

ANNEX 1 to
Public Redacted Version of
'Submission of Indictment for confirmation and related requests', filing KSC-BC-
2020-05/F00002 dated 14 February 2020

Public



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-05
Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 2 October 2020
Language: English
Classification: Public

Public Redacted Version of

'Indictment', dated 14 February 2020

Specialist Prosecutor's Office

Jack Smith

Counsel for the Accused

Julius von Bóné

The Specialist Prosecutor, pursuant to his authority under Articles 35(2)(i) and 38 of Law No.05/L-053 on Specialist Chamber and Specialist Prosecutor's Office ('Law'), charges:

SALIH MUSTAFA

with **War Crimes under International Law**, punishable under Article 14 of the Law, as set forth below:

THE ACCUSED

1. **Salih MUSTAFA** aka '**Commander CALI**' was born on 1 January 1972 in Prishtinë/Priština, Kosovo.
2. At all times relevant to this indictment, **Salih MUSTAFA** was Commander of the BIA Guerrilla unit ('BIA unit'), a unit within the Llap Operational Zone of the *Ushtria Çlirimtare e Kosovës* ('UÇK'), known in English as the Kosovo Liberation Army ('KLA').

STATEMENT OF FACTS

3. The BIA unit consisted of approximately 500 to 600 soldiers, which operated predominantly in and around large urban areas, such as Prishtinë/Priština and Obiliq/Obilić, and in the Gollak/Goljak region, which includes the village of Zllash/Zlaš. At all times relevant to this indictment, the BIA unit had a base at a compound consisting of a number of buildings in Zllash/Zlaš. The BIA unit used the compound as a safe house, and as a detention and interrogation site ('Zllash Detention Compound'). The crimes charged in this indictment were committed in a series of houses in the Zllash Detention Compound.
4. The charged crimes took place in the context of and were associated with an armed conflict in Kosovo between the KLA and forces of the Federal Republic of Yugoslavia ('FRY') and Republic of Serbia, including units of the Yugoslav Army ('VJ'), police, other units of the Ministry of Internal Affairs ('MUP'), and other groups fighting on behalf of the FRY and Serbia. This armed conflict existed at all times

relevant to this indictment. The victims of the crimes charged in this indictment were persons taking no active part in hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

Article 16(1)(a) of the Law

5. Through his acts and omissions, **Salih MUSTAFA** is individually criminally responsible for the crimes alleged in this indictment, which he committed, instigated, ordered, and/or aided and abetted. By using the word 'committed', the Specialist Prosecutor does not allege that **Salih MUSTAFA** physically committed all of the crimes charged. Committing encompasses **Salih MUSTAFA**'s participation in a joint criminal enterprise ('JCE').

Joint Criminal Enterprise

6. **Salih MUSTAFA** committed each of the crimes charged in this indictment in concert with others through their participation in a JCE, which existed from on or about 1 April 1999 to around the end of April 1999.

7. **Salih MUSTAFA** and other JCE members shared a common purpose to interrogate and mistreat persons detained at the Zllash Detention Compound. The common purpose involved the crimes of arbitrary detention, cruel treatment, and torture (Counts 1 to 3). **Salih MUSTAFA** shared the intent for the commission of these crimes with other members of the JCE.

8. It was foreseeable to **Salih MUSTAFA** that the crime of murder (Count 4) might be perpetrated by one or more members of the JCE, or by persons used by any member of the JCE to carry out the crimes involved in the common purpose. With the awareness that murder (Count 4) was a possible consequence of the implementation of the common purpose of the JCE, **Salih MUSTAFA** participated in the JCE, and thus, willingly took that risk.

9. Other members of the JCE included KLA members nicknamed Tabut or Tabuti or Kommandant Tabuti, Ilmi VELA, Bimi, Dardan, Afrim, and other KLA soldiers,

police, and guards present at the Zllash Detention Compound. Each member of the JCE, by their acts or omissions, contributed to achieving their common purpose. Alternatively, some or all of these individuals were not members of the JCE, but were used by members of the JCE to carry out crimes committed in furtherance of the common purpose.

10. **Salih MUSTAFA**, as commander of the BIA unit, significantly contributed to achieving the common purpose, in one or more of the following ways:

- a. Commanding and/or controlling KLA members present at the Zllash Detention Compound, including other JCE members and persons used by such JCE members to commit crimes in furtherance of the common purpose;
- b. Overseeing and/or participating in the operation of the Zllash Detention Compound;
- c. Participating in and/or ordering acts resulting in, continuing, or enforcing arbitrary detention, including as alleged in paragraphs 19-26 below;
- d. Participating in and/or ordering acts of cruel treatment and/or torture, including as alleged in paragraphs 19-26 below;
- e. Failing to take adequate measures to prevent and investigate crimes, and/or punish or discipline the perpetrators;
- f. Failing to take adequate measures to ensure the humane treatment of detainees at the Zllash Detention Compound; and/or
- g. Otherwise instigating or aiding and abetting charged crimes, including by his presence when crimes were committed and/or by the example of his own participation in crimes.

Physical Commission, Instigating, Ordering and Aiding and Abetting

11. **Salih MUSTAFA** is individually criminally responsible for physically committing, instigating, ordering, and/or aiding and abetting the crimes charged through the acts and omissions described in paragraph 10 above.

12. **Salih MUSTAFA** committed, including through the acts and omissions described in paragraph 10(b)-(f) above, the crimes charged in Counts 1, 2, and 3. He intended the commission of these crimes and/or, in relation to arbitrary detention, acted in the reasonable knowledge that the act or omission was likely to cause arbitrary deprivation of liberty.

13. **Salih MUSTAFA** instigated, including through the acts and omissions described in paragraphs 10(c)-(g) above, and/or ordered, including through the acts described in paragraph 10(c)-(d) above, the crimes charged in Counts 1, 2, and 3. He acted with intent to commit these crimes or was aware of the substantial likelihood that crimes would be committed in the execution of his orders and/or the carrying out of acts that he instigated.

14. **Salih MUSTAFA** aided and abetted, including through the acts and omissions described in paragraph 10(a)-(g) above, the crimes charged in Counts 1, 2, and 3. He was aware of the probability that these crimes would be committed and that his acts or omissions would contribute to their commission.

Article 16(1)(c) of the Law

15. In the alternative, **Salih MUSTAFA** is individually criminally responsible as a superior pursuant to Article 16(1)(c) of the Law for the crimes charged in this indictment.

16. As set out above, at all times relevant to this indictment, **Salih MUSTAFA** was Commander of the BIA unit, which had a base at the Zllash Detention Compound. In this capacity and pursuant to his *de facto* authority as an acknowledged leader at the Zllash Detention Compound, he exercised both *de jure* and *de facto* command and control over the KLA members that committed the crimes charged in this indictment.

The term 'committed', as used in the context of Article 16(1)(c) of the Law, includes all modes of liability covered by Article 16(1) of the Law.

17. **Salih MUSTAFA** knew or had reason to know that crimes were about to be committed or had been committed by certain KLA members under his effective control through numerous sources, including:

- a. his involvement in the commission of such crimes;
- b. his presence at the Zllash Detention Compound, including when such crimes were being committed;
- c. his receipt of information about the commission of such crimes; and/or
- d. his personal observation of evidence of the commission of such crimes.

18. **Salih MUSTAFA** failed to take the necessary and reasonable measures to prevent the commission of the crimes charged in this indictment by KLA members under his effective control and/or to punish the perpetrators thereof. The following acts and omissions of **Salih MUSTAFA** demonstrate his failure to take such necessary and reasonable measures:

- a. his failure to order or initiate genuine or adequate investigations into, or to take other genuine and adequate measures to address, allegations of the commission of crimes by certain KLA members present at the Zllash Detention Compound;
- b. his failure to report information about the commission or possible commission of crimes by certain KLA members present at the Zllash Detention Compound to appropriate authorities;
- c. his failure to discipline, dismiss, or demote KLA members who were involved in the commission of crimes and/or who failed to prevent or punish the commission of crimes by their subordinates;
- d. his failure to issue the orders that were necessary and reasonable in the circumstances to prohibit or put a stop to the commission of crimes by KLA members present at the Zllash Detention Compound; and/or

- e. his failure to take other adequate measures, such as ensuring adequate training and establishing or implementing necessary regulations and procedures, to ensure that KLA members present at the Zllash Detention Compound would not commit crimes.

CHARGES

COUNTS 1, 2 and 3

ARBITRARY DETENTION, CRUEL TREATMENT and TORTURE

19. From on or about 1 April 1999 to on or about 19 April 1999, at the Zllash Detention Compound, **Salih MUSTAFA**, individually and in concert with others, instigated, ordered, committed, and/or aided and abetted the crimes of arbitrary detention, cruel treatment, and torture. **Salih MUSTAFA** also knew or had reason to know that the crimes of arbitrary detention, cruel treatment, and torture were about to be committed or had been committed by his subordinates, and failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
20. **Salih MUSTAFA** and certain other KLA members deprived at least six persons of their liberty without due process of law at the Zllash Detention Compound.
21. **Salih MUSTAFA** and certain other KLA members established and maintained inhumane detention conditions, which were characterised by inadequate provisions of food, water, sanitation and hygiene, bedding and other accommodation, and medical care.
22. **Salih MUSTAFA** and certain other KLA members assaulted detainees both physically, including through beatings, and psychologically, including through threat of death and serious bodily injury, humiliation, discrimination on political grounds, intimidation, harassment, interrogation, and forced or coerced statements and confessions. Detainees were physically and psychologically assaulted in front of other detainees.

23. **Salih MUSTAFA** and certain other KLA members beat detainees with metal bars, baseball bats, wooden logs, and other instruments; burned them with candle wax and irons; gave them electric shocks; and cut them with knives.

24. On at least three occasions, **Salih MUSTAFA**, together with certain other KLA members, interrogated and physically assaulted at least two detainees. **Salih MUSTAFA** ordered other KLA members present to beat these detainees. **Salih MUSTAFA** and certain other KLA members punched, kicked, and severely beat these detainees with baseball bats, sticks, and the handle of a hatchet. On one occasion, **Salih MUSTAFA** [REDACTED] and told him he was to be killed.

25. The acts and omissions described above, considered alone or together, caused serious mental and/or physical suffering or injury to the victims, and/or constituted a serious attack on human dignity.

26. Through acts and omissions described above, **Salih MUSTAFA** and certain other KLA members inflicted severe pain or suffering with the aim of obtaining information or confessions, punishing, intimidating or coercing the victims, and/or discriminating, including on political grounds, against the victims.

Salih MUSTAFA is individually criminally responsible for:

Count 1: ARBITRARY DETENTION, a WAR CRIME, punishable under Articles 14(1)(c), 16(1)(a) and 16(1)(c) of the Law;

Count 2: CRUEL TREATMENT, a WAR CRIME, punishable under Articles 14(1)(c)(i), 16(1)(a) and 16(1)(c) of the Law; and

Count 3: TORTURE, a WAR CRIME, punishable under Articles 14(1)(c)(i), 16(1)(a) and 16(1)(c) of the Law.

COUNT 4

MURDER

27. **Salih MUSTAFA** committed in concert with others the murder of a detainee on a date between on or about 19 April 1999 and around the end of April 1999. **Salih**

MUSTAFA also knew or had reason to know that the crime of the murder was about to be committed or had been committed by his subordinates, and he failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

28. **Salih MUSTAFA** was present when this detainee was initially brought to the Zllash Detention Compound. The detainee was then singled out by certain KLA members and was beaten and tortured more severely than the other detainees. [REDACTED].

29. During his detention, his family members made repeated enquiries concerning his fate, but received false, incomplete or no information. The detainee was last seen alive on or about 19 April 1999. [REDACTED]. His family never heard from him again. Around the end of April 1999, the BIA unit left Zllash/Zlaš. The mortal remains of the detainee were discovered in [REDACTED].

Salih MUSTAFA is individually criminally responsible for:

Count 4: MURDER, a WAR CRIME, punishable under Articles 14(1)(c)(i), 16(1)(a) and 16(1)(c) of the Law.



Jack Smith

Specialist Prosecutor

Friday, 2 October 2020

At The Hague, the Netherlands.