain”.<sup>62</sup>
53. In [REDACTED], W04733 repeated his statement and added that the pathologist found a broken rib, which does not appear in the examination report.<sup>63</sup> He confirmed that it was Xhemshit Krasniqi who hit him with the revolver,<sup>64</sup> that [REDACTED] cut his wrist,<sup>65</sup> and repeated that his loss of vision

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<sup>58</sup> ERN 106978-107020, pp. 10, 11.

<sup>59</sup> ERN SPOE00013793-SPOE00013847 RED2, p. 32.

<sup>60</sup> ERN SITF00018740-00018767 RED, pp. 3-5.

<sup>61</sup> ERN SPOE00013793-SPOE00013847 RED2, p. 25.

<sup>62</sup> ERN SPOE00013793-SPOE00013847 RED2, p. 41.

<sup>63</sup> ERN 082892-TR-AT-ET Part 1 RED3, pp. 14, 15; ERN SITF00019793-00019810, p. 3.

<sup>64</sup> ERN 082892-TR-AT-ET Part 4 RED3, pp. 17, 28.

<sup>65</sup> ERN 082892-TR-AT-ET Part 5 RED2, p. 4.

was caused by the injury on his head, insisting that the bone is broken.<sup>66</sup> He explained that a doctor told him that the loss of vision came from the mistreatment,<sup>67</sup> however, no medical document has been presented to support this. Moreover, TW4-06, W04733's wife, testified that [REDACTED],<sup>68</sup> showing that the loss of sight had no link with the alleged mistreatment in Kukës. Similarly, TW4-08, W04733's son, testified "[a]s far as I remember, it was sometime in [REDACTED] when he began to lose eyesight".<sup>69</sup>

54. Whilst in [REDACTED], W04733 described that the Accused hit him with a rubber baton on all his body and feet which caused injuries to his [REDACTED],<sup>70</sup> there is insufficient evidence to support this, since the witness even failed to identify and give an accurate description of the Accused.<sup>71</sup> Moreover, none of the permanent injuries allegedly suffered by W04733 were caused by the Accused.

55. When Judge Mikula asked TW4-06 whether W04733 told her which specific wounds were caused by the Accused, TW4-06 testified that "he could not differentiate which wounds were caused by which persons in the moment he was being beaten".<sup>72</sup>

(a) Mental Harm

56. The Victims' Counsel claims that V03/04 and her children suffered immediate mental harm during W04733's arrest, and anxiety, fear and stress during his detention.<sup>73</sup> Upon W04733's return home, Victims' Counsel claims that V03/04

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<sup>66</sup> ERN 082892-TR-AT-ET Part 9 RED2, pp. 20, 21.

<sup>67</sup> ERN 082892-TR-AT-ET Part 9 RED2, pp. 20, 21.

<sup>68</sup> [REDACTED].

<sup>69</sup> TW4-08, T. 28 March 2023 p. 759.

<sup>70</sup> ERN 106978-107020, p. 5.

<sup>71</sup> ERN 082892-TR-AT-ET Part 1 RED3, p. 38.

<sup>72</sup> TW4-06, T. 29 March 2023 p. 878.

<sup>73</sup> Request, para. 39.

and her children suffered distress at the “condition he was in”,<sup>74</sup> and that W04733 “never fully recovered” which resulted in his family “suffer[ing] long lasting mental effects as they had to learn to live with his trauma and injuries”.<sup>75</sup>

57. Whilst the Victims’ Counsel outlines the causes of mental harm experienced by V03/04 and her children, namely W04733’s abduction, arrest, and detention, he fails to explain how said harm was directly caused by a crime for which Mr Shala has been accused. Mr Shala cannot be held responsible to repair the harm caused by crimes or acts carried out by other KLA members.

58. The Victims’ Counsel has failed to clearly identify how the mental harm suffered by V03/04 and her children was a direct result of the crimes for which Mr Shala has been accused. Given the Victim’s Counsel has failed to provide proof to the requisite standard of the mental harm, as well as the causal link between said harm and the crimes of which Mr Shala has been accused, the Defence contends that the Panel cannot conclude that Mr Shala should be held responsible to repair any mental harm allegedly suffered by V03/04 and her children.

(b) Material Harm

59. In the Request, the Victims’ Counsel claims that following his release, W04733 was “unable to provide for his family economically”.<sup>76</sup> Whilst the Victims’ Counsel states that the injuries W04733 sustained in detention, “hastened his physical decline”,<sup>77</sup> he does not specify which injuries or who the injuries were caused by, or how they exactly impacted W04733’s ability to work.

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<sup>74</sup> Request, para. 40.

<sup>75</sup> Request, para. 41.

<sup>76</sup> Request, para. 49.

<sup>77</sup> Request, para. 49.

60. The Victims' Counsel also claims that the cost of W04733's medical treatments following the assaults at Kukës, which included damage to his eyes and teeth, were "as high as €150,000.80"<sup>78</sup>. However, the Victims' Counsel does not specify who the injuries were caused by, or how these injuries impacted W04733's ability to work. Furthermore, no medical documents or receipts were provided to establish the costs, and thus there is no proof to support this claim.
61. The Victim's Counsel has failed to clearly identify how the material harm suffered by V03/04 and her children, was a direct result of the crimes for which Mr Shala has been accused of. Given he has failed to provide proof to the requisite standard of the material harm, as well as the causal link between said harm and the crimes of which Mr Shala has been accused, the Defence contends that the Panel cannot conclude that Mr Shala should be held responsible to repair any material harm allegedly suffered by V03/04 and her children.

*Concluding remarks on V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04*

62. V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04 are not eligible for reparations as indirect victims as they have failed to demonstrate, to the relevant standard of proof, that W04733 suffered harm as a result of a crime for which Mr Shala has been accused. They are not eligible for reparations in this case as indirect victims as they have failed to demonstrate, to the relevant standard of proof, that W04733 suffered harm as a direct victim and as a result of at least one of the crimes for which Mr Shala has been accused. The Defence also submits that the claims made by the Victims' Counsel in relation to the alleged harm, is disproportionate and excessive.

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<sup>78</sup> Request, para. 52.

63. As such, the Defence requests that the Panel conclude that no Reparations Order against Mr Shala can be made to repair any of the harm allegedly suffered by V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, or V08/04.
64. V01/04, V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, and V08/04 have not suffered harm as a direct result of Mr Shala's acts or omissions. The Accused's duty to repair any harm must be limited to the scope of any conviction and he cannot be held responsible to repair the harm caused by crimes or acts carried out by other KLA members during the relevant time period.
65. As the Trial Chamber in *Ntaganda* noted, "as much as the Chamber would like to see the reparative right of all victims of the situation fully realised, the scope of these reparations proceedings is strictly limited in reach and scope to the terms of the conviction".<sup>79</sup>
66. As such, the Defence concludes that the Panel cannot issue a Reparations Order against the Accused to repair the harm allegedly suffered by V01/04, V02/04, V03/04, V04/04, V05/04, V06/04, V07/04, or V08/04.

### III. CLASSIFICATION

67. Pursuant to Rule 82(3) and (4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, this Response is filed as confidential as it relates to a confidential filing and contains confidential information. The Defence will file a public redacted version of the Response in due course.

### IV. REQUESTED RELIEF

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<sup>79</sup> ICC, *The Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06, Addendum to the Reparations Order, 8 March 2021, para. 17.

68. The Defence respectfully requests the Panel to reject the Victims' Counsel's Request and reject issuing a Reparations Order against the Accused to repair the harm allegedly suffered by the victims participating in the proceedings.

**Word Count: 5626**

Respectfully submitted,



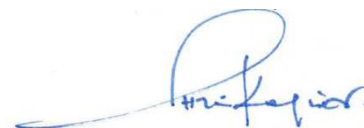
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Monday, 25 March 2024

The Hague, the Netherlands