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

Public

LEGAL ELEMENTS	REFERENCE(S) TO EVIDENCE		
CRIMES			
War Crimes			
Contextual Elements			
(1) Non-international armed conflict	OSCE/KVM Reports, <sup>1</sup> UNHCR Reports, <sup>2</sup> KLA General Staff Communiqués, <sup>3</sup> KLA political declarations <sup>4</sup> and mobilisation orders/decisions <sup>5</sup> 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		

<sup>&</sup>lt;sup>1</sup> 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].

<sup>&</sup>lt;sup>2</sup> UNHCR Report, Kosovo Crisis Update, 17 May 1999, 074222-074225; UNHCR Report, Kosovo Crisis Update, 28 May 1999, 074226-074231.

Communique no. 79 of the General Staff of the Kosovo Liberation Army, Pristina, 26 May 1999, Kosovapress, SPOE00055399-SPOE00055399-ET.

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 SPOE00054519-00054519-00054522-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 SPOE00054521-00054521-00054522-ET.

KLA in April 1999,6 including against the KLA based in Zllash starting on or about 16-18 April 1999.7

#### **NEXUS**

The BIA unit operated in the urban areas of Pristina, Fushe Kosove and Obiliq.<sup>8</sup> In Pristina, the BIA unit was divided into six guerrilla areas.<sup>9</sup> BIA also had a presence in Butovc and Zllash within the Gollak region.<sup>10</sup> 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.<sup>11</sup> The BIA units were involved in weapons supply, medical supplies, intelligence gathering and propaganda.<sup>12</sup> It also assisted other Operational Zones such as Drenica, Shala and Karadak with logistics.<sup>13</sup>

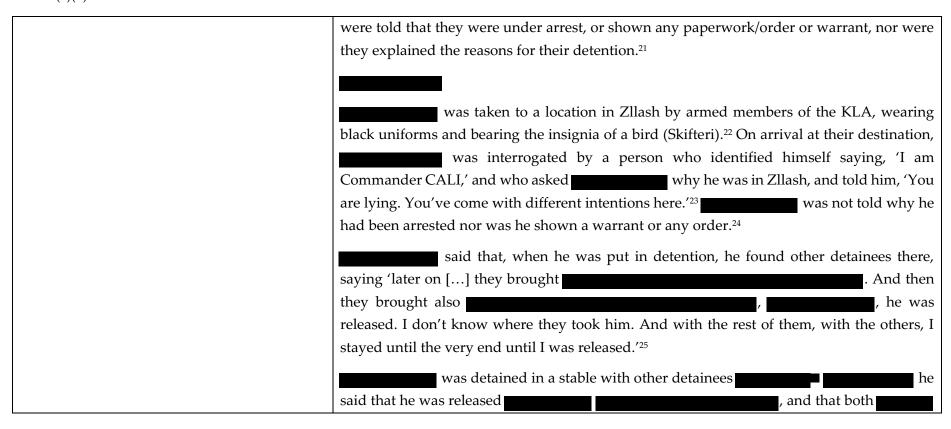
During the time period relevant to the Indictment, BIA soldiers had a base in Zllash.<sup>14</sup> Salih MUSTAFA aka CALI or Commander CALI Commander of the KLA BIA unit; he had soldiers under his command and himself led the BIA information gathering and the

<sup>6</sup> 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].

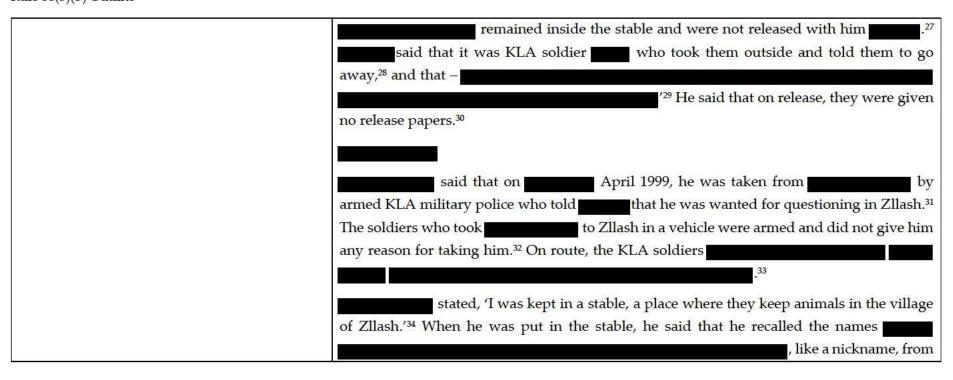
<sup>&</sup>lt;sup>7</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, , Part 7, p.12. See also UNMIK Statement of , p.8. <sup>8</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, Part 2, p.4. <sup>9</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, Part 2, p.12. <sup>10</sup> Transcript of SPO Suspect Interview of Part 3, p12. Salih MUSTAFA, 19 November 2019, <sup>11</sup> Transcript of SPO Suspect Interview of Part 2, p.9. Salih MUSTAFA, 19 November 2019, <sup>12</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, Part 2, p.8. <sup>13</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, , Part 2, p.8. <sup>14</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, , Part 3, p.18;

	intelligence sector, <sup>15</sup> which included information on Albanians who were believed to be assisting/working with the Serbian forces. <sup>16</sup>
(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. <sup>19</sup> There were guards at the door of the stable. <sup>20</sup> None of the detainees

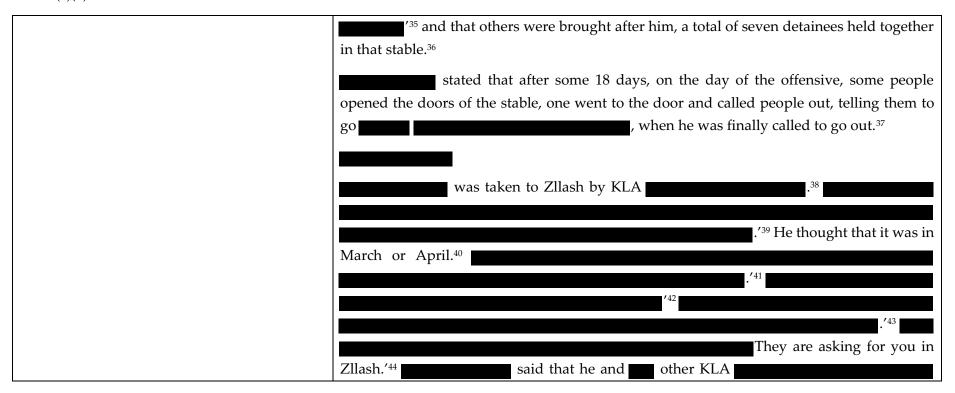
<sup>15</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, , Part 1, p.32: 'I led intelligence myself, because this was the first mission. [...] I was in charge - number one in charge of collecting intelligence, and I was also the commander of the guerrilla unit.' <sup>16</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, , Part 6, pp.8-9, 10. <sup>17</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, , Part 8, pp.8-12; Transcript of SPO Suspect Interview , Part 4, p.3. See also the evidence cited under Counts 1-4. Salih MUSTAFA, 19 November 2019, <sup>18</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, , Part 7, p.14-15; Transcript of SPO Suspect Interview , Part 6, pp.8-9, 10. See also Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Salih MUSTAFA, 20 November 2019 Part 6, p.7. 19 See Transcript of SPO Interview with , Part 2, p.14; UNMIK Statement <sup>20</sup> See e.g. Transcript of SPO Interview with Part 3, p.4; UNMIK Statement of



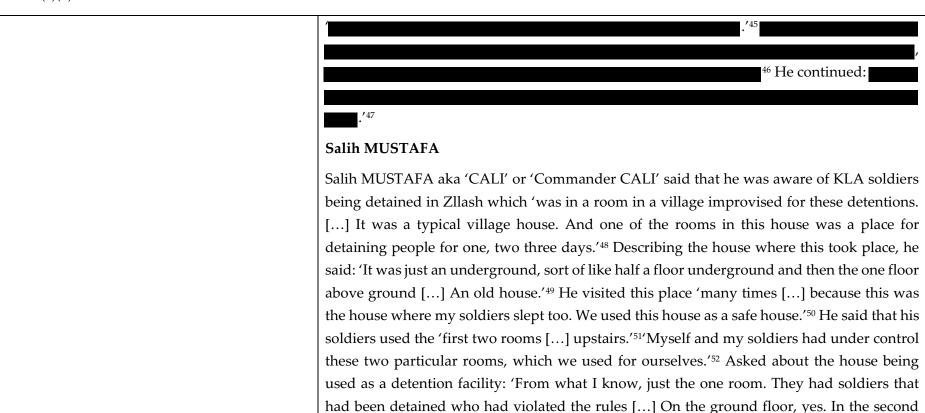
<sup>21</sup> See e.g. Transcript of SPO Interview with	,	Part 2, p.13; UNMIK Statement of	,
,	Transcript of SPO Interview with		Part 4, p.6.
<sup>22</sup> Transcript of SPO Interview with		Part 2, pp.6-7.	
<sup>23</sup> Transcript of SPO Interview with		, Part 2, pp.11-12.	
<sup>24</sup> Transcript of SPO Interview with	,	, Part 2, p.13.	
<sup>25</sup> Transcript of SPO Interview with	,	, Part 2, p.16.	
<sup>26</sup> Transcript of SPO Interview with	,	Part 2, p.15.	



<sup>27</sup> Transcript of SPO Interview with	1,	Part 3, p.9. See also UNMIK Statement of , undated,
		UNMIK statement, which states ' at
	<u>'</u> .	
<sup>28</sup> Transcript of SPO Interview with	,	, Part 3, p.9.
<sup>29</sup> 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	,	



<sup>35</sup> See Transcript of SPO Interview with	,	, Part 2, pp.14-15.
<sup>36</sup> UNMIK Statement of		
<sup>37</sup> See Transcript of SPO Interview with	,	, Part 3, p.7.
<sup>38</sup> Transcript of SPO	,	Part 1, pp.9-10.
<sup>39</sup> Transcript of SPO	,	, Part 3, p.5.
40 Transcript of SPO	,	, Part 3, p.2.
<sup>41</sup> Transcript of SPO	,	, Part 3, p.6.
<sup>42</sup> Transcript of SPO	,	, Part 3, p.16.
<sup>43</sup> Transcript of SPO	,	, Part 3, p.9.
44 Transcript of SPO	,	, Part 3, p.11.



45 Transcript of SPO	,	, Part 3, p.11.
46 Transcript of SPO	,	, Part 3, p.12.
<sup>47</sup> Transcript of SPO	,	Part 3, p.12.
48 Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019	, Part 7, p.2.
<sup>49</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019	, Part 7, p.5.
<sup>50</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019	, Part 7, p.5.
<sup>51</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019	, Part 7, p.5.
<sup>52</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019	, Part 7, p.5.

<sup>&</sup>lt;sup>53</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 7, p.6.

<sup>54</sup> Transcript of SPO Suspect Interview of SPO

<sup>&</sup>lt;sup>55</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 7, p.18.

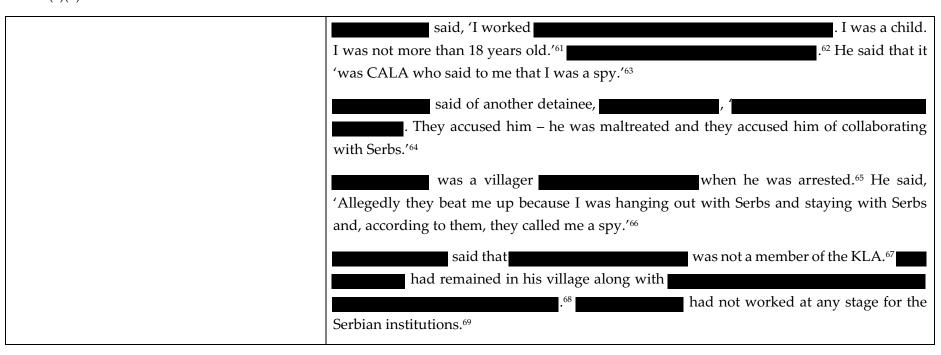
<sup>&</sup>lt;sup>56</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 8, p.2.

<sup>&</sup>lt;sup>57</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 8, p.4.

<sup>&</sup>lt;sup>58</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 8, p.6.

<sup>&</sup>lt;sup>59</sup> See the evidence cited under Count 1, element (1) and Counts 2-4.

<sup>&</sup>lt;sup>60</sup> See the evidence cited under Count 1, element (1).



61 Transcript of SPO Interview with 62 Transcript of SPO Interview with	,	, Part 2, p.13.  , Part 2, p.12; UNMIK Statement of processing and attention of the control of t	,
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.	

(4) Knowledge that the victim is a person taking no active part in hostilities

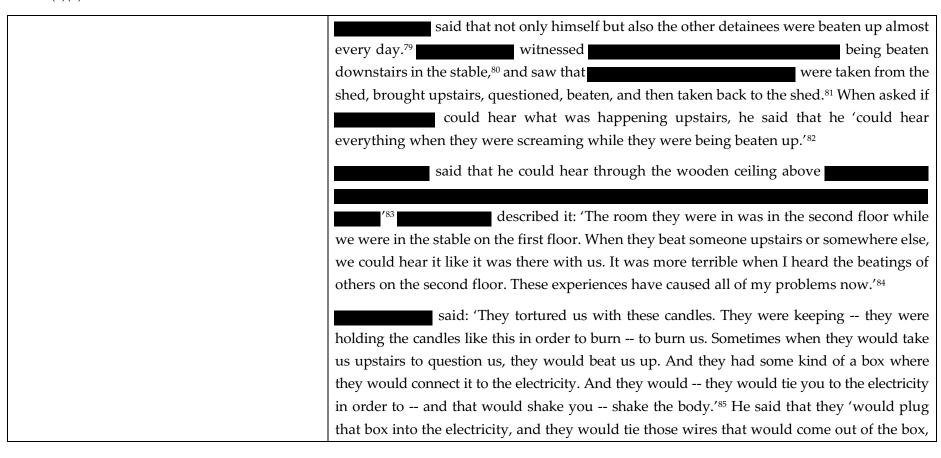
The perpetrators and Salih MUSTAFA participated in and were aware of the victims' detention and/or the circumstances of their arrest.<sup>70</sup> The victims were interrogated because they were believed to be collaborators, friends of the Serbs, or spies or thieves.<sup>71</sup>

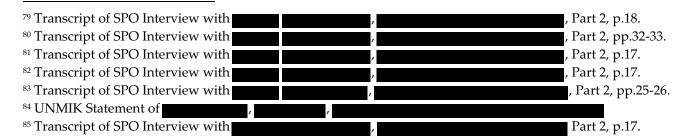
#### Count 2: Cruel Treatment (Article 14(1)(c)(i))

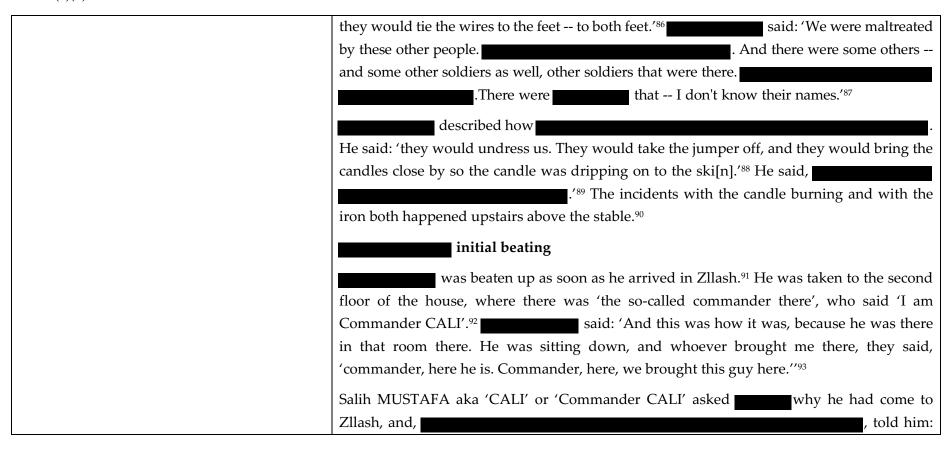
(1) An act or omission that causes serious mental or physical suffering or injury to, or constitutes a serious attack on human dignity Mistreatment at the Zllash Detention Compound took the form of burnings with candles, electro-shocks through cables and electricity boxes, beatings with metal bars or wood logs/batons, and 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 <sup>74</sup> The beatings took place in the stable itself and upstairs. 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.' If they wanted to beat you up there, they would beat you up in front of everybody else.'

<sup>&</sup>lt;sup>70</sup> See the evidence cited under Count 1, elements (1), (3).

<sup>71</sup> See e.g. Transcript of SPO Interview with	,	Part 2, p.12; UNMIK Statement of	, undated,
_	Transcript of SPO Interview with		, Part 4, p.5.
72 Transcript of SPO Interview with		Part 2, p.17.	
73 Transcript of SPO Interview with	,	, Part 2, pp.8-9.	
74 Transcript of SPO Interview with	,	, Part 2, pp.16, 18.	
75 Transcript of SPO Interview with	,	, Part 2, p.18.	
<sup>76</sup> Transcript of SPO Interview with	,	, Part 2, p.18.	
77 Transcript of SPO Interview with	,	, Part 2, p.19.	
78 Transcript of SPO Interview with	,	Part 3, p.5.	

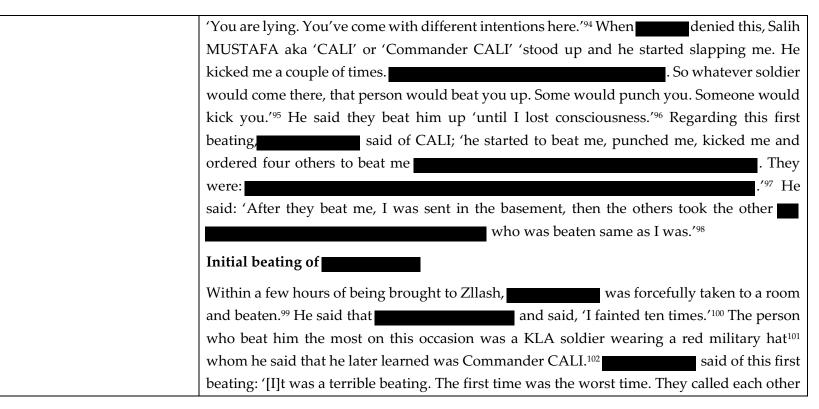






<sup>86</sup> Transcript of SPO Interview with Part 2, p.21. 87 Transcript of SPO Interview with Part 2, p.29. 88 Transcript of SPO Interview with , Part 3, p.4. 89 Transcript of SPO Interview with , Part 3, p.4. <sup>90</sup> Transcript of SPO Interview with , Part 3, p.4. 91 Transcript of SPO Interview with , Part 2, p.13. 92 Transcript of SPO Interview with , Part 2, pp.11-12. 93 Transcript of SPO Interview with , Part 4, p.5.

<sup>102</sup> Transcript of SPO Interview with

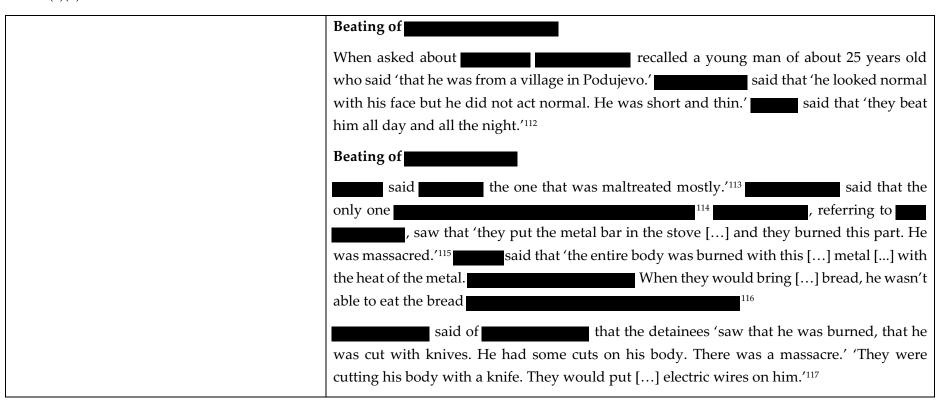


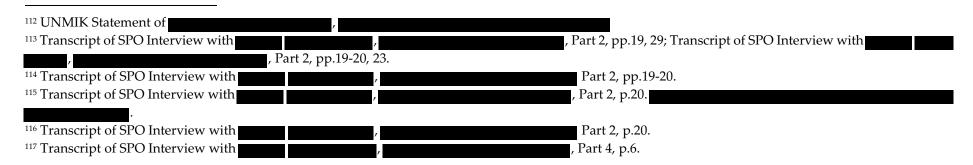
<sup>94</sup> Transcript of SPO Interview with , Part 2, p.12. 95 Transcript of SPO Interview with Part 2, pp.12-13. <sup>96</sup> Transcript of SPO Interview with , Part 2, p.13. 97 UNMIK Statement of undated, 98 UNMIK Statement of undated, 99 Transcript of SPO Interview with , Part 2, p.5. <sup>100</sup> 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 MUSTAFA, 20 November 2019, Part 8, pp.7-8.

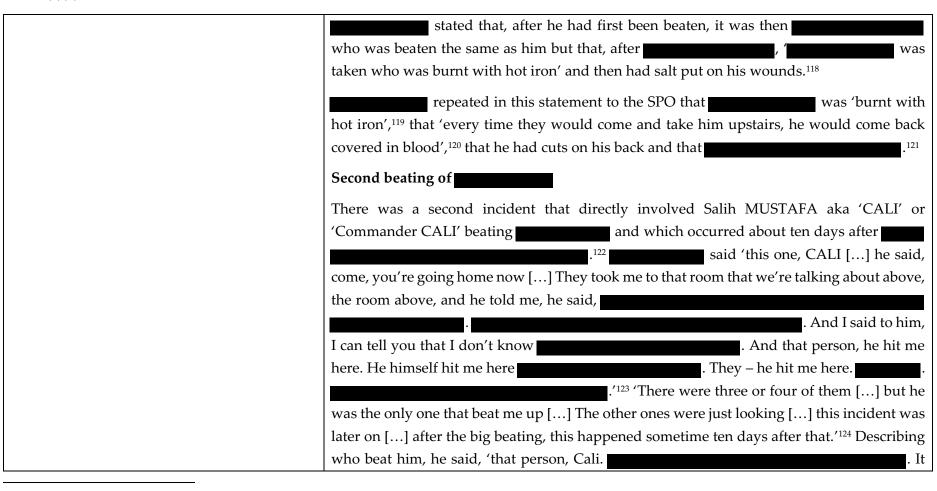
, Part 2, p.5.

by nicknames... I do recall one I heard which was called 100 He said that 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 said: 'The orders were given by this CALI two hit me more than others.'107 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, I. I heard him saying  $[\ldots]$ we're going to kill him.'109 .' [...] That is where my beating ended.'110 described the effects of this beating: 'This injury that I have in my head is from that this was how I got my injury

103 UNMIK Statement of	,	
104 UNMIK Statement of	,	
105 UNMIK Statement of	,	
<sup>106</sup> Transcript of SPO Interview with	,	
<sup>107</sup> Transcript of SPO Interview with	,	
<sup>108</sup> Transcript of SPO Interview with	,	
<sup>109</sup> Transcript of SPO Interview with	,	
110 Transcript of SPO Interview with	,	
111 UNMIK Statement of	,	





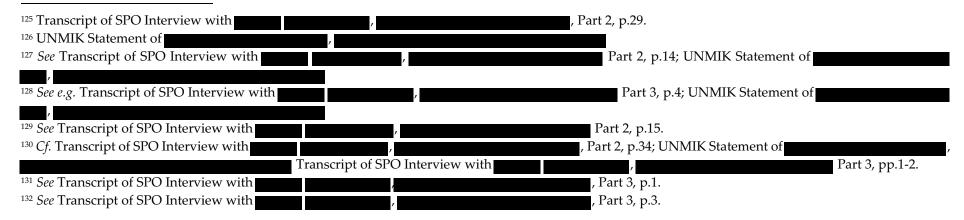


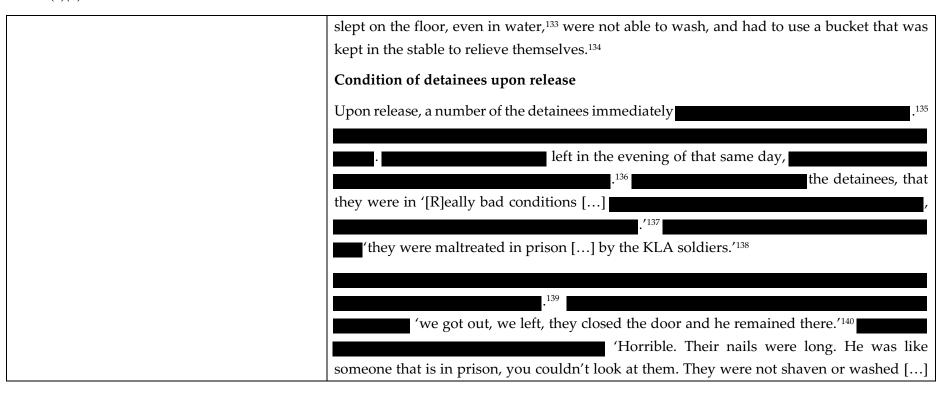
118 UNMIK Statement of			
119 UNMIK Statement of ,			•
120 Transcript of SPO Interview with		,	, Part 2, p.29.
121 Transcript of SPO Interview with		,	, Part 2, p.29.
122 See Transcript of SPO Interview with		,	, Part 2, p.28.
<sup>123</sup> Transcript of SPO Interview with	,		, Part 2, pp.26-27.
124 Transcript of SPO Interview with	,		, Part 2, p.28.

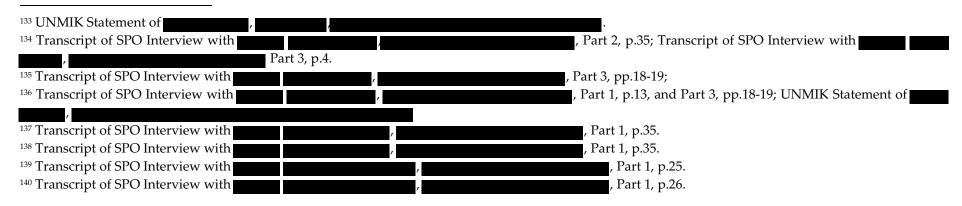
was that person.'125 said he was told that electric shocks were used on other detainees, but that such mistreatment was not performed on him. 126

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 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







	[] 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. <sup>142</sup>
(3) The victim is a person taking no active part in the hostilities	See evidence cited above under Count 1, element (3).
(4) Knowledge that the victim is a person taking no active part in hostilities	See evidence cited above under Count 1, element (4).
Count 3: Torture (Article 14(1)(c)(i))	
(1) The infliction, by act or omission, of severe pain or suffering, whether physical or mental	See evidence cited above under Count 2, element (1).
(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, <sup>143</sup> detainees were questioned and/or accused of being spies or thieves, <sup>144</sup> or cooperating with the Serbs. <sup>145</sup> was accused by Salih MUSTAFA aka 'CALI' or 'Commander CALI' of being a spy, before MUSTAFA started beating him. <sup>146</sup> Whilst being beaten up, was accused of being a spy, <sup>147</sup> of

141 Transcript of SPO Interview with Part 1, p.26.
142 See evidence cited above under Count 2, element (1).

<sup>&</sup>lt;sup>143</sup> See evidence cited above under Counts 1-2.

<sup>144</sup> See e.g. Transcript of SPO Interview with , Part 2, pp.17-18.

<sup>145</sup> UNMIK Statement of

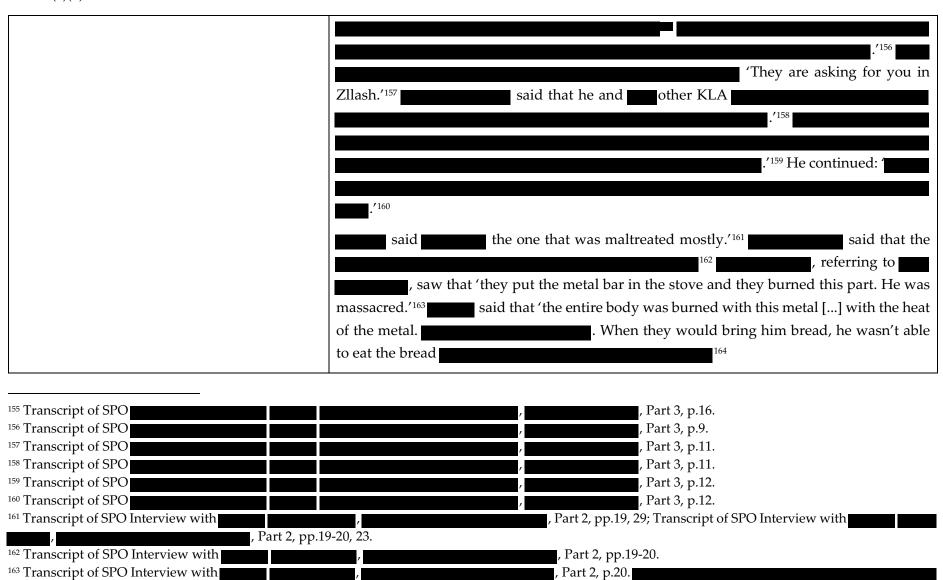
<sup>146</sup> Transcript of SPO Interview with , Part 2, p.12.

<sup>147</sup> Transcript of SPO Interview with , Part 2, pp.6-7.

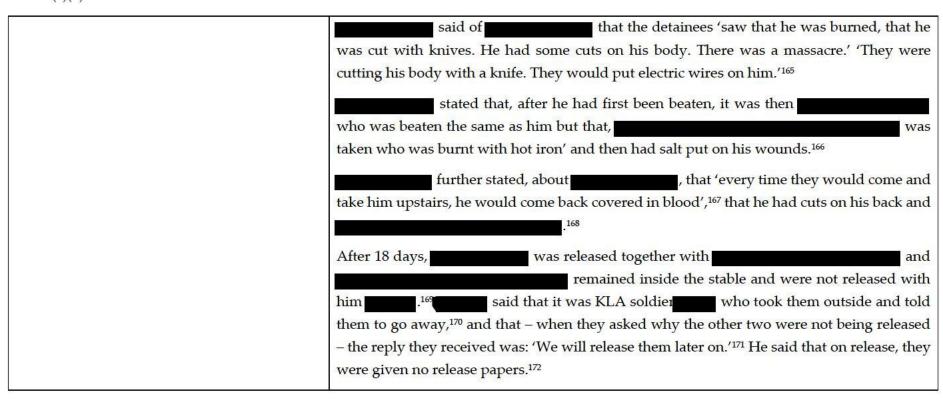
discriminating, on any ground, against the victim or a third person	cooperating with the Serbs. was also told by the perpetrators that they were going to because he was 'cooperating with Serbians'. Salih MUSTAFA aka 'CALI' or 'Commander CALI' told and started beating up when replied that he did not know.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

148 UNMIK Statement of	,		Î
149 UNMIK Statement of	,		Ī
150 Transcript of SPO Interview with		Part	2, pp.26-27.
151 Transcript of SPO		,	, Part 1, pp.9-10.
152 Transcript of SPO		,	, Part 3, p.5.
153 Transcript of SPO		,	, Part 3, p.2.
154 Transcript of SPO		,	Part 3, p.6.

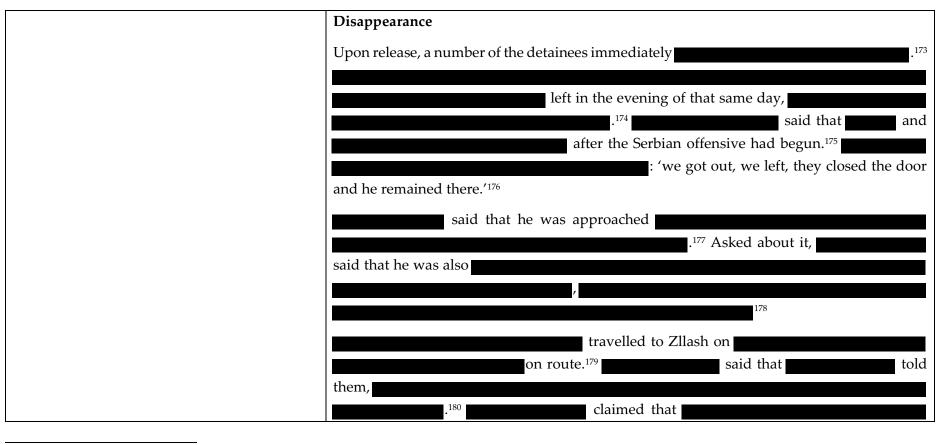
<sup>164</sup> Transcript of SPO Interview with

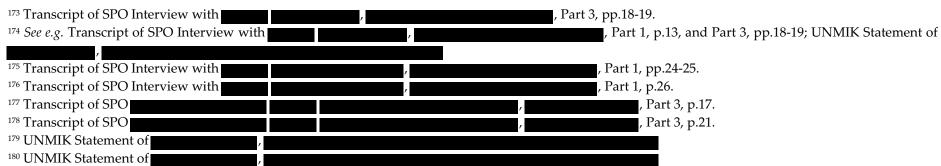


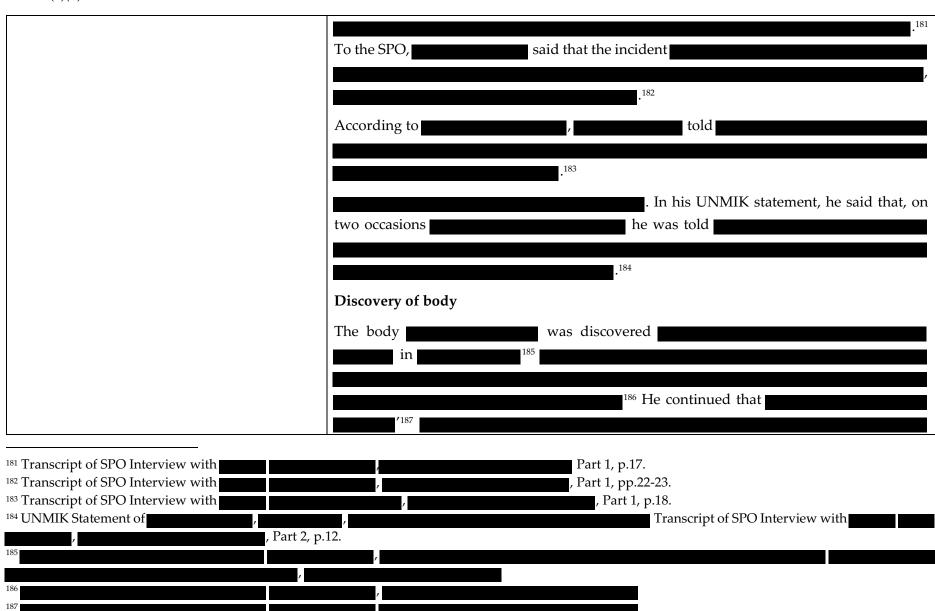
, Part 2, p.20.

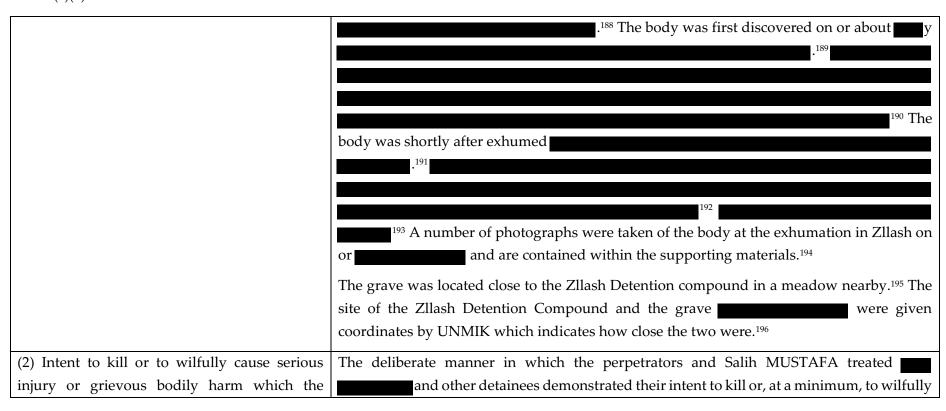


165 Transcript of SPO Interview with	, Part 4, p.6.
166 UNMIK Statement of	
167 Transcript of SPO Interview with	, Part 2, p.29.
168 Transcript of SPO Interview with	, Part 2, p.29.
<sup>169</sup> Transcript of SPO Interview with	, Part 3, p.9. See also UNMIK Statement of
<sup>170</sup> Transcript of 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.











perpetrator should reasonably have known might lead to death	cause serious injury or grievous bodily harm which they should have reasonably known might lead to death. <sup>197</sup>
	In particular, the evidence of and indicates that 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,
	With regard to not being released, 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.' added: 'He could have been able to walk, but he was really badlybadly 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.' and his legs were not able to he was unable to stand, especially towards the end.'
(3) The victim is a person taking no active part in the hostilities	See evidence cited above under Count 1, element (3).
(4) Knowledge that the victim is a person taking no active part in hostilities	See evidence cited above under Count 1, element (4).

<sup>&</sup>lt;sup>197</sup> See evidence cited above under Counts 1-2, elements (1)-(2).

<sup>&</sup>lt;sup>198</sup> See the evidence cited above under Counts 1-2, element (1).

Part 4, p.6

200 Transcript of SPO Interview with Part 4, p.6

Part 4, p.6

MODE(S) OF LIABILIY	
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 <sup>201</sup> in the arbitrary detention, cruel treatment and torture of, among others, 202 and 203 on April 1999, and 203 around April 1999. <sup>204</sup>
(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. <sup>205</sup>
JCE (Article 16(1)(a)) <sup>206</sup>	
(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

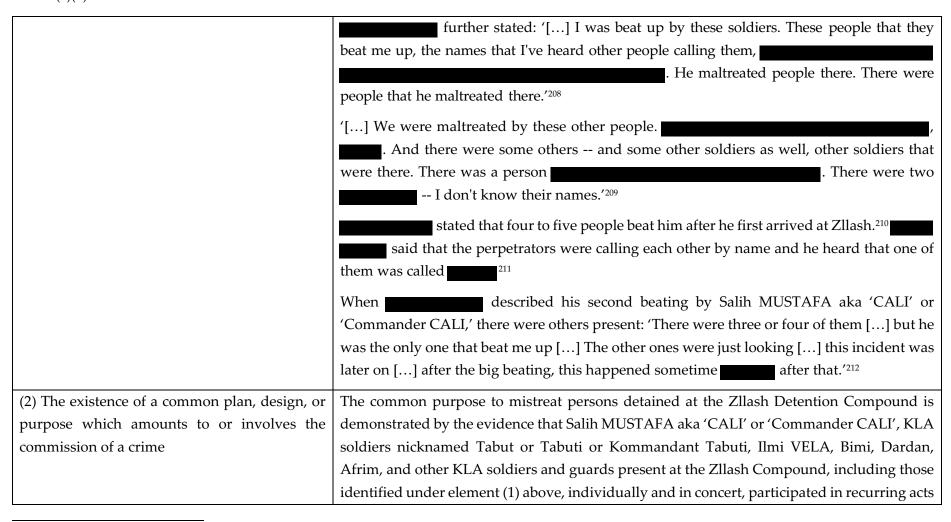
<sup>&</sup>lt;sup>201</sup> See evidence cited under Counts 1, 2 and 3 above.



<sup>&</sup>lt;sup>205</sup> See evidence cited under Counts 1, 2 and 3 above.

<sup>&</sup>lt;sup>206</sup> 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).

<sup>&</sup>lt;sup>207</sup> UNMIK Statement of



<sup>&</sup>lt;sup>208</sup> Transcript of SPO Interview with Part 2, pp.23-24.

<sup>&</sup>lt;sup>209</sup> Transcript of SPO Interview with part 2, p.29.

<sup>&</sup>lt;sup>210</sup> UNMIK Statement of

<sup>&</sup>lt;sup>211</sup> UNMIK Statement of ,

<sup>&</sup>lt;sup>212</sup> Transcript of SPO Interview with \_\_\_\_\_\_, Part 2, p.28.

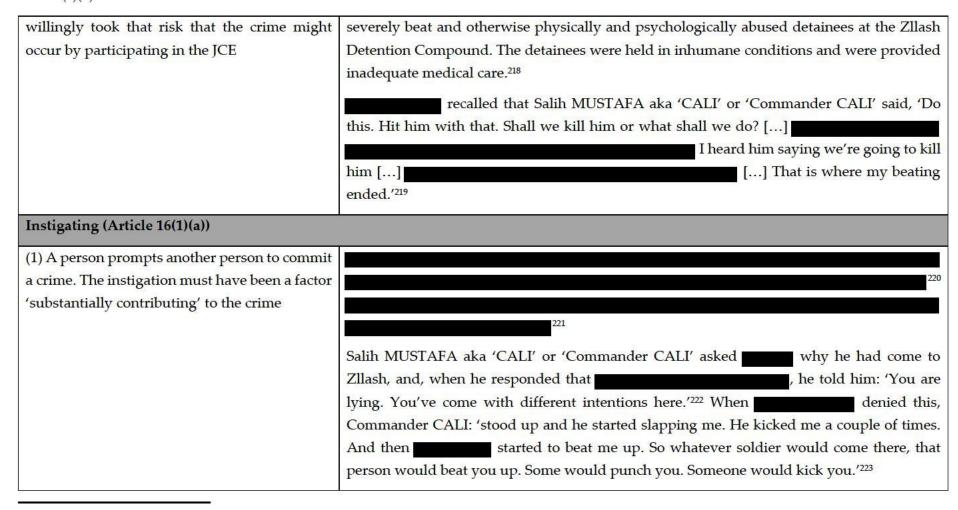
	of arbitrary detention, cruel treatment and torture against detainees, which continued at least until the end of April 1999. <sup>213</sup>
	In terms of the temporal extent of the JCE, Salih MUSTAFA aka CALI or Commander CALI said that the Serbian offensive on Zllash started on 16 April 1999 and Zllash was evacuated as a result of the offensive. <sup>214</sup> He said that 'the Serbian forces began to take over the area on the 19 <sup>th</sup> , and they completed it somewhere around the 22 <sup>nd</sup> [] They started on the 19 <sup>th</sup> and they finished on 22 <sup>nd</sup> .' <sup>215</sup> 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.' <sup>216</sup>
(3) The accused made a significant contribution to the common plan/design	See the evidence cited under physical commission above, and instigating, ordering, aiding and abetting, and superior responsibility below.
(4) Intent to effect the common purpose and commit the crimes	See the evidence cited under physical commission above, as well as under the mens rea elements for Counts 1, 2, and 3 above.
(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	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, who was treated worst, was a reasonably foreseeable consequence. <sup>217</sup>
out the common purpose; and the accused	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

<sup>&</sup>lt;sup>213</sup> See the evidence cited under Counts 1, 2 and 3 above.

<sup>214</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, Part 7, p.18.

<sup>&</sup>lt;sup>215</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, Part 7, p.19. Salih MUSTAFA, 20 November 2019, Part 7, p.24.

<sup>&</sup>lt;sup>217</sup> See evidence cited above under Counts 1-2, elements (1)-(2).



<sup>&</sup>lt;sup>218</sup> See evidence cited under Counts 1, 2 and 3 above.

<sup>219</sup> Transcript of SPO Interview with , Part 2, pp.7-9.

220 , Part 3, p.12.

221 , Part 3, p.12.

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

Regarding this first beating, said; 'he [CALI] started to beat me, punched me,
kicked me and ordered four others to beat me
·′ <sup>224</sup>
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. <sup>229</sup> 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: '
.′ <sup>231</sup> When replied that he did

<sup>224</sup> UNMIK Statement of	
<sup>225</sup> Transcript of SPO Interview with	, Part 2, p.7.
<sup>226</sup> Transcript of SPO Interview with	Part 2, p.7.
<sup>227</sup> Transcript of SPO Interview with	, Part 2, p.8.
<sup>228</sup> Transcript of SPO Interview with	, Part 2, p.9.
<sup>229</sup> See Transcript of SPO Interview with	, Part 2, p.28.
<sup>230</sup> See Transcript of SPO Interview with	, Part 2, p.27: "
	·
<sup>231</sup> Transcript of SPO Interview with	Part 2, pp.26-27.

(2) Direct intent, or awareness of the substantial likelihood that a crime will be committed in the execution of the instigation	not know
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. <sup>238</sup> Regarding his first beating, said; 'he [CALI] started to beat me, punched me, kicked me and ordered four others to beat me

<sup>&</sup>lt;sup>232</sup> Transcript of SPO Interview with , Part 2, p.27.

<sup>&</sup>lt;sup>233</sup> Transcript of SPO Interview with , Part 2, p.28.

<sup>&</sup>lt;sup>234</sup> Transcript of SPO Interview with Part 2, pp.27-29.

<sup>&</sup>lt;sup>235</sup> Transcript of SPO Interview with , Part 2, pp.28-29.

<sup>&</sup>lt;sup>236</sup> Transcript of SPO Interview with , Part 2, p.29.
<sup>237</sup> Transcript of SPO Interview with , Part 2, p.29.

<sup>&</sup>lt;sup>237</sup> Transcript of SPO Interview with state of SPO Suspect Interview o

evidence cited under element of (1) superior responsibility below.

	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.' <sup>240</sup> 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?' <sup>241</sup>
(2) Direct intent, or awareness of the substantial likelihood that a crime will be committed in the execution of that order	See the evidence cited under physical commission above, as well as under the mens rea elements for Counts 1, 2, and 3 above.
Aiding and Abetting (Article 16(1)(a))	
(1) Conduct that amounts to practical assistance, encouragement or moral support	See the evidence cited under instigating and ordering, element (1), physical commission and Counts 1-4 above.
(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. <sup>242</sup>
(3) Knowledge that conduct assists the commission of the crime by the perpetrator	See the evidence cited under physical commission above, superior responsibility below and under the mens rea elements for Counts 1, 2, and 3 above.
Superior Responsibility (Article 16(1)(c))	

239 UNMIK Statement of 240 Transcript of SPO Interview with 240 Transcript of SPO Int

<sup>&</sup>lt;sup>240</sup> Transcript of SPO Interview with , Part 2, p.7. , Part 2, p.7. , Part 2, p.7.

<sup>&</sup>lt;sup>242</sup> See the evidence cited under instigating and ordering, element (1), physical commission and Counts 1-4 above.

(1) Superior-subordinate relationship between	Salih MUSTAFA aka CALI or Commander CALI was the Commander of BIA with ultimate
the perpetrator and the accused	authority over its soldiers and sub-units. <sup>243</sup> Salih MUSTAFA aka 'CALI' or 'Commander
	CALI' had the power to discipline his soldiers and would take such decisions himself. <sup>244</sup> Salih
	MUSTAFA aka 'CALI' or 'Commander CALI' stayed at the 'safe house' used by BIA in Zllash
	numerous times in the relevant indictment period. <sup>245</sup>
	Salih MUSTAFA aka 'CALI' or 'Commander CALI' confirmed that there was a BIA soldier
	nicknamed 'Tabuti' (Nazif). <sup>246</sup> Salih MUSTAFA aka 'CALI' or 'Commander CALI' confirmed
	that a soldier called 'Ilmi Vela' was a BIA soldier in the unit of 'Nazif Tabut.' <sup>247</sup> 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). <sup>248</sup>
	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. <sup>249</sup>
(2) The accused knew or had reason to know	Salih MUSTAFA aka CALI or Commander CALI participated in the alleged crimes himself,
that the criminal act was about to be or had been	together with his subordinates He therefore knew and had reason to know that such
committed	criminal acts were being committed at that location in Zllash. <sup>250</sup>

<sup>&</sup>lt;sup>243</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, Part 1, pp.25, 27, 29, and Part 2, p.14. <sup>244</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 6, pp.2-3. <sup>245</sup> Transcript of SPO Suspect Interview of Part 3, pp.18-20, and Part 7, pp.5, 10, 12, 22. Salih MUSTAFA, 19 November 2019, <sup>246</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 8, pp.9-10. <sup>247</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, Part 8, pp.10-11. <sup>248</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 20 November 2019, , Part 8, pp.11-12. <sup>249</sup> Transcript of SPO Suspect Interview of Salih MUSTAFA, 19 November 2019, , Part 4, p.3.

<sup>&</sup>lt;sup>250</sup> 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).

Salih MUSTAFA aka CALI or Commander CALI was to be informed about every infringement committed by a soldier within BIA units.<sup>251</sup> MUSTAFA admitted having heard rumors afterwards that civilians were detained at that location in Zllash, people who had been stealing, thieves.<sup>252</sup>

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.<sup>253</sup>

Salih MUSTAFA aka CALI or Commander CALI was often<sup>254</sup> 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.<sup>255</sup> 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.' He said that he was present in Zllash before the Serbian offensive which started on or about 16 April 1999. Falter the Serbian offensive started on 16 April 1999, BIA soldiers were involved in the fighting against Serbian forces. 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.'

<sup>251</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	Part 6, p.2, and Part 7, p.8.
<sup>252</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, pp.15-16, 23-24.
<sup>253</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, pp.15-16.
<sup>254</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 3, pp.18-20, and Part 7, pp.5, 10, 12, 22.
<sup>255</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, pp.10, 12.
<sup>256</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, p.12.
<sup>257</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, p.12.
<sup>258</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, p.14.
<sup>259</sup> Transcript of SPO Suspect Interview of	Salih MUSTAFA, 20 November 2019,	, Part 7, p.20.

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