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In:	**KSC-BC-2023-12**
	Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi
Before:	**Single Trial Judge** Judge Christopher Gosnell
Registrar:	Dr Fidelma Donlon
Filing Participant:	Specialist Counsel for Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi
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Public Redacted Version of Joint Defence Response to SPO motion for admission of material through the bar table with confidential Annexes 1-6, 8-10 and public Annex 7

Specialist Prosecutor's Office

Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Luka Mišetić

Specialist Counsel for Bashkim Smakaj
Jonathan Elystan Rees KC
Huw Bowden

Specialist Counsel for Isni Kilaj
Iain Edwards
Joe Holmes

Specialist Counsel for Fadil Fazliu
David A. Young

Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

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I. INTRODUCTION

1. The Defence of Messrs Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi ("Defence") respond to the SPO Bar Table Motion ("BTM").[1]

2. The BTM dramatically overreaches, in disregard of the fundamental evidentiary principles designed to safeguard a fair trial. The SPO uses it to submit a vast quantity of material, representing the bulk of the SPO case.[2] It thus treats the bar table as the primary vehicle for tendering evidence, rather than an exception to the principle of orality. In many instances, testimonial material ([REDACTED]), is tendered without calling– or in some instances even identifying – the source of that testimony. In other instances, the SPO submits real evidence with no witness testimony as to the origins of the item in question. The SPO equally disrespects the cornerstone principle of relevance, including in its BTM numerous items unrelated to the charges in this case. Lengthy materials are tendered in full, with no attempt made to limit them to relevant sections.

3. The BTM's starkest flaws concern the evidence most central to the SPO case: materials created by and for the SPO as supposed aids to understanding indistinct covert audio recordings from the Detention Centre ("DC"). These items, and particularly transcripts apparently produced [REDACTED], cannot be treated as reliable. The SPO has provided no indicators of the authenticity or credibility of this material; and a significant body of expert opinion in forensic linguistics and phonetics supports the Defence's submission that admitting this material would be highly prejudicial and of questionable probity.

II. CLASSIFICATION

4. This filing is classified as confidential because it responds to a confidential filing and discusses confidential disclosed material.

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[1] KSC-BC-2023-12/F00632, Prosecution motion for admission of material through the bar table, 17 December 2025, Confidential ("BTM").
[2] [REDACTED]. Some contain hundreds of pages.

III. PROCEDURAL HISTORY

5. On 17 December 2025, the SPO filed the BTM.

6. On 7 January 2026, the Single Trial Judge extended the time for the Defence response to 23 January 2026 at 16h00, and extended the word limit for the response to 12,000 words.[3]

7. On 14 January 2026, the SPO filed its Prosecution request for transcription/translation verification deadline ("Verification Deadline Request").[4]

8. On 19 January 2026, the Single Trial Judge further extended the word limit for the response to 15,000 words.[5]

IV. APPLICABLE LAW

9. Rule 138 of the Rules of Procedure and Evidence ("Rules")[6] permits the admission of evidence where it is "relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect."[7] The tendering party must demonstrate that these requirements are met for each item.[8]

10. Such items must be included on the tendering party's Rule 95(4)(c) Exhibit List.

11. Regarding relevance:

> For evidence to be relevant, it must relate to matters that are properly to be considered by the Panel in its evaluation of the charges, as validly pleaded in the Indictment. The Panel has the power to exclude as

[3] KSC-BC-2023-12/F00656, STJ, Decision on "Joint Defence Request for Extensions of Time and Word Limit for Responding to the SPO Bar Table Motion", 7 January 2026, Public.
[4] KSC-BC-2023-12/F00666, SPO, Prosecution request for transcription/translation verification deadline, 14 January 2026, Confidential, para. 8.
[5] KSC-BC-2023-12/F00677, STJ, Decision on "Joint Defence Request for Further Extension of Word Limit to Respond to the SPO Bar Table Motion", 19 January 2026, Public.
[6] KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules"; or "Rule" for a provision therein).
[7] Rule 138(1).
[8] *Case 07*, KSC-BC-2020-07/F00334, TPII, Decision on the Prosecution Request for Admission of Items Through the Bar Table, 29 September 2021, Public ("Case 07 Bar Table Decision"), para. 11; KSC-BC-2023-12/F00642, STJ, Decision on the Conduct of the Proceedings, 22 December 2025, Public ("Decision on the Conduct of the Proceeding"), para. 18.

> irrelevant evidence of allegations that are not adequately pleaded in the indictment.[9]

12. Regarding authenticity:

> Evidence is deemed to be authentic if it is what it professes to be in origin or authorship. … A *prima facie* case of authenticity must be made out in order for evidence to be deemed reliable and so that it can be admitted.[10]

13. Regarding probative value:

> Probative value is determined by two primary factors: (i) the prima facie reliability of the tendered evidence; and (ii) the measure by which that evidence is likely to influence the determination of a particular issue in dispute in the case.[11]

14. Prejudice from the admission of evidence occurs where the item would "adversely impact the fairness or expeditiousness of the proceedings."[12] Rule 138(1) requires that evidence be excluded where its prejudicial effect outweighs its probative value: this *does not* require that the prejudicial effect *substantially* outweigh the probative value.[13]

15. The Rules also regulate the manner in which evidence must be tendered. It is permissible to tender some material from the bar table. This method should be used to avoid calling numerous witnesses to introduce material of "little controversy."[14] It should not be used to undermine the "prevailing principle of orality": important exhibits must be presented through witnesses who can speak to them and be cross-examined about them.[15] A party seeking to tender evidence

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[9] *Case 06*, KSC-BC-2020-06/F01623/RED, TPII, Public Redacted Version of Decision on Thaçi Defence's Motion to Strike Part of the Record of Testimony of W02652, 24 July 2023, Public (Original 23 June 2023) ("Decision on Testimony of W02652"), para. 20.
[10] Case 07 Bar Table Decision, para. 13.
[11] *Ibid.*, para. 14.
[12] *Ibid.*, para. 15.
[13] *Ibid*.
[14] ICC, *Prosecutor v Katanga*, Trial Chamber II, Directions for the Conduct of the Proceedings and Testimony in accordance with Rule 140, ICC-01/04-01/07-1665-Corr, 1 December 2009, paras 98-100.
[15] Case 07 Bar Table Decision, para. 22. See also: ICTY, *Prosecutor v Karadžić,* IT-95-5/18-T, TC, Decision on the Prosecutor's First Bar Table Motion, 13 April 2010 ("First *Karadžić* Bar Table Decision"), para. 9; ICTY, *Prosecutor v Karadžić*, IT-95-5/18-T, TC, Decision on Prosecution's Second Bar Table Motion for the Admission of Intercepts, 25 May 2012 ("Second *Karadžić* Bar Table Decision"), paras 5, 7, 8, 14; ICC, *Prosecutor v Ruto and Sang*, Trial Chamber V(A), Decision on the Joint Defence Application for

other than through a witness should provide a justification for that approach.[16] Accordingly, the "the testimony of a witness" must ordinarily be "given in person",[17] although exceptions are set out in other Rules, particularly Rules 100, 153, 154, and 155.

16. Rule 149 sets out procedures for the tendering of evidence from an expert.

V. SUBMISSIONS

17. These submissions set out the reasons for the Defence's objections to categories of items tendered through the BTM. **Annex 1** details the Defence's position on an item-by-item basis.

18. **Annexes 2-10** contain material in support of specific submissions and are identified below in the relevant submissions.

19. The objections set out in this response are timely. KSC caselaw makes clear that objections to the admissibility of evidence are premature if raised before the item of evidence is tendered.[18] Accordingly, this is the Defence's first opportunity to raise the arguments set out below.

A. VOLUMINOUS EVIDENCE, TENDERED WITHOUT IDENTIFYING RELEVANT PARTS

20. Consistent with decisions of Trial Panel II,[19] the Single Trial Judge has ruled that voluminous material will not be admitted in full without justification. Parties

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Admission of Documentary Evidence Related to the Testimony of Witness 536, ICC-01/09-01/11-1436, 15 July 2014, para. 11.

[16] *Prosecutor v Ntaganda*, Trial Chamber VI, Decision on Prosecution's Request for Admission of Documentary Evidence, ICC-01/04-02/06-1838, 28 March 2017, para. 13

[17] Rule 141(1).

[18] For example: *Case 06*, KSC-BC-2020-06/F02501/RED, Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaçi Defence Motion for Exclusion of Materials *in Limine*, 22 August 2024 (Public Redacted Version 20 December 2024), para. 35.

[19] *Case 06*, KSC-BC-2020-06/F01226/A01, TPII, Annex 1 to Order on the Conduct of Proceedings, 25 January 2023, Public, para. 50; *Case 07*, KSC-BC-2020-07/F00314/A01, Annex to Order on the Conduct of Proceedings, 17 September 2021, Public, para. 19.

must explain why such materials should be admitted in their entirety, or otherwise identify relevant portions for admission.[20]

21. The BTM does not comply with this requirement. It contains a number of voluminous items. These include over 35 hours of DC covert audio recordings and more than 5000 pages of related transcripts and translation, which are tendered in their entirety despite SPO acknowledgement that large portions of them are not relevant.[21] Admitting these items is contrary to the interests of fairness and expedition. It would burden the Defence with the need to review large quantities of irrelevant material, requiring time and resources beyond the Defence's means.

22. The Defence acknowledges that the Single Trial Judge's direction regarding voluminous evidence was issued after the BTM was filed. Nonetheless, it did not create any new rule but merely applied the principle of relevance, well known to the SPO. Moreover, equality of arms requires that prosecution and defence are subject to the same rules.[22]

B. AUDIO RECORDINGS, TRANSCRIPTS AND TRANSLATIONS

23. The SPO tenders a large number of audio recordings, namely: (i) [REDACTED] audio recordings of [REDACTED] DC calls;[23] and (ii) 11 original audio recordings of 11 DC visits;[24] (iii) [REDACTED] segments of audio which are described as being having been "enhanced".[25]

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[20] Decision on the Conduct of the Proceedings, para. 19.
[21] In its Verification Deadline Request (para. 3) the SPO claimed that the "relevant sections" of the transcripts are identifiable through "explicit detail" in the SPO's Rule 86(3) outline, Pre-Trial Brief and BTM (and see also fn.6). The SPO "reserves the right" to use material outside these "relevant sections", stating that these "additions would be limited in volume", but nonetheless failing to identify the sections in question or to limit the tendered items to these parts (fn.7).
[22] ICTY, *Prosecutor v Kupreškić et al.*, IT-95-16-AR73.3, AC, Decision on Appeal by Dragan Papić against Ruling to Proceed by Deposition, l5 July 1999, para. 24.
[23] BTM Annex 1, [REDACTED].
[24] BTM Annex 1, items [REDACTED]. Items [REDACTED] concern the five Charged Visits; items [REDACTED] concern six Non-Charged Visits (see paragraph 136 below).
[25] BTM, Annex 1, item [REDACTED].

24. In addition, for each of these [REDACTED] audio items, the SPO tenders (i) an Albanian transcript and (ii) an English translation of the transcript.

25. The Defence does not object in principle to the admission of original DC audio recordings where these (or parts of them) are shown to be relevant to charges in the Indictment.[26]

26. However, the Single Trial Judge should distinguish between the original audio recordings and the secondary materials *created by or for the SPO* in relation to these audio recordings. The latter are inadmissible in their entirety. These comprise three types of materials:

    (i) the "enhanced" audio segments of the 3 September Visit ("'Enhanced' Audio Segments");

    (ii) the 32 Albanian transcripts ("SPO Transcripts"); and

    (iii) the 32 English translations of those transcripts (SPO Translations").

27. It is useful to provide some background regarding these items.

28. The SPO began disclosing DC audio recordings in January 2025, and SPO Transcripts and SPO Translations in December 2024. It has since then continued to disclose multiple "revised" versions of SPO Transcripts and SPO Translations, most recently on 14 January 2026, although not all "revisions"[27] have been disclosed (see **Annex 2**, Table 1, showing the versions disclosed).

29. On 7 July 2025, the Smakaj Defence wrote to the SPO asking about the process used for voice attribution in the SPO Transcripts. The SPO responded that ". The SPO "invite[d]" counsel to identify disputed attributions. The Smakaj Defence

[26] See the submissions regarding relevance in Section A and Section F, which relate, *inter alia*, to the audio recordings.
[27] For reasons explained in Section G, the term "revision" is misleading; these are in fact merely different versions of the transcripts, none presumptively more accurate or reliable than any other.

responded on 10 July stating that in the absence of agreed facts the SPO should "[REDACTED]." [28]

30. [REDACTED].[29] [REDACTED].

31. On 17 July 2025, the Thaçi Defence filed a Notice of Objection and Reservation of Rights, reiterating Mr Thaçi's right to silence and that the SPO Transcripts are disputed.[30]

32. On 19 October 2025, the Smakaj Defence stated in its Pre-Trial Brief that it disputed voice attributions and commentary on non-speech sounds made in the SPO Transcripts.[31]

33. On 27 November 2025, the Thaçi Defence wrote to the SPO stating that it was having difficulty analysing the SPO Transcripts and SPO Translations because they lack timestamps, and requested timestamped versions.[32] The SPO did not reply.

34. On 9 December 2025, the Thaçi Defence wrote to the SPO requesting information about the process by which the SPO Transcripts and SPO Translations were produced, and about their creators. [REDACTED]. [REDACTED].[33] [REDACTED]. In its Verification Deadline Request, on 14 January 2026, the SPO provided some information regarding the experience of the persons who created the SPO Transcripts and SPO Translations, but did not provide most of the information requested.[34]

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[28] **Annex 3.**
[29] **Annex 4.**
[30] KSC-BC-2023-12/F00376, Thaçi Defence Notice of Objection and Reservation of Rights, 17 July 2025 (Reclassified as Public 21 October 2025,.
[31] KSC-BC-2023-12/F00513, Smakaj Pre-Trial Brief in accordance with Rule 95(5), 19 October 2025, Confidential, para. 9.
[32] **Annex 5**.
[33] **Annex 6**.
[34] Verification Deadline Request, para. 8

35. On 17 December 2025, the day the BTM was filed, the SPO disclosed [REDACTED][35]

36. In light of the apparent serious deficiencies in the SPO's handling of the audio material in this case, the Defence has consulted a prominent expert in Cognitive and Forensic Phonetics, who has researched and written extensively on the transcription of indistinct forensic audio and processes used to "enhance" such audio. The following submissions reflect [REDACTED] advice and are also supported by numerous scholarly publications which are referenced in these submissions and the attached bibliography (**Annex 7**).

(i) General principles regarding authenticity and reliability

37. The main problems with the material addressed in this section concern authenticity and reliability. As set out above (paragraph 12), *authenticity* concerns whether an item is what it professes to be. *Reliability* is an essential precondition of both probative value and relevance.[36] Reliability is the "invisible golden thread which runs through all the components of admissibility".[37] To be admissible, a tendered item must be *prima facie* reliable or credible.[38]

38. It is for the SPO, as the tendering party, to demonstrate that the items it has created as supposed aids to the audio recordings are both authentic and reliable.[39] It has not done so. Moreover, as explained below, scientific literature

[35] KSC-BC-2023-12/F00028/A02, SPO, Annex 2 to Submission of Further Amended Indictment for confirmation, 12 November 2024, Confidential (Reclassified from Strictly Confidential and *Ex Parte* 17 December 2024), p.12 fn.46.
[36] Paragraph 13 above (regarding probative value); ICTY, *Prosecutor v Tadić*, IT-94-1-T, TC, Decision on Defence Motion on Hearsay, 5 August 2996, para. 9 (regarding relevance); ICTY, *Prosecutor v Delalić et al.*, IT-96-21-T, TC, Decision on the Prosecution's oral requests for the admission of Exhibit 155 into evidence and for an order to compel the Accused, Zdravko Mucić, to provide a handwriting sample, 19 January 1998, para. 32 ("*Delalić* Evidence Decision"); ICTR, *Prosecutor v Musema*, ICTR-96-13-T, TCI, Judgement and Sentence, 27 January 2000, para. 38.
[37] *Delalić* Evidence Decision, para. 32
[38] *Prosecutor v Popović et al.*, IT-05-88-T, TCII, Decision on Admissibility of Intercepted Communications, 7 December 2007 ("*Popović* Intercept Decision"), pp12, 13, 14, 16, 20.
[39] Paragraph 9 above.

on the enhancement and transcription of forensic audio provides significant reasons to doubt the reliability of these materials.

(ii) The "Enhanced" Audio Segments

39. In respect of the 3 September Visit, the SPO tenders four "Enhanced" Audio Segments.[40] These should be ruled inadmissible.

a) <u>The SPO has not provided indicators of the "Enhanced" Audio Segments' authenticity</u>

40. The BTM Annex 1, under the heading "Indicia of authenticity" states that:

> …[REDACTED].[41]

41. However, the SPO has not tendered these forensic reports.[42] This means that the process by which these modified audio files were created is not before the Single Trial Judge. It is impossible for the Single Trial Judge to take any view on the *prima facie* authenticity of these items.

b) <u>The "Enhanced" Audio Segments and the expert reports about their creation must be tendered through their creator</u>

42. Moreover, the creator of these reports, who is also the creator of the "Enhanced" Audio Segments", is not named in the SPO's List of Witnesses.[43]

43. In order for the "Enhanced" Audio Segments and the related reports to be tendered, their authenticity and reliability must be made testable, by calling the expert source of these materials under Rule 149 and making him available for cross-examination. The Defence does not accept that the process applied to "enhance" the four audio segments has made them more intelligible. It also contests the SPO's implicit contention that this process has not altered the contents of the audio segments. The reasons for this position are elaborated

[40] BTM Annex 1, item [REDACTED].
[41] BTM Annex 1, item [REDACTED].
[42] [REDACTED].
[43] KSC-BC-2023-12/F00459/COR/A03, SPO, List of Witnesses, Confidential, 19 September 2025 (Correction 6 October 2025).

further below. It is also unclear why the four reports [REDACTED]. However, the Defence can only exercise its right to challenge the authenticity and reliability of the "Enhanced" Audio Segments if the Defence is able to cross-examine their creator.

44. For the reasons elaborated below in Section E, the SPO cannot circumvent the requirements of Rule 149 by tendering via Rule 138 expert evidence which was specifically produced for this trial, at the SPO's request. If the SPO wishes to tender the "Enhanced" Audio Segments, it must call their creator and tender his reports through him, so that the "enhancement" process can be challenged.

c) <u>The "Enhanced" Audio Segments are not reliable</u>

45. The SPO states that the "Enhanced" Audio Segments are more "audible" than the original audio.[44] Some confusion is introduced by this term, which appears to suggest an increase in volume rather than clarity or intelligibility.[45] The SPO also appears to contend that the "enhanced" versions nonetheless reflect the same contents as the original audio segments.

46. The SPO has put no material before the Single Trial Judge to support these contentions. Indeed, even the [REDACTED][46] do not support the contention that the process undertaken has increased the intelligibility of the four audio segments. [REDACTED].

47. Moreover, scientific literature calls into question this type of "enhancement" process. This literature highlights that:

[44] BTM Annex 1, item [REDACTED].
[45] Varoius concepts are used to describe forensic audio quality, such as audibility, clarity, and intelligibility. Some have a bearing on each other: *e.g.* speech might be unintelligible because it is inaudible, or because it is indistinct. However, speech that is audible in a recording may be unintelligible for other reasons. The disclosed reports concerning the "Enhanced" Audio Segments state that "enhancement" was intended to "make the voice information more intelligible or audible, to the extent possible". The difference between these concepts is one of the matters on which expert evidence would be of value.
[46] See paragraphs 40-41 above. [REDACTED].

(i) Techniques used to "enhance" forensic audio cannot reliably improve the clarity of indistinct audio recordings.[47] As one group of experts phrased it: "enhancing techniques, even when used according to best practice, are not capable of making the true content of indistinct forensic audio clearer with the consistency, reliability, and accountability required by modern forensic science standards".[48] These experts also noted that end users, including legal professionals, often have an "unrealistic expectation" of what these techniques can achieve.[49]

(ii) The only way to evaluate the relative clarity or intelligibility of two pieces of audio (including where one is said to be an "enhanced" version of the other), is by having people listen to it and rate its clarity/intelligibility.[50] Where this experiment has been carried out on audio "enhanced" for court proceedings, it has sometimes demonstrated that the "enhanced" audio is no more, and at times *less*, intelligible than the original.[51] Because of time and resource limitations, it has not been possible to subject the SPO's "Enhanced" Audio Segments to such a test (and neither does the burden lie on the Defence to do so). However, it is also noteworthy that two separate language professionals, requested by the Defence to transcribe the "enhanced" segments, stated that it this material was too indistinct to transcribe.[52]

(iii) Not only is "enhancement" potentially unhelpful for increasing clarity, it may cause listeners to more confidently hear words which were *not* spoken. This has been demonstrated through experiments which

[47] Fraser 2020b, pp. 90-91.
[48] Fraser, Aubanel, Maher and others, p. 750.
[49] Fraser, Aubanel, Maher and others, p. 750; Fraser 2020b, p. 91.
[50] Fraser, Aubanel, Maher and others, p. 750.
[51] Fraser 2021; Fraser 2020a; Fraser 2020b.
[52] **Annexes 8 and 9.**

compared listener interpretations of original and "enhanced" versions of indistinct audio.[53]

48. For all of these reasons, the Single Trial Judge should be extremely wary of an unsupported assertion by the SPO that that these segments of audio have been "enhanced" in a manner which is (a) useful for the intelligibility of that audio; and (b) not actively harmful for the audio's reliability. That conclusion is called into question by scientific writing, and in any event the SPO itself has provided *no material* indicating the reliability of the "Enhanced" Audio Segments. Matters are further exacerbated by the fact that the creator of this material has not been made available for cross-examination.

49. As the "Enhanced" Audio Segments are not reliable, they cannot be considered as relevant to or probative of the charges, and should be ruled inadmissible.

(iii) The SPO Transcripts and the SPO Translations

50. All 32 SPO Transcripts, in Albanian (and thus the SPO Translations of them, in English), are afflicted by multiple admissibility problems. The submissions below address:

(i) the SPO's failure to provide indicators of the SPO Transcripts' origins and thus authenticity;

(ii) the SPO's failure to tender the SPO Transcripts through their authors;

(iii) the SPO Transcripts' unreliability regarding the words and sound descriptions they contain;

(iv) the SPO Transcripts unreliability regarding voice attribution;

(v) why it has not been possible to "verify" relevant portions of the SPO Transcripts ;

[53] Fraser 2020a; See also Fraser 2020b, pp. 92-93; Fraser 2021; Fraser 2020b.

(vi) the inadmissibility of the SPO Translations.

51. It is useful to first highlight some features of the SPO Transcripts (and the SPO Translations derived from them).

52. **First**, the SPO's refusal to respond to disclosure requests[54] has left the Defence with extremely minimal information regarding the creation of these documents. [REDACTED].[55] In its Verification Deadline Request, the SPO stated that the work was done by two experienced "interpreters/translators/transcribers".[56] However, despite disclosure requests (**Annexes 3 and 6**), the SPO has provided no information regarding the timeframes of the transcription and translation work; guidelines used; the relationship between the transcribers and the SPO; how and by whom the work was supervised; the involvement of the transcribers in other KSC cases including Case 06; or the bases used for attributing voices and identifying non-speech sounds. The only dates shown on these documents are the dates of the audio recordings; no dates are given for when the SPO Transcripts and SPO Translations were created. The only indicator of the sequence in which the documents were created is the "Revised" number in their ERN, but this does not always resolve the question.[57]

53. **Secondly**, the format of the SPO Transcripts and the SPO Translations is not appropriate and does not reflect recognised good practices.[58] The SPO Transcripts use a format akin to a court transcript, even though their intended use, and the audio in question, are entirely different. A key example concerns timestamps: while timestamps are not necessary throughout a court transcript,

[54] See paragraph 34 above.
[55] KSC-BC-2023-12/F00076, PTJ, Decision on Working Language, 11 December 2024, Public, ("Decision on Working Language"), para.19: "Where a translation originates from the SPO and has been prepared by qualified translators or other similarly qualified staff, it shall be labelled as 'SPO Translation'."
[56] Verification Deadline Request, para.8.
[57] For example, [REDACTED].
[58] See *e.g.* Lai 2023, pp.5-6, indicating that language versions should be shown side-by-side; while voice attribution should be treated as a separate question from the words spoken, with transcripts using codes to identify speakers. See also NAJIT, pp.6-7, 8-9, 11.

they are important in transcripts of covertly recorded forensic audio, to add context to the words spoken (by indicating timing, including of pauses), and to enable analysis and verification of transcripts (see further below at paragraph 99).[59] Timestamps are also the only way that different transcripts of the same audio can be compared. The lack of timestamps in the SPO's documents make it difficult and time consuming to compare the multiple disclosed versions ("revisions") relating to a given recording. A page and line reference for one version cannot be used to identify the relevant text in a different version.[60] More importantly, without timestamps it is impossible to use a transcript as an aid to the audio. Although most participants in this trial cannot speak Albanian, they should nonetheless be in a position to evaluate the tone of voice used for a given utterance, which may be crucial in differentiating conspiracy from banter. Indeed, the SPO's failure to reference audio material by reference to timestamps, for example in its Pre-Trial Brief, violates the Decision on Working Language, which requires that when audio or video is relied on, "the exact time slot" must be identified.[61] These formatting flaws demonstrate that good practices were not followed.[62]

54. **Thirdly**, it is apparent that creating the SPO Transcripts from the audio recordings was difficult. The first recording device used was replaced because resulting audio was unintelligible; thereafter the SPO reported to the Single Judge that "audibility has improved considerably, although some portions of visits remain difficult to hear or inaudible."[63] All SPO Transcripts have been "revised" at least once; most multiple times (although not all versions have been

[59] Harworth 2018, p. 439.
[60] As exemplified by Verification Deadline Request, fn. 13.
[61] Decision on Working Language, para. 16(b).
[62] For an example of good practice guidelines from 2019, see NAJIT.
[63] KSC-BC-2023-12/INV/F00024, Prosecution report pursuant to Decision KSC-BC-2018-01/F00350, 28 June 2023 (Public Redacted Version 26 February 2025), para.6.

disclosed).[64] For example, [REDACTED].[65] The disclosure of "revisions" has continued since the submission of the SPO's List of Exhibits and BTM.[66]

55. Changes made through these "revisions" were not minor or immaterial (although identifying such changes has been difficult due to the lack of timestamps and the SPO's failure to systematically disclose versions with changes tracked).[67] Such manual comparisons as the Defence have been able to undertake show that the changes made are significant both in number and substance. For example, in the 6 October SPO Transcript:

(i) the "Revised" version includes the following text which appeared nowhere in the previous version:

[REDACTED].[68]

(ii) the "Revised 1" version includes the following text which appeared nowhere in the previous two versions:

[REDACTED].[69]

56. Despite this process of continuous and substantive re-transcription, the tendered versions of the SPO Transcripts and SPO Translations contain numerous references to "indiscernible" speech . For example, in the tendered version of the SPO Translation concerning the 6 October Visit (which is a translation of a second "revision"), the word "Indiscernible" appears 1224 times (over 185 pages).[70]

[64] **Annex 2**, Table 1.
[65] BTM Annex 1, [REDACTED].
[66] See **Annex 2**, Table 1. See also Section G below.
[67] [REDACTED].
[68] [REDACTED].
[69] BTM Annex 1, item [REDACTED].
[70] BTM Annex 1, item [REDACTED].

57. The Thaçi Defence made two requests for independent transcriptions from language professionals experienced in Albanian interpretation and translation. [REDACTED].[71] [REDACTED] (**Annexes 8 and 9**).

58. These factors raise serious concerns about the intelligibility of the audio, and thus the SPO's ability to produce reliable transcripts of it, as well as about the processes used by the SPO to attempt this.

a) SPO has given no indication of the SPO Transcripts' origins and authenticity

59. As set out above, the SPO must provide indications of the authenticity of material which it tenders. The BTM provides not a single reference to the origins or authenticity of the SPO Transcripts. For each of these items, the SPO's "Indicia of authenticity" (in BTM Annex 1[72]) refers exclusively to the authenticity of the *audio recordings*. No mention is made of the SPO Transcripts (or the SPO Translations) which are tendered together with the audio.

60. The SPO appears to consider that the authenticity of a transcript can simply be assumed. It is true that in some prior international cases, transcripts were accepted where the underlying audio was *prima facie* authentic, without any separate assessment of whether the transcripts could claim to faithfully reflect that audio.[73] In those cases the transcripts (as opposed to the audio itself) had not been challenged. Nonetheless, this approach is flawed. There are good reasons why the authenticity of a transcript must be separately established.

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[71] [REDACTED].
[72] Items [REDACTED].
[73] ICTR, *Prosecutor v Renzaho*, ICTR-97-31-T, Decision on Exclusion of Testimony and Admission of Exhibit, 20 March 2007; ICTY, *Prosecutor v Stanišić and Simatović*, IT-03-69-T, Decision on nineteenth Prosecution motion for leave to amend its rule 65 *ter* exhibit list (Mladić audio files) and motion for admission of excerpts from Mladić's audio files, 1 April 2011. That approach is also suggested in a Trial Panel I decision from *Case 05*, albeit without explanation or authority: *Prosecutor v Mustafa*, Decision on the submission and the admissibility of evidence, 25 August 2021, Public, para. 37. That was also the case when some SPO Transcripts and SPO Translations were admitted in Case 06: *Case 06*, KSC-BC-2020-06/F03216, TPII, Decision on Prosecution Motion for Admission of Obstruction Related Materials, 29 May 2025 (Public Redacted Version 26 August 2025). However, that is because the issues raised in the present submissions were not put before the Panel in Case 06.

61. Most fundamentally, a transcript cannot be equated to the contents of the audio recording. A transcript must be understood as evidence given by a person who listened to a recording, as to what he or she heard on the recording.[74] As the High Court of Australia explained:

> What is a transcript of a tape recording? It is a document setting out words which can be heard on playing over the tape. It is not a copy of the tape, but a written record of what has been heard.[75]

62. Accordingly, a transcript is a distinct form of evidence from the audio recording which it purports to reflect. Its authenticity is likewise separate. It is clearly possible for an audio recording to be accompanied by a transcript which *fails* to faithfully represent the contents of that audio.

63. Indeed, in linguistic science it is a truism that transcription is not mere transduction, and thus a transcript can never fully substitute for the speech which it seeks to represent.[76] A transcript can never reflect all "para- and extralinguistic signals" which speakers use in practice such as intonation, facial expressions and gestures.[77] Even where a recording and the speech it contains are clear, transcription involves multiple choices as to how to represent the heard speech.[78] Two independently produced transcripts of the same recording will almost invariably differ.[79] Such variation is not necessarily minor. In one experiment, eight "highly experienced professional transcribers"[80] each produced a transcript of the same informal 4-minute conversation among 5

[74] Fraser, House of Lords Evidence, section 3.2.
[75] *Butera v DPP Victoria* (1987) 164 CLR 180, per Mason CJ, Brennan and Deane J, para.7. See also *R v Hall & Ors* [2001] NSWSC 827, paras 32-35.
[76] See *e.g.* Fraser, House of Lords Evidence. section 3.3; Haworth 2018, p. 433-434, 435; Richardson, Haworth and Deamer, p. 678; Fraser 2104, p.10.
[77] Haworth 2018, pp. 436 *et seq*; Harrington, p.31.
[78] Fraser 2022, p.3 ("Consider, for some simple examples: whether to include or omit false starts, self-corrections or hesitation markers; whether to represent colloquial or dialectical expressions with standard spelling or special symbols.") See also Richardson, Howarth and Deamer; Harrington 2024, p. 32.
[79] Fraser 2022, p.3.
[80] Love and Wright, p. 4.

persons: the resulting transcripts varied dramatically in contents and even length (from 656 to 883 words; and from 82 to 134 "turns"[81]).[82]

64. Accordingly, a transcript is a separate item of evidence from the audio recording which it purports to represent. Its origins and authenticity must be separately established. The SPO cannot be permitted to tender the SPO Transcripts without providing the Single Trial Judge with information about their origins (and therefore their authenticity) – and indeed without having disclosed such information to the Defence, even on explicit request.[83]

b) The SPO Transcripts can only be tendered through their creator(s)

65. For the reasons explained above, a transcript amounts to a written account from a person who has listened to a recording as to what that person heard. The fact that a transcript is not in the format of a witness statement does not alter this.

66. Pursuant to Rule 141(1), witness testimony must be given in person. Accordingly, the SPO Transcripts cannot be tendered from the bar table. Their creators must be called and made available for cross-examination as to the contents of the SPO Transcripts and the means by which those contents were determined.

67. A relevant precedent can be seen in the ICTY's approach to intercept evidence. Such evidence was presumptively to be tendered by calling its creators to testify at trial, with bar table motions only available sparingly to fill "gaps" where necessary.[84]

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[81] A "turn" refers to a continuous period of speech from one speaker before the next speaker begins speaking.
[82] Love and Wright.
[83] See paragraph 34 above.
[84] First *Karadžić* Bar Table Decision, para. 13; Second *Karadžić* Bar Table Decision, paras 8, 14.; ICTY, *Prosecutor v Tolimir*, IT-05-88/3-T, TCII, Decision on Prosecution's Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para. 14. See also decisions from other cases indicating that intercepts were admitted by calling their creators so that the *prima facie* reliability of the intercepts could be ascertained: ICTY, *Prosecutor v Blagojević and Jokić*, IT-02-60-T, TCI, Decision on the Admission into

c) The transcripts are unreliable regarding *the words spoken* and other sounds described

68. As set out above, tendered evidence is only admissible if shown to be *prima facie* reliable.[85] Not only has the SPO provided *no indicators* of the reliability of the SPO Transcripts; several factors indicate that these documents are *unreliable*.

69. The Defence notes that the reliability of a transcript will be influenced by multiple factors.[86]

70. One set of factors relates to the underlying audio recording, and how easily understood it is. Covert recordings tend to be difficult to understand[87] (in contrast to other kinds of recordings, such as court audio[88]), with environmental recordings often being even less distinct than telephone intercepts.[89] Covert recordings of informal conversations often feature overlapping and incomplete speech, and because speakers rely on immediate context to understand each other, a listener to the subsequent audio who lacks that context (and, for environmental recordings, contemporaneous visual signals) will find it more difficult to understand.[90] An accompanying video can alleviate the latter difficulties;[91] however here there are no videos. This tendency for covertly recorded forensic audio to be indistinct is precisely why a transcript is usually considered necessary to aid the tribunal of fact in understanding the audio.[92]

71. However, the quality of the underlying audio is only one factor of many which influences the content and quality of a transcript. Other factors include:

Evidence of Intercept-Related Materials, 18 December 2003, paras 21-26, 29; *Popović* Intercept Decision, pp.3, 14-17.
[85] Paragraph 37.
[86] For a list, see H. Fraser, House of Lords Evidence, section 3.3.
[87] Fraser 2022, p.8; Fraser and Loakes, p. 415.
[88] Fraser 2022, p. 7.
[89] Lai 2023, p.2.
[90] Fraser 2022, p. 5; Fraser, House of Lords Evidence, section 5.1.
[91] Fraser 2022, p.5.
[92] Fraser 2022, p. 8; H. Fraser, House of Lords Evidence, section 4.2.

(i) the transcriber's skill (including experience and aptitude) and knowledge of the language and dialect used by the speakers;[93]

(ii) the transcriber's knowledge of the context and content of the recordings;[94] and

(iii) whether there is any way, *external to the recording*, of verifying the transcript – for example using the memory of someone who was present (as is often done for court transcripts).[95]

72. Regarding the **first of these factors**, the Single Trial Judge has limited information about the [REDACTED] transcribers. As set out above at paragraph 34, the SPO has refused to disclose such information, other than general assertions in the Verification Deadline Request that the transcribers are highly experienced.[96] For example, nothing is known about the transcribers' tested skill levels; which legal systems their experience was gained in; or any history of involvement with forensic transcripts later found to have been flawed.

73. Regarding the **third factor**, the SPO Transcripts were made without the involvement of any person who was present for the recorded conversations and who could verify from memory that the words recorded by the transcriber were in fact those which were spoken. (Note that this is a different process from reviewing transcripts *against the audio recordings*: paragraphs 86-88 below elaborate why such a process undertaken subsequently by the Defence could not cure the SPO Transcripts' unreliability.)

74. The **second factor** is the most complex, and requires elaboration. For the reasons to be explained, it is also highly problematic in this instance.

[93] Fraser 2022, pp5-6; Kettle and Fraser, p. 243.
[94] Fraser 2022, pp5-6.
[95] Fraser 2022, p. 6; This is a standard problem for covertly recorded forensic audio: Fraser, House of Lords Evidence, section 5.1; Fraser and Loakes, p. 415.
[96] Verification Deadline Request, para. 8.

75. As detailed in the scientific literature, a transcriber's knowledge of the context and content of the recordings is important to a reliable translation:

> Listening to recorded speech is harder than listening live, precisely because the recording is heard out of its original context. Thus even with a clear recording, a transcriber typically needs to be briefed about the content in order to hear it properly.[97]

76. Research demonstrates that speech which is completely clear when heard in context can become unintelligible when heard without context.[98] It follows that some knowledge of context is essential in understanding speech.

77. However, the contextual expectations of a transcriber can also create problems. Studies have demonstrated how contextual information "primes"[99] the listener, with the result that *unreliable* contextual expectations lead to "confident but inaccurate perception."[100] As explained by an expert in testimony to a UK House of Lords inquiry on this question, "the defining characteristic of indistinct audio is not that it is hard to hear, but that it is easy to mishear."[101]

78. Where a transcript is created from indistinct audio and then later used, priming[102] takes place at multiple points in this process.[103] For present purposes, it is relevant to consider the priming which occurs (a) first, when investigators create a transcript from audio (*contextual* priming); and (b) secondly, when other actors in a legal case attempt to review that transcript against the original audio (*textual* priming).

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[97] Fraser, House of Lords Evidence, section 3.2.
[98] Fraser and Loakes, p. 410 (citing Shockey 2003).
[99] The term "priming", used in this field, is related to suggestibility and cognitive bias: Fraser and Stevenson, p. 207; Harrington 2024, p. 23.
[100] Fraser 2022, p. 6, Fraser, House of Lords Evidence, section 3.2; Fraser and Loakes, pp412-413; Fraser 2014, p. 13.
[101] H. Fraser, House of Lords Evidence, section 5.1.
[102] Priming is "a process whereby the perception of speech (in an audio recording) can be subconsciously influenced by exposure to some type of 'information'": Harrington 2024, p. 37.
[103] For audiovisual presentations summarising the problem, see: H. Fraser, From investigation to trial, 17 November 2023; and Forensic Transcription Australia, Why we need forensic phonetics.

79. In the first step of this process, contextual priming occurs because an investigator listens to indistinct audio with a knowledge of the context, in order to understand it. This need for contextual knowledge to understand covertly recorded audio has led police and prosecutors in some legal systems to routinely use so-called "ad hoc experts" for transcription. These persons were police investigators, usually without a transcription background, but with a particular knowledge of the context of the case. Their "expertise" was said to arise from their repeated listening to the audio, and/or their background knowledge of the case, resulting in particular contextual knowledge.[104]

80. Using such police-produced transcripts *within an investigation* remains accepted practice;[105] however, *tendering them as evidence in court* is a separate question. In recent years, phonetic experts have unanimously highlighted the significant dangers in this approach: the very "expertise" claimed is the source of bias which taints the resulting transcript:

> The powerful effect of contextual expectations on perception means that unreliable contextual information can easily mislead perception, without conscious awareness. For these reasons, police transcripts are rarely fully accurate, and often egregiously wrong.[106]

81. Examples cited in one textbook include a drug case in which police mis-transcribed "German" as "hallucinogenic"; a murder case in which "show a man ticket" was transcribed by police as "shot a man to kill"; and a case in which "can't" was transcribed as "can".[107]

82. These transcription errors are not random. They are the result of priming, "which leads transcribers to perceive what they think the recording contains, rather than what it necessarily does contain".[108] It is important to recognise that priming is

[104] Fraser, 2022, p.9; Fraser and Stevenson, p. 206; French and Fraser, p.299; Fraser 2023, pp. 323-325.
[105] Fraser 2104, p. 17.
[106] Fraser 2022, p. 9.
[107] Coultard and Johnson, pp. 145, 147. For other examples, see Fraser and Stevenson; French and Fraser, p. 301; Fraser 2023, p.322.
[108] Love and Wright, pp.3-4.

necessary to comprehend indistinct audio, and is not *inherently* problematic; rather it becomes problematic where priming occurs from *unreliable information* because transcribers are not independent.[109] Police or prosecution transcribers will expect and thus unconsciously tend to hear (and thus record) inculpatory material, even when it is not there.[110] For this reason, experts advise that police *should not* be responsible for producing transcripts, because transcripts produced by them are likely to be unreliable.[111] The same criticism has been made, in a domestic criminal justice context, of the use of embedded police transcribers. Research shows that they exhibit the same priming effect as police officers,[112] likely as a result of the briefings given to them by investigators and the institutional context of their work.

83. In the present case the danger of relying on the words in the SPO Transcripts can be demonstrated by analogy. The SPO Transcripts also contain a number of descriptions of non-speech sounds heard by transcribers in the audio recordings. For example: "[REDACTED]",[113] "[REDACTED]",[114] and "[REDACTED]",[115] "[REDACTED]",[116] "[REDACTED]".[117] **Annex 10** shows a non-exhaustive list of similar noise descriptions extracted from the versions of the SPO Translations submitted through the BTM. Earlier versions contained even more speculative descriptions, such as "[REDACTED]"[118] and references to the noise of "[REDACTED]".[119]

[109] Fraser 2023, p.337.
[110] Fraser and Stevenson, esp. pp. 226-227; Fraser 2023, p. 322;
[111] Fraser 2022; Harworth 2018;
[112] Haworth 2018.
[113] BTM Annex 1, item [REDACTED].
[114] *Ibid*., line. [REDACTED].
[115] *Ibid*., [REDACTED].
[116] *Ibid*. [REDACTED].
[117] BTM Annex 1, item [REDACTED].
[118] REDACTED]
[119] *Ibid*., [REDACTED].

84. Regarding such descriptions of noises, it is obvious, that in the absence of video footage, these amount to subjective commentary or speculation by the transcribers. However, the same is true of the words which the transcribers say they have heard. These are nothing more than the words a particular listener *believes* that he or she has heard, and that in turn is a matter highly impacted by contextual expectations. The SPO's speculative interpretation of the words spoken are no more reliable than its speculative commentary about other sounds described.

85. Importantly, the influence of contextual factors on police transcribers occurs *unintentionally* and indeed *unknowingly*: transcribers do not typically intend to create unreliable transcripts, or even realise that they have done so.[120]

86. This problem might not be so significant if it were possible for other actors in a legal process[121] to subject a police transcript to post-hoc verification *against the recorded audio*. In reality however, this is virtually impossible, because this is a second point at which priming operates: textual priming. Research demonstrates that a person who listens to audio using a transcript as an aid will be significantly influenced by the transcript, such that they hear the words seen in the transcript, whether or not they exist in the audio:[122]

> …the act of viewing the transcript as it is being checked is likely to influence evaluators to hear in line with its suggestion, even if the transcript is manifestly wrong. Though very well established via numerous long-standing research findings, this is highly counterintuitive to those without a background in relevant branches of linguistic science, and evaluators are unlikely to have any awareness that they are being influenced.[123]

[120] Fraser, House of Lords Evidence, section 5.1; French and Fraser, p. 300;
[121] Regarding the specific challenges of an accused person attempting to later interpret his own speech in covertly recorded audio so as to produce an alternate transcript, see Fraser 2023, p326.
[122] Fraser and Stevenson; Fraser 2022, p.9; House of Lords Evidence, section 5.1; Kettle and Fraser, p. 243; Zhang; Fraser, Stevenson and Marks; Fraser and Kinoshita.
[123] Fraser, House of Lords Evidence, section 5.1

87. A listener who has been "primed" by a given transcript is unable to undo the influence of that transcript so as to give equal consideration to other potential interpretations.[124] Experts have explained that for this reason, asking defence lawyers to review a police transcript against the audio does not provide a useful safeguard.[125] For the same reason, the typical jury direction in common law systems – that the audio is the authentic source and juries should reach their own conclusions using the transcript only as an aid – is criticized by experts as unrealistic.[126]

> …there are no post-hoc safeguards that can protect the courts in the way the legal safeguards intend. Exposure to an unreliable transcript contaminates the understanding of the forensic audio as surely as exposure to biological material contaminates DNA analysis, and is even less likely to be detected via the trial process. […]
>
> The cause of these problems, clearly, is the legal concept that the transcript is "only assistance", to be handled as a matter of common knowledge. This makes the solution straightforward: recognise forensic transcription as a branch of linguistic science, and treat it as a matter for scientific opinion.[127]

88. This demonstrates that the approach taken by the ICC in *Bemba et al* was flawed. The ICC Appeals Chamber considered that the Trial Chamber's use of Prosecution transcripts was not problematic because the parties could review the transcripts and identify mistakes; and because the Trial Chamber reviewed the audio and transcripts together.[128] What both the Trial Chamber and the Appeals Chamber failed to appreciate was the effect of priming in any such review.

89. The same principles demonstrate why LSU cannot simply "verify" the SPO Transcripts or portions of them. Although verification of *court transcripts* is a core

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[124] Fraser and Stevenson, esp. p. 227; Fraser, Stevenson and Marks; Fraser and Kinoshita, esp. p. 149.
[125] Fraser, House of Lords Evidence, section 5.1; French and Fraser, p. 301; Fraser 2023, pp. 323-324, 327-328; Fraser 2014, p.14.
[126] Fraser, House of Lords Evidence, section 5.1; Fraser 2023, pp. 323-324, 328; Zhang; Fraser 2014, pp.15-16.
[127] Fraser, House of Lords Evidence, section 6.1.
[128] ICC, *Prosecutor v Bemba et al*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", ICC-01/05-01/13-2275-Red, 8 March 2018, paras 1338-1339.

part of LSU's work,[129] this is a qualitatively different undertaking than transcribing indistinct forensic audio.[130] This is partly because verification is typically done at the request of a person who was present and notices that the transcript does not match his or her *memory* of what was said. In addition, court recordings (audio, or at the KSC likely video) will rarely be indistinct: speakers use microphones, taking turns (rather than overlapping) and with the intention that their utterances will be recorded and be understood to a listener not present in court. None of these factors are present for forensic audio, including the highly indistinct recordings tendered by the SPO. Rather, these are heavily susceptible to the priming effect described above. An LSU transcriber who reads an SPO Transcript while listening to the audio will be primed, such that they are more likely to hear the words reflected in the transcript than they would otherwise have been.

90. Because of the operation of priming at these two points in a legal process (when the transcript is created, and when it is reviewed against audio), a substantial body of expert opinion has developed, explaining why the use of police transcribers produces unreliable transcripts which cannot be overcome through judicial safeguards such as allowing defence lawyers to review a transcript or a jury to read it alongside underlying audio.[131] These experts point to a number of miscarriages of justice which have resulted from the use of such transcripts.[132]

91. Instead, experts recommend that transcripts of indistinct audio be created by qualified experts, independent of the prosecution, in the same way that other forensic evidence reports are produced.[133]

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[129] KSC-BD-14/COR, Registry Instruction on Requesting Translation, Interpretation and Verification Services s. 10(1)(c).
[130] Fraser 2022, especially pp.7-9.
[131] Fraser, House of Lords Evidence, section 5.1; French and Fraser, p. 301; Fraser 2023, pp. 323-328; Fraser 2014, pp.14-16.
[132] Fraser 2011; Fraser 2018; Fraser 2023; see also *R v Murrell* [2001] NSWCCA 179.
[133] Fraser, House of Lords Evidence, section 5.2; Fraser and Loakes, p.417; Fraser 2014, p.18.

d) The transcripts are unreliable regarding *voice attribution*

92. The SPO has provided scant information regarding its approach to voice attribution.[134] Regarding the recorded DC phone calls, the BTM provides no explanation at all regarding attribution. Regarding the DC visits, the BTM[135] and at least one previous filing suggest that the DC visitor logs are relied on.[136] However, these only purport to show the visitors present in the DC at a given time. They do not claim to show which visitor(s) were in the recorded room; which detainees were in that room; or who among those present uttered particular words.

93. The SPO otherwise appears to rely on comparing the voices heard in material portions of the DC audio recordings with voices previously heard responding to certain names,[137] or with voices in recorded DC telephone calls.[138] In other words, the SPO has listened to two recordings of speech, and formed a view on similarities between them. No information has been disclosed as to *how* or *by whom*[139] this was done. Rather, the SPO's *opinions* as to voice attribution are presented in the SPO Transcripts as though they are facts.

94. Linguistic sciences demonstrate that voice attribution, like transcription, is not a matter of 'common knowledge' but something which should be done by an expert.[140] Forensic science is itself limited in what it can achieve regarding voice

[134] This applies also to the attribution of phone numbers to specific individuals.
[135] BTM Annex 1, submissions on items [REDACTED];
[136] KSC-BC-2023-12/F00373/COR, Corrected version of Prosecution Reply to 'Smakaj Response to Prosecution Submissions on Fourth Review of Detention', 15 July 2025 (Correction 16 July 2025; Public Redacted Version 18 July 2025), para.7.
[137] *Ibid*. See also **Annex 3**.
[138] *e.g.* BTM Annex 1, submissions on items [REDACTED].
[139] Eg - whether by transcribers or investigators, their relevant expertise, and their familiarity with the KSC cases and the alleged speakers.
[140] Fraser and Loakes, pp418-419.

identification.[141] Experiments demonstrate that even experienced listeners and transcribers will frequently mis-attribute voices.[142]

95. The SPO recognises that it is not appropriate for LSU staff to undertake voice attribution.[143] It has not explained how or why its own staff members – whether the two transcribers who created the SPO Transcripts[144] or others – are *better* placed to make these voice identifications. The SPO's own "revised" versions demonstrate that the SPO has not reliably been able to attribute voices in the DC audio recordings. In some cases, the persons identified as speaking particular words – and even the identified participants in the conversation – changed between these versions.[145]

96. Like the words included in the transcript, the SPO's voice attribution is effectively the (opinion) witness testimony of the SPO transcribers (or another person) who listened to the audio. Such evidence should not be accepted as though it had been scientifically established, and with no evidence given (or tested through cross-examination) as to the process by which this was done.

e) <u>The Defence has had no means of verifying the SPO Transcripts</u>

97. For the reasons set out above, the SPO Transcripts cannot simply be verified by a process of having an Albanian speaker (whether a member of LSU or otherwise) listen to the recorded audio *while reviewing the transcript*.

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[141] Fraser and Loakes, pp421-423.
[142] See *e.g.* Love and Wright, p. 7; and the overview in Yarmey.
[143] Verification Deadline Request, fn.3.
[144] *Ibid.*, para. 8.
[145] For example: One version of the SPO Translation for the 12 August visit attributes a significant amount speech to [REDACTE]. The version now tendered does not mention [REDACTED] as even present (BTM Annex 1, item [REDACTED], p.1). The speech previously attributed to [REDACTED] (with many words changed) is now attributed to [REDACTED] (BTM Annex 1, item [REDACTED], pp.68-71). The Defence notes that the first mentioned version (covering only part of the visit) is marked "Revised 1 ET", but was disclosed earlier than the tendered version. It is not known which version was created first.

98. A reliable verification could only be done by taking relevant segments of the audio recordings, and having them transcribed independently under expert supervision. Contextual information required to understand the audio would be provided in a careful, controlled, and documented manner by a person independent from the parties. Through this process, a more reliable transcript would be created which could be compared to the SPO Transcript. In principle, this could be done by LSU, although a process would need to be established for the provision of appropriate and neutral contextual information, preferably under expert guidance.

99. In the present case this has been impossible. Aside from time and resource constraints, the key impediment is that the SPO Transcripts do not include timestamps throughout.[146] The SPO Transcripts and SPO Translations can only be linked to the audio by reference to the relevant ".wav" file segment, each of which is five minutes long. Because of this, finding the audio of one specific disputed utterance alleged in an SPO Transcript requires listening for it through the five minute segment. Even for an Albanian speaker this would require multiple listens because of the indistinct nature of the audio. An attempt by a non-Albanian[147] Defence team member to merely check some of the non-speech sounds described in the SPO Translations was futile, as these could not be located within the relevant audio segment without timestamps. And because the material phrases from the SPO Transcripts cover a large number of segments, transcribing afresh all the segments containing these would involve transcribing many hours of audio. The time and cost required to undertake this task are prohibitive.[148] That is particularly so taking into account the contextualisation

[146] Timestamps are sporadically included, for example, where a period of lengthy silence is noted. See for example: BTM Annex 1, [REDACTED], but these are exceptional.
[147] The working language of these proceedings is English: Decision on Working Language. English versions of evidence must therefore be useable without an expectation of knowledge of Albanian.
[148] An industry standard used in some sources is that one minute of forensic audio can take around one hour to transcribe (before translation): Lai 2023, p.4, citing NAJIT, p.3.

process required for a transcriber to understand the audio (again, as demonstrated by the fact that the Thaçi Defence were told by two separate Albanian transcription services – one being LSU – that two "enhanced" segments of the 3 September visit recording were too indistinct to transcribe at all).

100. And crucially, even if the Defence *had* been well enough resourced to mirror the SPO's approach and task a Defence team member with creating a Defence transcript of the audio recordings, it would be impossible for the Single Trial Judge to determine which of the two transcripts should be preferred. This demonstrates the absurdity of what the SPO is asking. The SPO in effect requests that the Single Trial Judge simply assume that its transcripts are correct (even though that assumption is clearly contradicted by a considerable volume of research and scholarly writing).

101. For all of these reasons, the SPO Transcripts cannot be treated as reliable.

f) <u>The SPO Translations</u>

102. In the present case, the flawed SPO Transcripts (in Albanian) were used to produce the SPO Translations (in English). Clearly, if transcripts are unreliable, translations of them must also be unreliable.[149]

(iv) Conclusions and appropriate relief regarding the "Enhanced" Audio Segments, SPO Transcripts and SPO Translations

103. The analysis above indicates that the "Enhanced" Audio Segments, the SPO Transcripts, and the SPO Translations cannot be considered authentic or reliable.

104. All of these items were produced either for or by the SPO itself. Despite this, the SPO has failed to put material before the Single Trial Judge which details how they were produced, or on what basis such process can be trusted. It is impossible for the Single Trial Judge to be satisfied that any of these items is *prima facie* reliable.

[149] Fraser, House of Lords Evidence, section 5.3.

105. At the same time, there is a clear and significant possibility that these items will be prejudicial. If the SPO Transcripts and SPO Translations are admitted, it is difficult to conceive of how the Single Trial Judge could avoid being influenced by this unreliable material. Attempting to give the SPO Transcripts and SPO Transcriptions *less weight* would be a meaningless exercise – the Single Trial Judge cannot know which parts of these documents are accurate and which are not, and there is no other evidence in the case about what occurred in the DC visits. The lack of reliable transcripts and translations would be problematic in any criminal case, but here the impacts are amplified significantly by the centrality of the evidence in question, and the fact that the Single Trial Judge (and most participants in the trial) do not speak Albanian.

106. The Single Trial Judge should accordingly rule that the "Enhanced" Audio Segments, the SPO Transcripts, and the SPO Translations are all inadmissible in their entirety.

C. SEIZED DOCUMENTS AND RELATED MATERIALS

107. The SPO tenders several items said to be related to search and seizure operations. These include:

(i) a scan of a 10-page document which the SPO claims was seized from Mr Smakaj's car on 30 October 2023; and an English translation of its contents;[150]

(ii) photographs which the SPO claims were taken during the 30 October 2023 search.[151]

[150] BTM Annex 1, item [REDACTED].
[151] BTM Annex 1, item [REDACTED].

108. The SPO tenders the 10-page document not for the truth of its contents, but as real evidence.[152] It alleges that the item was recovered by an anonymous SPO officer(s) on 30 October 2024 in a car attributed to Mr Smakaj, and invites the Single Trial Judge to infer that Mr Smakaj took the document from the DC and left it in his car.

109. Used in this way, as *real evidence*, the relevance of the 10-page document depends solely on the circumstances in which it was found. Those circumstances are disputed and have not been demonstrated by the SPO.

110. Mr Smakaj does not accept that the document was located in his car and has stated through his Pre-Trial Brief that he never saw it before these proceedings.[153] Neither is it accepted that the photographs were taken during the 30 October 2023 search at Mr Smakaj's residence, or that they show "where the SPO located and seized"[154] the 10-page document.

111. Despite this, the SPO offers no witness who can speak to the circumstances, including the date, time and location, in which (i) the 10-page document was located; or (ii) the photographs were taken. Without a witness who can speak to these matters, the 10-page document is not relevant and has no probative value. Likewise, without any witness able to testify that the 10-page document was found in a given vehicle, a document said to show Mr Smakaj's ownership of that vehicle[155] also has no probative value.

112. As set out above in paragraph 15, the bar table should not be used to admit the central contested evidence in a case, particularly without explicit justification. The SPO provides no reason for *not* introducing this material through the SPO

[152] *May on Criminal Evidence* 6th Ed. § 2-05: "a document may be admissible as real evidence: the document is then produced, not to prove its contents, but to prove its existence"; admissibility depends upon establishing "some link between the document and the defendant".
[153] [REDACTED].
[154] BTM Annex 1, item [REDACTED] ("Relevance/probative value column").
[155] BTM Annex 1, item [REDACTED].

officer who allegedly located the 10-page document. Calling that witness would add no significant time to the trial, but would pay due respect to the Defence right to cross-examine adverse witnesses.[156]

113. The Defence objects to the admission from the bar table of these items, and that of any other document which refers to the 10-page document or relies upon its admission.

114. Last, but for the same reasons, materials produced by Witness 9,[157] whom the SPO is calling to testify, should be tendered through that witness, rather than from the bar table.

D. REGISTRY ITEMS

115. The BTM includes several items created by Registry staff. One such item is a Registry filing, purporting to describe the process for detainee printing at the DC.[158] Previous Defence filings have already addressed the reasons why this report is inadmissible as evidence.[159] The Defence reiterates those arguments.

116. If Registry activities are to be proved, this must be done through witness testimony from an *identified* Registry staff member.[160] This reflects Rule 141 and the basic principles set out in paragraph 15 above. The Defence does not accept the contents of the Registry filing. And yet, if it can be admitted in this form from the bar table, the Defence is deprived of the opportunity to challenge its contents through cross-examination.

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[156] *Ibid*., para. 14
[157] BTM Annex 1, items [REDACTED].
[158] BTM Annex 1, item [REDACTED].
[159] KSC-BC-2023-12/F00628, Joint Defence Response to Prosecution request for Rule 102(1)(b) disclosure & amendment of the exhibit list (F00614), 17 December 2025, Confidential, paras 27-32.
[160] ICC, *Prosecutor v Lubanga*, TCI, Redacted Decision on the Defence Application for the Chamber to Call an Associate Legal Officer from the Registry to Give Evidence, ICC-01/04-01/06-2189- Red, 14 December 2009, esp. para. 14. See the same approach at the STL: *In the Case against Al Jadeed S.A.L./New T.V. S.A.L. and Al Khayat*, STL-14-05, Transcript (Testimony of Mr Anthony Lodge), 20 April 2015, p. 4, line 11 to p. 47, line 6.

117. That the report is signed by the Registrar[161] does not change this. That signature does not indicate that all matters in the report are within the Registrar's *personal* knowledge. In this respect, signing a filing is different from swearing a witness statement. In any event, even if the report could be equated to a statement from the Registrar, she would need to be called to testify as to its contents.

118. In order for the material in the report to enter into evidence, it must be given by a person (whether the Registrar or another official) who is able to give a solemn declaration as to the truth of its contents, and who can be cross-examined on it by the Defence.

119. Relatedly, the DC "[REDACTED]",[162] extensively redacted, is inappropriate for tendering from the bar table. A Registry staff member who can testify to how this document was maintained and therefore to its accuracy must be used to introduce the document, and made available for Defence cross-examination.

E. EXPERT MATERIALS

120. Through the BTM, the SPO tenders a number of items prepared by forensic experts. These include:

(i) Seven reports from the [REDACTED] regarding the copying of telephones seized by the SPO during its investigations in this case; [163]

(ii) Nine documents from an External Forensic Company ("EFC") regarding searches undertaken on forensic images taken from DC devices in the context of this case.[164]

[161] See the SPO's arguments in: KSC-BC-2023-12/F00639, Prosecution reply to 'Public redacted version of Joint Defence Response to Prosecution request for Rule 102(1)(b) disclosure & amendment of the exhibit list (F00614)', 19 December 2025, Public, para. 4.
[162] BTM Annex 1, item [REDACTED].
[163] BTM Annex 1, items [REDACTED].
[164] BTM Annex 1, items [REDACTED].

121. Rule 149 prescribes procedures to be followed regarding the admission of expert evidence. Expert evidence is to be given by calling the expert to testify in person, unless the opposing Party has accepted the expert's report.[165] The admissibility of the expert's report is decided by the Panel only after the testimony and questioning of the expert.[166]

122. However, in the present case, the SPO does not rely on Rule 149 to admit these documents. No arguments are made on this in the BTM, however a footnote concerning the EFC Reports states:

> The SPO recognizes that as the reports are being tendered pursuant to Rule 138, they would not be categorised, nor obtain the weight associated with, expert reports. *See similarly* Decision F03602, KSCBC-2020-06/F03602, in particular paras 72, 95(e).[167]

123. The SPO thus appears to assert that it may circumvent Rule 149, and simply opt to tender under Rule 138 material which was produced for the SPO by forensic experts specifically for use as evidence in this case.

124. This raises the question of when material produced by an expert is covered by Rule 149, such that the expert must be heard in person; and when – conversely – such material may be tendered in writing under Rule 138. When that question arose in Case 06, the Appeals Panel ruled that Rule 149 applies to an expert witness who is:

> …specifically proffered by a Party or participant to provide testimony before the relevant panel in the proceedings in the capacity of an expert. Likewise, a report derives its "expert" status under Rule 149 of the Rules by virtue of being authored or produced by a witness qualified as an expert witness in the proceedings, in addition to meeting the relevant requirements for the admission of expert evidence.[168]

125. Accordingly, the difference between instances where Rule 138 may be used, and those where Rule 149 demands in-person testimony, is *whether the expert material*

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[165] Rule 149(3).
[166] Rule 149(4).
[167] BTM, footnote 43.
[168] *Case 06*, KSC-BC-2020-06/IA036/F00011/COR, AP, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, 8 October 2025, Public, para. 38.

was produced specifically for the proceedings at hand. The material at issue in the Case 06 Appeals Panel consisted of historical forensic reports originally produced for proceedings before other courts (ICTY, EULEX, UNMIK, etc.).[169] Such documents were held to be admissible under Rule 138. In contrast, the Appeals Panel considered that Trial Panel II was correct to *refuse* the admission of written reports tendered by Case 06 Victims' Counsel where the expert in question (Dr Lerz) had not been called to testify in person under Rule 149. This was because:

> …the reports in question were specifically prepared for the purpose of the trial proceedings in the present case and other cases before the Specialist Chambers... Therefore, the requirements of Rule 149 of the Rules applied Dr Lerz's expert reports and, as correctly noted by the Trial Panel, they could only be admitted through his oral testimony, unless otherwise agreed by the Defence pursuant to Rule 149(3) of the Rules.[170]

126. The SPO had itself made this argument in those appeal proceedings:[171]

> …a party does not have 'the power to control the applicability of Rule 149' and cannot seek to tender the reports by experts specifically commissioned by a Party or participant other than through Rule 149.[172]

127. Yet that is precisely what the SPO seeks to do in the present case. The materials listed above at paragraph 120 were all specifically prepared for the purpose of trial proceedings in this case.

128. In an attempt to circumvent the Appeals Panel ruling, and its own previously expressed position, the SPO now makes reference to a later Trial Panel II decision: "Decision F03602".[173] By that decision, Trial Panel II permitted one of the Case 06 Accused to tender material which had been produced for the SPO by

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[169] As seen *e.g.* in: *Case 06*, KSC-BC-2020-06/F03211/RED, TPII, Public Redacted Version of Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request, 29 May 2025, Public, paras 8, 19, 20, 26, 28, 32, 59, 63-64, 73, 77, 81, 105-106,.
[170] *Ibid*., para.47. See also: *Case 06*, KSC-BC-2020-06/F03305, TPII Decision on Victims' Counsel's Submission of Expert Reports and Request to Admit Them into Evidence, 3 July 2025, Public.
[171] *Case 06*, KSC-BC-2020-06/IA036/F00006, SPO, Prosecution response to 'Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211, F03213', 4 August 2025, Public, paras 12-13.
[172] *Ibid*., para. 13.
[173] BTM, footnote 43.

an expert in the context of Case 06, and without calling that expert.[174] The Panel did not explain how this decision could be reconciled with the Appeals Panel's ruling or Trial Panel II's earlier decision regarding the reports of Dr Lerz. Likewise the SPO, in relying selectively on Decision F03602, does not explain how it can be interpreted as consistent with the prior Appeals Panel ruling.

129. The Defence recognises that Decision F03602 concerned an expert report commissioned by the SPO and yet tendered by an opposing Party. In this respect the facts were slightly different from those concerning Dr Lerz's report. It is not clear from Decision F03602 whether this difference explains Trial Panel II's approach. But in any event, in this case the [REDACTED] reports and the EFC reports were all created at the request of the tendering Party (the SPO).

130. The Defence recognises that the EFC reports[175] were commissioned via the Registry, following judicial orders. That is immaterial. The creation of these reports, and preceding steps, were undertaken following, and only because of, specific SPO requests.[176] Had the SPO been able to directly obtain the underlying material through its own investigations, it would have instructed an IT expert directly. It was unable to do so only because (i) the material in question was in the control of the Registry;[177] and (ii) the Registry could not simply transfer the material to the SPO because of the risk that it included privileged material.[178] It is only because of these factors that the Registry, rather than the SPO, directly instructed the EFC. Nonetheless, this process was initiated by the SPO, and

[174] *Case 06*, KSC-BC-2020-06/F03602, TPII, Decision on Krasniqi Defence Second Application for Admission of Material through the Bar Table, 1 December 2025, Public, para. 72.
[175] BTM Annex 1, items [REDACTED].
[176] As detailed in: KSC-BC-2023-12/F00221, PTJ, Order Setting out a Mechanism to Review Preserved Material – Stage 1, 17 March 2025, Confidential (*Ex Parte* markings lifted 15 May 2025), paras 1-12. See also: KSC-BC-2023-12/F00357, PTJ, Decision Appointing Independent Counsel and Initiating Stage 2 of the Mechanism to Review Preserved Material, 1 July 2025, Confidential, paras 1-7.
[177] See KSC-BC-2023-12/F00141, PTJ, Decision on Prosecution Request for Records and Related Defence Submissions and Order for Further Submissions, 28 January 2025, Confidential (*Ex Parte* markings lifted 15 May 2025), paras 44-45.
[178] *Ibid*., paras 51-52.

undertaken pursuant to SPO instructions, for example regarding search queries.[179] Thus, despite the intercession of the Registry, the EFC reports were commissioned *for* the SPO, based on the SPO's requests, and specifically for use in the present proceedings.

131. The SPO's request to tender this material via Rule 138 is comparable to the circumstances in which Case 06 Victims' Counsel sought to tender a report produced for use in Case 06. There, both Trial Panel II and the Appeals Panel agreed that Rule 149 applies, and the material could not be tendered without calling the expert to testify.[180] The same applies to the [REDACTED] reports and the EFC reports.

132. The SPO should be permitted to tender these reports only pursuant to Rule 149, making the experts in question available for Defence cross-examination.

F. MATERIAL CONCERNING EVENTS OUTSIDE THE INDICTMENT

133. A significant number of items tendered by the SPO concern events outside the scope of the indictment confirmed in this case ("Indictment").[181]

134. The Indictment concerns five DC visits to Mr Thaçi alleged to involve the four co-Accused and specific other individuals ("Charged Visits"):

(i) A visit on 2 July 2023 (by Mr Fazliu);

(ii) A visit on 3 September 2023 (by Mr Kuçi),

[179] *Ibid.*, para. 58.
[180] *Case 06*, KSC-BC-2020-06/F03305, TPII, Decision on Victims' Counsel's Submission of Expert Reports and Request to Admit Them into Evidence, 3 July 2025, Public; *Case 06*, KSC-BC-2020-06/IA036/F00011/COR, AP, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, 8 October 2025, Public, para. 47.
[181] KSC-BC-2023-12/F00264/A01, SPO, Amended Confirmed Indictment, 16 April 2025, Confidential. See also KSC-BC-2023-12/F00264/A02, SPO, Public Redacted Amended Confirmed Indictment, 16 April 2025, Public.

(iii) Visits on 9 September 2023 (by Mr Smakaj, Mr Blerim Shala, and Mr Artan Behrami) and 7 October 2023 (by Mr Smakaj and Mr Artan Behrami);

(iv) A visit on 6 October 2023 (by Mr Kilaj and Mr Vllaznim Kryeziu).[182]

135. Although the Indictment includes the sweeping claim that "the Accused's actions, as detailed below, were part of a broader pattern of conduct intended to obstruct the *Thaçi et al.* case",[183] no detail is provided as to the content of this alleged "pattern of conduct" or its relevance to the charged offences. Accordingly, it is clear that the conduct charged in the Indictment is limited to that which concerns these five Charged Visits.

136. Despite this, the SPO tenders material concerning various *other* DC visits, said to have occurred during 2023 ("Non-Charged Visits"). Several of these visits are alleged to have occurred before the temporal scope of the Indictment (12 April to 2 November 2023[184]). This material includes DC records, audio recordings of some visits, telephone recordings said to relate to visits, and publicly available material.

137. As set out above (paragraphs 9-11), material is only admissible where it is relevant, *i.e.* where it concerns matters to be considered in evaluating the charges pleaded in the Indictment.

138. Evidence is not admissible in relation to "material facts not pleaded in the Indictment" or to "an allegation of which insufficient notice was given".[185] Trial Panel II addressed this question in Case 06:

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[182] Indictment, paras 6-22.
[183] Indictment, para. 8. And see also a passing reference to a "pattern of conduct" in Indictment, para. 23, also without factual elaboration or any explanation of relevance.
[184] Indictment, para. 7.
[185] Decision on Testimony of W02652, para. 22. See also *Case 06*, KSC-BC-2020-06/F02393/RED, TPII, Public Redacted Version of Decision on Selimi Defence Motion to Exclude Evidence of W04846, 19 June 2024, Public ("Decision on Evidence of W04846"), para. 18.

> …the Panel notes that the Indictment is the sole accusatory instrument so that it should give adequate notice of any allegation material to the Prosecution case, while other instruments (including the Pre-Trial Brief) could provide further specification of what is pleaded in the Indictment if clear and consistent. In no case could those instruments result in the addition of material allegations or the amendment of the charges.[186]

139. It follows that notice of material facts must have been provided via the Indictment itself. This is particularly so with regard to any allegations of an Accused's personal conduct.[187]

140. The SPO cannot expand the scope of the case by adding allegations concerning the conduct of the Accused beyond the Indictment, especially conduct outside the Indictment's temporal scope. Yet this is precisely what the SPO seeks to do by introducing evidence regarding multiple DC visits not mentioned in the Indictment. The inclusion in the Indictment of a generalised catch-all reference to a "pattern" does not suffice: the SPO could have mentioned the Non-Charged Visits in the Indictment, but chose not to do so.[188] Accordingly, the Non-Charged Visits do not form part of the case.

141. Evidence can at times be admissible although it relates to an allegation not pleaded in the Indictment. Such evidence has often been admitted where it is relevant to:

> … the chapeau requirements for crimes against humanity or the existence of a consistent pattern of conduct relevant to serious violations of international humanitarian law; or where it provides the Panel with useful background or contextual information.[189]

142. However, the SPO has not demonstrated that material concerning Non-Charged Visits is relevant in one of these ways. The SPO's explanations of the "Relevance/probative value" of this material falls broadly into two categories: (i)

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[186] Decision on Testimony of W02652, para. 21.
[187] *Ibid*., para. 23.
[188] Compare Trial Panel II's reasoning in Decision on Testimony of W02652, para. 28.
[189] *Case 06*, KSC-BC-2020-06/F02350/RED, TPII, Public Redacted Version of Decision on Thaçi Defence Request Related to W03170, 31 May 2024, Public, para. 25.

claims that this material provides "context"; and (ii) claims that the material demonstrates a "pattern" of "obstructive conduct". These are addressed in turn.

(i) Reference to events outside the Indictment to show "context"

143. In principle, evidence of events outside the Indictment can be relevant where it provides necessary context to the allegations charged. This principle applies "[w]here an event is not in itself part of the crime charged, but without which the account would be incomplete or incomprehensible."[190]

144. To be admitted for this purpose, evidence must be necessary to render other evidence about the charged allegations understandable.[191] It cannot be assumed that all material with some connection to allegations in the Indictment are relevant as context. The SPO must explain *how* the material provides necessary context. Merely asserting that a piece of evidence "provides context" does not satisfy this requirement.

(ii) Reference to events outside the Indictment to demonstrate a "pattern"

145. More fundamentally problematic is the SPO's request to admit evidence about the Non-Charged Visits on the basis that they demonstrate a "pattern" of behaviour from Mr Thaçi and/or others.

146. International criminal tribunals have typically refused to admit evidence that an Accused has committed wrongs other than those charged in the Indictment and/or has a "propensity" to certain types of wrongful behaviour. Trial Panel II has prevented the SPO from using evidence for this purpose.[192] The ICTR Appeals Chamber confirmed that:

[190] ICTR, *Prosecutor v Bagosora*, ICTR-98-41-T, TCI, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003, para. 10.
[191] *Ibid*., para. 34.
[192] Decision on Evidence of W04846, para. 23; Decision on Testimony of W02652, para. 29.

> …evidence of prior criminal acts of the Accused is inadmissible for the purpose of demonstrating a "general propensity or disposition" to commit the crimes charged.[193]

These decisions emphasize the highly prejudicial effect of such evidence, which will ordinarily outweigh its probative value.[194]

147. The same principles are applicable in the present case. The SPO seeks to admit evidence simply on the basis that it shows a "pattern" of conduct. No explanation is given as to how such a pattern is relevant to the crimes charged or why evidence of it should be considered probative. What *is* clear is that it would be highly prejudicial to admit evidence for the purpose of painting the Accused as serial offenders or persons of bad character. This would also contravene the Accused's rights to be promptly informed of the charges and to have adequate time for the preparation of their defence,[195] since the Defence would need to dedicate extensive additional resources to investigating and challenging these additional Non-Charged Visits.

148. Accordingly, evidence tendered by the SPO concerning Non-Charged Visits, including phone calls allegedly related to them, must be rejected as inadmissible.

G. ITEMS NOT ON THE SPO EXHIBIT LIST

149. A number of items tendered through the BTM are not included on the SPO's Exhibit List as initially filed, and the SPO has not obtained (or requested) leave to add them. These items may not be admitted into evidence unless the Panel permits the SPO to amend its Exhibit List, which requires that the SPO has given "timely notice" and showed "good cause".[196]

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[193] *Prosecutor v Bagosora et al.*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, AC, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence, 19 December 2003, para. 14. See also Trial Chamber I's explanation of the principle: ICTR, *Prosecutor v Bagosora*, ICTR-98-41-T, TCI, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003, paras 11-14.
[194] In addition to the decisions cited above, see also ICTR, *Prosecutor v Nshogoza*, ICTR-07-91-T, TCII, Decision on Prosecutor's Motion to Admit Evidence of a Consistent Pattern of Conduct, 20 February 2009, esp. para. 12.
[195] KSC Law, Article 21(4)(a) and (c).
[196] Rule 118(2).

150. One category of such items warrants more detailed submissions: these are some of the SPO Transcripts and six SPO Translations. For six of the eleven DC visits covered by the BTM,[197] the SPO tenders a different ("revised") version of the SPO Transcript and SPO Translation than that which was included in the original Exhibit List. This is shown in **Annex 2,** Table 2.

151. On 22 January 2026, the SPO filed an Updated Exhibit List,[198] following a Single Trial Judge Decision which granted leave to add certain specified items.[199] In the Updated Exhibit List the SPO included eight sets of SPO Transcripts and SPO Translations which are different versions from those in the original Exhibit List.[200] This is despite the fact that SPO has not made, and the Single Trial Judge's has not decided, any request to add these different versions to the Exhibit List.

152. This is impermissible. For the reasons explained above,[201] a transcript amounts to a testimonial account by a transcriber as to what he or she has heard in an audio recording. "Revising" a forensic transcript is not akin to simply submitting a more complete version (as occurs with a lesser redacted version, in which the content remains constant while more of it is revealed). Nor is it the same as revising a translation:[202] while different translations of a text are possible, nonetheless the words of the original are objectively discernible. That is not the case for a transcript of indistinct audio, where no objectively ascertainable "ground truth" exists regarding the words spoken.[203] Any new "revision" in fact amounts to a new statement from the transcriber which differs from the earlier account: it reflects a change in the transcriber's view about what words or other

[197] BTM Annex [REDACTED].
[198] KSC-BC-2023-12/F00685/A01, SPO, Annex 1 to Prosecution submission of amended exhibit list, 21 January 2026, Confidential.
[199] KSC-BC-2023-12/F00678, STJ, Decision on "Prosecution Request for Rule 102(1)(b) Disclosure & Amendment of the Exhibit List", 19 January 2026, Public.
[200] **Annex 2,** Table 2 identifies these items.
[201] Paragraphs 61-65.
[202] Defined in KSC-BD-13, Policy on Translation and Interpretation, 15 May 2019, Public, s. 3(2).
[203] Harrington House of Lords Evidence, p.6; Fraser and Loakes, p.416; Fraser 2020,p.89.

sounds were heard, from whom, and in which order. Successive "revised" transcripts do not increasingly approach some objective goal of completeness or reliability: they are simply different.

153. Accordingly, the SPO may not simply tender a transcript of given audio different from that included in its Exhibit List, relying only on the fact that it has given the two documents related names. Neither may it simply add different versions of the SPO Transcripts to its Exhibit List without leave. The Defence has a right to know which version of events the SPO relies on. If the SPO now wishes to tender different SPO Transcripts (and their different SPO Translations) from those included in its original Exhibit List, it must provide timely notice and good cause. At a minimum this must include explaining why new transcripts have been produced, how they differ from the documents in the Exhibit List, and on what basis the SPO believes that they are to be preferred over the previously relied-on versions.

VI. CONCLUSION AND RELIEF SOUGHT

154. The SPO will no doubt reply to these submissions by pointing to the short period remaining before trial, and by complaining of the time required for it to address the fundamental flaws in its BTM, as though the imperative for expedition can override fair trial rights. However, the situation is of the SPO's making. The SPO appears to have operated on an assumption that it could conduct the vast bulk of its case from the bar table, with deeply flawed evidence at the centre of that case. The consequences of that error must now be borne by the SPO, not by the Defence. The fact that the inadmissible material tendered in the BTM is both wide reaching and central to the SPO case are not reasons to be sympathetic to the SPO's predicament. To the contrary, these are reasons why that material cannot be permitted into evidence, because to do so would have exceptionally prejudicial consequences.

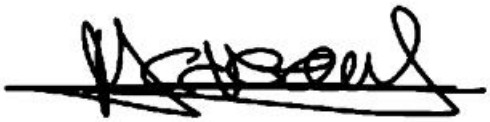
155. The Defence requests that the Single Trial Judge:

DENY the admission of the items which the Defence object to, as set out in Annex 1.

[Word count: 14,999 words]

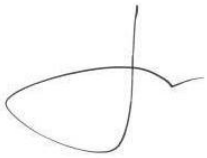
Respectfully submitted,

23 January 2026



Sophie Menegon

Counsel for Hashim Thaçi



Jonathan Elystan Rees KC

Specialist Counsel for Bashkim Smakaj

Iain Edwards

Specialist Counsel for Isni Kilaj

Alexander Admiraal

Specialist Counsel for Hajredin Kuçi

David A. Young

Specialist Counsel for Fadil Fazliu