

ANNEX 1 to

Public Version of

**“Submission of revised Indictment for confirmation and related requests”, dated
18 March 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
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Public Redacted Version of

"Indictment", dated 18 March 2020

Specialist Prosecutor's Office

Jack Smith

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 Articles 14 and 16(1) of the Law, and **Other Crimes under Kosovo Law**, punishable under the Criminal Code of the Socialist Federal Republic of Yugoslavia ('FRY Code') and Articles 15(1) and 16(2) 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, and was a citizen of the Federal Republic of Yugoslavia ('FRY') at all times relevant to this indictment. His last known address is [REDACTED], Prishtinë/Priština, Kosovo. He has Kosovan nationality (personal number [REDACTED]).
2. At all times relevant to this indictment, **Salih MUSTAFA** was the 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

Contextual Elements

3. The crimes charged in this indictment took place in the context of and were associated with an armed conflict in Kosovo between the KLA and forces of the FRY and Republic of Serbia, including units of the Yugoslav Army ('VJ'), police and other units of the Ministry of Internal Affairs ('MUP'), and other groups fighting on behalf of the FRY and Serbia.

4. The KLA had a command structure, controlled territory and planned and conducted operations in Kosovo. Armed hostilities, involving numerous forces, occurred before, during and after the period relevant to this indictment, in locations throughout Kosovo.

5. 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 operated from 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 by certain KLA members against persons detained at the Zllash Detention Compound. The victims of these crimes were all FRY citizens and were persons taking no active part in hostilities.

6. **Salih MUSTAFA** was aware of the factual circumstances of the armed conflict and knew that the victims were persons taking no active part in hostilities.

Modes of Liability

7. Between approximately 1 April 1999 and around the end of April 1999, **Salih MUSTAFA** and certain other KLA soldiers, police, and guards shared a common purpose to interrogate and mistreat detainees at the Zllash Detention Compound. The common purpose involved the crimes of arbitrary detention, cruel treatment, torture, and murder.

8. **Salih MUSTAFA** shared the intent for the commission of these crimes with other members of this joint criminal enterprise ('JCE'). Alternatively, it was foreseeable to **Salih MUSTAFA** that the crime of murder 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 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 soldiers 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 the 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, directing, controlling and/or otherwise influencing 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 paragraph 18 below;
- d. Participating in and/or ordering acts of cruel treatment and/or torture, including as alleged in paragraphs 22-25 and 28 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.

11. Through these same acts and omissions, **Salih MUSTAFA** provided practical assistance, encouragement and/or moral support, which had a substantial effect on

the perpetration of the crimes charged in this indictment. He was aware of the probability that these crimes would be committed and that his acts or omissions would contribute to their commission.

12. Through the acts and omissions alleged in paragraphs 18, 22-25, and 28, **Salih MUSTAFA** physically committed acts continuing and enforcing arbitrary detention, and of cruel treatment and torture. 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. In the alternative, **Salih MUSTAFA** is individually criminally responsible as a superior.

14. At all times relevant to this indictment, **Salih MUSTAFA** was Commander of the BIA unit and 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 superior responsibility, includes all modes of liability covered by Article 16(1) of the Law and Articles 18-26 and 30 of the FRY Code.

15. **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.

16. **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.

Illegal or Arbitrary Arrest and Detention

17. Between approximately 1 April 1999 and 19 April 1999, **Salih MUSTAFA** and certain other KLA members, including soldiers nicknamed 'Tabut' or 'Tabuti' or 'Kommandant Tabuti', 'Ilmi VELA', 'Bimi', 'Dardan', 'Afrim', deprived at least six persons of their liberty without due process of law at the Zllash Detention Compound. They were held under guard, including in a locked stable, and subjected to acts of cruel treatment and torture, as described in paragraphs 20-26 and 28 below. These persons were arrested and detained without legal basis, not informed of the reason

for their arrest or detention, and/or had no opportunity to challenge the basis for their detention.

18. **Salih MUSTAFA** participated in acts enforcing and continuing arbitrary detention at the Zllash Detention Compound, including through his oversight of the Zllash Detention Compound and acts of cruel treatment and torture of detainees, as described in paragraphs 22-25 and 28 below.

19. As set out in paragraphs 8, 11-12 and 15 above, **Salih MUSTAFA** had the requisite intent and knowledge for the crime of arbitrary detention.

Cruel Treatment

20. Between approximately 1 April 1999 and 19 April 1999, **Salih MUSTAFA** and certain other KLA members, including soldiers nicknamed 'Tabut' or 'Tabuti' or 'Kommandant Tabuti', 'Ilmi VELA', 'Bimi', 'Dardan', 'Afrim', established and maintained inhumane detention conditions at the Zllash Detention Compound. These conditions were characterised by deprivation of liberty without due process of law, as set out in paragraphs 17-18 above, and inadequate provisions of food, water, sanitation and hygiene, bedding and other accommodation, and medical care.

21. In addition, between approximately 1 April 1999 and 19 April 1999, **Salih MUSTAFA** and certain other KLA members, including soldiers nicknamed 'Tabut' or 'Tabuti' or 'Kommandant Tabuti', 'Ilmi VELA', 'Bimi', 'Dardan', 'Afrim', routinely assaulted detainees at the Zllash Detention Compound both physically, including through beatings with various instruments, burning and the administration of electric shocks, and psychologically, including through threat of death and serious bodily injury, fear, 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. Some were urinated on in front of other detainees during their detention.

22. The detainees at the Zllash Detention Compound were beaten on an almost daily basis. **Salih MUSTAFA** took no measures to prevent or curtail the violence, or to otherwise assist or ensure the humane treatment of the detainees.

23. In or about early April 1999, **Salih MUSTAFA**, together with other KLA members, including soldiers nicknamed 'Tabuti', 'Ilmi Vela', 'Dardan' and 'Afrim', interrogated and beat [REDACTED]. **Salih MUSTAFA** slapped, punched, and kicked [REDACTED], and ordered other KLA members present to beat him with a baseball bat and with the handle of a hatchet.

24. On or about [REDACTED], **Salih MUSTAFA**, together with other KLA members, including a soldier nicknamed 'Tabut', interrogated and beat [REDACTED] and ordered others to beat him. [REDACTED] was kicked, punched and beaten with sticks. **Salih MUSTAFA** [REDACTED] [REDACTED], and told him that he was a spy and that he was to be killed.

25. In a separate incident to that described in paragraph 24 above, **Salih MUSTAFA**, in the presence of other KLA members, interrogated [REDACTED] about his knowledge of the identities of thieves and spies, and beat him with a baseball bat all over his body, causing him severe mental harm and severe physical injuries.

26. 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. These acts and omissions violated the fundamental rights of the victims to liberty and security of person, freedom of movement, due process of law, and freedom from discrimination on political grounds. **Salih MUSTAFA** and certain other KLA members tried to force the victims to act against their will and conscience. As a result of their treatment at the Zllash Detention Compound, the victims lost consciousness, sustained broken bones, were humiliated, disfigured, seriously bruised, burned and wounded, covered in blood, and had psychological and physical conditions that continued following their release.

27. As set out in paragraphs 8, 11-12, and 15 above, **Salih MUSTAFA** had the requisite intent and knowledge for the crime of cruel treatment.

Torture

28. Through the acts and omissions described in paragraphs 20-26 above, **Salih MUSTAFA** and certain other KLA members, including soldiers nicknamed 'Tabut' or 'Tabuti' or 'Kommandant Tabuti', 'Ilmi VELA', 'Bimi', 'Dardan', 'Afrim', 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. During the acts and omissions described above, **Salih MUSTAFA** and certain other KLA members, including soldiers nicknamed 'Tabuti', 'Ilmi Vela', 'Dardan' and 'Afrim', questioned the detainees, and accused the victims of having collaborated with the Serbian authorities, and/or of not supporting the KLA.

29. As set out in paragraphs 8, 11-12, and 15 above, **Salih MUSTAFA** had the requisite intent and knowledge for the crime of torture.

Murder

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

[REDACTED]

[REDACTED].

31. During his detention, his family members made repeated enquiries concerning his fate, but received false, incomplete, or no information. [REDACTED] was last seen alive on or about 19 April 1999. [REDACTED]

[REDACTED]

[REDACTED]. His family never heard from him again. Around the end of April 1999, the BIA unit left Zllash/Zlaš. The mortal remains of [REDACTED] were discovered in

32. As set out in paragraphs 8, 11, and 15 above, **Salih MUSTAFA** had the requisite intent and knowledge for the crime of murder.

STATEMENT OF CRIMES

33. Through the acts and omissions described in paragraphs 12, 18, 22-25, and 28 above, **Salih MUSTAFA** physically committed the crimes of arbitrary detention, cruel treatment and torture. Through the acts and omissions described in paragraphs 7-11, 17-18, 20-26, 28, and 30-31 above, **Salih MUSTAFA** committed through his participation in a joint criminal enterprise and/or aided and abetted the commission of the crimes of arbitrary detention, cruel treatment, torture, and murder. Through the acts and omissions described in paragraphs 13-16, 17-18, 20-26, 28, and 30-31 above, **Salih MUSTAFA** also knew or had reason to know that the crimes of arbitrary detention, cruel treatment, torture and murder 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.

34. **Salih MUSTAFA** is individually criminally responsible, including under customary international law, for:

Count 1: ARBITRARY DETENTION at the Zllash Detention Compound between approximately 1 April 1999 and 19 April 1999, a WAR CRIME, punishable under Articles 14(1)(c), 16(1)(a), and 16(1)(c) of the Law, and Articles 22, 24, 26, 30, and 142 of the FRY Code, as incorporated in Articles 15(1)(a) and 16(2) of the Law;

Count 2: CRUEL TREATMENT at the Zllash Detention Compound between approximately 1 April 1999 and 19 April 1999, a WAR CRIME, punishable under Articles 14(1)(c)(i), 16(1)(a), and 16(1)(c) of the Law, and Articles 22, 24, 26, 30, and 142 of the FRY Code, as incorporated in Articles 15(1)(a) and 16(2) of the Law;

Count 3: TORTURE at the Zllash Detention Compound between approximately 1 April 1999 and 19 April 1999, a WAR CRIME, punishable under Articles 14(1)(c)(i),

16(1)(a), and 16(1)(c) of the Law, and Articles 22, 24, 26, 30, and 142 of the FRY Code, as incorporated in Articles 15(1)(a) and 16(2) of the Law; and

Count 4: MURDER at the Zilash Detention Compound between approximately 19 April 1999 and around the end of April 1999, a WAR CRIME, punishable under Articles 14(1)(c)(i), 16(1)(a), and 16(1)(c) of the Law and Articles 22, 24, 26, 30, and 142 of the FRY Code, as incorporated in Articles 15(1)(a) and 16(2) of the Law.



Jack Smith

Specialist Prosecutor

Friday, 2 October 2020

At The Hague, the Netherlands.