

ANNEX 2 to
Corrected redacted versions of KSC-BC-2020-05/F00002/A02

Public

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LEGAL ELEMENTS	REFERENCE(S) TO EVIDENCE
CRIMES	
War Crimes	
Contextual Elements	
(1) Non-international armed conflict	OSCE/KVM Reports, ¹ UNHCR Reports, ² KLA General Staff Communiqués, ³ KLA political declarations ⁴ and mobilisation orders/decisions ⁵ show that, in the period relevant to the Indictment, a non-international armed conflict existed in Kosovo between the KLA and forces of the FRY and Republic of Serbia, including VJ and MUP units, and other groups fighting on behalf of the FRY and Serbia. Serbian forces carried out offensives against the

¹ OSCE/KVM, Background Report dated 12 March 1999, IT-05-87-P00444 [Exhibit P444 in the ICTY *Milutinovic et al* case, IT-05-87]; OSCE/KVM Working Papers 26 February-4 March 1999, IT-05-87-P00680 [Exhibit P680 in the ICTY *Milutinovic et al* case, IT-05-87]; Selected pages of OSCE/KVM Daily Bluebook 1998-1999 (up to April 1999), 03524578-03525549 [Exhibit P1029 in the ICTY *Djordjevic* case, IT-05-87/1].

² UNHCR Report, Kosovo Crisis Update, 17 May 1999, 074222-074225; UNHCR Report, Kosovo Crisis Update, 28 May 1999, 074226-074231.

³ [REDACTED]
[REDACTED]; Communiqué no. 79 of the General Staff of the Kosovo Liberation Army, Pristina, 26 May 1999, Kosovapress, SPOE00055399-SPOE00055399-ET.

⁴ [REDACTED]
[REDACTED]; Political Declaration No. 33 of the General Staff of the Kosovo Liberation Army, Pristina, 25 March 1999, Kosovapress, SPOE00054441-00054442-ET.

⁵ KLA General Staff Order No.87 regarding general mobilisation, 31 March 1999, ordering, *inter alia*, that all between 18-50 years of age report for registration, SPOE00054517-00054518-ET at SPOE0005418, and SPOE00054519-00054522-ET at SPOE00054519-00054520-ET; KLA General Staff Order No.98 for ensuring completion during the general mobilisation of the Military Police of the KLA, 31 March 1999, SPOE00054519-00054522-ET, at SPOE00054520-00054521-ET; Decision no. 151 for the general mobilisation aimed at confronting the Serbian offensive and the final liberation of Kosovo, SPOE00054519-00054522-ET, at SPOE00054521-00054522-ET.

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	<p>KLA in April 1999,⁶ including against the KLA based in Zllash starting on or about 16-18 April 1999.⁷</p> <p>NEXUS</p> <p>The BIA unit operated in the urban areas of Pristina, Fushe Kosove and Obiliq.⁸ In Pristina, the BIA unit was divided into six guerrilla areas.⁹ BIA also had a presence in Butovc and Zllash within the Gollak region.¹⁰ Salih MUSTAFA aka CALI or Commander CALI estimated that prior to the NATO bombing in March 1999, the BIA unit had approximately 500 to 600 members.¹¹ The BIA units were involved in weapons supply, medical supplies, intelligence gathering and propaganda.¹² It also assisted other Operational Zones such as Drenica, Shala and Karadak with logistics.¹³</p> <p>During the time period relevant to the Indictment, BIA soldiers had a base in Zllash.¹⁴ Salih MUSTAFA aka CALI or Commander CALI Commander of the KLA BIA unit; he had soldiers under his command and himself led the BIA information gathering and the</p>
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⁶ Order no.455-151 to break up and destroy Siptar Albanian Terrorist Forces in the sector of Bajgora-Bare, 15 April 1999, IT-05-87-P01975 [Exhibit P1975 in the ICTY *Milutinovic et al* case, IT-05-87].

⁷ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 7, p.12. *See also* UNMIK Statement of [REDACTED], p.8.

⁸ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 2, p.4.

⁹ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 2, p.12.

¹⁰ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 3, p.12.

¹¹ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 2, p.9.

¹² Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 2, p.8.

¹³ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 2, p.8.

¹⁴ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 3, p.18; [REDACTED]

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	intelligence sector, ¹⁵ which included information on Albanians who were believed to be assisting/working with the Serbian forces. ¹⁶
(2) Awareness of factual circumstances establishing the existence of the armed conflict	Salih MUSTAFA and the perpetrators of the alleged crimes were members of the BIA unit, which, throughout the period relevant to the Indictment, were engaged in armed conflict with the Serbian forces. ¹⁷ Soldiers from the KLA BIA unit were involved in the monitoring and surveillance of Serbian forces; they used the base in Zllash in between carrying out this task. ¹⁸
Elements of Underlying Counts	
Count 1: Arbitrary Detention (Article 14(1)(c)/ Article 14(1)(c)(i))	
(1) Deprivation of an individual's liberty without due process of law	The detainees were kept in the stable of an old house, a sort of barn for animals, which was locked with chains. ¹⁹ There were guards at the door of the stable. ²⁰ None of the detainees

¹⁵ Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 19 November 2019, ██████, Part 1, p.32: 'I led intelligence myself, because this was the first mission. [...] I was in charge – number one in charge of collecting intelligence, and I was also the commander of the guerrilla unit.'

¹⁶ Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 20 November 2019, ██████, Part 6, pp.8-9, 10.

¹⁷ Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 20 November 2019, ██████, Part 8, pp.8-12; Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 19 November 2019, ██████, Part 4, p.3. *See also* the evidence cited under Counts 1-4.

¹⁸ Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 20 November 2019, ██████, Part 7, p.14-15; Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 20 November 2019, ██████, Part 6, pp.8-9, 10. *See also* Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 20 November 2019, ██████, Part 6, p.7.

¹⁹ *See* Transcript of SPO Interview with ██████, ██████, ██████, Part 2, p.14; UNMIK Statement ██████, ██████, ██████,

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²⁰ *See e.g.* Transcript of SPO Interview with ██████, ██████, ██████, Part 3, p.4; UNMIK Statement of ██████, ██████, ██████, ██████, ██████,

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	<p>were told that they were under arrest, or shown any paperwork/order or warrant, nor were they explained the reasons for their detention.²¹</p> <p>██████████</p> <p>██████████ was taken to a location in Zllash by armed members of the KLA, wearing black uniforms and bearing the insignia of a bird (Skifteri).²² On arrival at their destination, ██████████ was interrogated by a person who identified himself saying, 'I am Commander CALI,' and who asked ██████████ why he was in Zllash, and told him, 'You are lying. You've come with different intentions here.'²³ ██████████ was not told why he had been arrested nor was he shown a warrant or any order.²⁴</p> <p>██████████ said that, when he was put in detention, he found other detainees there, saying 'later on [...] they brought ██████████. And then they brought also ██████████, ██████████, he was released. I don't know where they took him. And with the rest of them, with the others, I stayed until the very end until I was released.'²⁵</p> <p>██████████ was detained in a stable with other detainees ██████████, ██████████ he said that he was released ██████████, ██████████, and that both ██████████</p>
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²¹ See e.g. Transcript of SPO Interview with ██████████, ██████████ Part 2, p.13; UNMIK Statement of ██████████, ██████████, ██████████ Transcript of SPO Interview with ██████████, ██████████ Part 4, p.6.

²² Transcript of SPO Interview with ██████████, ██████████ Part 2, pp.6-7.

²³ Transcript of SPO Interview with ██████████, ██████████, Part 2, pp.11-12.

²⁴ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.13.

²⁵ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.16.

²⁶ Transcript of SPO Interview with ██████████, ██████████, ██████████ Part 2, p.15.

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	<p>██████████ remained inside the stable and were not released with him ██████████.²⁷</p> <p>██████████ said that it was KLA soldier ██████████ who took them outside and told them to go away,²⁸ and that – ██████████</p> <p>██████████²⁹ He said that on release, they were given no release papers.³⁰</p> <p>██████████</p> <p>██████████ said that on ██████████ April 1999, he was taken from ██████████ by armed KLA military police who told ██████████ that he was wanted for questioning in Zllash.³¹ The soldiers who took ██████████ to Zllash in a vehicle were armed and did not give him any reason for taking him.³² On route, the KLA soldiers ██████████ ██████████</p> <p>██████████ ██████████.³³</p> <p>██████████ stated, 'I was kept in a stable, a place where they keep animals in the village of Zllash.'³⁴ When he was put in the stable, he said that he recalled the names ██████████</p> <p>██████████, like a nickname, from</p>
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²⁷ Transcript of SPO Interview with ██████████, ██████████, ██████████ Part 3, p.9. See also UNMIK Statement of ██████████, undated, ██████████ UNMIK statement, which states '██████████' at ██████████.

²⁸ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 3, p.9.

²⁹ Transcript of SPO Interview with ██████████, ██████████, ██████████ Part 3, p.10.

³⁰ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 3, p.13.

³¹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, pp.4-6.

³² Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, p.8.

³³ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, p.8.

³⁴ UNMIK Statement of ██████████, ██████████, ██████████

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██████████³⁵ and that others were brought after him, a total of seven detainees held together in that stable.³⁶

██████████ stated that after some 18 days, on the day of the offensive, some people opened the doors of the stable, one went to the door and called people out, telling them to go. ██████████, when he was finally called to go out.³⁷

██████████ was taken to Zilash by KLA ██████████.38 ██████████

[REDACTED].³⁹ He thought that it was in March or April.⁴⁰ [REDACTED]

[REDACTED] .⁴¹ [REDACTED]

[REDACTED] '42 [REDACTED]

_____ .⁴³ _____

[REDACTED] They are asking for you in Zilash.’⁴⁴ [REDACTED] said that he and [REDACTED] other KLA [REDACTED]

³⁵ See Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, pp.14-15.

³⁶ UNMIK Statement of [REDACTED], [REDACTED], [REDACTED]

³⁷ See Transcript of SPO Interview with [REDACTED], [REDACTED], Part 3, p.7.

³⁸ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] Part 1, pp.9-10.

³⁹ Transcript of SPO [REDACTED], Part 3, p.5.

⁴⁰ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.2.

⁴¹ Transcript of SPO [REDACTED], Part 3, p.6.

⁴² Transcript of SPO [REDACTED], Part 3, p.16.

⁴³ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.9.

⁴⁴ Transcript of SPO [REDACTED], Part 3, p.11.

[REDACTED].⁴⁵ [REDACTED]
[REDACTED]
[REDACTED]⁴⁶ He continued: [REDACTED]
[REDACTED]
[REDACTED].⁴⁷

Salih MUSTAFA

Salih MUSTAFA aka 'CALI' or 'Commander CALI' said that he was aware of KLA soldiers being detained in Zllash which 'was in a room in a village improvised for these detentions. [...] It was a typical village house. And one of the rooms in this house was a place for detaining people for one, two three days.'⁴⁸ Describing the house where this took place, he said: 'It was just an underground, sort of like half a floor underground and then the one floor above ground [...] An old house.'⁴⁹ He visited this place 'many times [...] because this was the house where my soldiers slept too. We used this house as a safe house.'⁵⁰ He said that his soldiers used the 'first two rooms [...] upstairs.'⁵¹ 'Myself and my soldiers had under control these two particular rooms, which we used for ourselves.'⁵² Asked about the house being used as a detention facility: 'From what I know, just the one room. They had soldiers that had been detained who had violated the rules [...] On the ground floor, yes. In the second

⁵² Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, p.5.

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	<p>room.⁵³ He said that he witnessed soldiers being detained and that he recalled soldiers being detained there on two or three occasions.⁵⁴ He had heard from unnamed soldiers who were there that 'they had stopped some thieves that are harming the local population [...] And that the civilian population was being harmed from, one, from the Serbian forces; and secondly, from our own thieves.'⁵⁵</p> <p>Salih MUSTAFA aka 'CALI' or 'Commander CALI' when describing the house said: 'There were three rooms upstairs, and there were bars. It seemed like it had a balcony or a terrace, and downstairs there were other rooms.'⁵⁶ He drew a sketch and marked a room downstairs saying: 'And this is the room where I knew that soldiers were being detained'⁵⁷ [...] Everybody that was around there would call it the detention room.'⁵⁸</p>
(2) Intent to deprive an individual of liberty without due process of law or in the reasonable knowledge that the act or omission is likely to cause arbitrary deprivation of liberty	The intention of the perpetrators and Salih MUSTAFA is demonstrated by the deliberate manner in which detainees were brought to, held, treated at, and released from the Zllash Detention Compound over a period of approximately 18 days. ⁵⁹
(3) The victim is a person taking no active part in the hostilities	The victims were detained at the Zllash Detention Compound. ⁶⁰

⁵³ Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████ Part 7, p.6.

⁵⁴ Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████, Part 7, pp.6-7; Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████, Part 7, p.16.

⁵⁵ Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████ Part 7, p.18.

⁵⁶ Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████ Part 8, p.2.

⁵⁷ Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████ Part 8, p.4.

⁵⁸ Transcript of SPO Suspect Interview of ██████████ Salih MUSTAFA, 20 November 2019, ██████████ Part 8, p.6.

⁵⁹ See the evidence cited under Count 1, element (1) and Counts 2-4.

⁶⁰ See the evidence cited under Count 1, element (1).

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	<p>██████████ said, 'I worked ██████████. I was a child. I was not more than 18 years old.'⁶¹ ██████████.⁶² He said that it 'was CALA who said to me that I was a spy.'⁶³</p> <p>██████████ said of another detainee, ██████████, '██████████. They accused him – he was maltreated and they accused him of collaborating with Serbs.'⁶⁴</p> <p>██████████ was a villager ██████████ when he was arrested.⁶⁵ He said, 'Allegedly they beat me up because I was hanging out with Serbs and staying with Serbs and, according to them, they called me a spy.'⁶⁶</p> <p>██████████ said that ██████████ was not a member of the KLA.⁶⁷ ██████████ had remained in his village along with ██████████.⁶⁸ ██████████ had not worked at any stage for the Serbian institutions.⁶⁹</p>
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⁶¹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.13.

⁶² Transcript of SPO Interview with ██████████, ██████████, Part 2, p.12; UNMIK Statement of ██████████, undated, ██████████.

⁶³ UNMIK Statement of ██████████, undated, ██████████.

⁶⁴ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.33.

⁶⁵ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, p.5.

⁶⁶ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 4, p.5.

⁶⁷ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, p.7.

⁶⁸ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, p.10.

⁶⁹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 1, p.22.

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(4) Knowledge that the victim is a person taking no active part in hostilities	The perpetrators and Salih MUSTAFA participated in and were aware of the victims' detention and/or the circumstances of their arrest. ⁷⁰ The victims were interrogated because they were believed to be collaborators, friends of the Serbs, or spies or thieves. ⁷¹
Count 2: Cruel Treatment (Article 14(1)(c)(i))	
(1) An act or omission that causes serious mental or physical suffering or injury to, or constitutes a serious attack on human dignity	Mistreatment at the Zllash Detention Compound took the form of burnings with candles, electro-shocks through cables and electricity boxes, beatings with metal bars or wood logs/batons, ⁷² and [REDACTED]. ⁷³ [REDACTED] said: 'Out of 18 days, perhaps we kind of escaped beating for two to three days. Because every day, whoever would come, they would come and beat you up'. ⁷⁴ The beatings took place in the stable itself and upstairs. ⁷⁵ [REDACTED] said that 'when they would come down they would beat us up and they would leave. And then later on, if they wanted to, they would come and take you out of there and bring us upstairs.' ⁷⁶ 'If they wanted to beat you up there, they would beat you up in front of everybody else.' ⁷⁷ [REDACTED] described being beaten by [REDACTED]. ⁷⁸

⁷⁰ See the evidence cited under Count 1, elements (1), (3).⁷¹ See e.g. Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 2, p.12; UNMIK Statement of [REDACTED], undated, [REDACTED] Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 4, p.5.⁷² Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 2, p.17.⁷³ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.8-9.⁷⁴ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.16, 18.⁷⁵ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.18.⁷⁶ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.18.⁷⁷ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.19.⁷⁸ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 3, p.5.

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██████████ said that not only himself but also the other detainees were beaten up almost every day.⁷⁹ ██████████ witnessed ██████████ being beaten downstairs in the stable,⁸⁰ and saw that ██████████ were taken from the shed, brought upstairs, questioned, beaten, and then taken back to the shed.⁸¹ When asked if ██████████ could hear what was happening upstairs, he said that he 'could hear everything when they were screaming while they were being beaten up.'⁸²

██████████ said that he could hear through the wooden ceiling above ██████████
██████████

██████████⁸³ ██████████ described it: 'The room they were in was in the second floor while we were in the stable on the first floor. When they beat someone upstairs or somewhere else, we could hear it like it was there with us. It was more terrible when I heard the beatings of others on the second floor. These experiences have caused all of my problems now.'⁸⁴

██████████ said: 'They tortured us with these candles. They were keeping -- they were holding the candles like this in order to burn -- to burn us. Sometimes when they would take us upstairs to question us, they would beat us up. And they had some kind of a box where they would connect it to the electricity. And they would -- they would tie you to the electricity in order to -- and that would shake you -- shake the body.'⁸⁵ He said that they 'would plug that box into the electricity, and they would tie those wires that would come out of the box,

⁷⁹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.18.

⁸⁰ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.32-33.

⁸¹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.17.

⁸² Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.17.

⁸³ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.25-26.

⁸⁴ UNMIK Statement of ██████████, ██████████, ██████████

⁸⁵ Transcript of SPO Interview with ██████████, ██████████, Part 2, p.17.

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they would tie the wires to the feet -- to both feet.⁸⁶ [REDACTED] said: 'We were maltreated by these other people. [REDACTED]. And there were some others -- and some other soldiers as well, other soldiers that were there. [REDACTED]. There were [REDACTED] that -- I don't know their names.'⁸⁷

[REDACTED] described how [REDACTED]. He said: 'they would undress us. They would take the jumper off, and they would bring the candles close by so the candle was dripping on to the ski[n]'.⁸⁸ He said, [REDACTED].⁸⁹ The incidents with the candle burning and with the iron both happened upstairs above the stable.⁹⁰

[REDACTED] initial beating

[REDACTED] was beaten up as soon as he arrived in Zllash.⁹¹ He was taken to the second floor of the house, where there was 'the so-called commander there', who said 'I am Commander CALI'.⁹² [REDACTED] said: 'And this was how it was, because he was there in that room there. He was sitting down, and whoever brought me there, they said, 'commander, here he is. Commander, here, we brought this guy here.'⁹³

Salih MUSTAFA aka 'CALI' or 'Commander CALI' asked [REDACTED] why he had come to Zllash, and, [REDACTED], told him:

⁸⁶ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.21.

⁸⁷ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.29.

⁸⁸ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, p.4.

⁸⁹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, p.4.

⁹⁰ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, p.4.

⁹¹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.13.

⁹² Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.11-12.

⁹³ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 4, p.5.

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'You are lying. You've come with different intentions here.'⁹⁴ When ██████ denied this, Salih MUSTAFA aka 'CALI' or 'Commander CALI' 'stood up and he started slapping me. He kicked me a couple of times. ██████. So whatever soldier would come there, that person would beat you up. Some would punch you. Someone would kick you.'⁹⁵ He said they beat him up 'until I lost consciousness.'⁹⁶ Regarding this first beating, ██████ said of CALI; 'he started to beat me, punched me, kicked me and ordered four others to beat me ██████. They were: ██████.'⁹⁷ He said: 'After they beat me, I was sent in the basement, then the others took the other ██████ who was beaten same as I was.'⁹⁸

Initial beating of ██████

Within a few hours of being brought to Zllash, ██████ was forcefully taken to a room and beaten.⁹⁹ He said that ██████ and said, 'I fainted ten times.'¹⁰⁰ The person who beat him the most on this occasion was a KLA soldier wearing a red military hat¹⁰¹ whom he said that he later learned was Commander CALI.¹⁰² ██████ said of this first beating: '[I]t was a terrible beating. The first time was the worst time. They called each other

⁹⁴ Transcript of SPO Interview with ██████, ██████, ██████, Part 2, p.12.

⁹⁵ Transcript of SPO Interview with ██████, ██████, ██████, Part 2, pp.12-13.

⁹⁶ Transcript of SPO Interview with ██████, ██████, ██████, Part 2, p.13.

⁹⁷ UNMIK Statement of ██████, undated, ██████

⁹⁸ UNMIK Statement of ██████, undated, ██████

⁹⁹ Transcript of SPO Interview with ██████, ██████, ██████, Part 2, p.5.

¹⁰⁰ Transcript of SPO Interview with ██████, ██████, ██████, Part 2, p.3.

¹⁰¹ Salih MUSTAFA admitted that he wore a red beret and thought he was the only person who did. See Transcript of SPO Suspect Interview of ██████ Salih MUSTAFA, 20 November 2019, ██████ Part 8, pp.7-8.

¹⁰² Transcript of SPO Interview with ██████, ██████, ██████, Part 2, p.5.

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by nicknames... I do recall one I heard which was called [REDACTED]¹⁰³ He said that [REDACTED] and added: 'I was on the ground in the mud. First, they started beating me with a wooden stick all over my body.'¹⁰⁴ He said: 'they beat me one after the other taking turns to kick me with their feet, hitting me with their hands and heating me with the wooden stick for about four hours or more. After they beat me and they dragged me and then they dragged me into another room where we were seven again.'¹⁰⁵ During the beating, he heard them saying, 'we have to kill him because he is a spy.'¹⁰⁶ In addition, he said: 'Upon the order of CALI they all hit me [...] This Tabut hit me as well. They all hit me, but these two hit me more than others.'¹⁰⁷ [REDACTED] said: 'The orders were given by this CALI with the red hat on.' The person he referred to as CALI was saying: 'Do this. Hit him with that. Shall we kill him or what shall we do?'¹⁰⁸ Of CALI, [REDACTED] said, '[REDACTED] [...] [REDACTED]. I heard him saying we're going to kill him.'¹⁰⁹ [REDACTED] ' [...] That is where my beating ended.'¹¹⁰

[REDACTED] described the effects of this beating: 'This injury that I have in my head is from that time [showed investigators a place in head [REDACTED]]. I did not want to tell the doctors that this was how I got my injury [REDACTED]'.¹¹¹

¹⁰³ UNMIK Statement of [REDACTED], [REDACTED].

¹⁰⁴ UNMIK Statement of [REDACTED], [REDACTED].

¹⁰⁵ UNMIK Statement of [REDACTED], [REDACTED].

¹⁰⁶ Transcript of SPO Interview with [REDACTED], [REDACTED].

¹⁰⁷ Transcript of SPO Interview with [REDACTED], [REDACTED].

¹⁰⁸ Transcript of SPO Interview with [REDACTED], [REDACTED].

¹⁰⁹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED].

¹¹⁰ Transcript of SPO Interview with [REDACTED], [REDACTED].

¹¹¹ UNMIK Statement of [REDACTED], [REDACTED].

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When asked about [REDACTED] [REDACTED] recalled a young man of about 25 years old who said 'that he was from a village in Podujevo.' [REDACTED] said that 'he looked normal with his face but he did not act normal. He was short and thin.' [REDACTED] said that 'they beat him all day and all the night.'¹¹²

Beating of [REDACTED]

[REDACTED] said [REDACTED] the one that was maltreated mostly.'¹¹³ [REDACTED] said that the only one [REDACTED]¹¹⁴ [REDACTED], referring to [REDACTED], saw that 'they put the metal bar in the stove [...] and they burned this part. He was massacred.'¹¹⁵ [REDACTED] said that 'the entire body was burned with this [...] metal [...] with the heat of the metal. [REDACTED] When they would bring [...] bread, he wasn't able to eat the bread [REDACTED]¹¹⁶

[REDACTED] said of [REDACTED] that the detainees 'saw that he was burned, that he was cut with knives. He had some cuts on his body. There was a massacre.' 'They were cutting his body with a knife. They would put [...] electric wires on him.'¹¹⁷

¹¹² UNMIK Statement of [REDACTED], [REDACTED]

¹¹³ Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, pp.19, 29; Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, pp.19-20, 23.

¹¹⁴ Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, pp.19-20.

¹¹⁵ Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, p.20. [REDACTED].

¹¹⁶ Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, p.20.

¹¹⁷ Transcript of SPO Interview with [REDACTED], [REDACTED], Part 4, p.6.

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██████████ stated that, after he had first been beaten, it was then ██████████ who was beaten the same as him but that, after ██████████, '██████████ was taken who was burnt with hot iron' and then had salt put on his wounds.¹¹⁸

██████████ repeated in this statement to the SPO that ██████████ was 'burnt with hot iron',¹¹⁹ that 'every time they would come and take him upstairs, he would come back covered in blood',¹²⁰ that he had cuts on his back and that ██████████.¹²¹

Second beating of ██████████

There was a second incident that directly involved Salih MUSTAFA aka 'CALI' or 'Commander CALI' beating ██████████ and which occurred about ten days after ██████████.¹²² ██████████ said 'this one, CALI [...] he said, come, you're going home now [...] They took me to that room that we're talking about above, the room above, and he told me, he said, ██████████. ██████████. ██████████. And I said to him, I can tell you that I don't know ██████████. And that person, he hit me here. He himself hit me here ██████████. They – he hit me here. ██████████. ██████████.¹²³ 'There were three or four of them [...] but he was the only one that beat me up [...] The other ones were just looking [...] this incident was later on [...] after the big beating, this happened sometime ten days after that.'¹²⁴ Describing who beat him, he said, 'that person, Cali. ██████████. It

¹¹⁸ UNMIK Statement of ██████████, ██████████

¹¹⁹ UNMIK Statement of ██████████, ██████████.

¹²⁰ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.29.

¹²¹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.29.

¹²² See Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.28.

¹²³ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.26-27.

¹²⁴ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.28.

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was that person.’¹²⁵ [REDACTED] said he was told that electric shocks were used on other detainees, but that such mistreatment was not performed on him.¹²⁶

Conditions of detention

The detainees were kept in the stable of an old house, a sort of barn for animals, which was locked with chains.¹²⁷ The witnesses were consistent in their description of the stable. There were guards at the door of the stable.¹²⁸ The stable was in very poor conditions, had hay on the ground, no proper windows and no light coming in from the outside.¹²⁹ Food and water were insufficient (they were given only some bread and water).¹³⁰ [REDACTED] said, ‘For two days and two nights, I haven’t eaten anything. Afterwards, after two days, we were given something, some bread, some stale bread, something that was catastrophic but something just to keep ourselves alive [...] nothing else, just bread.’¹³¹ It was cold in the stable.¹³² The overall conditions of detention were miserable and insanitary. The detainees

¹²⁵ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.29.

¹²⁶ UNMIK Statement of [REDACTED], [REDACTED]

¹²⁷ See Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 2, p.14; UNMIK Statement of [REDACTED], [REDACTED]

¹²⁸ See e.g. Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 3, p.4; UNMIK Statement of [REDACTED], [REDACTED]

¹²⁹ See Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 2, p.15.

¹³⁰ Cf. Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.34; UNMIK Statement of [REDACTED], [REDACTED] Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 3, pp.1-2.

¹³¹ See Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, p.1.

¹³² See Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, p.3.

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	<p>slept on the floor, even in water,¹³³ were not able to wash, and had to use a bucket that was kept in the stable to relieve themselves.¹³⁴</p> <p>Condition of detainees upon release</p> <p>Upon release, a number of the detainees immediately [REDACTED].¹³⁵</p> <p>[REDACTED] left in the evening of that same day, [REDACTED].¹³⁶ [REDACTED] the detainees, that they were in '[R]eally bad conditions [...] [REDACTED], [REDACTED].'¹³⁷ [REDACTED] 'they were maltreated in prison [...] by the KLA soldiers.'¹³⁸</p> <p>[REDACTED].¹³⁹ [REDACTED] 'we got out, we left, they closed the door and he remained there.'¹⁴⁰ [REDACTED] 'Horrible. Their nails were long. He was like someone that is in prison, you couldn't look at them. They were not shaven or washed [...]</p>
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¹³³ UNMIK Statement of [REDACTED], [REDACTED], [REDACTED].

¹³⁴ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.35; Transcript of SPO Interview with [REDACTED], [REDACTED], Part 3, p.4.

¹³⁵ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, pp.18-19;

¹³⁶ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.13, and Part 3, pp.18-19; UNMIK Statement of [REDACTED], [REDACTED].

¹³⁷ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.35.

¹³⁸ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.35.

¹³⁹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.25.

¹⁴⁰ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.26.

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	██████████ [...] They looked like they were – their eyes were big like this and they looked like they were crazy.’ ¹⁴¹
(2) Intent to inflict serious bodily or mental harm or commit a serious attack upon the human dignity of the victim	The episodes of beatings and mistreatments deliberately perpetrated by MUSTAFA and the other perpetrators on detainees are evidence of their intent. ¹⁴²
(3) The victim is a person taking no active part in the hostilities	<i>See evidence cited above under Count 1, element (3).</i>
(4) Knowledge that the victim is a person taking no active part in hostilities	<i>See evidence cited above under Count 1, element (4).</i>
Count 3: Torture (Article 14(1)(c)(i))	
(1) The infliction, by act or omission, of severe pain or suffering, whether physical or mental	<i>See evidence cited above under Count 2, element (1).</i>
(2) Aimed at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at	In the course of their mistreatment, ¹⁴³ detainees were questioned and/or accused of being spies or thieves, ¹⁴⁴ or cooperating with the Serbs. ¹⁴⁵ ██████████ was accused by Salih MUSTAFA aka ‘CALI’ or ‘Commander CALI’ of being a spy, before MUSTAFA started beating him. ¹⁴⁶ Whilst being beaten up, ██████████ was accused of being a spy, ¹⁴⁷ of

¹⁴¹ Transcript of SPO Interview with ██████████, ██████████, ██████████ Part 1, p.26.

¹⁴² *See evidence cited above under Count 2, element (1).*

¹⁴³ *See evidence cited above under Counts 1-2.*

¹⁴⁴ *See e.g.* Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.17-18.

¹⁴⁵ UNMIK Statement of ██████████, ██████████

¹⁴⁶ Transcript of SPO Interview with ██████████, ██████████, Part 2, p.12.

¹⁴⁷ Transcript of SPO Interview with ██████████, ██████████, Part 2, pp.6-7.

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discriminating, on any ground, against the victim or a third person	cooperating with the Serbs. ¹⁴⁸ [REDACTED] was also told by the perpetrators that they were going to [REDACTED] because he was 'cooperating with Serbians'. ¹⁴⁹ Salih MUSTAFA aka 'CALI' or 'Commander CALI' told [REDACTED] [REDACTED] and started beating up [REDACTED] when [REDACTED] replied that he did not know. ¹⁵⁰
(3) The victim is a person taking no active part in the hostilities	<i>See evidence cited above under Count 1, element (3).</i>
(4) Knowledge that the victim is a person taking no active part in hostilities	<i>See evidence cited above under Count 1, element (4).</i>
Count 4: Murder (Article 14(1)(c)(i))	
(1) An act or omission resulting in the death of an individual	Detention and mistreatment [REDACTED] was taken to Zllash by KLA [REDACTED]. ¹⁵¹ [REDACTED] [REDACTED] [REDACTED]. ¹⁵² He thought that it was in March or April. ¹⁵³ [REDACTED] [REDACTED]. ¹⁵⁴ [REDACTED]

¹⁴⁸ UNMIK Statement of [REDACTED], [REDACTED]¹⁴⁹ UNMIK Statement of [REDACTED], [REDACTED]¹⁵⁰ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 2, pp.26-27.¹⁵¹ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 1, pp.9-10.¹⁵² Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.5.¹⁵³ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.2.¹⁵⁴ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.6.

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[REDACTED]

[REDACTED] .^{'156} [REDACTED]

[REDACTED] 'They are asking for you in Zllash.'¹⁵⁷ [REDACTED] said that he and [REDACTED] other KLA [REDACTED] .^{'158} [REDACTED]

[REDACTED]

[REDACTED].'¹⁵⁹ He continued: '[REDACTED]

[REDACTED]

[REDACTED].'¹⁶⁰

[REDACTED] said [REDACTED] the one that was maltreated mostly.'¹⁶¹ [REDACTED] said that the [REDACTED]¹⁶² [REDACTED], referring to [REDACTED], saw that 'they put the metal bar in the stove and they burned this part. He was massacred.'¹⁶³ [REDACTED] said that 'the entire body was burned with this metal [...] with the heat of the metal. [REDACTED]. When they would bring him bread, he wasn't able to eat the bread [REDACTED]¹⁶⁴

155 Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.16.

156 Transcript of SPO [REDACTED], Part 3, p.9.

157 Transcript of SPO [REDACTED], Part 3, p.11.

158 Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.11.

159 Transcript of SPO [REDACTED], Part 3, p.12.

160 Transcript of SPO [REDACTED], Part 3, p.12.

¹⁶¹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.19, 29; Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.19-20, 23.

¹⁶² Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, pp.19-20.

¹⁶³ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.20. [REDACTED]
[REDACTED].

¹⁶⁴ Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, p.20.

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	<p>██████████ said of ██████████ that the detainees ‘saw that he was burned, that he was cut with knives. He had some cuts on his body. There was a massacre.’ ‘They were cutting his body with a knife. They would put electric wires on him.’¹⁶⁵</p> <p>██████████ stated that, after he had first been beaten, it was then ██████████ who was beaten the same as him but that, ██████████ was taken who was burnt with hot iron’ and then had salt put on his wounds.¹⁶⁶</p> <p>██████████ further stated, about ██████████, that ‘every time they would come and take him upstairs, he would come back covered in blood’,¹⁶⁷ that he had cuts on his back and ██████████.¹⁶⁸</p> <p>After 18 days, ██████████ was released together with ██████████ and ██████████ remained inside the stable and were not released with him ██████████.¹⁶⁹ ██████████ said that it was KLA soldier ██████████ who took them outside and told them to go away,¹⁷⁰ and that – when they asked why the other two were not being released – the reply they received was: ‘We will release them later on.’¹⁷¹ He said that on release, they were given no release papers.¹⁷²</p>
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¹⁶⁵ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 4, p.6.

¹⁶⁶ UNMIK Statement of ██████████, ██████████

¹⁶⁷ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.29.

¹⁶⁸ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.29.

¹⁶⁹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 3, p.9. *See also* UNMIK Statement of ██████████, ██████████, ██████████, ██████████

¹⁷⁰ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 3, p.9.

¹⁷¹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 3, p.10.

¹⁷² Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 3, p.13.

Strictly Confidential and *Ex Parte*
Rule 86(3)(b) Outline**Disappearance**

Upon release, a number of the detainees immediately [REDACTED].¹⁷³

[REDACTED] left in the evening of that same day, [REDACTED]

[REDACTED].¹⁷⁴ [REDACTED] said that [REDACTED] and

[REDACTED] after the Serbian offensive had begun.¹⁷⁵ [REDACTED]

[REDACTED]: 'we got out, we left, they closed the door and he remained there.'¹⁷⁶

[REDACTED] said that he was approached [REDACTED]

[REDACTED].¹⁷⁷ Asked about it, [REDACTED]

said that he was also [REDACTED]

[REDACTED], [REDACTED]

[REDACTED]¹⁷⁸

[REDACTED] travelled to Zllash on [REDACTED]

[REDACTED] on route.¹⁷⁹ [REDACTED] said that [REDACTED] told

them, [REDACTED]

[REDACTED].¹⁸⁰ [REDACTED] claimed that [REDACTED]

¹⁷³ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 3, pp.18-19.

¹⁷⁴ See e.g. Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.13, and Part 3, pp.18-19; UNMIK Statement of [REDACTED], [REDACTED]

¹⁷⁵ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, pp.24-25.

¹⁷⁶ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.26.

¹⁷⁷ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.17.

¹⁷⁸ Transcript of SPO [REDACTED], [REDACTED], [REDACTED], [REDACTED], Part 3, p.21.

¹⁷⁹ UNMIK Statement of [REDACTED], [REDACTED]

¹⁸⁰ UNMIK Statement of [REDACTED], [REDACTED]

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	<p>[REDACTED] .¹⁸¹</p> <p>To the SPO, [REDACTED] said that the incident [REDACTED]</p> <p>[REDACTED],</p> <p>[REDACTED] .¹⁸²</p> <p>According to [REDACTED], [REDACTED] told [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] .¹⁸³</p> <p>[REDACTED]. In his UNMIK statement, he said that, on two occasions [REDACTED] he was told [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] .¹⁸⁴</p> <p>Discovery of body</p> <p>The body [REDACTED] was discovered [REDACTED]</p> <p>[REDACTED] in [REDACTED] .¹⁸⁵ [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] .¹⁸⁶ He continued that [REDACTED]</p> <p>[REDACTED] .¹⁸⁷ [REDACTED]</p>
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¹⁸¹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 1, p.17.

¹⁸² Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, pp.22-23.

¹⁸³ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 1, p.18.

¹⁸⁴ UNMIK Statement of [REDACTED], [REDACTED], [REDACTED] Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.12.

¹⁸⁵ [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED]

¹⁸⁶ [REDACTED], [REDACTED], [REDACTED]

¹⁸⁷ [REDACTED], [REDACTED], [REDACTED]

	<p>[REDACTED].¹⁸⁸ The body was first discovered on or about [REDACTED] y [REDACTED].¹⁸⁹ [REDACTED] [REDACTED] [REDACTED] [REDACTED]¹⁹⁰ The body was shortly after exhumed [REDACTED] [REDACTED].¹⁹¹ [REDACTED] [REDACTED] [REDACTED]¹⁹² [REDACTED] [REDACTED]¹⁹³ A number of photographs were taken of the body at the exhumation in Zllash on or [REDACTED] and are contained within the supporting materials.¹⁹⁴ The grave was located close to the Zllash Detention compound in a meadow nearby.¹⁹⁵ The site of the Zllash Detention Compound and the grave [REDACTED] were given coordinates by UNMIK which indicates how close the two were.¹⁹⁶</p>
(2) Intent to kill or to wilfully cause serious injury or grievous bodily harm which the	The deliberate manner in which the perpetrators and Salih MUSTAFA treated [REDACTED] [REDACTED] and other detainees demonstrated their intent to kill or, at a minimum, to wilfully

Page	Text
188	[REDACTED]
189	[REDACTED]
190	[REDACTED]
191	[REDACTED]
192	[REDACTED]
193	[REDACTED]
194	Eight colour photographs date-stamped [REDACTED] [REDACTED].
195	[REDACTED]
196	[REDACTED] [REDACTED].

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perpetrator should reasonably have known might lead to death	<p>cause serious injury or grievous bodily harm which they should have reasonably known might lead to death.¹⁹⁷</p> <p>In particular, the evidence of [REDACTED] and [REDACTED] indicates that [REDACTED] was singled out and tortured in a far more brutal manner than were the other detainees, with him being electrocuted, cut with knives, burned with hot iron bars, [REDACTED].¹⁹⁸</p> <p>With regard to [REDACTED] not being released, [REDACTED] said: 'In my opinion, the reason why they didn't release him -- there was -- okay, in my opinion, there was nobody -- there was -- there was nothing left of him to release, because he was really badly maltreated. He was massacred.'¹⁹⁹ [REDACTED] added: 'He could have been able to walk, but he was really badly --badly hurt. Towards the end, he -- he suffered a lot of tortures, and he was tortured a lot, and his legs were not able to -- he was unable to stand, especially towards the end.'²⁰⁰</p>
(3) The victim is a person taking no active part in the hostilities	<i>See evidence cited above under Count 1, element (3).</i>
(4) Knowledge that the victim is a person taking no active part in hostilities	<i>See evidence cited above under Count 1, element (4).</i>

¹⁹⁷ See evidence cited above under Counts 1-2, elements (1)-(2).¹⁹⁸ See the evidence cited above under Counts 1-2, element (1).¹⁹⁹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 4, p.6²⁰⁰ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED] Part 4, p.6

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MODE(S) OF LIABILITY	
Physical Commission (Article 16(1)(a))	
(1) The physical perpetration of a crime by the accused, or the culpable omission of an act that was mandated by a rule of criminal law	██████████ and ██████████ identified Salih MUSTAFA aka 'CALI' or 'Commander CALI' as a direct perpetrator ²⁰¹ in the arbitrary detention, cruel treatment and torture of, among others, ██████████ ²⁰² and ██████████ ²⁰³ on ██████████ April 1999, and ██████████ around ██████████ April 1999. ²⁰⁴
(2) The accused acted with intent to commit the crime, or with an awareness of the substantial likelihood that a crime would occur as a consequence of his/her conduct	Intent for the crimes of arbitrary detention, cruel treatment and torture is demonstrated by the deliberate manner in which Salih MUSTAFA aka 'CALI' or 'Commander CALI' beat and mistreated the detainees and his statements during such beatings. ²⁰⁵
JCE (Article 16(1)(a)) ²⁰⁶	
(1) Plurality of persons	Regarding this first beating, ██████████ said; 'he [CALI] started to beat me, punched me, kicked me, and ordered four others to beat me ██████████ ██████████ ██████████ ²⁰⁷

²⁰¹ See evidence cited under Counts 1, 2 and 3 above.

²⁰² Transcript of SPO Interview with ██████████, ██████████, ██████████ Part 2, pp.11-12; Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 4, p.5.

²⁰³ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.3-5, 7-9.

²⁰⁴ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.26-29.

²⁰⁵ See evidence cited under Counts 1, 2 and 3 above.

²⁰⁶ Joint Criminal Enterprise ('JCE') is a form of commission falling within Article 16(1)(a). See, similarly, ICTY, Krajišnik, Appeal Judgment, para.662 (addressing identical language in the context of the Statute of the ICTY).

²⁰⁷ UNMIK Statement of ██████████, ██████████

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	<p>██████████ further stated: '[...] I was beat up by these soldiers. These people that they beat me up, the names that I've heard other people calling them, ██████████. He maltreated people there. There were people that he maltreated there.'²⁰⁸</p> <p>'[...] We were maltreated by these other people. ██████████, ██████████. And there were some others -- and some other soldiers as well, other soldiers that were there. There was a person ██████████. There were two ██████████ -- I don't know their names.'²⁰⁹</p> <p>██████████ stated that four to five people beat him after he first arrived at Zllash.²¹⁰ ██████████ said that the perpetrators were calling each other by name and he heard that one of them was called ██████████²¹¹</p> <p>When ██████████ described his second beating by Salih MUSTAFA aka 'CALI' or 'Commander CALI,' there were others present: 'There were three or four of them [...]' but he was the only one that beat me up [...] The other ones were just looking [...] this incident was later on [...] after the big beating, this happened sometime ██████████ after that.'²¹²</p>
(2) The existence of a common plan, design, or purpose which amounts to or involves the commission of a crime	The common purpose to mistreat persons detained at the Zllash Detention Compound is demonstrated by the evidence that Salih MUSTAFA aka 'CALI' or 'Commander CALI', KLA soldiers nicknamed Tabut or Tabuti or Kommandant Tabuti, Ilmi VELA, Bimi, Dardan, Afrim, and other KLA soldiers and guards present at the Zllash Compound, including those identified under element (1) above, individually and in concert, participated in recurring acts

²⁰⁸ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, pp.23-24.

²⁰⁹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.29.

²¹⁰ UNMIK Statement of ██████████, ██████████.

²¹¹ UNMIK Statement of ██████████, ██████████.

²¹² Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.28.

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	<p>of arbitrary detention, cruel treatment and torture against detainees, which continued at least until the end of April 1999.²¹³</p> <p>In terms of the temporal extent of the JCE, Salih MUSTAFA aka CALI or Commander CALI said that the Serbian offensive on Zllash started on 16 April 1999 and Zllash was evacuated as a result of the offensive.²¹⁴ He said that 'the Serbian forces began to take over the area on the 19th, and they completed it somewhere around the 22nd [...] They started on the 19th and they finished on 22nd.'²¹⁵ Asked what happened to the BIA unit, he said that between the end of April and leading up to 12 June 1999, '[W]e then started using a safehouse [...] between Reminishte and Sharban where the injured people were placed [...] I personally, along with my soldiers, carried out my duties both in Pristina and in Butovc.'²¹⁶</p>
(3) The accused made a significant contribution to the common plan/design	<i>See the evidence cited under physical commission above, and instigating, ordering, aiding and abetting, and superior responsibility below.</i>
(4) Intent to effect the common purpose and commit the crimes	<i>See the evidence cited under physical commission above, as well as under the mens rea elements for Counts 1, 2, and 3 above.</i>
(5) It was foreseeable to him/her that a crime might be perpetrated by a JCE member or a non-member used by a JCE member in carrying out the common purpose; and the accused	<p>The deliberate manner in which the Salih MUSTAFA and other perpetrators severely mistreated the detainees demonstrated that the death of one of the victims, in particular, [REDACTED] who was treated worst, was a reasonably foreseeable consequence.²¹⁷</p> <p>Salih MUSTAFA aka 'CALI' or 'Commander CALI', KLA soldiers nicknamed Tabut or Tabuti or Kommandant Tabuti, Ilmi VELA, Bimi, Dardan, Afrim, and other KLA soldiers</p>

²¹³ See the evidence cited under Counts 1, 2 and 3 above.

²¹⁴ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED] Part 7, p.18.

²¹⁵ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED] Part 7, p.19.

²¹⁶ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, p.24.

²¹⁷ See evidence cited above under Counts 1-2, elements (1)-(2).

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willingly took that risk that the crime might occur by participating in the JCE	severely beat and otherwise physically and psychologically abused detainees at the Zllash Detention Compound. The detainees were held in inhumane conditions and were provided inadequate medical care. ²¹⁸
	[REDACTED] recalled that Salih MUSTAFA aka ‘CALI’ or ‘Commander CALI’ said, ‘Do this. Hit him with that. Shall we kill him or what shall we do? [...] [REDACTED] [REDACTED] I heard him saying we’re going to kill him [...] [REDACTED] [...] That is where my beating ended.’ ²¹⁹
Instigating (Article 16(1)(a))	
(1) A person prompts another person to commit a crime. The instigation must have been a factor ‘substantially contributing’ to the crime	[REDACTED] [REDACTED] ²²⁰ [REDACTED] [REDACTED] ²²¹ Salih MUSTAFA aka ‘CALI’ or ‘Commander CALI’ asked [REDACTED] why he had come to Zllash, and, when he responded that [REDACTED], he told him: ‘You are lying. You’ve come with different intentions here.’ ²²² When [REDACTED] denied this, Commander CALI: ‘stood up and he started slapping me. He kicked me a couple of times. And then [REDACTED] started to beat me up. So whatever soldier would come there, that person would beat you up. Some would punch you. Someone would kick you.’ ²²³

²¹⁸ See evidence cited under Counts 1, 2 and 3 above.

²¹⁹ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.7-9.

220 [REDACTED], Part 3, p.12.

221 [REDACTED], Part 3, p.12.

²²² Transcript of SPO Interview with [REDACTED], [REDACTED], Part 2, p.12.

²²³ Transcript of SPO Interview with [REDACTED], Part 2, pp.12-13.

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Regarding this first beating, ██████████ said; 'he [CALI] started to beat me, punched me, kicked me and ordered four others to beat me ██████████

██████████'.²²⁴

According to ██████████, 'Upon the order of CALI they all hit me. This ██████████ hit me as well. They all hit me, but these two hit me more than others.'²²⁵ ██████████ said: 'The orders were given by this CALI with the red hat on.' He was saying: 'Do this. Hit him with that. Shall we kill him or what shall we do?'²²⁶ Of CALI, ██████████ said, ██████████ I heard him saying we're going to kill him.'²²⁷ ██████████ said: ██████████ [...] That is where my beating ended.'²²⁸

██████████ recited another incident of torture that directly involved Salih MUSTAFA aka 'CALI' or 'Commander CALI' and which occurred about ██████████ after his first big beating on his arrival.²²⁹ ██████████ said that CALI came to the stable, ██████████, and told him to get up, that he was going home.²³⁰ CALI then took him to the room upstairs and there 'CALI' told him: ██████████. ²³¹ When ██████████ replied that he did

²²⁴ UNMIK Statement of ██████████, ██████████

²²⁵ Transcript of SPO Interview with ██████████, ██████████, Part 2, p.7.

²²⁶ Transcript of SPO Interview with ██████████, ██████████, Part 2, p.7.

²²⁷ Transcript of SPO Interview with ██████████, ██████████, Part 2, p.8.

²²⁸ Transcript of SPO Interview with ██████████, ██████████, Part 2, p.9.

²²⁹ See Transcript of SPO Interview with ██████████, ██████████, Part 2, p.28.

²³⁰ See Transcript of SPO Interview with ██████████, ██████████, Part 2, p.27: ██████████ ██████████ ██████████.'

²³¹ Transcript of SPO Interview with ██████████, ██████████, Part 2, pp.26-27.

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	not know [REDACTED], CALI hit him [REDACTED] and broke [REDACTED]. ²³² [REDACTED] did not remember for how long the beating went on, but he remembered that it was only CALI who beat him on that occasion (although there were also three or four others present who were just looking on), ²³³ and that he still suffers the consequences of that [REDACTED]. ²³⁴ He said that the person who beat him [REDACTED] was the same person who [REDACTED] on his first evening. ²³⁵ He recalled a person saying, 'here, here, here, CALI'. ²³⁶ [REDACTED] recalled that, after this event, he 'knew very well that that was the person that beat' him. ²³⁷
(2) Direct intent, or awareness of the substantial likelihood that a crime will be committed in the execution of the instigation	<i>See the evidence cited under physical commission above, as well as under the mens rea elements for Counts 1, 2, and 3 above.</i>
Ordering (Article 16(1)(a))	
(1) A person in a position of authority instructs another person to commit an offence. The order must substantially contribute to the commission of the crime	Salih MUSTAFA was Commander of BIA, with ultimate authority over its soldiers and sub-units. ²³⁸ Regarding his first beating, [REDACTED] said; 'he [CALI] started to beat me, punched me, kicked me and ordered four others to beat me [REDACTED]'

²³² Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.27.²³³ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.28.²³⁴ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.27-29.²³⁵ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, pp.28-29.²³⁶ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.29.²³⁷ Transcript of SPO Interview with [REDACTED], [REDACTED], [REDACTED], Part 2, p.29.²³⁸ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 1, pp.25, 27, 29, and Part 2, p.14. *See also the evidence cited under element of (1) superior responsibility below.*

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	<p>██████████ ██████████²³⁹</p> <p>According to ██████████, 'Upon the order of CALI they all hit me. ██████████ hit me as well. They all hit me, but these two hit me more than others.'²⁴⁰ ██████████ said: 'The orders were given by this CALI with the red hat on.' He was saying: 'Do this. Hit him with that. Shall we kill him or what shall we do?'²⁴¹</p>
(2) Direct intent, or awareness of the substantial likelihood that a crime will be committed in the execution of that order	<i>See the evidence cited under physical commission above, as well as under the mens rea elements for Counts 1, 2, and 3 above.</i>
Aiding and Abetting (Article 16(1)(a))	
(1) Conduct that amounts to practical assistance, encouragement or moral support	<i>See the evidence cited under instigating and ordering, element (1), physical commission and Counts 1-4 above.</i>
(2) Which has a substantial effect on the perpetration of a crime	The circumstances in which the assistance, encouragement and moral support demonstrated that Salih MUSTAFA's acts and omissions had a substantial effect on the perpetration of the crimes. ²⁴²
(3) Knowledge that conduct assists the commission of the crime by the perpetrator	<i>See the evidence cited under physical commission above, superior responsibility below and under the mens rea elements for Counts 1, 2, and 3 above.</i>
Superior Responsibility (Article 16(1)(c))	

²³⁹ UNMIK Statement of ██████████, ██████████²⁴⁰ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.7.²⁴¹ Transcript of SPO Interview with ██████████, ██████████, ██████████, Part 2, p.7.²⁴² *See the evidence cited under instigating and ordering, element (1), physical commission and Counts 1-4 above.*

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(1) Superior-subordinate relationship between the perpetrator and the accused	<p>Salih MUSTAFA aka CALI or Commander CALI was the Commander of BIA with ultimate authority over its soldiers and sub-units.²⁴³ Salih MUSTAFA aka 'CALI' or 'Commander CALI' had the power to discipline his soldiers and would take such decisions himself.²⁴⁴ Salih MUSTAFA aka 'CALI' or 'Commander CALI' stayed at the 'safe house' used by BIA in Zllash numerous times in the relevant indictment period.²⁴⁵</p> <p>Salih MUSTAFA aka 'CALI' or 'Commander CALI' confirmed that there was a BIA soldier nicknamed 'Tabuti' (Nazif).²⁴⁶ Salih MUSTAFA aka 'CALI' or 'Commander CALI' confirmed that a soldier called 'Ilmi Vela' was a BIA soldier in the unit of 'Nazif Tabut.'²⁴⁷ He said that Ilmi Vela had a criminal record and was demobilised at some point (but not as a result of anything done in Zllash).²⁴⁸</p> <p>Brahim MEHMETI, aka 'Bimi', was MUSTAFA's first assistant and deputy until February 1999, when Bimi then became the officer in charge of morale and politics for the Llap Zone and BIA at the same time.²⁴⁹</p>
(2) The accused knew or had reason to know that the criminal act was about to be or had been committed	Salih MUSTAFA aka CALI or Commander CALI participated in the alleged crimes himself, together with his subordinates. He therefore knew and had reason to know that such criminal acts were being committed at that location in Zllash. ²⁵⁰

²⁴³ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED] Part 1, pp.25, 27, 29, and Part 2, p.14.

²⁴⁴ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED] Part 6, pp.2-3.

²⁴⁵ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED] Part 3, pp.18-20, and Part 7, pp.5, 10, 12, 22.

²⁴⁶ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED] Part 8, pp.9-10.

²⁴⁷ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED] Part 8, pp.10-11.

²⁴⁸ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 8, pp.11-12.

²⁴⁹ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 19 November 2019, [REDACTED], Part 4, p.3.

²⁵⁰ See evidence above for Count 1, elements (1) and (2); Count 2, elements (1) and (2); Count 3, element (1), and Count 4, elements (1) and (2).

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	<p>Salih MUSTAFA aka CALI or Commander CALI was to be informed about every infringement committed by a soldier within BIA units.²⁵¹ MUSTAFA admitted having heard rumors afterwards that civilians were detained at that location in Zllash, people who had been stealing, thieves.²⁵²</p> <p>Further, Salih MUSTAFA aka 'CALI' or 'Commander CALI' admitted having heard rumors afterwards that civilians were detained at that location in Zllash, people who had been stealing, thieves.²⁵³</p> <p>Salih MUSTAFA aka CALI or Commander CALI was often²⁵⁴ in Zllash during March and April 1999, both before the NATO bombardment began in March 1999, and before and during the Serbian offensive that commenced on 16 April 1999.²⁵⁵ Asked for how long he had been in Zllash before the Serbian offensive started, he said: 'Perhaps 15 days or 20 days before the offensive.'²⁵⁶ He said that he was present in Zllash before the Serbian offensive which started on or about 16 April 1999.²⁵⁷ After the Serbian offensive started on 16 April 1999, BIA soldiers were involved in the fighting against Serbian forces.²⁵⁸ He said: 'after the third day of the offensive, they [BIA soldiers] were involved in withdrawing the injured people from the war area and moving them to the military hospital on what we considered to be the Llap side. I was called from a different place to lead this operation, because I was not there.'²⁵⁹</p>
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²⁵¹ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED] Part 6, p.2, and Part 7, p.8.

²⁵² Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, pp.15-16, 23-24.

²⁵³ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, pp.15-16.

²⁵⁴ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 3, pp.18-20, and Part 7, pp.5, 10, 12, 22.

²⁵⁵ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, pp.10, 12.

²⁵⁶ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, p.12.

²⁵⁷ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, p.12.

²⁵⁸ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, p.14.

²⁵⁹ Transcript of SPO Suspect Interview of [REDACTED] Salih MUSTAFA, 20 November 2019, [REDACTED], Part 7, p.20.

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(3) The accused failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof	There is no evidence that Salih MUSTAFA took such measures.
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