



In: KSC-BC-2023-12

**The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni
Kilaj, Fadil Fazliu and Hajredin Kuçi**

Before: Pre-Trial Judge

Judge Marjorie Masselot

Registrar: Fidelma Donlon

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Framework Decision on Disclosure of Evidence and Related Matters

Specialist Prosecutor

Kimberly P. West

Specialist Counsel for Hashim Thaçi

Nina Tavakoli

Sophie Menegon

Duty Counsel for Bashkim Smakaj

Bas Martens

Registry

Head of Witness Protection and Support
Office

Specialist Counsel for Isni Kilaj

Iain Edwards

Joe Holmes

Duty Counsel for Fadil Fazliu

Michiel Pestman

Duty Counsel for Hajredin Kuçi

Alexander Admiraal

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 95(2)(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 29 November 2024, the Pre-Trial Judge confirmed, in part, the Indictment against Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj ("Mr Smakaj"), Isni Kilaj ("Mr Kilaj"), Fadil Fazliu ("Mr Fazliu") and Hajredin Kuçi ("Mr Kuçi") (collectively "Accused").²

2. On 2 December 2024, the Specialist Prosecutor's Office ("SPO") filed the indictment as confirmed ("Confirmed Indictment").³

3. On 10 December 2024, upon the first appearance of the Accused before the Pre-Trial Judge,⁴ the Pre-Trial Judge scheduled the first status conference in this case

¹ KSC-BC-2023-12, F00015, President, [Decision Assigning a Pre-Trial Judge](#), 6 June 2024, public.

² KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 29 November 2024, confidential.

³ KSC-BC-2023-12, F00040, Specialist Prosecutor, *Submission of Confirmed Indictment*, 2 December 2024, strictly confidential, with Annex 1, strictly confidential, containing the Confirmed Indictment. A public redacted version of the Confirmed Indictment was filed on 6 December 2024, [F00055/A01](#).

⁴ KSC-BC-2023-12, F00059, Pre-Trial Judge, *Decision Setting the Date for Initial Appearances and Related Matters*, 6 December 2024, public; F00063, Pre-Trial Judge, *Decision Rescheduling Initial Appearance of Isni Kilaj*, 7 December 2024, public. See also **Mr Thaçi**: F00048, Registrar, *Notification of Service of Arrest Warrant on Hashim Thaçi Pursuant to Rule 55(4)*, 5 December 2024, confidential; F00064, Registrar, *Report on the Service of the Arrest Warrant on Hashim Thaçi*, 7 December 2024, confidential and *ex parte*, with Annexes 1-3, confidential and *ex parte*; **Mr Smakaj**: F00042, Registrar, *Notification of Arrest of Bashkim Smakaj Pursuant to Rule 55(4)*, 5 December 2024, confidential; F00058, Registrar, *Notification of the Reception of Bashkim Smakaj in the Detention Facilities of the Specialist Chambers*, 6 December 2024, public, with Annex 1, strictly confidential and *ex parte*; **Mr Kilaj**: F00043, Registrar, *Notification of Arrest of Isni Kilaj Pursuant to Rule 55(4)*, 5 December 2024, confidential; F00056, Registrar, *Notification of the Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers*, 6 December 2024, public, with Annex 1, strictly confidential and *ex parte*; **Mr Fazliu**: F00045, Registrar, *Notification of Arrest of Fadil Fazliu Pursuant to Rule 55(4)*, 5 December 2024, confidential; F00057, Registrar, *Notification of the Reception of Fadil Fazliu in the Detention Facilities of the Specialist Chambers*, 6 December 2024, public, with Annex 1, strictly confidential and *ex parte*; **Mr Kuçi**: F00046, Registrar, *Notification of Service of Summons to Appear*

– which was to take place on 17 December 2024 – in order to review the status of the case and organise the disclosure of evidence between the Parties. The Pre-Trial Judge ordered the Parties and the Registry to make written submissions in advance, on various matters concerning the progress of the investigations, the evidence to be presented at trial, and the disclosure process.⁵

4. On 12 and 13 December 2024, the SPO,⁶ the Registry,⁷ the Defence for Mr Thaçi (“Thaçi Defence”)⁸ and the Defence for Mr Kilaj (“Kilaj Defence”)⁹ filed their written submissions. The Defence for Mr Smakaj, Mr Fazliu and Mr Kuçi did not file any written submissions (“Smakaj Defence”, “Fazliu Defence” and “Kuçi Defence”) (collectively “Defence”).

5. On 17 December 2024, the first status conference was held, where the Parties and the Registry made (further) oral submissions and the Pre-Trial Judge issued a number of oral rulings.¹⁰

II. APPLICABLE LAW

6. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the Accused shall be made available

on *Hajredin Kuçi*, 5 December 2024, confidential; F00068, Registrar, *Report on the Service of Summons to Appear on Hajredin Kuçi*, 8 December 2024, confidential and *ex parte*, with Annexes 1-3, confidential and *ex parte*.

⁵ KSC-BC-2023-12, F00072, Pre-Trial Judge, [Order Setting the Date for the First Status Conference and for Submissions](#) (“Order for Submissions”), 10 December 2024, public, with Annex 1, public.

⁶ KSC-BC-2023-12, F00079, Specialist Prosecutor, *Prosecution Submissions for First Status Conference* (“SPO Submissions”), 12 December 2024, confidential. A public redacted version was filed on 16 December 2024, F00079/RED.

⁷ KSC-BC-2023-12, F00078, Registry, *Submissions in Advance of Status Conference Pursuant to Order F00072*, 12 December 2024, confidential, with Annex 1, confidential, and Annex 2, strictly confidential and *ex parte*.

⁸ KSC-BC-2023-12, F00082, Thaçi Defence, *Thaçi Defence Submissions for First Status Conference* (“Thaçi Defence Submissions”), 13 December 2024, confidential.

⁹ KSC-BC-2023-12, F00083, Kilaj Defence, *Kilaj Defence Submissions for First Status Conference* (“Kilaj Defence Submissions”), 13 December 2024, confidential.

¹⁰ KSC-BC-2023-12, Transcript of Status Conference (“Transcript of First Status Conference”), 17 December 2024, public, pp. 126-198.

to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

7. Pursuant to Rule 46(1) of the Rules, and subject to the Registrar's obligations under Rule 24 of the Rules, the SPO shall be responsible for the retention, storage, and security of information, physical, and electronic material obtained in the course of its investigations.

8. Pursuant to Rule 95(2)(b) of the Rules, after the initial appearance of the Accused in accordance with Rule 92 of the Rules, the Pre-Trial Judge shall set time limits for the disclosure of evidence, take any measure to ensure timely disclosure, and prepare a disclosure report for the Trial Panel.

9. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused in order to, *inter alia*: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel, so as to ensure the expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

10. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 106, 107, and 108 of the Rules, the SPO shall make available to the Defence and, where applicable, Victims' Counsel, as soon as possible and at least within 30 days of the initial appearance, the supporting material to the Confirmed Indictment, as well as any statement obtained from the Accused.

11. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the SPO's case, the SPO shall make available to the Defence and, where applicable, Victims' Counsel, the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the Accused understand and speak; (ii) all other witness

statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

12. Pursuant to Rule 102(2) and (4) of the Rules, any statements of additional SPO witnesses, which have not been disclosed up to the 30-day time limit prior to the opening of the SPO's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible, in a language the Accused understand and speak, and shall be accompanied by reasons for late disclosure. Any such disclosure shall be finalised during the pre-trial stage.

13. Pursuant to Rule 102(3) of the Rules, the SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and shall allow inspection of other tangible objects in the custody or control of the SPO, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused.

14. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence, as soon as it is in its custody, control or actual knowledge, any information which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the SPO's evidence.

15. Pursuant to Article 23(1) of the Law, Rules 80(1) and 108(1)(b) of the Rules, a Panel may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

16. Pursuant to Rule 80(4)(a)(i)-(iii), (d), and (e) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the Accused and/or the public, where necessary, of the identity and/or

whereabouts of a witness, a victim participating in the proceedings or a person related to or associated with them.

17. Pursuant to Rule 107(2) of the Rules, the SPO shall apply to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information of which it has custody or control has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

18. Pursuant to Rule 108(1)(a) and (c) of the Rules, the SPO may apply to the Panel to withhold information in whole or in part where the disclosure of such information may prejudice ongoing or future investigations or be contrary for any other reason to the public interest or the rights of third parties. Pursuant to Rule 108(6) of the Rules, the same applies *mutatis mutandis* to the Defence.

19. Pursuant to Rule 109(b) and (c) of the Rules, both the SPO and the Defence, should it choose to disclose any evidence, shall submit, when disclosing: (i) a clear and concise description of the items, or categories thereof, disclosed to the other Party; and (ii) a categorisation of the information disclosed, in accordance with the charges in the Confirmed Indictment, with specific references to the underlying crimes, contextual elements of the crimes charged, the alleged conduct of the Accused or, where applicable, the evidence to be presented by the SPO.

20. Pursuant to Rule 95(4) of the Rules, the Pre-Trial Judge shall order the SPO to file, within a set time limit, its Pre-Trial Brief, the list of witnesses that the SPO intends to call to testify at trial, and the list of proposed exhibits it intends to present at trial.

21. Pursuant to Rule 95(5) of the Rules, after the submission of the SPO Pre-Trial Brief and list of witnesses and proposed exhibits, the Pre-Trial Judge shall invite the Defence to file, within a set time limit, a Pre-Trial Brief indicating: (i) in general terms, the nature of the Accused's defence; (ii) the charges and matters which the Accused

dispute, by reference to particular paragraphs in the SPO Pre-Trial Brief and the reasons why the Accused dispute them; (iii) a list of potential witnesses that the Defence intend to call at trial, including to which relevant issue the witnesses' evidence relates, without prejudice to any subsequent amendment or filing thereof. The Pre-Trial Judge shall also request the Defence, within a set time limit, to notify the SPO and the Panel of their intent to offer a defence of alibi or any grounds for excluding criminal responsibility.

22. Pursuant to Rule 104(5) of the Rules, within a time limit set by the Panel and no later than 15 days prior to the opening of the Defence case, the Defence shall: (i) permit the SPO to inspect and copy any statements, documents, photographs, and other tangible objects in the Defence's custody or control, which are intended for use by the Defence as trial; (ii) provide the SPO with all statements, if any, of witnesses whom the Defence intends to call to testify at trial or intends to present at trial; and (iii) provide the SPO with all exhibits that the Defence intends to present at trial.

23. Pursuant to Rules 106, 107(1), and 111(1) of the Rules, certain categories of material are, in principle, exempted from disclosure, subject to the Rules and unless otherwise ordered by the Panel. These include: (i) reports, memoranda or other internal documents prepared by the SPO (including the Special Investigative Task Force), the Defence and Victims' Counsel, including their assistants and representatives (Rule 106 of the Rules); (ii) material provided to the SPO on a confidential basis and solely for the purpose of generating new evidence (Rule 107(1) of the Rules); and (iii) privileged communication as defined by Rule 111(1) of the Rules.

III. DISCUSSION

A. PRINCIPLES GOVERNING THE DISCLOSURE OF EVIDENCE

1. Introduction

24. The legal framework of the Specialist Chambers provides for several procedural steps to be taken by the Pre-Trial Judge and the Parties, between the initial appearance of the Accused and the transmission of the case file to the Trial Panel, in accordance with Rule 98 of the Rules. A critical step, among others, is the establishment of a system regulating the exchange of evidence between the Parties and its communication to the Pre-Trial Judge. Adopting a system that ensures the efficiency of the disclosure process is fundamental for the Pre-Trial Judge to achieve a balance between the duty to safeguard certain interests, including the protection of witnesses, victims, and other persons at risk, and the obligation to uphold the rights of the Accused under Article 21 of the Law.¹¹

2. Role of the Parties and the Registry

25. The disclosure of evidence, and the Parties' ensuing obligations under the Rules, is a process that takes place between the SPO and the Defence. This process must be organised and facilitated by the Registry, acting as a communication channel between the Parties and the Panel,¹² through the electronic software provided to this effect, as

¹¹ See KSC-BC-2023-10, F00076/RED, Pre-Trial Judge, [Public Redacted Version of the Framework Decision on Disclosure of Evidence and Related Matters](#) ("Januzi et al. Disclosure Decision"), 24 October 2023, para. 39; KSC-BC-2020-04, F00033, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#) ("Shala Disclosure Decision"), 30 April 2021, public, para. 28. Similarly, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-117-Red3, Pre-Trial Chamber II, [Redacted First Decision on the Prosecutor's Request for Redactions and Related Requests](#), 3 July 2014, para. 17, and references therein.

¹² See [Januzi et al. Disclosure Decision](#), para. 40; [Shala Disclosure Decision](#), para. 29. Similarly, ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-31-tENG, Pre-Trial Chamber I, [Decision on the Evidence Disclosure Protocol and Other Related Matters](#) ("Al Hassan Disclosure Decision"), 16 May 2018, para. 36; *Prosecutor v. Ongwen*, ICC-02/04-01/15-203, Pre-Trial Chamber II, [Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#) ("Ongwen Disclosure Decision"), 27 February 2015, para. 10.

stipulated in Rules 98(1)(b) and 109(a) of the Rules.¹³ The Parties shall abide by the Registry Instruction on Uploading Records to Legal Workflow when disclosing evidence electronically.¹⁴

26. According to Article 34(1) of the Law and Rule 24(1) and (2) of the Rules, the Registrar shall maintain a full and accurate record of the proceedings and shall preserve all evidence and other material produced during the proceedings, in accordance with the principles set out in this decision and any future rulings on the matter. Such record must be accessible to the Parties and participants, as the case may be, subject to any necessary restrictions regarding protection and level of confidentiality, as provided for in Articles 23 and 58 of the Law, as well as Rules 80, 82, 105, 106, 107 and 108 of the Rules, or as ordered by the Pre-Trial Judge. In this regard, when disclosing evidence, the Parties shall determine the appropriate level of classification of each item and shall register evidence as public, unless there exist reasons to classify the material otherwise, in accordance with Rule 83(1) of the Rules.¹⁵

3. Communication of Evidence to the Pre-Trial Judge

27. The Pre-Trial Judge recalls that she has the duty to take all necessary measures for the expeditious preparation of the case for trial, as required by Article 39(1) and (13) of the Law and Rule 95(2) of the Rules, including preparing a disclosure report for the Trial Panel, as stipulated in Rule 95(2)(b) of the Rules. In order to fulfil this duty, all evidence exchanged between the Parties, regardless of whether it will be relied upon at trial, shall be communicated to the Pre-Trial Judge. Such

¹³ See [Januzi et al. Disclosure Decision](#), para. 40; [Shala Disclosure Decision](#), para. 29.

¹⁴ KSC-BD-18, Registrar, Instruction on Uploading Records on Legal Workflow, 28 August 2019.

¹⁵ See Transcript of First Status Conference, p. 133, lines 21-24. See also [Januzi et al. Disclosure Decision](#), para. 41; [Shala Disclosure Decision](#), para. 30. See, similarly, ICC, *Prosecutor v. Yekatom*, ICC-01/14-01/18-64-Red, Pre-Trial Chamber II, [Public Redacted Version of "Decision on Disclosure and Related Matters"](#), ("Yekatom Disclosure Decision") 23 January 2019, para. 17.

communication will also assist the Pre-Trial Judge to ensure that the disclosure of evidence takes place under satisfactory conditions.¹⁶

28. Accordingly, the Pre-Trial Judge shall have access to the following disclosed evidence: (a) all evidence relied upon by the SPO to support the Confirmed Indictment; (b) all statements of witnesses whom the SPO intends to call to testify at trial (Rule 102(1)(b)(i) of the Rules); (c) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial (Rule 102(1)(b)(ii) of the Rules); (d) the exhibits that the SPO intends to present at trial (Rule 102(1)(b)(iii) of the Rules); (e) all evidence which is deemed by the Defence to be material to their preparation, or was obtained from or belonged to the Accused (Rule 102(3) of the Rules); (f) all exculpatory evidence in the SPO's custody, control or actual knowledge (Rule 103 of the Rules); (g) all evidence the Defence may present to establish an alibi or a ground for excluding criminal responsibility, including names and current contact information of witnesses and any other evidence upon which the Accused intends to rely to establish such alibi or grounds (Rule 104(1)(a) and (b) of the Rules); (h) all evidence in the Defence's custody or control, which is open to inspection by the SPO and is intended for use by the Defence at trial (Rules 104(5)(a) of the Rules); (i) all statements of witnesses, if any, whom the Defence intends to call to testify at trial or intends to present at trial (Rule 104(5)(b) of the Rules); and (j) all exhibits that the Defence intends to present at trial (Rule 104(5)(c) of the Rules).¹⁷

4. Deadlines for Disclosure

29. Under the Specialist Chambers' legal framework, the disclosure of some categories of material is subject to explicit deadlines provided for in the Rules, while for other categories of material the determination of the appropriate time-frame for

¹⁶ See [Januzi et al. Disclosure Decision](#), para. 42; [Shala Disclosure Decision](#), para. 31. See, similarly, ICC, [Yekatom Disclosure Decision](#), para. 12; [Al Hassan Disclosure Decision](#), para. 14.

¹⁷ See [Januzi et al. Disclosure Decision](#), para. 43; [Shala Disclosure Decision](#), para. 32.

disclosure is left to the Pre-Trial Judge, taking into account the specificities of the case, the size and features of the evidentiary record, and the submissions of the Parties.¹⁸

30. While the present decision sets out a calendar for disclosure of the different categories of evidence, such deadlines are indicative of the minimum notice only. When possible, the disclosing Party should endeavour to disclose the material ahead of the established deadlines, so as to allow proper preparation by the receiving Party.¹⁹ In case of disclosures past the deadlines established in this decision or as ordered by the Pre-Trial Judge, the disclosing Party shall address a request to the Pre-Trial Judge, together with reasons for the late disclosure.²⁰

5. Completeness and Relevance of the Disclosed Evidence

31. Either Party shall ensure that the disclosed evidence is complete. Evidentiary items that were inadvertently disclosed in incomplete form may be re-disclosed in a complete form within the time limit provided for in the Rules or as ordered by the Pre-Trial Judge.²¹

32. The Parties shall also ensure that their disclosure packages are complete and properly linked to the relevant witness(es). In this regard, all documents and material referred to in a particular witness statement (associated exhibits) shall be disclosed together with the relevant statement, in the same disclosure package.²² Furthermore, when evidence is related to a particular witness, such linkage shall be established by

¹⁸ See [Januzi et al. Disclosure Decision](#), para. 44; [Shala Disclosure Decision](#), para. 33.

¹⁹ See [Januzi et al. Disclosure Decision](#), para. 45; [Shala Disclosure Decision](#), para. 34. Similarly, ICC, [Yekatom Disclosure Decision](#), para. 13; [Al Hassan Disclosure Decision](#), paras 20-21.

²⁰ See [Januzi et al. Disclosure Decision](#), para. 45; [Shala Disclosure Decision](#), para. 34.

²¹ See [Januzi et al. Disclosure Decision](#), para. 46; [Shala Disclosure Decision](#), para. 35.

²² See [Januzi et al. Disclosure Decision](#), para. 47; [Shala Disclosure Decision](#), para. 36. See relatedly [Annex 1](#) to Order for Submissions, point 3(e); SPO Submissions, para. 28; Transcript of First Status Conference, p. 167, lines 7-11.

including the witness's pseudonym in the metadata field for the respective piece of evidence in Legal Workflow.²³

33. The SPO and the Defence, should it choose to do so, shall disclose only evidence of true relevance that underpins the particular factual allegations fulfilling the requisite legal requirements, as opposed to the greatest volume of evidence, so as to allow the receiving Party to focus its preparation.²⁴

B. TIME-FRAME FOR DISCLOSURE OF EVIDENCE

1. Rule 102(1)(a): Supporting Material to the Indictment

34. Rule 102(1)(a) of the Rules regulates the disclosure of the material relied upon by the SPO in support of the Confirmed Indictment and any statement(s) obtained from the Accused. Such material must be disclosed as soon as possible but at least within 30 days of the initial appearance of the Accused.²⁵

35. In the present case, the SPO submits that: (i) there are a total of 185 items to be disclosed under Rule 102(1)(a) of the Rules, including translations and a statement obtained from Mr Kilaj; (ii) out of the total of 185 items, 123 do not require redactions and can be disclosed to the Defence immediately; and (iii) the remaining 62 items require limited standard redactions and can be disclosed following the issuance of the present decision.²⁶

²³ See [Januzi et al Disclosure Decision](#), para. 47; [Shala Disclosure Decision](#), para. 36.

²⁴ See Transcript of First Status Conference, p. 133, lines 18-20; [Januzi et al. Disclosure Decision](#), para. 48; [Shala Disclosure Decision](#), para. 37. See *relatedly* the Kilaj Defence's and the SPO's submissions at the status conference; Transcript of First Status Conference, p. 143, lines 7-16; p. 144, lines 14-16. Similarly, ICC, [Yekatom Disclosure Decision](#), para. 18; [Al Hassan Disclosure Decision](#), para. 25; [Ongwen Disclosure Decision](#), para. 20.

²⁵ See [Januzi et al. Disclosure Decision](#), para. 49; [Shala Disclosure Decision](#), para. 38.

²⁶ SPO Submissions, paras 13-17; Transcript of First Status Conference, p. 156, line 14 to p. 157, line 10; p. 158, lines 8-19.

36. The Smakaj Defence requests that the Rule 102(1)(a) material be disclosed immediately.²⁷ The Thaçi Defence, Kilaj Defence, Fazliu Defence and Kuçi Defence have not made specific submissions with regard to the Rule 102(1)(a) material, other than seeking certain clarifications.²⁸

37. The Pre-Trial Judge recalls that, during the status conference, she ordered the SPO to disclose the Rule 102(1)(a) material which did not require redactions immediately.²⁹ The remaining material requiring (standard) redactions shall be disclosed after the issuance of the present decision and the disclosure of all Rule 102(1)(a) material shall be completed by no later than **Tuesday, 7 January 2025**, as provided under said rule. Notwithstanding the above time limit, the Pre-Trial Judge directs the SPO to disclose the Rule 102(1)(a) material on a rolling basis.

2. Rule 102(1)(b): Additional Material Intended for Use at Trial

38. Rule 102(1)(b) of the Rules governs the disclosure of any additional material intended for use at trial, which was not relied upon by the SPO as supporting material to the Indictment submitted for confirmation. This material must be disclosed within a time limit set by the Pre-Trial Judge and, in any case, no later than 30 days prior to the opening of the SPO case pursuant to Rule 124 of the Rules.³⁰

39. The timeframe for disclosure of such material may depend on factors such as: (i) the amount and type of material to be disclosed; (ii) when the material was collected by the SPO; (iii) the need to complete investigative steps (including obtaining the necessary clearances from information providers) before disclosing such material; (iv) the completion of forensic examinations conducted by third party

²⁷ Transcript of First Status Conference, p. 139, lines 3-7.

²⁸ See Kilaj Defence Submissions, para. 21.

²⁹ Transcript of First Status Conference, p. 162, lines 3-13. On 17 December 2024, following the status conference, the SPO disclosed on package of Rule 102(1)(a) material; Disclosure Package 6.

³⁰ See [Januzi et al. Disclosure Decision](#), para. 52; [Shala Disclosure Decision](#), para. 41.

entities; (v) review of privileged material by an independent third-party; (vi) the need to translate (parts of) this material, notably statements of witnesses whom the SPO intends to call to testify; and (vii) the need to implement protective measures, including the redaction of information.³¹

40. Should the SPO wish to disclose additional statements of witnesses whom it intends to call to testify at trial, but fails to do so within the time limit set by the Pre-Trial Judge under Rule 102(1)(b) of the Rules, such late disclosure shall comply with the requirements of Rule 102(1), (2), and (4) of the Rules, including with regard to translation. The Defence may seize the Pre-Trial Judge where grounds to dispute the late disclosure exist.³²

41. The SPO submits that: (i) it is prepared to start disclosing the Rule 102(1)(b) material, on a rolling basis, beginning on 20 December 2024, but cannot estimate when it would complete such disclosure, as certain investigative steps are still ongoing; (ii) it will, in any case, disclose the Rule 102(1)(b) material no later than 30 days before the opening of its case; (iii) the material includes forensic copies and records of mobile phones, audio recordings, transcripts of audio-visual material, call logs and call data records, expert reports, documents and additional material that may still be obtained, including witness statements, official records obtained from the Specialist Chambers' Detention Centre, and physical items; (iv) this material may require limited redactions; and (v) the SPO will endeavour to disclose all associated exhibits to a witness statement together with the statement and will do so also for any translation, to the extent that this will not cause undue delays.³³

³¹ See [Januzi et al. Disclosure Decision](#), para. 53; [Shala Disclosure Decision](#), para. 42.

³² See [Januzi et al. Disclosure Decision](#), para. 54; [Shala Disclosure Decision](#), para. 43.

³³ SPO Submissions, paras 18-28; Transcript of First Status Conference, p. 165, line 16 to p. 167, line 3; p. 170, lines 1-6.

42. The Thaçi Defence appreciates receiving witness statements and their associated exhibits at the same time and does not make further observations.³⁴ The Smakaj Defence submits that any Rule 102(1)(b) material which is already in the SPO's possession, and does not require redactions, should be disclosed to the Defence immediately and not on a rolling basis.³⁵ The Kilaj Defence submits, similarly, that Rule 102(1)(b) material should be disclosed as soon as it is available. It adds that the Pre-Trial Judge should set a deadline for the disclosure of such material well in advance of the time limit set under Rule 102(a)(b) of the Rules (*i.e.* 30 days before the opening of the SPO case), in order to ensure that the Accused have adequate time and facilities to prepare their defence.³⁶ The Fazliu Defence requests to receive any Albanian translations simultaneously with the original versions and the Kuçi Defence does not make any specific submissions.³⁷

43. The Pre-Trial Judge recalls that, during the status conference, she instructed the SPO to begin the disclosure of Rule 102(1)(b) material that does not require redactions as soon as practicable. The Pre-Trial Judge further announced that a deadline for the disclosure of the remaining Rule 102(1)(b) material would be set in the present decision.³⁸

44. In setting the timeline for the disclosure of Rule 102(1)(b) material, the Pre-Trial Judge pays heed in particular to: (i) the SPO's submission that it is prepared to begin disclosing the Rule 102(1)(b) material in its possession immediately and on a rolling basis;³⁹ (ii) the need to ensure that the Accused have adequate time and facilities for

³⁴ Transcript of First Status Conference, p. 167, lines 7-11.

³⁵ Transcript of First Status Conference, p. 139, lines 8-18; p. 167, line 14 to 168, line 4.

³⁶ Kilaj Defence Submissions, paras 22-23; Transcript of First Status Conference, p. 168, line 23 to p. 169, line 13.

³⁷ Transcript of First Status Conference, p. 168, lines 7-20.

³⁸ Transcript of First Status Conference, p. 170, lines 8-16.

³⁹ SPO Submissions, paras 19, 27.

the preparation of their defence;⁴⁰ and (iii) the need to ensure an expeditious preparation for trial. At the same time, the Pre-Trial Judge is also mindful that: (i) several investigative steps remain ongoing, which may generate additional evidence, and their completion is not entirely within the SPO's control;⁴¹ (ii) certain evidence is currently forensically analysed, while other evidence may require an independent third-party review, both of which are not in the SPO's control; (iii) the transcription and translation of certain audio material remains ongoing;⁴² and (iv) the Rule 102(1)(b) material may require redactions, albeit limited.⁴³

45. For these reasons, the Pre-Trial Judge considers it appropriate to set staggered deadlines for the disclosure of the Rule 102(1)(b) material. In the first stage, the SPO shall disclose the Rule 102(1)(b) material that is already in its possession at this moment. Specifically, the SPO shall: (i) disclose all such Rule 102(1)(b) material that does not require redactions, or requires only standard redactions, by no later than **Monday, 17 February 2025**;⁴⁴ (ii) file any requests for protective measures for the remaining Rule 102(1)(b) material currently in its possession as soon as possible and no later than **Monday, 17 February 2025**. The Defence may respond, if it so wishes, by **Monday, 24 February 2025**. The Pre-Trial Judge will not entertain a reply; and (iii) disclose the Rule 102(1)(b) material requiring protective measures by no later than **Monday, 17 March 2025**.

46. Further, the SPO shall file by no later than **Monday, 17 March 2025**, updated submissions on: (i) the progress of its investigations; (ii) the additional evidence

⁴⁰ Article 21(4)(c) of the Law.

⁴¹ See SPO Submissions, paras 3-6, 11-12, 20; Transcript of First Status Conference, p. 165, lines 16-25.

⁴² SPO Submissions, para. 21.

⁴³ SPO Submissions, para. 25.

⁴⁴ The Pre-Trial Judge notes that the SPO anticipates to be in a position to provide a first Rule 102(3) notice by 17 February 2025. The Pre-Trial Judge understands, by implication, that by that date, the SPO will have also identified the Rule 102(1)(b) material currently in its possession, since the Rule 102(3) notice includes relevant material and evidence that has not been disclosed under Rules 102(1)(a)-(b) and 103 of the Rules; see SPO Submissions, paras 30, 32.

collected, if any (including the number of items, type, the need to apply redactions (standard and non-standard); (iii) the estimated time of completion of any ongoing investigative steps; (iv) outstanding disclosure of Rule 102(1)(b) material in the possession of the SPO, the need to apply redactions (standard and non-standard) and when any request for protective measures can be lodged; (v) the progress of any translations, as the case may be, and when can said material be disclosed to the Defence; and (vi) an estimation of when the disclosure of Rule 102(1)(b) material can be completed. Following receipt of the SPO's submissions, the Pre-Trial Judge will set a further final deadline for the full disclosure of the Rule 102(1)(b) material, if necessary.

47. In meeting its disclosure obligation, the SPO shall disclose all associated exhibits to a witness statement together with the statement, in the same disclosure batch, as discussed in paragraph 32 above. The Pre-Trial Judge takes note with approval that the SPO will also disclose witness statements and their corresponding translations in the same disclosure batch.⁴⁵

3. Rule 102(3): Evidence Material to the Preparation of the Defence, Obtained from or Belonging to the Accused

48. Rule 102(3) material encompasses evidence deemed by the Defence to be material to their case preparation, which is in the custody or control of the SPO or was obtained from or belonged to the Accused, including statements, documents, photographs, and other tangible objects.⁴⁶

49. The Pre-Trial Judge notes that Rule 102(3) of the Rules sets out a procedure involving the following steps: (i) the provision by the SPO of a detailed notice to the Defence of any material and evidence in its possession; (ii) requests by the Defence for

⁴⁵ See relatedly [Annex 1](#) to Order for Submissions, point 3(e); SPO Submissions, para. 28; Transcript of First Status Conference, p. 168, lines 7-15; p. 169, lines 19-23.

⁴⁶ See [Januzi et al. Disclosure Decision](#), para. 59; [Shala Disclosure Decision](#), para. 46.

the disclosure or inspection of material in the custody or control of the SPO, which is deemed by the Defence to be material for their preparation, or were obtained from or belonged to the Accused; and (iii) any disputes raised by the SPO as to the materiality of the material requested by the Defence.⁴⁷

50. As a first step, the SPO shall prepare and disclose a detailed notice of all material and evidence in its possession without delay, as prescribed by Rule 102(3) of the Rules. The Pre-Trial Judge notes that this requirement concerns any material and evidence in the SPO's possession.⁴⁸ The detailed notice must include not only information the SPO assesses to be potentially material to the Defence preparation, but *any* material and evidence in the SPO's possession, which has not been disclosed under Rules 102(1)(a)-(b) and 103 of the Rules and which is relevant *to the case*.⁴⁹

51. As expressly stipulated by Rule 102(3) of the Rules, thereafter, an indication as to the materiality of any such item is to be made by the Defence. The formulation *material to the Defence preparation* shall be construed broadly and refers to all documents and objects of relevance to the preparation of the Defence case, in the exercise of the Accused's rights under the Law and the Rules.⁵⁰ What is *material* in this

⁴⁷ See [Januzi et al. Disclosure Decision](#), para. 60; [Shala Disclosure Decision](#), para. 47; KSC-BC-2020-07, IA005/F00008/RED, Court of Appeals, [Public Redacted Version of Decision on the Appeals Against Disclosure Decision](#) ("Gucati and Haradinaj Appeals Decision on Disclosure"), 29 July 2021, public, para. 38.

⁴⁸ See [Gucati and Haradinaj Appeals Decision on Disclosure](#), para. 54 ("The Panel recalls that the Prosecution cannot disclose that which it does not have and is not obliged to undertake investigations, perform analyses, or create work products which are not in its custody or control, possession or actually known to it").

⁴⁹ See Transcript of Status Conference, p. 172, lines 7-11; [Januzi et al. Disclosure Decision](#), para. 61; [Shala Disclosure Decision](#), para. 48; [Gucati and Haradinaj Appeals Decision on Disclosure](#), paras 38, 40, 42, 44, 46.

⁵⁰ See [Januzi et al. Disclosure Decision](#), para. 62; [Shala Disclosure Decision](#), para. 49; [Gucati and Haradinaj Appeals Decision on Disclosure](#), para. 41. See similarly, STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.4, F0004, Appeals Chamber, [Public Redacted Version of 19 September Decision on Appeal by Counsel for Mr Oneissi Against Pre-Trial Judge's "Decision on Issues Related to the Inspection Room and Call Data Records"](#) ("2 October 2013 Decision"), 2 October 2013, para. 21, and references therein; ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1433 (OA 11), Appeals Chamber, [Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008](#) ("11 July 2008 Judgment"), 11 July 2008, paras 77-78; *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1330 (OA 3), Appeals Chamber,

context should not necessarily be limited by the temporal scope of the Confirmed Indictment or confined to issues which would either directly undermine the SPO's case or support a line of argument of the Defence.⁵¹ The Defence *preparation* is also a broad concept and need not be limited to what is directly linked to exonerating or incriminating evidence,⁵² or related to the SPO's case.⁵³ Conversely, items that are of a purely personal nature, too remote, hypothetical or speculative, not related to the charges against the Accused, or which have only an abstract logical relationship to the issues, may be considered as not material to the preparation of the Defence.⁵⁴ If an item is considered material (and that remains unchallenged), then the item shall be disclosed in its entirety and not only the material parts thereof.⁵⁵

52. The Defence may also request the disclosure or inspection of material not included in the SPO's notice, but claimed by the Defence to be material for their preparation. In such a case, however, the Defence must: (i) provide suitable parameters for specification of any requested items, so as to enable the SPO to identify the items sought; and (ii) indicate the materiality of the requested items for Defence preparation. The Defence may not rely on mere general descriptions of or conclusory allegations on the requested information and should avoid making requests in the form of catch-all phrases.⁵⁶

[*Judgment on the appeal of Mr Bosco Ntaganda against the "Decision on Defence requests seeking disclosure orders and a declaration of Prosecution obligation to record contacts with witnesses"*](#), 20 May 2016, para. 23, and references therein.

⁵¹ See [Januzi et al. Disclosure Decision](#), para. 62; [Shala Disclosure Decision](#), para. 49; [Gucati and Haradinaj Appeals Decision on Disclosure](#), para. 41. See similarly, STL, [2 October 2013 Decision](#), para. 22, and references therein.

⁵² See [Januzi et al. Disclosure Decision](#), para. 62; [Shala Disclosure Decision](#), para. 49. Similarly, ICC, [11 July 2008 Judgment](#), para. 77.

⁵³ See [Januzi et al. Disclosure Decision](#), para. 62; [Shala Disclosure Decision](#), para. 49. Similarly, STL, [2 October 2013 Decision](#), para. 22, and references therein.

⁵⁴ See [Januzi et al. Disclosure Decision](#), para. 62; [Gucati and Haradinaj Appeals Decision on Disclosure](#), para. 41. See also Transcript of First Status Conference, p. 143, lines 7-16; p. 144, lines 14-16.

⁵⁵ See [Januzi et al. Disclosure Decision](#), para. 62.

⁵⁶ See [Januzi et al. Disclosure Decision](#), para. 63; [Shala Disclosure Decision](#), para. 50.

53. Lastly, the SPO may seize the Pre-Trial Judge where grounds to dispute the materiality of the information, as indicated by the Defence, exist. If the SPO raises any disputes regarding such Defence requests, it may take issue with the parameters of specification as well as the materiality of the requested items.⁵⁷ Upon challenge, the Pre-Trial Judge will assess the materiality of the item itself in its entirety, and not discrete information contained therein or specific parts thereof. If an item is found not to be material to the preparation of the Defence, no part or portion of said item, nor any discrete information therein, shall be disclosed, unless otherwise found.⁵⁸

54. The SPO submits that: (i) it is not possible to provide an accurate estimate of the volume of Rule 102(3) material, as this is a residual category, impacted, to a large extent, by the evidence intended to be presented at trial or potentially exculpatory and disclosed under Rules 102(1)(a), (b) and 103 of the Rules; (ii) nonetheless, it is in a position to provide the Defence with a first Rule 102(3) notice by 17 February 2025; (iii) a subsequent notice will likely be necessary; and (iv) some of the Rule 102(3) material may require redactions.⁵⁹

55. The Thaçi Defence invites the SPO to systematically include in the Rule 102(3) notice the witness codes of the witnesses concerned by each item or the name of the Accused for items seized from an Accused.⁶⁰ The Smakaj Defence submits that the Rule 102(3) material should be disclosed to the Defence immediately and not on a rolling basis.⁶¹ The Fazliu Defence, the Kuçi Defence and the Kilaj Defence have not made any specific submissions in relation to Rule 102(3) material.⁶²

⁵⁷ See [Januzi et al. Disclosure Decision](#), para. 64; [Shala Disclosure Decision](#), para. 51.

⁵⁸ See [Januzi et al. Disclosure Decision](#), para. 64.

⁵⁹ SPO Submissions, paras 30-33; Transcript of First Status Conference, p. 173, lines 1-19; p. 174, line 23 to p. 175, line 14.

⁶⁰ Transcript of First Status Conference, p. 173, line 23 to p. 174, line 2.

⁶¹ Transcript of First Status Conference, p. 139, lines 19-22; p. 174, lines 5-10.

⁶² Transcript of First Status Conference, p. 174, lines 12-19.

56. In light of the Parties' submissions, the Pre-Trial Judge considers it appropriate to set **Monday, 17 February 2025**, as the deadline for the SPO to disclose a first detailed notice of evidence falling under Rule 102(3) of the Rules. Thereafter, the Defence shall indicate to the SPO which items among those listed in the detailed notice it seeks to have access to, by way of disclosure or inspection. The Defence shall provide such indication by **Monday, 3 March 2025**, or at any time earlier. On the basis of such indication, the SPO shall, no later than **Monday, 10 March 2025**, or **within one (1) week** of the Defence indication, whichever is earlier, disclose or provide access to the selected material that does not require redactions or requires only standard redactions. Should the Defence seek access to and disclosure of Rule 102(3) material that requires redactions, the SPO shall make a prompt request for protective measures to the Pre-Trial Judge, no later than **Monday, 17 March 2025**, or **within fourteen (14) days** of the Defence indication, whichever is earlier. Should the SPO wish to dispute the materiality of the evidence indicated by the Defence, it shall seize the Panel **within fourteen (14) days** of the Defence indication.

57. For the duration of the pre-trial proceedings, the SPO shall file any additional detailed notice(s) of evidence falling under Rule 102(3) of the Rules every two months from the filing of the previous notice, unless otherwise ordered. The timeline set out above applies *mutatis mutandis*, meaning: (i) the Defence shall indicate to the SPO which items among those listed in the notice it seeks to have access to **within fourteen (14) days**; (ii) the SPO shall disclose or provide access to the selected material that does not require redactions or requires only standard redactions **within one (1) week** of the Defence indication; and (iii) the SPO shall seize the Pre-Trial Judge with any request for protective measures and dispute materiality, if it so wishes, **within fourteen (14) days** of the Defence indication.

58. The Pre-Trial Judge notes with approval the proposal made by the Thaçi Defence,⁶³ which would facilitate the Defence's review of the Rule 102(3) notice(s) and expedite the process. Accordingly, the SPO is directed to indicate in its Rule 102(3) notice(s) the witness codes of the witnesses concerned, where applicable, and the name of the Accused concerned for items which were obtained from or belonged to the Accused.

4. Rule 103: Exculpatory Evidence

59. Rule 103 material (exculpatory evidence) encompasses any information in the custody, control or actual knowledge of the SPO, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the SPO's evidence. The requirement that the SPO shall disclose exculpatory evidence *immediately, as soon as* it is in its custody, control or actual knowledge, identifies a continuous obligation for the SPO to disclose such material to the Defence, unless justifiable reasons prevent immediate disclosure, such as the need for redactions.⁶⁴ The initial determination as to whether or not certain information is exculpatory in nature falls upon the SPO and must be done in good faith.⁶⁵ At the beginning of the pre-trial phase, the requirement is that the SPO *immediately* starts the review and *immediately* discloses the evidentiary items when it assesses that they potentially contain

⁶³ See *supra* para. 55.

⁶⁴ See Transcript of First Status Conference, p. 176, lines 9-16; [Januzi et al. Disclosure Decision](#), para. 68; [Shala Disclosure Decision](#), para. 54; KSC-BC-2020-06, F00936/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations](#) ("Thaçi et al. Disclosure Non-Compliance Decision"), 26 August 2022, public, para. 28. Similarly, ICTR, *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, [Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecution's Request for Leave to Present Additional Evidence of Witness ABC1 and EB](#) ("27 November 2006 Decision"), 27 November 2006, para. 11, and references therein. See also, ICC, [Yekatom Disclosure Decision](#), para. 16; [Ongwen Disclosure Decision](#), para. 18.

⁶⁵ See [Januzi et al. Disclosure Decision](#), para. 68; [Shala Disclosure Decision](#), para. 54. Similarly, ICTR, [27 November 2006 Decision](#), para. 11, and references therein.

exculpatory information.⁶⁶ The absence of a strict deadline for exculpatory evidence does not translate into delaying the disclosure process to a later stage.⁶⁷

60. The SPO submits that it intends to disclose one package of Rule 103 material shortly and that it will continue to review its evidence and disclose such material immediately once identified, subject to the application of any required redactions.⁶⁸

61. The Smakaj Defence requests the Pre-Trial Judge to order the SPO to disclose the first package of Rule 103 material by the end of the week and submits that exculpatory evidence should be released immediately.⁶⁹ The Thaçi Defence, the Fazliu Defence, the Kuçi Defence and the Kilaj Defence have not made specific submissions in relation to Rule 103 material.

62. The Pre-Trial Judge notes that the first package of Rule 103 material has been disclosed to the Defence on 18 December 2024.⁷⁰ Accordingly, the Smakaj Defence request in this regard is moot.

63. The Pre-Trial Judge further considers it appropriate to order the SPO to disclose any further Rule 103 material immediately upon its discovery and on a rolling basis, particularly if the material does not require redactions. To the extent that such material requires redactions, the SPO shall seize the Pre-Trial Judge at the earliest opportunity for a ruling on the matter, in order to facilitate the immediate disclosure of the material to the Defence.⁷¹

⁶⁶ See [Januzi et al. Disclosure Decision](#), para. 68; [Thaçi et al. Disclosure Non-Compliance Decision](#), para. 28.

⁶⁷ See [Januzi et al. Disclosure Decision](#), para. 68; [Thaçi et al. Disclosure Non-Compliance Decision](#), para. 28.

⁶⁸ SPO Submissions, paras 34-35; Transcript of First Status Conference, p. 177, lines 4-8.

⁶⁹ Transcript of First Status Conference, p. 139, lines 22-24 ; p. 177, lines 21-23.

⁷⁰ Disclosure Package 7.

⁷¹ See [Januzi et al. Disclosure Decision](#), para. 70; [Shala Disclosure Decision](#), para. 56.

5. Rule 107: Protected Material

64. Rule 107 of the Rules, together with Article 58 of the Law, regulate the disclosure of material which has been provided to the SPO on a confidential basis and solely for the purpose of generating new evidence. Such material is, in principle, not subject to disclosure unless the information provider consents to such disclosure.⁷²

65. Where protected material is subject to disclosure under Rules 102 and/or 103 of the Rules, the SPO shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of its obligation to disclose the material in question. The SPO may also apply for counterbalancing measures pursuant to Rule 108(2) of the Rules.⁷³

66. The SPO submits that Rule 107 clearances are not necessary for material which it currently anticipates tendering into evidence at trial and adds that it will promptly inform the Pre-Trial Judge should this change.⁷⁴ The Defence does not make any submissions on this point.⁷⁵

67. Having taken note of the SPO's undertaking,⁷⁶ the Pre-Trial Judge directs the SPO to promptly bring to her attention any issues regarding material affected by Rule 107 of the Rules.

C. DISCLOSURE OF EVIDENCE BY THE DEFENCE

68. The principles and procedures enunciated in the present decision apply equally to the Defence, subject to their respective disclosure obligations. The Pre-Trial Judge recalls that the disclosure obligations of the Defence, pursuant to Rule 104 of the Rules, will only be triggered if the Defence elects to present evidence and, in any case, only

⁷² See [Januzi et al. Disclosure Decision](#), para. 71; [Shala Disclosure Decision](#), para. 57.

⁷³ See [Januzi et al. Disclosure Decision](#), para. 72; [Shala Disclosure Decision](#), para. 58.

⁷⁴ SPO Submissions, paras 36-37.

⁷⁵ Transcript of First Status Conference, p. 179, lines 5-7 .

⁷⁶ SPO Submissions, para. 37.

after the SPO has filed its Pre-Trial Brief and the list of witnesses to be called at trial and proposed exhibits, in accordance with Rule 95(4) of the Rules.⁷⁷

69. Accordingly, within a time limit set by the Pre-Trial Judge and after the submission of the SPO Pre-Trial Brief and list of witnesses and proposed exhibits, the Defence will be invited to file their Pre-Trial Briefs indicating the information requested in Rule 95(5) of the Rules, without prejudice to the Defence's right to notify their intent to offer a defence of alibi or any ground for excluding criminal responsibility at any time earlier.⁷⁸

70. Considering that the disclosure process has just started, the Pre-Trial Judge refrains from making any further determinations. Time limits regulating the filing of the SPO Pre-Trial Brief and list of witnesses and exhibits, which will in turn inform the deadlines for the filing of the Defence's respective Pre-Trial Briefs and the disclosure of evidence, if any, will be determined at a later stage.

D. TRANSLATION OF DOCUMENTS AND EVIDENCE

71. The Pre-Trial Judge recalls that the disclosing Party must ensure that the evidence, including witness statements, is disclosed in English, the working language of the proceedings, as determined in accordance with Article 20 of the Law and Rule 8(3) of the Rules.⁷⁹

72. On the other hand, Article 21(4)(a) of the Law stipulates that the Accused must be informed in a language they understand of the nature and cause of the charges against them, in this case, Albanian. However, this right does not equate to an unfettered and absolute right to receive all evidence, documents, and filings in the

⁷⁷ See [Januzi et al. Disclosure Decision](#), para. 75; [Shala Disclosure Decision](#), para. 61.

⁷⁸ See [Januzi et al. Disclosure Decision](#), para. 76; [Shala Disclosure Decision](#), para. 62.

⁷⁹ KSC-BC-2023-12, F00076, Pre-Trial Judge, [Decision on Working Language](#) ("Decision on Working Language"), 11 December 2024, public, para. 28(a). See also [Januzi et al. Disclosure Decision](#), para. 78; [Shala Disclosure Decision](#), para. 64.

Accused's language. Translating the entire case file, including evidence, would prejudice the right under Article 21(4)(d) of the Law to be tried within a reasonable time.⁸⁰ Therefore, a balance must be achieved between these competing rights in order to make proceedings fair and expeditious at the same time.⁸¹

73. As a result of the above, the Rules establish that all statements of witnesses whom the SPO intends to call to testify at trial shall be made available in the language the Accused understand and speak, as expressly required by Rule 102(1) of the Rules.⁸² All other evidence shall be submitted in English, in accordance with the Decision on Working Language, unless otherwise ordered by the Pre-Trial Judge.⁸³

74. The free assistance of an interpreter together with Counsel's professional advice, as provided for in Article 21(4)(c) and (g) of the Law, will assist the Accused in understanding the evidence and related filings that are not in Albanian.⁸⁴ The Defence may also request the SPO to provide the Albanian translation of specific evidence, or parts thereof, other than statements of witnesses whom the SPO intends to call to testify at trial, if the SPO is already in possession of such translations.⁸⁵ When making such requests, the Defence shall indicate the reasons why it is essential to receive these pieces of evidence in Albanian and why the Accused is not in a position to appreciate

⁸⁰ See [Januzi et al. Disclosure Decision](#), para. 79; [Shala Disclosure Decision](#), para. 65. Similarly, ICC, [Ongwen Disclosure Decision](#), paras 31-32; *Prosecutor v. Bemba*, ICC-01/05-01/08-307, Pre-Trial Chamber III, [Decision on the Defence's Request Related to Language Issues in the Proceedings](#), 4 December 2008, para. 15.

⁸¹ See [Januzi et al. Disclosure Decision](#), para. 79; [Shala Disclosure Decision](#), para. 65.

⁸² See also Transcript of First Status Conference, p. 169, lines 19-23.

⁸³ [Decision on Working Language](#); see [Januzi et al. Disclosure Decision](#), para. 80; [Shala Disclosure Decision](#), para. 66.

⁸⁴ See [Januzi et al. Disclosure Decision](#), para. 81; [Shala Disclosure Decision](#), para. 67. Similarly, ICC, *Prosecutor v. Yekatom*, ICC-01/14-01/18-56-Red, Pre-Trial Chamber II, [Public Redacted Version of "Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings"](#), 11 January 2019, para. 18; [Ongwen Disclosure Decision](#), para. 33.

⁸⁵ See also [Januzi et al. Disclosure Decision](#), para. 81; [Shala Disclosure Decision](#), para. 67. Similarly, ICC, *Prosecutor v. Yekatom and Ngaissona*, ICC-01/04-01/18-163, Pre-Trial Chamber II, [Second Decision on Disclosure and Related Matters](#), 4 April 2019, para. 38; [Al Hassan Disclosure Decision](#), para. 23.

the content of such evidence with the assistance of an interpreter and Counsel's advice. In the event of disagreement between the Defence and the SPO in this regard, the Defence must seize the Pre-Trial Judge as soon as possible.⁸⁶

E. PROCEDURE FOR DISCLOSURE OF EVIDENCE

75. The accompanying material foreseen in Rule 109(b) and (c) of the Rules is designed to put the receiving Party in the best possible position to familiarise itself with and navigate through the disclosed material, in order to focus its preparation and, more generally, to enhance the expeditiousness and fairness of the proceedings.⁸⁷

76. Rule 109(c) of the Rules describes in general terms the generic categories that can be assigned to evidentiary material when it is uploaded on Legal Workflow and disclosed to the receiving Party.⁸⁸ The categories available on Legal Workflow are: "Accused"; "Alleged Conduct of the Accused"; "Contextual Elements of the Crimes"; "Location"; and "Underlying Crimes" ("Standard Category" and "Standard Categories"). In this regard, the Pre-Trial Judge notes that the Standard Categories "Underlying Crimes" and "Contextual Elements of the Crimes" are not relevant to the present case. Accordingly, the Pre-Trial Judge instructs the SPO to create a new Standard Category entitled "Offences".⁸⁹

77. At the outset, the Pre-Trial Judge observes that the Parties made some observations on the case-specific sub-categories and format of the Rule 109(c) chart, but that they continue to discuss certain details *inter partes*.⁹⁰

⁸⁶ See also [Januzi et al. Disclosure Decision](#), para. 81; [Shala Disclosure Decision](#), para. 67.

⁸⁷ See [Januzi et al. Disclosure Decision](#), para. 82; [Shala Disclosure Decision](#), para. 68. Similarly, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-47, Pre-Trial Chamber II, [Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#), 12 April 2013, paras 31-32; *Prosecutor v. Bemba*, ICC-01/05-01/08-55, Pre-Trial Chamber III, [Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#), 31 July 2008, paras 72-73.

⁸⁸ See [Januzi et al. Disclosure Decision](#), para. 86; [Shala Disclosure Decision](#), para. 71.

⁸⁹ Similarly [Januzi et al. Disclosure Decision](#), para. 86.

⁹⁰ Transcript of First Status Conference, p. 185, line 6 to p. 18, line 10.

78. As a matter of principle, the Pre-Trial Judge finds that case-specific sub-categorisation is required to ensure the fair and expeditious conduct of the proceedings.⁹¹ Accordingly, noting the Parties' submissions at the status conference,⁹² and pending the outcome of their *inter partes* discussions, the Pre-Trial Judge finds useful the following case-specific sub-categories in Legal Workflow: "Count 1", "Count 2", "Count 3", etc. and "all" (under the Standard Category "Offences"); (ii) "commission", "incitement", "assistance", "agreement" and "all" (under the Standard Category "Alleged Conduct of the Accused"); and (iii) "Thaçi", "Smakaj", "Fazliu", "Kilaj", "Kuçi" and "all" (under the Standard Category "Accused").

79. The Parties may proceed on the basis of the aforementioned sub-categories. Should the Parties agree, in the course of their *inter partes* discussions, on any further case-specific sub-categories to be applied in Legal Workflow,⁹³ the Pre-Trial Judge directs them to report to her accordingly, as set forth below.

80. With regard to the Rule 109(c) chart, the Pre-Trial Judge notes that the Parties are currently engaged in *inter partes* discussions on the format of the chart.⁹⁴ The Pre-Trial Judge notes with approval the proposal made by the Thaçi Defence⁹⁵ and directs the Parties to make a joint submission on the result of their discussions on a model disclosure chart by no later than **Friday, 31 January 2025**.

81. The Pre-Trial Judge also notes that the SPO submits that the Rule 109(c) chart should be limited to any Rule 102(1)(b) material, since the Rule 86(3) outline already provides extensive analysis of the Rule 102(1)(a) material.⁹⁶ The Defence prefer to

⁹¹ See [Order for Submissions](#), para. 20; [Annex 1](#) to Order for Submissions, point 8(a) and (b); see also [Januzi et al. Disclosure Decision](#), para. 87.

⁹² Transcript of First Status Conference, p. 185, lines 6-8; p. 186, lines 9-13.

⁹³ See SPO Submissions, para. 39; Thaçi Defence Submissions, para. 10.

⁹⁴ SPO Submissions, paras 42-43; Thaçi Defence Submissions, para. 11; Transcript of Status Conference, p. 185, line 10 to p. 188, line 6.

⁹⁵ Transcript of Status Conference, p. 186, lines 7-13.

⁹⁶ SPO Submissions, para. 42.

receive a consolidated chart, which refers to both the Rule 102(1)(a) material and the Rule 102(1)(b) material.⁹⁷ The Pre-Trial Judge is mindful of the Defence's submissions. However, in the interest of an efficiency and expeditious conduct of the proceedings, the Pre-Trial Judge finds it appropriate for the SPO's Rule 109(c) chart, and any addendum thereto, to relate to the Rule 102(1)(b) and Rule 102(2) material only. As rightly highlighted by the SPO, the Rule 86(3)(b) outline already provides an analysis of the Rule 102(1)(a) material. With respect to the Defence, their Rule 109(c) charts shall relate to the Rule 104(1), (5) and (6) material.⁹⁸

82. As to the timing of the Rule 109(c) chart, the Pre-Trial Judge observes that the present case is of comparatively limited factual and legal complexity, involving alleged offences under Article 15(2) of the Law of limited temporal and geographical scope. The Pre-Trial Judge also considers that it is preferable not to disrupt the progress of disclosure and that generating the Rule 109(c) chart close to the time of the Pre-Trial Briefs is more efficient and expeditious. Accordingly, and taking into account the Parties' concurring submissions,⁹⁹ the Pre-Trial Judge instructs the Parties to file their Rule 109(c) charts **within fifteen (15) days** from the filing of their respective Pre-Trial Briefs.¹⁰⁰

⁹⁷ Transcript of Status Conference, p. 186, line 15 to p. 188, line 6.

⁹⁸ See [Januzi et al. Disclosure Decision](#), para. 90; [Shala Disclosure Decision](#), para. 73; KSC-BC-2020-05, F00034, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#) ("Mustafa Disclosure Decision"), 9 October 2020, public, para. 71; KSC-BC-2020-07, F00121, Pre-Trial Judge, [Decision on Submissions on Rule 109\(c\) Categorisation](#) ("Gucati and Haradinaj Categorisation Decision"), 11 February 2021, public, paras 15-19; KSC-BC-2020-06, F00218, Pre-Trial Judge, [Decision on Categorisation of Evidence Under Rule 109\(c\) and Related Matters](#), 12 March 2021, public, paras 9-10, 25.

⁹⁹ SPO Submissions, para. 41; Thaçi Submissions, para. 12; Transcript of First Status Conference, p. 186, lines 21-23.

¹⁰⁰ See also [Januzi et al. Disclosure Decision](#), para. 91; [Shala Disclosure Decision](#), para. 74; [Gucati and Haradinaj Categorisation Decision](#), para. 21.

F. RESTRICTIONS TO DISCLOSURE

1. General Principles

83. The Pre-Trial Judge notes that full disclosure of all material and relevant evidence is the principle, while withholding information is the exception.¹⁰¹ As a combined reading of Article 21(6) of the Law and Rules 80(1) and 108(1) of the Rules indicates, any restrictions to full disclosure must be strictly necessary with a view to protecting: (i) the safety, physical and psychological well-being, dignity, and privacy of witnesses, victims participating in the proceedings, and other persons at risk on account of the testimony given by witnesses of the Specialist Chambers, provided that these measures are consistent with the rights of the Accused; (ii) ongoing or future investigations; and (iii) the public interest and the rights of third parties. In this context, it is also recalled that it is permissible to withhold certain information from the Defence prior to trial.¹⁰²

84. Redactions for the purpose of protecting ongoing or future investigations or the public interest and the rights of third parties are applied only upon a request of the SPO or the Defence, filed confidentially and *ex parte*.¹⁰³ Redactions for the purpose of protecting witnesses, victims participating in the proceedings, and other persons at

¹⁰¹ See [Januzi et al. Disclosure Decision](#), para. 92; [Shala Disclosure Decision](#), para. 75. Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-568 (OA3), Appeals Chamber, [Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 \(2\) and \(4\) of the Rules of Procedure and Evidence"](#) ("13 October 2006 Judgment"), 13 October 2006, paras 1, 39; *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-475 (OA), Appeals Chamber, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"](#) ("13 May 2008 Judgment"), 13 May 2008, para. 70.

¹⁰² See [Januzi et al. Disclosure Decision](#), para. 92; [Shala Disclosure Decision](#), para. 75. Similarly, ICC, [13 May 2008 Judgment](#), para. 68.

¹⁰³ Rule 108(1) and (6) of the Rules.

risk on account of testimony given by witnesses are applied either upon a request from the Parties, filed confidentially and *ex parte*, or *proprio motu*.¹⁰⁴

85. Lastly, the need for redactions is to be assessed on a case-by-case basis.¹⁰⁵ In deciding upon the applicable redaction regime, the Pre-Trial Judge must thus strike a balance between the competing interests at stake, whilst ensuring that the proceedings are fair and expeditious.¹⁰⁶

2. Legal Test

86. In assessing if certain information may be withheld from the receiving Party, it must be ascertained whether:¹⁰⁷

- (i) the disclosure of the information in question to the receiving Party, as opposed to the general public, poses an objectively justifiable risk to the protected person or interest;
- (ii) the protective measure is strictly necessary.¹⁰⁸ Thus, if less restrictive protective measures are both sufficient and feasible, such protective measures must be chosen; and
- (iii) the protective measure is proportionate in view of the prejudice caused to the Accused and a fair trial.¹⁰⁹

¹⁰⁴ Rule 80(1) and (3) of the Rules.

¹⁰⁵ See [Januzi et al. Disclosure Decision](#), para. 94; [Shala Disclosure Decision](#), para. 77. Similarly, ICC, [13 October 2006 Judgment](#), para. 36; [13 May 2008 Judgment](#), paras 2, 59, 66.

¹⁰⁶ See [Januzi et al. Disclosure Decision](#), para. 94; [Shala Disclosure Decision](#), para. 77.

¹⁰⁷ See [Januzi et al. Disclosure Decision](#), para. 95; [Shala Disclosure Decision](#), para. 78; [Mustafa Disclosure Decision](#), para. 76. Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-773 (OA5), Appeals Chamber, [Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended requests for Redactions under Rule 81"](#), 14 December 2006, paras 21, 33-34; [13 May 2008 Judgment](#), paras 95-99; ECtHR, *Rowe and Davis v. United Kingdom*, no. 2890/95, [Judgment](#), 16 February 2000, para. 61; *Botmeh and Alami v. United Kingdom*, no. 15187/03, [Judgment](#), 7 June 2007, para. 37.

¹⁰⁸ Article 21(6) of the Law.

¹⁰⁹ Rule 80(1) of the Rules.

3. Redaction Regime

87. The Pre-Trial Judge notes that, with the exception of the Smakaj Defence,¹¹⁰ the Parties support the adoption of the redaction regime in place in the *Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala* case (“*Januzi et al.* case”).¹¹¹ The Pre-Trial Judge is mindful of the concerns raised by the Smakaj Defence and the Kilaj Defence¹¹² and considers that these concerns are addressed by the procedure described in paragraph 93 below.

88. Accordingly, and with a view to expediting the proceedings and establishing an efficient, predictable, and sustainable redaction regime, the Pre-Trial Judge considers it appropriate to adopt the redaction regime in the *Januzi et al.* case, with the modification set out in paragraphs 98-99 below. With the adoption of this regime, the Parties have sufficient guidance in implementing redactions, if any, before disclosing the evidence in their possession.¹¹³

89. According to this regime, evidence may be disclosed by either Party with redactions applied directly to certain pre-defined categories of information (“**standard redactions**”) without prior judicial authorisation.¹¹⁴ In this case, the disclosing Party is not required to submit a discrete application. The receiving Party is entitled to challenge any redaction applied after the evidence has been disclosed.¹¹⁵

90. For any redactions falling outside the aforementioned pre-defined categories (“**non-standard redactions**”), the disclosing Party must submit a discrete application

¹¹⁰ Transcript of First Status Conference, p. 181, lines 6-12.

¹¹¹ SPO Submissions, para. 38; Thaçi Defence Submissions, para. 9; Kilaj Defence Submissions, para. 24; Transcript of First Status Conference, p. 177, line 14 to p. 178, line 12, referring to [Januzi et al Disclosure Decision](#), paras 96-109.

¹¹² See Kilaj Defence Submissions, para. 24; Transcript of First Status Conference, p. 181, lines 6-12; p. 182, lines 4-24.

¹¹³ See [Januzi et al Disclosure Decision](#), para. 97; [Shala Disclosure Decision](#), para. 80.

¹¹⁴ See *infra* paras 100-101.

¹¹⁵ See *infra* para. 93.

to the Pre-Trial Judge seeking authorisation to restrict disclosure, in accordance with the procedure set out below.¹¹⁶

91. In the case of both standard and non-standard redactions, the information to be withheld may be blackened or suppressed, or replaced with the text element “[REDACTED]”. In addition, the disclosing Party shall indicate the type of redaction in the redaction box or at any other appropriate place by using a specific code, as listed below, unless such indication would defeat the purpose of the redaction. This format will allow the reader to immediately recognise the type of underlying information that is redacted or suppressed and the corresponding justification. In the event that the redacted information falls under more than one category, all relevant codes should be indicated.¹¹⁷

92. When disclosing evidence with redactions, the disclosing Party shall assign unique pseudonyms to any person whose identity is redacted under categories A.3 and A.4, as set out below, accompanying the respective redaction code(s). The purpose of such pseudonyms is to allow the reader of the redacted material to identify whether the same person is referenced across multiple pieces of evidence. The disclosing Party need not provide the category code and/or a pseudonym when doing so would defeat the purpose of the redaction, but shall make clear which codes/pseudonyms are missing for this reason.¹¹⁸

93. The receiving Party may **challenge** any specific redaction it believes to be unwarranted or if it believes that a specific redaction should be lifted as a result of changed circumstances. To this end, it shall approach the disclosing Party directly. The Parties shall consult in good faith with a view to resolving the matter. If the Parties are unable to agree, the receiving Party may apply without undue delay to the

¹¹⁶ See *infra* para. 102.

¹¹⁷ See [Januzi et al. Disclosure Decision](#), para. 100; [Shala Disclosure Decision](#), para. 83.

¹¹⁸ See [Januzi et al. Disclosure Decision](#), para. 101; [Shala Disclosure Decision](#), para. 84.

Pre-Trial Judge for a ruling, thereby creating an obligation for the disclosing Party to justify the redaction in question. In this case, the disclosing Party shall file a response **within five (5) days** from notification of the challenge in the record of the case, unless otherwise decided by the Pre-Trial Judge.¹¹⁹

94. The disclosing Party must **monitor** the continued necessity of redactions and shall re-disclose evidence with lesser redactions without seeking the prior leave of the relevant Panel as soon as the reasons justifying them cease to exist, or, if applicable, shall make an application under Rule 81(1) and (2) of the Rules, in case the redactions shall continue to have effect in subsequent proceedings. Redactions may further be **lifted** following: (i) an agreement between the Parties that an objectively justifiable risk to the person or interest concerned has ceased to exist; or (ii) an order of the relevant Panel. If the redacted information falls under more than one category, the redaction should be lifted when all relevant deadlines have expired. If the disclosing Party wishes to maintain redactions after the relevant deadline for the lifting thereof, it should apply to the relevant Panel.¹²⁰

95. In order to verify, at her discretion, the validity of any redactions applied by the disclosing Party and, if necessary, order the disclosing Party *proprio motu* to lift, partially or fully, any redactions, after having given the disclosing Party the opportunity to submit its observations, the Pre-Trial Judge considers it appropriate for her to receive the unredacted version of the evidence at the time the redacted version is disclosed to the receiving Party.¹²¹ This will enable the Pre-Trial Judge to **verify**, pursuant to Rules 80(1) and 108(1) of the Rules, the scope and validity of any redaction, thus adding another layer of review for the benefit of the receiving Party.

¹¹⁹ See [Januzi et al. Disclosure Decision](#), para. 102; [Shala Disclosure Decision](#), para. 85.

¹²⁰ See [Januzi et al. Disclosure Decision](#), para. 103; [Shala Disclosure Decision](#), para. 86.

¹²¹ The former should be accessible in the electronic management system to the Pre-Trial Judge only. Similarly, [Januzi et al. Disclosure Decision](#), para. 104; [Shala Disclosure Decision](#), para. 87; ICC, [Al Hassan Disclosure Decision](#), para. 32; [Yekatom Disclosure Decision](#), para. 28.

This will also enable the Pre-Trial Judge to react in a swift way if challenges are raised to the redactions applied, as the case may be. This is without prejudice to the fact that the disclosing Party may only rely on the redacted form of the evidence, as disclosed to the receiving Party.¹²²

96. Lastly, the Pre-Trial Judge recalls that, pursuant to Rule 81(1)(a) of the Rules, protective measures **once ordered shall continue to have effect** in any other subsequent proceedings unless and until varied. Accordingly, it is not necessary for the Pre-Trial Judge to order the continued application of protective measures that have been ordered in other Specialist Chambers proceedings in the present case. This occurs automatically by virtue of Rule 81(1)(a) of the Rules.¹²³

4. Standard Redactions

97. The categories for standard redactions are clearly delineated and well-entrenched in the practice of other courts¹²⁴ and have been adopted in several other cases before the Specialist Chambers.¹²⁵ The Pre-Trial Judge herewith adopts said categories of standard redactions and their justifications in light of the test set out above.¹²⁶ In the Pre-Trial Judge's view, the disclosure of the information categorized below to the receiving Party regularly entails an objectively justifiable risk to the interests concerned and requires the adoption of protective measures that are strictly necessary, while taking into account the rights of the Accused and a fair trial.¹²⁷

¹²² See [Januzi et al. Disclosure Decision](#), para. 104; [Shala Disclosure Decision](#), para. 87.

¹²³ See [Januzi et al. Disclosure Decision](#), para. 105.

¹²⁴ For example, ICC, [Yekatom Disclosure Decision](#), paras 25-26; [Al Hassan Disclosure Decision](#), para. 29.

¹²⁵ See [Januzi et al. Disclosure Decision](#), para. 107; [Shala Disclosure Decision](#), para. 89; [Mustafa Disclosure Decision](#), para. 86; KSC-BC-2020-06, F00099, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#) ("*Thaçi et al. Disclosure Decision*"), 23 November 2020, public, para. 95; KSC-BC-2020-07, F00104, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#) ("*Gucati and Haradinaj Disclosure Decision*"), 22 January 2021, public, para. 82.

¹²⁶ See *supra* para. 86.

¹²⁷ See [Januzi et al. Disclosure Decision](#), para. 106; [Shala Disclosure Decision](#), para. 88.

98. In addition, the Pre-Trial Judge notes the SPO's proposal to adopt (to the extent that this is necessary) a new category of standard (block) redactions. The SPO submits that this is to be applied, for example, to transcripts of testimonies emanating from other proceedings, where such transcripts contain the testimonies of two witnesses and only one is relevant to the present proceedings. The testimony of the unrelated witness would be covered by block redactions.¹²⁸ The Defence opposes this proposal.¹²⁹

99. The Pre-Trial Judge has taken note of the Defence's submissions, but finds that, given the inherent link with other proceedings before the Specialist Chambers, it is conceivable that the evidentiary material may contain wholly irrelevant information. To stay with the example of the SPO, the testimony of a witness given in other proceedings which is entirely unrelated to the present proceedings shall not be subject to disclosure in this case. This is acknowledged by the Kilaj Defence itself, when stating that "[i]t is a matter of principle that only evidence of relevance to a case is disclosed".¹³⁰ Further, the Pre-Trial Judge finds that such a new category of standard redactions is particularly pertinent in the circumstances of the present case and can promote the swift disclosure of the relevant evidence to the Defence and the expeditious conduct of the proceedings. Any concerns of the Defence can be addressed by the verification process of the Pre-Trial Judge and the fact that the Defence has the opportunity to challenge the block redactions applied. The Pre-Trial Judge finds merit in adopting such a new category, notwithstanding the SPO's submission that it may not be necessary, in order to have such block redactions marked accordingly, for the benefit of the Defence. For these reasons, the Pre-Trial Judge adopts a new category of standard redactions, to be marked as **Category "G"**,

¹²⁸ SPO Submissions, footnote 3; Transcript of First Status Conference, p. 179, line 24 to p. 180, line 7.

¹²⁹ Transcript of First Status Conference, p. 180, line 17 to p. 182, line 14; p. 183, lines 4-15.

¹³⁰ Transcript of First Status Conference, p. 143, lines 7-9.

under “(c) Other information not subject to disclosure in accordance with the Rules”, as set out below.

100. In light of the above, the categories of information which may be redacted by the disclosing Party without prior judicial authorisation are:

(a) Redactions under Rule 108(1)(a) of the Rules:

Category “A.1”: Locations of interviews and accommodation, insofar as disclosure would unduly attract attention to the movements of the Parties’ staff, victims, witnesses, and other persons at risk on account of the activities of the Specialist Chambers, thereby posing an objective risk to ongoing or future investigations. This information is also in principle not relevant to the other Party. Any such redactions shall be lifted when the location is no longer used in ongoing or future investigations.

Category “A.2”: Identifying and contact information of Party, Registry or Specialist Chambers’ staff or contractors (excluding investigators), who travel frequently to, or are based in, the field, insofar as disclosure of this information could put these persons at risk and/or hinder their work, thereby putting ongoing or future investigations at risk (to be further specified as “A.2.1.” for translators/interpreters, “A.2.2.” for stenographers, “A.2.3.” for psycho-social experts, “A.2.4.” for other medical experts, “A.2.5.” for other staff members falling within this category, and “A.2.6.” for other contractors falling within this category).

Category “A.3”: Identifying and contact information of investigators, insofar as, mindful that the Parties have only a limited pool of investigators, the disclosure of this information could put them at risk and hinder their work in the field, thereby putting ongoing or future investigations at risk, or pose security risks to witnesses or other persons whom they interview or contact. In accordance with paragraph 92, above, the disclosing Party shall indicate the unique pseudonym of the investigator, in addition to the category code (e.g. “A.3.1.”, “A.3.2.”, “A.3.3.”, etc).

Category “A.4”: Identifying and contact information of intermediaries, insofar as disclosure of this information may put these persons at risk and hinder their work in the field, thereby putting ongoing or future investigations at risk, or pose security risks to witnesses or other persons with whom they have contact. In accordance with paragraph 92, above, the disclosing Party shall indicate the unique pseudonym of the intermediary, in addition to the category code (e.g. “A.4.1.”, “A.4.2.”, “A.4.3.”, etc).

Category “A.5”: Identifying and contact information of leads and sources, including potential witnesses,¹³¹ insofar as disclosure of this information could result in the leads and sources being intimidated or interfered with which, in turn, could prejudice ongoing or future investigations (to be further specified as “A.5.1.” for individual leads and sources, including potential witnesses, “A.5.2.” for non-governmental organizations, “A.5.3.” for international organizations, “A.5.4.” for national governmental agencies, “A.5.5.” for academic institutions, “A.5.6.” for private companies”, and “A.5.7.” for other sources). Where the lead or source provides material that is disclosed, their identity should be disclosed as the source in the context of that disclosure, provided that there are no additional security concerns and the lead or source is not protected under Article 35(2)(e) of the Law and Rule 107 of the Rules.

Category “A.6”: Means used to communicate with witnesses, insofar as disclosure of this information may compromise investigation techniques and the location of witnesses. This information is also, in principle, not relevant to the other Party.

Category “A.7”: Other redactions under Rule 108(1)(a) of the Rules, insofar as disclosure of the redacted information would prejudice ongoing or future investigations.

(b) *Redactions under Article 23(1) of the Law and Rules 80(4)(a)(i)-(ii) and 108(1)(b)-(c) of the Rules:*

Category “B.1”: Contact information of witnesses, including phone numbers, locations/addresses, and email addresses, insofar as disclosure of this information may pose a risk to the safety, dignity, privacy, and well-being of the person concerned.

Category “B.2”: Identifying and contact information of family members of witnesses, including photographs, as well as contact information, such as phone numbers, locations/addresses, and email addresses, insofar as disclosure of this information may pose a risk to their safety, dignity, privacy, and well-being. Such individuals are extremely vulnerable given that they have not agreed to be part of the Specialist Chambers’ proceedings and may not even be aware that a family member is a witness and are, therefore, at risk of being associated with the Specialist Chambers. Redactions to contact information should be ongoing. Where

¹³¹ Potential witnesses are those that have either been or are about to be interviewed by the Parties. For the classification as “prosecution sources”, see ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-476 (OA2), Appeals Chamber, [Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”](#), 14 May 2008, paras 1-2, 46, 49. Potential witnesses differ from “innocent third parties” (see category B.3 below): whereas the former have been or will be approached by the Parties during their respective investigations in the context of proceedings before the Specialist Chambers, innocent third parties are not approached in the context of the Parties’ investigations and may not be aware that their name is mentioned in the context of such investigation. This distinction may be of importance for the receiving Party and should be marked by the use of different codes.

a redaction to identifying information is applied solely to protect a witness for whom redactions are no longer justified, the redaction under this category should equally be lifted when the identity of the witness is disclosed. Where the redaction to identifying information under this category is applied for a family member's own security and that family member's identity is of no relevance to any known issue in the case, redactions under this category should be ongoing. For redactions falling outside the above scenarios, the disclosing Party should make an application to the relevant Panel.

Category "B.3": Identifying and contact information of individuals who are at risk on account of the testimony of witnesses, but who are not victims, current or prospective witnesses or sources or members of their families ("innocent third parties"),¹³² including phone numbers, locations/addresses, email addresses, and photographs, insofar as disclosure of this information may pose a risk to their safety, dignity, privacy, and well-being. Such individuals have not agreed to be part of Specialist Chambers' proceedings and may not even be aware that their name is mentioned in the context of those proceedings and are, therefore, at risk of being perceived as potential witnesses or collaborators with the Specialist Chambers. Redactions to contact information under this category should be ongoing. For individuals of no relevance to any known issue in the case, redactions to identifying information under this category should be ongoing. Otherwise, the disclosing Party should make an application to the relevant Panel.

Category "B.4": Location of witnesses admitted into a witness protection programme and information revealing the places used for present and future relocation of such witnesses, including before they enter the witness protection programme, insofar as disclosure of this information may compromise the confidentiality of such places, thereby putting protected witnesses at risk. This information is also, in principle, not relevant to the other Party.

Category "B.5": Other redactions under Rule 108(1)(b)-(c) of the Rules, insofar as disclosure of the redacted information would cause grave risk to the security of a witness, victims participating in the proceedings, or members of their family or be contrary for any other reason to the public interest or the rights of third parties.

(c) Other information not subject to disclosure in accordance with the Rules:

Category "C": Internal work product contained in any material subject to disclosure, pursuant to Rule 106 of the Rules. Such redactions do not require the Panel's approval.

Category "D": Communications made in the context of the professional relationship between a person and his or her Specialist Counsel pursuant to Rule 111(1) of the Rules. Such redactions do not require the Panel's approval. They may not be applied to information falling under Rule 111(2)-(6) of the Rules. In these cases, an application to the relevant Panel should be made.

¹³² Rule 80(1) of the Rules. *Similarly*, ICC, [13 May 2008 Judgment](#), paras 1, 40, 56.

Category “F”: Redactions authorised in prior proceedings pursuant to Rule 81(1)(a) of the Rules. Such redactions shall contain the relevant case and decision number.

Category “G”: Redactions to parts of evidentiary material, in particular, transcripts of testimonies emanating from other proceedings, where such transcripts contain the testimonies of several witnesses, only one or some of whom are relevant to the case at hand. Redactions to the testimonies of witnesses who are entirely irrelevant and unrelated to the case at hand may be applied without prior approval from the Panel.

101. Category A-D redactions should, pursuant to Rules 106 and 108(1) of the Rules, be applied, *mutatis mutandis*, to equivalent information from other national or international law enforcement agencies, including the Kosovo police and prosecution, the ICTY, KFOR, UNMIK, and EULEX Kosovo.¹³³ Where such redactions are applied, an identifier for the agency in question should be included in addition to the relevant redaction code.

5. Non-Standard Redactions

102. Non-standard redactions concern, in particular, the names of witnesses whose identity must be withheld from the opposing Party prior to the commencement of the trial and instances where entire pieces of evidence must be withheld.¹³⁴ In such cases, the disclosing Party shall submit an application to the relevant Panel sufficiently in advance so as to allow for a timely decision thereon and the subsequent disclosure of evidence within the time limits prescribed in the Rules or the Panel’s decision. At the same time, a redacted version of the application should be provided to the receiving Party; the receiving Party may respond thereto **within five (5) days** of notification of the application. Moreover, in order to enable the Pre-Trial Judge to take an objective decision, the Witness Protection and Support Office (“WPSO”) shall submit, **within**

¹³³ Article 37(1) of the Law.

¹³⁴ See [Januzi et al. Disclosure Decision](#), para. 108; [Shala Disclosure Decision](#), para. 90; [Mustafa Disclosure Decision](#), para. 88; [Thaçi et al. Disclosure Decision](#), para. 97; [Gucati and Haradinaj Disclosure Decision](#), para. 83. Similarly, ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-224, Pre-Trial Chamber II, [Decision on issues related to disclosure and exceptions thereto](#), 23 April 2015, para. 7; [Yekatom Disclosure Decision](#), para. 32; [Al Hassan Disclosure Decision](#), para. 33.

five (5) days of notification of the application for non-disclosure, an individual risk assessment for each witness in relation to whom non-disclosure of identity is requested or if, in relation to a witness for whom a risk assessment has been submitted, updated information is necessary.¹³⁵ Upon authorisation, any non-standard redactions shall be marked as **category “E”**.¹³⁶

103. Redactions falling under this category shall be **lifted** upon order of the relevant Panel or as soon as the reasons justifying them cease to exist. Should a Party intend to lift a non-standard redaction concerning the name of a witness because it believes that the reasons justifying the withholding of identity have ceased to exist, it shall notify the Pre-Trial Judge and WPSO thereof **five (5) days prior** to the lifting of any such redaction.¹³⁷

IV. DISPOSITION

104. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **ORDERS** the Parties and the Registrar to apply the principles governing disclosure of evidence as set forth in paragraphs 24-33 of this decision;
- b) **ORDERS** the SPO to complete the disclosure of material falling under Rule 102(1)(a) of the Rules by no later than **Tuesday, 7 January 2025**;
- c) **ORDERS** the SPO to complete the disclosure of material falling under Rule 102(1)(b) of the Rules which is currently in its possession and does not

¹³⁵ WPSO may file any risk assessment in relation to KSC-BC-2023-12, F00087, Specialist Prosecutor, *Prosecution request for protective measures and related requests*, 16 December 2024, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*, by the time limit set for the Registry at Transcript of First Status Conference, p. 190, lines 4-12. To the end, the Registrar shall make filing F00087 available to WPSO. A confidential redacted version of said request was made available to the Defence on 20 December 2024, F00087/CONF/RED; Annex 1 was reclassified as confidential on the same day.

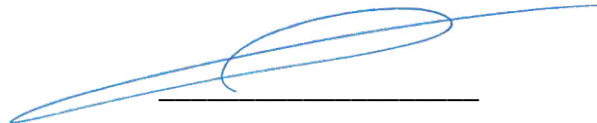
¹³⁶ See [Januzi et al. Disclosure Decision](#), para. 108; [Shala Disclosure Decision](#), para. 90.

¹³⁷ See [Januzi et al. Disclosure Decision](#), para. 109; [Shala Disclosure Decision](#), para. 91.

- require redactions, or requires only standard redactions, by no later than **Monday, 17 February 2025**;
- d) **ORDERS** the SPO to file any requests for protective measures in relation to material falling under Rule 102(1)(b) of the Rules which is currently in its possession as soon as possible and no later than **Monday, 17 February 2025**. The Defence may respond, if it so wishes, by **Monday, 24 February 2025**;
- e) **ORDERS** the SPO to complete the disclosure of material falling under Rule 102(1)(b) of the Rules which is currently in its possession and requires protective measures by no later than **Monday, 17 March 2025**;
- f) **ORDERS** the SPO to file updated submissions as directed at paragraph 46 of this decision, by no later than **Monday, 17 March 2025**;
- g) **ORDERS** the SPO to provide to the Defence with a first detailed notice of evidence falling under Rule 102(3) of the Rules by no later than **Monday, 17 February 2025**;
- h) **ORDERS** the Defence to indicate to the SPO, by **Monday, 3 March 2025**, or at any time earlier, which items among those listed in the first detailed notice under Rule 102(3) of the Rules it seeks to have access to by way of disclosure or inspection;
- i) **ORDERS** the SPO, on the basis of any Defence indication(s) under point (h) above, to disclose to or provide the Defence with access to the selected material that does not require redactions or requires only standard redactions by no later than **Monday, 10 March 2025**, or **within one (1) week** of the Defence indication(s), whichever is earlier;
- j) **ORDERS** the SPO, on the basis of any Defence indication(s) as referred to under point (h) above, to file any request for protective measures of selected

- material no later than **Monday, 17 March 2025**, or **within fourteen (14) days** of the Defence indication(s), whichever is earlier;
- k) **ORDERS** the SPO to seize the Pre-Trial Judge **within fourteen (14) days** of the Defence indication(s) as referred to under point (h) above, should it dispute the materiality of evidence;
- l) **ORDERS** the SPO to file any additional detailed notice(s) of evidence falling under Rule 102(3) of the Rules every two months from the filing of the previous notice, unless otherwise ordered, and **ORDERS** all Parties to abide by the timeline set out in paragraph 57 of this decision;
- m) **ORDERS** the SPO to disclose any batch(es) of Rule 103 material immediately and on a rolling basis;
- n) **ORDERS** the SPO, should any material falling under Rule 103 of the Rules require redactions, to make a request for protective measures at the earliest opportunity and to disclose immediately such material with redactions, if granted;
- o) **ORDERS** the SPO to promptly bring to the attention of the Pre-Trial Judge any issues regarding material affected by Rule 107 of the Rules;
- p) **ORDERS** the Parties to follow the terms of the redaction regime as set forth in paragraphs 83-103 of this decision;
- q) **ORDERS** the Parties to use the Standard Categories in the metadata field of each item of disclosure and the case-specific subcategories, as indicated in paragraphs 75-79 of this decision;
- r) **ORDERS** the Parties to file a joint submission on the result of their discussions on any further sub-categories and a model Rule 109(c) chart by no later than **Friday, 31 January 2025**;

- s) **ORDERS** the Parties to file their respective Rule 109(c) charts, as indicated in paragraphs 81-82 of this decision, **within fifteen (15) days** of the filing of their respective Pre-Trial Briefs;
- t) **ORDERS** WPSO to submit, **within five (5) days** of either Party's application for non-disclosure, an individual risk assessment for each witness in relation to whom non-disclosure of identity is requested, as set forth in paragraph 102 of this decision;
- u) **ORDERS** the Registry to make filing F00087 available to WPSO, as specified in footnote 135 of the present decision;
- v) **ORDERS** the Registry to reclassify the Thaçi Defence filing F00082 as public; and
- w) **ORDERS** the Kilaj Defence to seek reclassification or file a public redacted version of its submissions, F00083, by no later than **Wednesday, 15 January 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Friday, 20 December 2024

At The Hague, the Netherlands.