



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 26 October 2020

Language: English

Classification: Public

**Public Redacted Version of
Decision on the Confirmation of the Indictment Against Hashim Thaçi,
Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

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I.	PROCEDURAL BACKGROUND	2
II.	SUBMISSIONS.....	5
III.	APPLICABLE LAW	6
	A. Review of Indictment.....	6
	B. Crimes and Modes of Liability	7
	C. Maintaining Confidentiality.....	9
IV.	JURISDICTION.....	10
	A. Subject Matter Jurisdiction	10
	B. Temporal Jurisdiction	13
	C. Territorial or Personal Jurisdiction.....	13
V.	LEGAL REQUIREMENTS	15
	A. Nature and Scope of the Review	15
	1. Nature of the Review	15
	2. Scope of the Review	17
	B. Elements of Crimes.....	18
	1. Crimes Against Humanity	18
	2. War Crimes	37
	C. Modes of Liability.....	45
	1. Joint Criminal Enterprise	45
	2. Aiding and Abetting.....	50
	3. Superior Responsibility	51
VI.	CHARGES	54
	A. Contextual Requirements	54
	1. Contextual Requirements for Crimes Against Humanity	54
	2. Contextual Requirements for War Crimes	59
	B. The Crimes Charged	64
	1. Counts 2 and 3: Imprisonment and Arbitrary Detention	64
	2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment	96
	3. Counts 6 and 7: Torture.....	150
	4. Counts 8 and 9: Murder	158
	5. Count 10: Enforced Disappearance of Persons	182
	6. Count 1: Persecution.....	191
	7. Additional Requirements for Crimes Against Humanity and War Crimes	196
	C. The Modes of Liability Charged	199
	1. Joint Criminal Enterprise I.....	199
	2. Joint Criminal Enterprise III	212
	3. Aiding and Abetting.....	214
	4. Superior Responsibility	216
VII.	RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY	230
VIII.	DISPOSITION	233

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 24 April 2020, the Specialist Prosecutor submitted for confirmation a strictly confidential and *ex parte* indictment ("Indictment") together with evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.²

2. On 28 May 2020, the Specialist Prosecutor submitted a request for: (i) the issuance of arrest warrants for Hashim Thaçi ("Mr Thaçi"), Kadri Veseli ("Mr Veseli"), Rexhep Selimi ("Mr Selimi") and Jakup Krasniqi ("Mr Krasniqi") (collectively, the "Suspects") and related transfer orders; (ii) authorisation for search and seizure, [REDACTED]; and (iii) the interim non-disclosure of the Indictment, related documents and the identities of witnesses and victims.³

3. On 2 June 2020, the Specialist Prosecutor requested to add further supporting material and submitted an updated detailed outline.⁴

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, confidential.

² KSC-BC-2020-06, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation* ("Initial Submission"), 24 April 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

³ KSC-BC-2020-06, F00005, Specialist Prosecutor, *Request for Arrest Warrants and Related Orders* ("Submission on Related Orders"), 28 May 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

⁴ KSC-BC-2020-06, F00006, Specialist Prosecutor, *Request to Present Additional Supporting Materials*, 2 June 2020, strictly confidential and *ex parte*, with Annex 1 and Annex 2 ("Updated SPO Outline"), strictly confidential and *ex parte*.

4. On 17 June 2020, the Pre-Trial Judge authorised the submission of additional supporting material and of the updated detailed outline.⁵
5. On 23 June 2020, the Pre-Trial Judge authorised, upon request of the Specialist Prosecutor,⁶ that the following information from the Indictment is publicly disclosed, namely the: (i) identities of Mr Thaçi and Mr Veseli as charged suspects; and (ii) number of counts, legal characterisation and nature of the alleged crimes, approximate number of known victims, and their affiliation or ethnicity.⁷
6. On 2 July 2020, the Pre-Trial Judge issued an order in which he requested the Specialist Prosecutor to prepare a revised Indictment and to incorporate a detailed statement of facts, delineating with more specificity, a description of the factual allegations corresponding to each crime.⁸ The Pre-Trial Judge also requested that the Specialist Prosecutor charge the four suspects solely under Articles 13, 14, and 16 of the Law.⁹
7. On 24 July 2020, the Specialist Prosecutor submitted a revised Indictment for confirmation (“Revised Indictment”), as requested.¹⁰
8. On 29 July 2020, the Specialist Prosecutor for the second time requested authorisation to submit additional supporting material.¹¹

⁵ KSC-BC-2020-06, F00007, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Request to Present Additional Supporting Material*, 17 June 2020, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-06, F00008, Specialist Prosecutor, *Urgent Request for Authorisation to Disclose Information Relating to the Indictment*, 23 June 2020, strictly confidential and *ex parte*.

⁷ KSC-BC-2020-06, F00009, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Urgent Request*, 23 June 2020, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-06, F00010, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules* (“Order Pursuant to Rule 86(4)”), 2 July 2020, strictly confidential and *ex parte*, paras 22 and 27(a).

⁹ Order Pursuant to Rule 86(4), paras 23, 26, 27(b).

¹⁰ KSC-BC-2020-06, F00011, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation* (“Second Submission”), 24 July 2020, strictly confidential and *ex parte* with Annex 1 (“Revised Indictment”), strictly confidential and *ex parte*.

¹¹ KSC-BC-2020-06, F00012, Specialist Prosecutor, *Second Request to Present Additional Supporting Materials*, 29 July 2020, strictly confidential and *ex parte*.

9. On 30 July 2020, the Pre-Trial Judge authorised the submission of additional supporting material and ordered the submission of a supplemental detailed outline.¹²

10. On 12 August 2020, the Specialist Prosecutor submitted the supplemental detailed outline, as ordered.¹³

11. On 18 September 2020, the Pre-Trial Judge issued an order in which he requested the Specialist Prosecutor to clarify discrepancies between the Revised Indictment and the detailed outline in relation to certain locations and individuals and, if need be, to submit a further revised indictment.¹⁴

12. On 21 September 2020, the President set the venue of the proceedings of this case and any related matters emanating therefrom to the Host State, the Netherlands.¹⁵

13. On 24 September 2020, the Specialist Prosecutor provided, as ordered, clarifications on the charges and informed the Pre-Trial Judge that he does not intend to submit a further revised indictment.¹⁶

14. On 19 October 2020, the Pre-Trial Judge issued an order setting a target date for the issuance of this decision.¹⁷

¹² KSC-BC-2020-06, F00013, Pre-Trial Judge, *Second Decision on Specialist Prosecutor's Request to Present Additional Supporting Material*, 30 July 2020, strictly confidential and *ex parte*.

¹³ KSC-BC-2020-06, F00014, Specialist Prosecutor, *Submission of Supplemental Rule 86(3)(b) Outline*, 12 August 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

¹⁴ KSC-BC-2020-06, F00016, Pre-Trial Judge, *Second Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 18 September 2020, strictly confidential and *ex parte*.

¹⁵ KSC-BC-2020-06, F00017, President, *Decision Invoking a Change of Venue to the Host State*, 21 September 2020, confidential and *ex parte*.

¹⁶ KSC-BC-2020-06, F00018, Specialist Prosecutor, *Submission Pursuant to Order KSC-BC-2020-06/F00016*, 24 September 2020, strictly confidential and *ex parte*.

¹⁷ KSC-BC-2020-06, F00023, Pre-Trial Judge, *Order Setting Target Date for a Decision Pursuant to Article 39(2)*, 19 October 2020, strictly confidential and *ex parte*.

II. SUBMISSIONS

15. In the Revised Indictment, the Specialist Prosecutor's Office ("SPO") charges the Suspects with crimes against humanity, committed in the context of a widespread or systematic attack against the civilian population (Article 13 of the Law) and war crimes committed in the context of a non-international armed conflict (Article 14(1)(c) of the Law).¹⁸ More specifically, the SPO alleges that the crimes of persecution (Count 1),¹⁹ imprisonment/arbitrary detention (Counts 2 and 3),²⁰ other inhumane acts/cruel treatment (Counts 4 and 5),²¹ torture (Counts 6 and 7),²² murder (Counts 8 and 9)²³ and enforced disappearance of persons (Count 10)²⁴ were committed during the period from at least March 1998 through September 1999 ("Indictment Period")²⁵ in Kosovo and areas of northern Albania.²⁶ According to the SPO, the Suspects incur individual criminal responsibility for committing, between at least March 1998 through September 1999, through their participation in a joint criminal enterprise (in its basic and extended forms)²⁷ and/or having aided and abetted²⁸ the crimes under Counts 1-10. Additionally, the SPO contends that, in the alternative, the Suspects are individually criminally responsible as superiors for the crimes under Counts 1-10 pursuant to Article 16(1)(c) of the Law.²⁹

¹⁸ Revised Indictment, paras 16-31, 173-174 [68].

¹⁹ Revised Indictment, paras 57-58, 174 [68].

²⁰ Revised Indictment, paras 59-94, 174 [68].

²¹ Revised Indictment, paras 95-134, 174 [68].

²² Revised Indictment, paras 136, 174 [68].

²³ Revised Indictment, paras 137-171, 174 [68].

²⁴ Revised Indictment, paras 172, 174 [68].

²⁵ Revised Indictment, paras 16, 18, 57, 59, 95-96, 136-137, 172.

²⁶ Revised Indictment, paras 57, 59, 95-96, 136-137, 172, Schedules A-C.

²⁷ Revised Indictment, paras 32-51, 173, 174 [68]. The SPO alternatively alleges that the Suspects committed, in whole or in part, the crimes set forth in Counts 1-10 through the extended form of joint criminal enterprise. *See* Revised Indictment, para. 34.

²⁸ Revised Indictment, paras 52, 173, 174 [68].

²⁹ Revised Indictment, paras 53-55, 173, 174 [68].

16. In addition to the request for confirmation of the Revised Indictment,³⁰ the SPO requests the temporary non-disclosure of the Revised Indictment, related documents and information to the public and the accused until further order³¹ as well as the interim non-disclosure of the identities of witnesses and victims until appropriate protective measures have been ordered.³² The SPO submits that there are real risks of the Suspects' flight,³³ interference with witnesses and victims,³⁴ and the commission of further crimes³⁵ that demonstrate good cause justifying these requests.

17. To effectuate the non-disclosure of the identities of victims and witnesses, the SPO requests: (i) the non-disclosure of the name and identifying information of any witness and victim to the public; (ii) redactions of the identity and identifying information of and the assignment of provisional pseudonyms to witnesses and victims named prior to disclosure to the Suspects or the public; and (iii) the continuation of non-disclosure until further decision on application from the SPO or after hearing the SPO.³⁶

III. APPLICABLE LAW

A. REVIEW OF INDICTMENT

18. Article 39(1) and (2) of the Law and Rule 86(4) of the Rules provide that the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-

³⁰ Initial Submission, para. 7(i).

³¹ Initial Submission, paras 5, 7(ii); Submission on Related Orders, paras 2, 55, 60(e); Second Submission, para. 7.

³² Initial Submission, paras 5, 7(ii); Submission on Related Orders, paras 2, 54, 60(d); Second Submission, para. 7.

³³ Submission on Related Orders, paras 31-33.

³⁴ Submission on Related Orders, paras 34-38.

³⁵ Submission on Related Orders, paras 39-40.

³⁶ Submission on Related Orders, para. 54(a)-(c).

grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed and specifically indicated as such. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

19. Pursuant to Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged. The indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

20. Upon confirmation of any charge(s) of the indictment, Rule 86(6) of the Rules provides that the suspect shall have the status of an Accused and the Pre-Trial Judge may issue any other decisions or orders provided for in Article 39(3) of the Law.

21. Rule 86(8) and (10) of the Rules provides that the Registrar shall retain and prepare certified copies of the confirmed indictment bearing the seal of the Specialist Chambers ("SC") and notify the President of the confirmed indictment.

B. CRIMES AND MODES OF LIABILITY

22. In addition to adjudicating in accordance with the Constitution of Kosovo, the Law, provisions of Kosovo law expressly incorporated in the Law, and international human rights law, Articles 3(2)(d), (3), and 12 of the Law provide that the SC shall apply customary international law, as applicable at the time the relevant crimes were committed. In determining customary international law at

the time the crimes were committed, a Judge may be assisted by sources of international law, including subsidiary sources such as the jurisprudence from the international *ad hoc* tribunals, the International Criminal Court, and other criminal courts.

23. Article 13 of the Law provides that for the purpose of this Law, under customary international law during the temporal jurisdiction of the SC, crimes against humanity means any of the following acts when committed as part of a widespread or systematic attack against any civilian population: (i) murder; (ii) extermination; (iii) enslavement; (iv) deportation; (v) imprisonment; (vi) torture; (vii) rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; (viii) persecution on political, racial, ethnic or religious grounds; (ix) enforced disappearance of persons; and (x) other inhumane acts.

24. Article 14(1)(c) of the Law provides that for the purpose of this Law, under customary international law during the temporal jurisdiction of the SC, war crimes means, in the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”), including any of the following acts committed against persons taking no active part in hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause: (i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture; (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) taking of hostages; and (iv) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

25. For crimes in Articles 13 and 14 of the Law, Article 16(1)(a) provides, *inter alia*, that a person who instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of such a crime shall be individually responsible for the crime. Article 16(1)(c) of the Law further provides that the fact that any of the acts or omissions were committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

C. MAINTAINING CONFIDENTIALITY

26. Article 39(11) of the Law stipulates that the Pre-Trial Judge may, where necessary, provide for the protection of victims and witnesses.

27. Rule 85(4) of the Rules provides that all documents and information submitted by the SPO to the Pre-Trial Judge during investigation shall remain at the least confidential and *ex parte*, subject to Rule 102 of the Rules.

28. Rule 88 of the Rules provides that the indictment shall be made public upon confirmation by the Pre-Trial Judge. However, in exceptional circumstances, upon a showing of good cause, the Pre-Trial Judge may order the temporary non-disclosure of the indictment, related documents or information to the public until further order. The indictment shall in any case be made public, with redactions, where necessary, no later than the Accused's initial appearance. The SPO may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

29. Rule 102(1)(a) of the Rules provides that the SPO shall make available to the Accused, as soon as possible, but at least within 30 days of the initial appearance

of the Accused, the supporting material to the indictment submitted for confirmation as well as all statements obtained from the Accused.

30. Rule 105(1) of the Rules provides that the SPO may apply to the Panel for interim non-disclosure of the identity of a witness or victim participating in the proceedings until appropriate protective measures have been ordered.

IV. JURISDICTION

31. In order to be confirmed, an indictment must fulfil the subject matter and temporal requirements, and must have either a territorial or personal basis for jurisdiction.

A. SUBJECT MATTER JURISDICTION

32. Article 6 of the Law provides that the Specialist Chambers shall have jurisdiction over crimes set out in Articles 12-15 of the Law. The crimes against humanity of persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance of persons (Counts 1, 2, 4, 6, 8 and 10), as pleaded by the Specialist Prosecutor, are listed in Article 13 of the Law and therefore fall within the subject matter jurisdiction of the Specialist Chambers. Equally, the war crimes of cruel treatment, torture and murder (Counts 5, 7 and 9), as pleaded by the Specialist Prosecutor, are listed in Article 14(1)(c)(i) of the Law and therefore fall within the subject matter jurisdiction of the Specialist Chambers.

33. In the Revised Indictment, the SPO submits that the Suspects are also criminally responsible for the war crime of arbitrary detention (Count 3), in violation of Article 14(1)(c) of the Law.³⁷ While this provision does not explicitly list arbitrary detention as a war crime in non-international armed conflict, it does

³⁷ Revised Indictment, paras 59-94, 174 [68].

not limit the crimes falling under SC jurisdiction to those expressly enumerated therein. Nonetheless, in order to exercise jurisdiction over a war crime that is not listed in Article 14(1)(c)(i)-(iv) of the Law, such crime must: (i) constitute a serious violation of Common Article 3; and (ii) be prohibited by customary international law at the time of its commission, in conformity with Articles 3(2)(d) and 12 of the Law.

34. Common Article 3 provides that “persons taking no active part in hostilities, including [...] those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely [...]”. This protection, also stipulated in Article 4(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II) of 8 June 1977, must be enforced by all parties to the armed conflict and must be afforded to all detained persons, irrespective of the reason for deprivation of liberty.³⁸ The requirement of humane treatment constitutes a fundamental obligation of international humanitarian law (“IHL”) and reflects customary international law.³⁹ It is broader than the

³⁸ ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edition, 2016 (“2016 ICRC Commentary”) states regarding Common Article 3: “it is undisputed that the substantive provisions of common Article 3 bind all such armed groups when they are party to an armed conflict” (para. 508). See also ICRC, *Commentary on the Additional Protocols to the Geneva Conventions*, 1987 (“1987 ICRC Commentary to Additional Protocol II”) regarding Article 1 (paras 4460, 4470). Regarding Article 5, the 1987 ICRC Commentary to Additional Protocol II clarifies that the expression “those who are responsible for the internment or the detention” refers to “persons who are responsible de facto for camps, prisons, or any other places of detention, independently of any recognized legal authority” (para. 4582).

³⁹ See Rule 87, in Henckaerts J.-M., Doswald-Beck L., *Customary International Humanitarian Law* (“CIHL Study”), Vol. I (Rules), Cambridge University Press 2005, p. 306. See also ICJ, *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, *Judgment of 27 June 1986*, para. 218; ICTY, *Prosecutor v. Tadić*, IT-94-1-AR72, Appeals Chamber, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* (“Tadić Decision on Jurisdiction”), 2 October 1995, para. 98.

prohibitions expressly listed in Common Article 3, which serve as examples of conduct that is indisputably in violation of the provision.⁴⁰

35. Deprivation of liberty without a legal basis or in violation of basic safeguards is not compatible with and violates the requirement of humane treatment of all persons placed *hors de combat*, including by detention, as enshrined in Common Article 3.⁴¹

36. Customary international law prohibits arbitrary deprivation of liberty. Extensive state practice, in the form of, *inter alia*, military manuals, criminal legislation, documents of international organisations and conferences, and international judicial and quasi-judicial bodies, establishes the applicability of this prohibition in both international and non-international armed conflicts.⁴² This has also been confirmed by the ICRC in Rule 99 of its 2005 Customary International Humanitarian Law Study.⁴³

37. In light of the foregoing, the Pre-Trial Judge finds that arbitrary detention constitutes a serious violation of Common Article 3 and was prohibited by customary international law at the time of commission of the crimes alleged in the Revised Indictment. The status of the law, at the national and international level, was sufficiently clear and foreseeable to anticipate that depriving someone of his

⁴⁰ 2016 ICRC Commentary regarding Common Article 3, para. 555; ICTY, *Prosecutor v. Aleksovski*, I-95-14/1, Trial Chamber, *Judgement*, 25 June 1999, para. 49.

⁴¹ Rule 99, CIHL Study, Vol. I (Rules), p. 344.

⁴² See the practice referred to in Rule 99, CIHL Study, Vol. I (Rules), p. 347; Vol. II (Practice), pp. 2331-2344, in particular pp. 2331 (para. 2555), 2332 (para. 2563), 2333 (paras 2576, 2579, 2580), 2334 (para. 2593), 2335 (paras 2599, 2600, 2605), 2336 (paras 2606, 2607, 2608, 2611); UN Security Council Resolutions: 1019 (1995), U.N. Doc. S/RES/1019, 9 November 1995; 1034 (1995), U.N. Doc. S/RES/1034, 21 December 1995; UN General Assembly Resolution 50/193 (1996), U.N. Doc. A/RES/50/193, 11 March 1996; UN Commission on Human Rights, Situation of human rights in the Republic of Bosnia and Herzegovina, the State of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), U.N. Doc. E/CN.4/RES/1996/71, 23 April 1996; UN Commission on Human Rights, Situation of human rights in the Sudan, U.N. Doc. E/CN.4/RES/1996/73, 23 April 1996, para. 15. See also Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (1976) ("SFRY Criminal Code").

⁴³ Rule 99, CIHL Study, Vol. I (Rules), p. 344.

or her liberty in an arbitrary manner might give rise to individual criminal responsibility.⁴⁴

38. Accordingly, the Pre-Trial Judge concludes that the SC may exercise jurisdiction over this war crime under Article 14(1)(c) in combination with Article 12 of the Law.

B. TEMPORAL JURISDICTION

39. Article 7 of the Law provides that the SC shall have jurisdiction over crimes within its subject matter jurisdiction, which occurred between 1 January 1998 and 31 December 2000. As the Specialist Prosecutor has alleged that the crimes under Counts 1-10 were committed between at least March 1998 and September 1999,⁴⁵ the Pre-Trial Judge finds that the crimes fall within SC temporal jurisdiction.

C. TERRITORIAL OR PERSONAL JURISDICTION

40. Pursuant to Article 8 of the Law, the SC shall have jurisdiction over crimes within its subject matter jurisdiction, which were either commenced or committed in Kosovo. Pursuant to Article 9(2) of the Law, the SC shall have personal jurisdiction when the suspect is a person having Kosovo/Federal Republic of Yugoslavia ("FRY") citizenship (active personality principle) or crimes are committed against persons of Kosovo/FRY citizenship (passive personality principle), wherever those crimes were committed. The territorial and personal jurisdictional bases are thus in the alternative. Satisfying one of these requirements is sufficient to reach an affirmative finding on jurisdiction.

⁴⁴ See also Article 142 of the SFRY Criminal Code.

⁴⁵ Revised Indictment, paras 16, 18, 57, 59, 95-96, 136-137, 172.

41. In the present case, the majority of the crimes allegedly occurred in locations within Kosovo, such as: Likoc/Likovac and [REDACTED]; Jabllanicë/Jablanica; Llapushnik/Lapušnik and Berishë/Beriša mountains; Drenoc/Drenovac; Malishevë/Mališevo and Volljakë/Volujak Cave; [REDACTED]; Bare and Bajgorë/Bajgora; Llapashticë/Lapaštica, [REDACTED], Majac/Majance, Potok and [REDACTED]; Zllash/Zlaš; [REDACTED]; [REDACTED]; Kleçkë/Klečka and [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Prizren; Ferizaj/Uroševac; [REDACTED]; Gjilan/Gnjilane; Suharekë/Suva Reka; Rahovec/Orahovac; Novobërdë/Novo Brdo; [REDACTED]; and [REDACTED].⁴⁶ The Pre-Trial Judge therefore finds that the territorial jurisdiction requirement of Article 8 of the Law has been met.

42. Regarding the crimes that allegedly occurred on the territory of Albania, such as in the *Kukës* and *Has* districts, the Pre-Trial Judge notes that the Suspects, born in Kosovo,⁴⁷ were allegedly citizens of the FRY at all times relevant to the Revised Indictment.⁴⁸ The Pre-Trial Judge therefore finds that the active personal jurisdiction requirement of Article 9(2) of the Law has been met.

43. In light of the foregoing, the Pre-Trial Judge finds that the case falls within the jurisdiction of the SC.

⁴⁶ Revised Indictment, paras 60-77, 80-94, 98-115, 119-134, 138-164, 166-171.

⁴⁷ Revised Indictment, paras 1, 4, 7, 10.

⁴⁸ Revised Indictment, paras 1, 4, 7, 10. *See also* [REDACTED]; [REDACTED]; [REDACTED]; IT-04-84 P00340, pp. 4, 6, 173 (3288, 3290, 3457).

V. LEGAL REQUIREMENTS

A. NATURE AND SCOPE OF THE REVIEW

1. Nature of the Review

44. The confirmation of the indictment is an *ex parte* process without the involvement of the Defence. Judicial review ensures that only those charges are considered at trial for which sufficient evidence has been presented. It also ensures that the indictment provides the Accused with sufficient information to understand clearly and fully the nature and cause of the charges against him or her with a view to preparing an adequate defence.⁴⁹

45. Pursuant to Article 38(4) of the Law and Rule 86(1) of the Rules, the Specialist Prosecutor submits the indictment, together with supporting material, for review by the Pre-Trial Judge. During the review process, the Pre-Trial Judge determines whether the indictment meets the requirements under Rule 86(3) of the Rules, in particular the sufficiency of information as regards the name and particulars of the suspect, the statement of facts and the statement of crimes,⁵⁰ and whether there is a need to revert to the Specialist Prosecutor, pursuant to Rule 86(4)(a)-(c) of the Rules. Notably, the Pre-Trial Judge may request or permit the Specialist Prosecutor to present additional material in support of any or all charges. Subsequently, pursuant to Article 39(2) of the Law and the chapeau of Rule 86(4) of the Rules, the Pre-Trial Judge examines the supporting material in relation to each charge in the indictment, to determine whether the SPO has established a well-grounded suspicion that the suspect committed or participated in the commission of a crime under the jurisdiction of the SC.

⁴⁹ Order Pursuant to Rule 86(4), para. 9.

⁵⁰ In this respect, the Pre-Trial Judge must give due regard to the rights of the Accused set out in Article 21(4)(a), (c) and (d) of the Law, which echoes Article 6(1), (3)(a) and (b) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") and Article 14(3)(a), (b) and (c) of the International Covenant on Civil and Political Rights ("ICCPR").

46. While neither the Law nor the Rules define well-grounded suspicion, the threshold is clearly differentiated from other evidentiary standards provided in the SC's legal framework. The Law establishes four progressively higher evidentiary thresholds: (i) grounds to believe (in Article 38(3)(a) of the Law and Rule 43(1) of the Rules regarding the status of suspects); (ii) grounded suspicion (in Article 41(6) of the Law regarding arrest warrants by the SC or arrest orders by the SPO); (iii) well-grounded suspicion (in Article 39(3) of the Law and Rule 86(4) of the Rules regarding the confirmation of an indictment); and (iv) beyond reasonable doubt (in Article 21(3) of the Law and Rule 158(3) of the Rules regarding convictions). As the threshold for triggering proceedings against an Accused, well-grounded suspicion is necessarily more onerous than those required for ascertaining suspects and ordering arrests, and is evidently less demanding than the standard for conviction following trial.

47. The Pre-Trial Judge notes that, according to Article 19.1.12 of the Kosovo Criminal Procedure Code of 2012, No. 04/L-123 ("CPC"), well-grounded suspicion is reached when the evidence "would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence".⁵¹ Notably, it is not sufficient, as required for grounded suspicion under Article 19.1.9 CPC, that the objective observer be satisfied that "the person concerned is more likely than not to have committed the offence".

48. Therefore, while falling short of the certainty of a proven fact, determining the existence of a well-grounded suspicion nevertheless requires a conviction on the part of the Pre-Trial Judge, beyond mere theory or suspicion, that: (i) the contextual elements of the crime (if any) are present; (ii) the underlying acts or

⁵¹ "Objective" is defined as "not influenced by personal feelings or opinions in considering and representing facts; impartial, detached", see *OED Online* (Oxford University Press, December 2019), available at <https://www.oed.com/view/Entry/129634?redirectedFrom=objective#eid> (last accessed 20 October 2020).

crimes have indeed occurred; and (iii) the suspect committed or participated in the commission of the crime through the alleged mode(s) of liability. The Pre-Trial Judge bases such findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment. In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.⁵²

2. Scope of the Review

49. Pursuant to Rule 86(4) of the Rules, to determine whether a well-grounded suspicion exists, the Pre-Trial Judge examines the indictment, the detailed outline and the supporting material only, without regard to any extraneous information or material, albeit publicly available. Accordingly, the Pre-Trial Judge may confirm or dismiss the indictment based solely on the information and evidentiary material submitted by the SPO.⁵³

50. As part of the review process, the Pre-Trial Judge conducts a preliminary assessment of the supporting material, without encroaching on the prerogatives of the Trial Panel in determining the admissibility and weight of the evidence, as set out in Rules 137-139 of the Rules.⁵⁴ That being said, the Pre-Trial Judge shall not rely on material that is manifestly (i) non-authentic or (ii) obtained by means of a violation of the Law, the Rules, or standards of international human rights

⁵² Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-803-tEN, Pre-Trial Chamber I, Decision on the Confirmation of Charges, 29 January 2007, para. 39; *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Pre-Trial Chamber I, Decision on the Confirmation of Charges Against Laurent Gbagbo (“Gbagbo Decision on Confirmation of Charges”), 12 June 2014, para. 22.

⁵³ Similarly, STL, *Prosecutor v. Ayyash et al.*, STL-17-07/I/AC/R176bis, Appeals Chamber, Interlocutory Decision on the Applicable Law: Criminal Association and Review of the Indictment, 18 October 2017, para. 111.

⁵⁴ Similarly, STL, *Prosecutor v. Ayyash et al.*, STL-11-01/I, Pre-Trial Judge, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011, para. 26.

law, or under torture or any other inhumane or degrading treatment, as provided in Rule 138(2)-(3) of the Rules.

B. ELEMENTS OF CRIMES

1. Crimes Against Humanity

(a) Contextual Requirements for Crimes Against Humanity

51. The contextual requirements for crimes against humanity consist of: (i) a widespread or systematic attack directed against any civilian population; (ii) a nexus between the underlying act and the attack; and (iii) knowledge of the attack.⁵⁵

(i) *Widespread or systematic attack directed against any civilian population*

52. *Attack*. The term “attack” refers to a campaign, operation or course of conduct involving the multiple commission of acts of violence and mistreatment of the civilian population, including those referred to in Article 13 of the Law.⁵⁶ The acts which constitute an “attack” need not themselves be punishable as crimes against

⁵⁵ ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Trial Chamber, *Judgement* (“*Kunarac et al* Trial Judgment”), 22 February 2001, para. 410; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, *Public Redacted Version of Judgement Issued on 24 March 2016* (“*Karadžić* Trial Judgment”), 24 March 2016, para. 472; *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, *Judgment* (“*Mladić* Trial Judgment”), 22 November 2017, para. 3023.

⁵⁶ ICTY, *Kunarac et al. Trial Judgment*, para. 417; *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Appeals Chamber, *Judgement* (“*Kunarac et al. Appeal Judgment*”), 12 June 2002, para. 86; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber, *Judgement* (“*Blagojević and Jokić* Trial Judgment”), 17 January 2005, para. 543; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Chamber, *Judgement* (“*Akayesu* Trial Judgment”), 2 September 1998, para. 581; *Prosecutor v. Rutaganda*, ICTR-96-3-T, Trial Chamber, *Judgement and Sentence*, 6 December 1999, para. 70.

humanity,⁵⁷ nor does the “attack” itself need to constitute a military attack.⁵⁸ The concepts of “attack”, within the meaning of Article 13 of the Law, and “armed conflict”, within the meaning of Article 14 of the Law, are not identical.⁵⁹ Hence, the attack may precede, outlast, or continue during the armed conflict, but it need not be a part of it.⁶⁰ When establishing whether there was an “attack” on a particular civilian population, it is not relevant that the other side also committed atrocities.⁶¹

53. *Directed against any civilian population.* As the expression “directed against” specifies, the attack must target any civilian population, a collective that is the primary target of the attack and not its incidental victim.⁶² The Specialist Prosecutor is not required to demonstrate that the entire population of the geographical area, in which the attack took place, must have been subjected to the attack.⁶³ Rather, it is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way that the attack was in fact directed against a civilian population, rather than against a limited and randomly selected group of individuals.⁶⁴ The term “civilian population” is interpreted broadly and refers to persons who are not taking part in hostilities, as

⁵⁷ ECCC, *Co-Prosecutors v. Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Trial Chamber, *Judgement* (“*Duch Trial Judgment*”), 26 July 2010, para. 298; ICTR, *Prosecutor v Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, *Judgement* (“*Nahimana et al. Appeal Judgment*”), 28 November 2007, paras 915-918.

⁵⁸ ICTY, *Kunarac et al. Trial Judgment*, para. 416; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Pre-Trial Chamber II, *Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo* (“*Bemba Decision on Confirmation of Charges*”), 15 June 2009, para. 75.

⁵⁹ ICTY, *Mladić Trial Judgment*, para. 3024; *Kunarac et al. Trial Judgment*, para. 416.

⁶⁰ ICTY, *Kunarac et al. Appeal Judgment*, para. 86; *Karadžić Trial Judgment*, para. 473.

⁶¹ ICTY, *Kunarac et al. Appeal Judgment*, para. 87.

⁶² ICTY, *Mladić Trial Judgment*, para. 3026; *Kunarac et al. Appeal Judgment*, para. 92; ICC, *Bemba Decision on Confirmation of Charges*, para. 76; *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, *Judgment Pursuant to Article 74 of the Statute* (“*Katanga Trial Judgment*”), 7 March 2014, para. 1104.

⁶³ ICTY, *Kunarac et al. Appeal Judgment*, para. 90; ICC, *Bemba Decision on Confirmation of Charges*, para. 77.

⁶⁴ ICTY, *Kunarac et al. Appeal Judgment*, para. 90; *Mladić Trial Judgment*, para. 3026; ECCC, *Duch Trial Judgment*, para. 303; ICC, *Katanga Trial Judgment*, para. 1105.

opposed to members of armed forces and other legitimate combatants.⁶⁵ The presence of non-civilians in the midst of the population does not alter its civilian character.⁶⁶ The purpose of the attack is immaterial to determine if this attack is directed against any civilian population.⁶⁷ Moreover, the reference to “any” civilian population signifies that Article 13 of the Law is not limited to populations defined by a common nationality, ethnicity or other similar distinguishing features and may include the State’s own population.⁶⁸ Whether the attack was directed against the civilian population may be assessed by taking into account, for example: (i) the means and methods used in the course of the attack; (ii) the status of the victims and their number; (iii) the discriminatory nature of the attack; (iv) the nature of the crimes committed in the course of the attack; (v) the form of resistance to the assailants at the time of the attack; (vi) the extent to which the attacking force complied with the precautionary requirements with the laws of

⁶⁵ Considering Common Article 3 and Articles 43 and 50 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I), of 8 June 1977 (“Additional Protocol I”), persons who are not taking part in hostilities includes members of armed forces who laid down their arms or those placed *hors de combat* by sickness, wounds, detention or any other cause, as well as members of a resistance movement and former combatants who no longer take part in hostilities when the crimes were committed. See e.g. ICTY, *Kunarac et al. Trial Judgment*, para. 425; *Prosecutor v. Blaškić*, IT-95-14-T, Trial Chamber, *Judgement* (“*Blaškić Trial Judgment*”), 3 March 2000, para. 214; *Prosecutor v. Limaj et al.*, IT-03-66-T, Trial Chamber, *Judgement* (“*Limaj et al. Trial Judgment*”), 30 November 2005, para. 186; *Mladić Trial Judgment*, para. 3027; ICTR, *Akayesu Trial Judgment*, para. 582; ECCC, *Duch Trial Judgment*, para. 311; ICC, *Bemba Decision on Confirmation of Charges*, para. 78; *Katanga Trial Judgment*, para. 1102.

⁶⁶ ICTY, *Blagojević and Jokić Trial Judgment*, para. 544; ICTR, *Akayesu Trial Judgment*, para. 582. See also Article 50(3) of Additional Protocol I.

⁶⁷ SCSL, *Prosecutor v. Moinina Fofana, Allieu Kondewa*, SCSL-04-14-A, Appeals Chamber, *Judgement*, 28 May 2008, paras 299, 300.

⁶⁸ ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Trial Chamber, *Opinion and Judgment* (“*Tadić Trial Judgment*”), 7 May 1997, para. 635; *Kunarac et al. Trial Judgment*, para. 423; ECCC, *Duch Trial Judgment*, para. 312; ICC, *Katanga Trial Judgment*, para. 1103; *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Trial Chamber VI, *Judgment* (“*Ntaganda Trial Judgment*”), 8 July 2019, para. 667.

war; and (vii) the propaganda and training of troops related to the targeting of civilians.⁶⁹

54. *Widespread or systematic*. The disjunctive qualifiers “widespread” or “systematic” characterise the nature of the attack.⁷⁰ The term “widespread” connotes the large-scale nature of the attack and the number of targeted persons.⁷¹ It may denote an attack carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians.⁷² The term “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence.⁷³ The existence of a policy or plan can be indicative of the systematic character of the attack but it is not a distinct legal element.⁷⁴ Whether an attack is “widespread” or “systematic” may be assessed taking into consideration, for example: (i) the possible participation of officials or authorities or any identifiable patterns of crimes;⁷⁵ (ii) the repetition of discriminatory acts directed at certain members of the population;⁷⁶ (iii) the use of

⁶⁹ ICTY, *Kunarac et al. Appeal Judgment*, para. 91; *Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A, Appeals Chamber, *Judgement* (“*Mrkšić and Šljivančanin Appeal Judgment*”), 5 May 2009, para. 30; ECCC, *Duch Trial Judgment*, para. 309; ICC, *Ntaganda Trial Judgment*, para. 671.

⁷⁰ ICTY, *Kunarac et al. Appeal Judgment*, para. 97; ICC, *Situation in the Republic of Kenya*, ICC-01/09-19-Corr, Pre-Trial Chamber II, *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an investigation into the Situation in the Republic of Kenya*, 31 March 2010, para. 94.

⁷¹ ICTY, *Kunarac et al. Appeal Judgment*, para. 94; *Mladić Trial Judgment*, para. 3025; ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Pre-Trial Chamber I, *Decision on Confirmation of Charges* (“*Katanga and Ngudjolo Decision on Confirmation of Charges*”), 30 September 2008, para. 394; *Gbagbo Decision on Confirmation of Charges*, 12 June 2014, para. 222.

⁷² ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 395; *Bemba Decision on Confirmation of Charges*, para. 83.

⁷³ ICTY, *Kunarac et al. Appeal Judgment*, para. 94; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Appeals Chamber, *Judgement* (“*Kordić and Čerkez Appeal Judgment*”), 17 December 2004, para. 94; ICTR, *Akayesu Trial Judgment*, para. 580; ICC, *Gbagbo Decision on Confirmation of Charges*, para. 223.

⁷⁴ ICTY, *Kunarac et al. Appeal Judgment*, para. 98; *Mladić Trial Judgment*, para. 3025; ECCC, *Duch Trial Judgment*, para. 312; ICC, *Katanga Trial Judgment*, para. 301.

⁷⁵ ICTY, *Kunarac et al. Appeal Judgment*, para. 95.

⁷⁶ ICTY, *Prosecutor v. Krajišnik*, IT-00-39-T, Trial Chamber, *Judgement* (“*Krajišnik Trial Judgment*”), 27 September 2006, para. 708.

propaganda by the perpetrators;⁷⁷ and (iv) the consequences of the attack upon the targeted population.⁷⁸

(ii) *Nexus between underlying act and attack*

55. The underlying act must be committed “as part of” the attack against the civilian population, but it need not be committed in the midst of that attack. A crime, which is committed before or after the main attack against the civilian population or away from it, could still, if sufficiently connected, be part of that attack.⁷⁹ In determining whether such nexus exists, the characteristics, the aims, the nature or consequences of the act must be considered.⁸⁰

(iii) *Knowledge of the attack*

56. The perpetrator must be aware that a widespread or systematic attack directed against a civilian population is taking place and that his or her action is part of the attack, or at least must have taken the risk that his or her acts were part thereof.⁸¹ The perpetrator does not need to know the details of the attack or share the purpose or goal behind the attack. It is also irrelevant whether the perpetrator intended his or her acts to be directed against the targeted population or merely against the victim.⁸² The perpetrator’s awareness may be inferred from, *inter alia*:
(i) the person’s position in the military hierarchy and role in the criminal

⁷⁷ ICTY, *Kunarac et al. Trial Judgment*, para. 572.

⁷⁸ ICTY, *Kunarac et al. Appeal Judgment*, para. 95.

⁷⁹ ICTY, *Kunarac et al. Appeal Judgment*, para. 100; ECCC, *Duch Trial Judgment*, para. 318.

⁸⁰ ICC, *Bemba Decision on Confirmation of Charges*, para. 86; *Katanga Trial Judgment*, para. 1124.

⁸¹ ICTY, *Kunarac et al. Appeal Judgment*, para. 102; *Prosecutor v. Šainović et al.*, IT-05-87-A, Appeals Chamber, *Judgement* (“*Šainović et al. Appeal Judgment*”), 23 January 2014, para. 271; *Mladić Trial Judgment*, para. 3029; ECCC, *Duch Trial Judgment*, para. 319; ICC, *Bemba Decision on Confirmation of Charges*, paras 87, 88.

⁸² ICTY, *Kunarac et al. Appeal Judgment*, paras 102, 103; ECCC, *Duch Trial Judgment*, para. 319; ICC, *Katanga Trial Judgment*, para. 1125.

campaign; (ii) the perpetrator's presence at the scene of the crimes; and (iii) the general historical and political environment in which the acts occurred.⁸³

(b) Specific Requirements for Crimes Against Humanity

(i) Imprisonment

57. *Material elements (actus reus)*. The crime of imprisonment as a crime against humanity, within the meaning of Article 13(1)(e) of the Law, is committed through an act or omission resulting in depriving a person of his or her physical liberty without due process of law, thus rendering the imprisonment arbitrary.⁸⁴ The imprisonment includes the unlawful captivity of a person in an enclosed environment, such as a prison or psychiatric institution, and the unlawful restriction of the person's movements to a specific area, such as a ghetto, camp or a house.⁸⁵

58. The deprivation of liberty is considered arbitrary when no legal basis exists to justify it. Where a lawful basis of imprisonment exists, it must apply throughout the period of imprisonment; where it ceases to apply, continued imprisonment

⁸³ ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 402.

⁸⁴ ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Trial Chamber, *Judgement* ("Kordić and Čerkez Trial Judgment"), 26 February 2001, para. 302; *Prosecutor v. Krnojelac*, IT-97-25-T, Trial Chamber, *Judgment* ("Krnojelac Trial Judgment"), 15 March 2002, paras 113-115; *Kordić and Čerkez Appeal Judgment*, para. 116; ECCC, *Duch Trial Judgment*, para. 347; *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007/ECCC/TC, Trial Chamber, *Case 002/02 Judgement* ("Case 002/02 Trial Judgment"), 16 November 2018, para. 689; ICTR, *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Trial Chamber, *Judgement and Sentence* ("Ntagerura Trial Judgment"), 25 February 2004, para. 702.

⁸⁵ ICC, *Situation in the Republic of Burundi*, ICC-01/17-9-Red, Pre-Trial Chamber, *Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-9-US-Exp, 25 October 2017"* ("Burundi Decision 25 October 2017"), 9 November 2017, para. 68; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Appeals Chamber, *Judgement Volume 1 Part 2* ("Prlić et al. Appeal Judgment"), 29 November 2017, para. 473; *Kordić and Čerkez Appeal Judgment*, para. 640; *Prosecutor v. Simić et al.*, IT-95-17/1-T, Trial Chamber, *Judgement* (*Simić et al*, Trial Judgment"), 17 October 2003, paras 534, 661; ECCC, *Duch Trial Judgment*, paras 464, 468; *Case 002/02 Trial Judgment*, paras 1160-1163.

may be considered arbitrary.⁸⁶ International human rights instruments are instructive when making the assessment whether the deprivation of liberty is arbitrary.⁸⁷ If a national law is relied upon as a justification for the imprisonment, it must be established that the relevant provisions do not violate international law.⁸⁸

59. The arbitrariness of imprisonment may further result from an otherwise justified deprivation of physical liberty if the deprivation is being administered under serious disregard of fundamental procedural rights of the person deprived of his or her liberty as provided for under international law.⁸⁹ The fundamental procedural rights encompass, in particular: (i) the right to be informed of the reason for detention; and (ii) the right to prompt review of the lawfulness of detention by a court or an administrative board.⁹⁰

60. The law does not require the imprisonment to be for a prolonged period. The brevity of the detention alone cannot be brought forward as an argument to deny the gravity or seriousness of the deprivation of physical liberty.⁹¹ However, not every minor deprivation of liberty satisfies the material elements of imprisonment.⁹²

⁸⁶ ICTY, *Krnojelac Trial Judgment*, para. 114; ECCC, *Duch Trial Judgment*, para. 348; *Case 002/02 Trial Judgment*, paras 689, 691; ICTR, *Ntagerura Trial Judgment*, para. 702.

⁸⁷ For example, see Articles 9 and 10 of the Universal Declaration of Human Rights (GA/RES/217 A/(III) of 10 December 1948) (“UDHR”); Articles 5 and 6 of the ECHR; Articles 9 and 14 of the ICCPR; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (GA Res. 43/173 of 9 December 1999). ICTY, *Krnojelac Trial Judgment*, para. 113; ECCC, *Case 002/02 Trial Judgment*, paras 692-693; ICC, *Burundi Decision 25 October 2017*, fn. 169.

⁸⁸ ICTY, *Krnojelac Trial Judgment*, para. 114; ECCC, *Duch Trial Judgment*, para. 348; *Case 002/02 Trial Judgment*, paras 689; ICTR, *Ntagerura Trial Judgment*, para. 702.

⁸⁹ ICTY, *Krnojelac Trial Judgment*, fn. 347; *Kordić and Čerkez Trial Judgment*, para. 302; ICTR, *Ntagerura Trial Judgment*, para. 702.

⁹⁰ ICTY, *Krnojelac Trial Judgment*, para. 120; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber, *Judgement Volume 1* (“Prlić et al. Trial Judgment”), 29 May 2013, para. 66; ECCC, *Duch Trial Judgment*, para. 239.

⁹¹ ICC, *Burundi Decision 25 October 2017*, para. 68.

⁹² ICTR, *Ntagerura Trial Judgment*, para. 702; ECCC, *Duch Trial Judgment*, para. 349.

61. *Mental element (mens rea)*. The perpetrator must have intended to deprive the person of his or her physical liberty, or he or she acted in the reasonable knowledge that his or her act or omission is likely to cause arbitrary deprivation of the person's physical liberty.⁹³

(ii) *Other inhumane acts*

62. *Material elements (actus reus)*. The crime of other inhumane acts as a crime against humanity, within the meaning of Article 13(1)(j) of the Law, is committed through an act or omission of similar gravity to the other enumerated acts under Article 13 of the Law, resulting in serious mental or physical suffering or injury, or constituting a serious attack on human dignity.⁹⁴ As the term "other" suggests, it is a residual crime which criminalises conduct that does not otherwise fall under any of the remaining crimes listed in Article 13 of the Law.⁹⁵

63. Article 13(1)(j) of the Law is formulated openly allowing a range of acts or omissions to fall under it. In order to prevent a possible violation of the principle *nullum crimen sine lege*, its applicability must be limited to severe conduct that presents the same degree of gravity as the other crimes set out in Article 13 of the

⁹³ ICTY, *Krnjelac Trial Judgment*, para. 115; ECCC, *Duch Trial Judgment*, para. 350; *Case 002/02 Trial Judgment*, para. 687.

⁹⁴ ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber, *Judgement* ("Popović et al. Trial Judgment"), 10 June 2010, para. 888; *Prosecutor v. Vasiljević*, IT-98-32-T, Trial Chamber, *Judgment* ("Vasiljević Trial Judgment"), 29 November 2002, para. 234; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Trial Chamber, *Judgement and Sentence* ("Bagosora et al. Trial Judgment"), 18 December 2008, para. 2218; ECCC, *Duch Trial Judgment*, para. 368.

⁹⁵ Similarly, ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Trial Chamber, *Judgement* ("Kvočka et al. Trial Judgment"), 2 November 2001, para. 206; *Vasiljević Trial Judgment*, para. 234; ICTR, *Bagosora et al. Trial Judgment*, para. 2218; ECCC, *Duch Trial Judgment*, para. 367; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 452; *Prosecutor v. Muthaura et al.*, ICC-01/09-02/11-382-Red, Pre-Trial Chamber II, *Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute*, 23 January 2012, para. 269; *Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, Pre-Trial Chamber I, *Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Al Hassan Decision on Confirmation of Charges"), 13 November 2019, para. 252.

Law.⁹⁶ The severity of the conduct must be assessed on a case-by-case basis with due regard for the individual circumstances of the case,⁹⁷ such as the: (i) nature of the act or omission; (ii) context in which it occurred; (iii) personal circumstances of the victim, including age, sex and health; and (iv) physical, mental and moral impact of the conduct upon the victim.⁹⁸ The detention or confinement of persons in inhumane conditions may amount to an inhumane act in certain circumstances,⁹⁹ but it does not, in and of itself, constitute an inhumane act.

64. There is no requirement that the suffering have long-term effects, although this may be relevant to the determination of the severity of the criminal conduct.¹⁰⁰

65. *Mental element (mens rea)*. The act or omission must have been committed intentionally or with the knowledge that this act or omission was likely to cause such pain or suffering or to constitute a serious attack upon human dignity.¹⁰¹

(iii) Torture

66. *Material elements (actus reus)*. The crime of torture as a crime against humanity, within the meaning of Article 13(1)(f) of the Law, is committed through an act or

⁹⁶ Similarly, ICTY, *Kordić and Čerkez Appeal Judgment*, para. 117; *Kvočka et al. Trial Judgment*, para. 206; ICTR, *Prosecutor v. Niyitegeka*, ICTR-96-14-T, Trial Chamber, *Judgement and Sentence*, 16 May 2003, para. 460; ECCC, *Duch Trial Judgment*, para. 367; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 448. Whether a specific conduct satisfies the threshold of severity may also be drawn from norms of international human rights law, in particular the ECHR and the ICCPR. See ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Chamber, *Judgement* (“*Kupreškić et al. Trial Judgment*”), 14 January 2000, para. 566; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 449; *Al Hassan Decision on Confirmation of Charges*, para. 252.

⁹⁷ ICTY, *Blaškić Trial Judgment*, para. 243; *Kordić and Čerkez Appeal Judgment*, para. 117; ECCC, *Duch Trial Judgment*, para. 369; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 253.

⁹⁸ ICTY, *Vasiljević Trial Judgment*, para. 235; ECCC, *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007/ECCC/TC, Trial Chamber, *Case 002/01 Judgement* (“*Case 002/01 Trial Judgment*”), 7 August 2014, para. 438; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 449.

⁹⁹ ICTR, *Prosecutor v. Bagilishema*, ICTR-95-IA-T, Trial Chamber, *Judgement*, 7 June 2001, paras 490-492.

¹⁰⁰ ICTY, *Vasiljević Trial Judgment*, para. 235; ECCC, *Duch Trial Judgment*, para. 369; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 253.

¹⁰¹ ICTY, *Vasiljević Trial Judgment*, para. 236; *Popović et al. Trial Judgment*, para. 888; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber, *Judgement*, 21 May 1999, para. 153.

omission inflicting severe pain or suffering, whether physical or mental, upon another person.¹⁰²

67. Whether an act or omission qualifies as torture must be determined on a case-by-case basis,¹⁰³ taking into account, for example, the: (i) nature and context of the infliction of pain; (ii) premeditation and institutionalisation of the ill-treatment; (iii) physical condition of the victim; (iv) manner and method used; (v) position of inferiority of the victim; (vi) extent to which an individual has been mistreated over a prolonged period of time; and (vii) subjection to repeated or various forms of mistreatment that are inter-related, follow a pattern, or are directed to the same prohibited goal.¹⁰⁴ Conditions imposed during detention, such as beatings, sexual violence, prolonged deprivation of sleep, food, hygiene and medical assistance, as well as threats to torture, rape, or kill relatives have been considered sufficiently severe as to amount to torture.¹⁰⁵

68. Further, the consequences of the act or omission need not be permanent or visible on the victim.¹⁰⁶ There is no requirement that the perpetrator acted in a public capacity or as person of authority.¹⁰⁷

69. *Mental element (mens rea)*. The perpetrator must have inflicted the pain or suffering intentionally and in pursuance of such purpose as obtaining information

¹⁰² ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Trial Chamber, *Judgement* (“Brđanin Trial Judgment”), 1 September 2004, para. 481; *Kunarac et al. Appeal Judgment*, para. 142; ECCC, *Duch Trial Judgment*, para. 354.

¹⁰³ ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Appeals Chamber, *Judgement* (“Brđanin Appeal Judgment”), 3 April 2007, para. 251; *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, Appeals Chamber, *Judgement* (“Naletilić and Martinović Appeal Judgment”), 3 May 2006, para. 299; *Kunarac et al. Appeal Judgment*, para. 149.

¹⁰⁴ ICTY, *Simić et al. Trial Judgment*, para. 80, referring to *Krnojelac Trial Judgment*, para. 182. See also ECCC, *Duch Trial Judgment*, para. 355.

¹⁰⁵ ECCC, *Duch Trial Judgment*, para. 355, referring to ICTY, *Prosecutor v. Mucić et al.*, IT-96-21-T, Trial Chamber, *Judgement* (“Mucić et al. Trial Judgment”), 16 November 1998, para. 467; *Kvočka et al. Trial Judgment*, para. 151; *Kunarac et al. Appeal Judgment*, para. 150.

¹⁰⁶ ICTY, *Kvočka et al. Trial Judgment*, para. 148; ECCC, *Duch Trial Judgment*, para. 355.

¹⁰⁷ ICTY, *Kunarac et al. Appeal Judgment*, para. 148; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, *Judgement* (“Kvočka et al. Appeal Judgment”), 28 February 2005, para. 284.

or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person.¹⁰⁸ It is sufficient that one of the prohibited purposes forms part of the motivation behind the conduct; it need not be the “predominant or sole purpose” behind the infliction of severe pain or suffering.¹⁰⁹

(iv) *Murder*

70. *Material elements (actus reus)*. The crime of murder as a crime against humanity, within the meaning of Article 13(1)(a) of the Law, is committed through an act or omission resulting in the death of a person.¹¹⁰ It is not necessary to produce the body of the deceased person as proof of death; it suffices to rely on circumstantial evidence,¹¹¹ taking into account, for example: (i) incidents of mistreatment directed against the victim; (ii) patterns of mistreatment and disappearances of other victims; (iii) coincident or near-coincident time of death of other victims; (iv) the circumstances in which the victim was last seen; (v) the general climate of lawlessness in the area where the acts were committed and the general behaviour of soldiers in the vicinity; and (vi) the length of time which has elapsed since the person disappeared.¹¹²

¹⁰⁸ ICTY, *Kunarac et al. Appeal Judgment*, para. 153; *Limaj et al. Trial Judgment*, paras 235, 239; ECCC, *Duch Trial Judgment*, para. 356.

¹⁰⁹ ICTY, *Kvočka et al. Trial Judgment*, para. 153; *Mucić et al. Trial Judgment*, para. 470; *Kunarac et al. Appeal Judgment*, para. 155; *Simić et al. Trial Judgment*, para. 81; ECCC, *Duch Trial Judgment*, para. 356.

¹¹⁰ ICTY, *Krnjelac Trial Judgment*, para. 324; *Krajišnik Trial Judgment*, para. 715; ICTR, *Akayesu Trial Judgment*, para. 589; ECCC, *Duch Trial Judgment*, para. 331; ICC, *Bemba Decision on Confirmation of Charges*, para. 132.

¹¹¹ ICTY, *Tadić Trial Judgment*, para. 240; *Krnjelac Trial Judgment*, para. 326; *Karadžić Trial Judgment*, para. 446; ECCC, *Duch Trial Judgment*, para. 332; ICC, *Katanga Trial Judgment*, para. 768.

¹¹² ICTY, *Krnjelac Trial Judgment*, para. 327; *Prosecutor v. Halilović*, IT-01-48-T, Trial Chamber, *Judgement* (“*Halilović Trial Judgment*”), 16 November 2005, para. 37.

71. *Mental element (mens rea)*. The perpetrator must have killed the person intentionally or wilfully caused serious bodily harm, which the perpetrator should reasonably have known might lead to death.¹¹³

(v) *Enforced disappearance*

72. *Material elements (actus reus)*. The crime of enforced disappearance as a crime against humanity,¹¹⁴ within the meaning of Article 13(1)(i) of the Law, is committed by State agents, or persons acting with the authorisation, support or acquiescence of a State or a political organisation,¹¹⁵ through an act or omission

¹¹³ ICTY, *Kordić and Čerkez Trial Judgment*, para. 236; *Mladić Trial Judgment*, para. 3050; ECCC, *Duch Trial Judgment*, para. 333.

¹¹⁴ The crime of enforced disappearance as a crime against humanity has been recognised in various legal instruments, such as Organisation of American States, Annual Report of the Inter-American Commission on Human Rights, AG/RES.666 (XIII-01/83), 18 November 1983, para. 4; Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, adopted on 18 December 1992 (“1992 Declaration”), fourth preambular paragraph; Inter-American Convention on Forced Disappearance of Persons, 9 June 1994, OAS Treaty Series No. 68, p. 33 (“1994 Inter-American Convention”), sixth preambular paragraph; International Law Commission, Draft Code of Crimes Against the Peace of Mankind, Yearbook ILC, 1996, vol. II (Part Two), p. 50; Article 7(1)(i) of the Rome Statute, 17 July 1998, UNTS, vol. 2187 (“Rome Statute”), p. 3; Article 5.1(i) and 5.2(h) of Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction Over Serious Criminal Offences, UNTAET/REG/2000/15, 6 June 2000; Report of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/66, 10 March 2005 (“2005 ISWG Report”), para. 12; International Convention for the Protection of All Persons from Enforced Disappearance, UNTS, vol. 2716, p. 3 (“2006 Convention on Enforced Disappearance”), fifth preambular paragraph and Article 5; Draft Articles on Prevention and Punishment of Crimes Against Humanity (“CAH Draft Articles”), Article 2(1)(i), contained in Report of the International Law Commission (2019), A/74/10, pp. 10-140.

¹¹⁵ For the purposes of establishing criminal responsibility for the crime against humanity of enforced disappearance, the perpetrators may act in the context of the State or a political organisation. This has been acknowledged in ECCC, *Case 002/01 Trial Judgment*, para. 448; *Case 002/02 Trial Judgment*, para. 754; Article 7(2)(i) of the Rome Statute and related Elements of Crimes; Article 2(2)(i) of the CAH Draft Articles; this element has been supported in the Report entitled “Civil and Political Rights, Including Questions of: Disappearances and Summary Executions”, submitted by Mr. Manfred Nowak (“2002 Nowak Report”), E/CN.4/2002/71, 8 January 2002, paras 71, 73; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 10.1.1 (calling for a broad definition of enforced disappearance that includes acts “committed by non-state actors, such as paramilitary groups, death squads, rebel fighters or organised criminal groups”). The involvement of the State is also evinced in various human rights instruments, such as GA/RES/33/173 (“Disappeared Persons”), 20 December 1978, Preambular Paragraphs 2-4; 1992 Declaration, Preambular Paragraph 3;

resulting in the deprivation of a person's liberty, followed by the refusal to acknowledge such deprivation or to disclose information regarding the fate or whereabouts of such person.¹¹⁶

73. The deprivation of liberty covers comprehensively any form of deprivation of liberty of a person against his or her will in any place.¹¹⁷ The deprivation of liberty

Article II of the 1994 Inter-American Convention; Article 2 of the 2006 Convention on Enforced Disappearance (Article 3 of said Convention allows States to investigate instances of enforced disappearances committed by persons or groups of persons acting without the authorization, support or acquiescence of the State); Report of the Working Group on Enforced or Involuntary Disappearances ("1987 WGEID Report"), E/CN.4/1988/19, 31 December 1987, para. 17; Report of the Working Group on Enforced or Involuntary Disappearances ("1996 WGEID Report"), E/CN.4/1996/38, 15 January 1996, para. 55; Addendum to the Report of the Working Group on Enforced or Involuntary Disappearances ("2010 WGEID Report Addendum"), A/HRC/16/48/Add.3, 28 December 2010, paras 25-26 (accepting however the broadening of the definition in the Rome Statute by including "political organizations"); Council of Europe, Parliamentary Assembly, Resolution 828 (1984), para. 2. *See also* Inter-American Court of Human Rights ("IACtHR"), *Case of Velásquez-Rodríguez v. Honduras*, Judgment (Merits) ("Velásquez-Rodríguez v. Honduras Judgment"), 29 July 1988, para. 148; *Case of Gómez-Palomino v. Peru, Order (Monitoring compliance with Judgment)* (*Gómez-Palomino v. Peru Order*), 22 November 2005, para. 97; *Case of the Río Negro Massacres v. Guatemala*, Judgment (Preliminary objection, merits, reparations and costs), 4 September 2012, para. 115; *Case of Osario Rivera and Family Members v. Peru*, Judgment, 26 November 2013, para. 113.

¹¹⁶ The elements of the crime are derived from customary international law as mirrored in legal instruments and the practice of international courts, including human rights bodies. In so doing, the Pre-Trial Judge is mindful of the difference between violations of human rights obligations and criminal responsibility, reflected in the nature of the instruments and the specific mandates of the courts or bodies whose decisions are relied upon. Documents, instruments and decisions on events dating after the temporal jurisdiction of the Specialist Chambers attest to the consolidation of previous definitions of enforced disappearance. ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber, Judgment, 15 April 2011, para. 1837; ECCC, Case 002/01 Trial Judgment, para. 448; Case 002/02 Trial Judgment, para. 754; War Crimes Chamber in the Court of Bosnia and Herzegovina, *Boban Šimšić*, X-KR-05/04, Verdict, 11 July 2006, para. 77; *Dragan Damjanović*, X-KR-05/51, Verdict, 15 December 2006, pp. 26-27; *Želko Lelek*, X-KR/06/202, Verdict, 23 May 2008, p. 26; ICC, Burundi Decision 25 October 2017, para. 118; IACtHR, *Case of García and Family Members v. Guatemala*, Serie C No. 258, Judgment ("García and Family Members v. Guatemala Judgment"), 29 November 2012, para. 115; *Case of González Medina and Family v. Dominican Republic*, Judgment, 27 February 2012, para. 128; 1987 WGEID Report, para. 17; 1996 WGEID Report, para. 55; Third Preamble Paragraph of the 1992 Declaration, A/RES/47/133, adopted on 18 December 1992; Article II of the 1994 Inter-American Convention; Article 2 of the 2006 Convention on Enforced Disappearance; Article 7(2)(i) of the Rome Statute (which relies to a great extent on the definition in the 1992 Declaration) and Article 2(2)(i) of the CAH Draft Articles.

¹¹⁷ *See supra* paras 57-61 (Specific Requirements, Imprisonment). ICC, Burundi Decision 25 October 2017, para. 118; Third Preamble Paragraph of the 1992 Declaration ("persons are arrested, detained or abducted against their will or otherwise deprived of their liberty"); Article II of the 1994 Inter-American Convention ("act of depriving a person or persons of his or their freedom, in whatever way"); Article 7(2)(i) of the Rome Statute ("arrest, detention or abduction of persons"), together with related

as such may be unlawful from its initiation, or an initially justified deprivation of liberty may subsequently become unlawful.¹¹⁸ It also covers the scenario where the person concerned was initially arrested and detained lawfully but, subsequently, “disappeared” in custody.¹¹⁹

74. The refusal to acknowledge or give information encompasses outright denial, the giving of false information about, or concealment of the fate or whereabouts of the victim.¹²⁰ In this context, it is noted that, whether or not the family of the victim lodged a formal complaint,¹²¹ the State has the duty to carry out *ex officio* an effective investigation into the disappearance of the victim without delay;¹²²

Elements of Crimes (paragraph 1) and fns 25 and 26; Article 2(2)(i) of the CAH Draft Articles; Article 2 of the 2006 Convention on Enforced Disappearance (“arrest, detention, abduction or any other form of deprivation of liberty”); Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, 10 January 2008 (“2007 WGEID Report”), p. 11, para. 7 (part of the General Comment); 2010 WGEID Report Addendum, paras 22-24.

¹¹⁸ See *supra* paras 57-61 (Specific Requirements, Imprisonment). See also fn. 25 of the Elements of Crimes to the Rome Statute.

¹¹⁹ IACtHR, *Case of Trujillo-Oroza v. Bolivia*, *Judgment*, 26 January 2000; ICC, *Burundi Decision 25 October 2017*, para. 118. See also fn. 26 of the Elements of Crimes to the Rome Statute.

¹²⁰ ICC, *Burundi Decision 25 October 2017*, para. 118; 2010 WGEID Report Addendum, para. 28.

¹²¹ Article 13(1) of the 1992 Declaration (“Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint”); the same language is employed in Article 12(2) of the 2006 Convention on Enforced Disappearance; similarly, ICC, *Burundi Decision 25 October 2017*, para. 118; IACtHR, *Velásquez-Rodríguez v. Honduras Judgment*, para. 177; *Case of Zambrano Vélez et al. v. Ecuador*, *Judgment*, 4 July 2007, para. 120; *Case of Heliodoro Portugal v. Panama*, *Judgment* (“*Heliodoro Portugal v. Panama Judgment*”), 12 August 2008, para. 145.

¹²² ECtHR, *Case of Kurt v. Turkey*, 15/1997/799/1002, *Judgment*, 25 May 1998, para. 124; *Case of Cyprus v. Turkey*, 25781/94, *Judgment*, 10 May 2001, paras 147-148; *Case of Timurtaş v. Turkey*, 23531/94, *Judgment*, 13 June 2000, paras 89-90 and 103-105; *Case of Bazorkina v. Russia*, 69481/01, *Judgment*, 27 July 2006, paras 117-125, 148; IACtHR, *Velásquez-Rodríguez v. Honduras Judgment*, paras 174-177, 181; *Case of Blake v. Guatemala*, *Judgment (Merits)* (“*Blake v. Guatemala Judgment*”), 24 January 1998, para. 66; *Heliodoro Portugal v. Panama Judgment*, para. 144; *García and Family Members v. Guatemala Judgment*, para. 138; Human Rights Committee, *Bleier v. Uruguay*, Communication No. 30/1978, Decision, 29 March 1982, para. 15; *Quinteros Almeida v. Uruguay*, Communication No. 107/1981, Decision (“*Quinteros Decision*”), 21 July 1983, para. 15; *Arévalo Perez et al. v. Columbia*, Communication No. 181/1984, Decision, 3 November 1989, para. 10; *Laureano Atachahua v. Peru*, Communication No. 540/1993, Decision, 25 March 1996, para. 10; *Sarma v. Sri Lanka*, Communication No. 950/2000, Decision, 16 July 2003, para. 11; ICC, *Burundi Decision 25 October 2017*, para. 118. See also Article 13 of the 1992 Declaration; Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/16/48 (“2010 WGEID Report”), 26 January 2011, pp. 14-15, paras 4-5 (part of the General Comment).

equally, the political organisation has the obligation to account for missing persons and inform the families of their fate or whereabouts.¹²³

75. As a result of the enforced disappearance, the victim is removed from the protection of the law, to wit, the victim has no longer access to judicial assistance and legal procedures, thus placing him or her in a situation of complete defencelessness.¹²⁴ The definition of enforced disappearance under customary international law does not establish a minimum period for the victim's removal from the protection of the law.¹²⁵

76. The crime of enforced disappearance is considered a continuous crime as long as the perpetrators continue to conceal the fate and whereabouts of the person or persons who have disappeared and these facts remain unclarified.¹²⁶

¹²³ The prohibition of enforced disappearance in armed conflict, whether international or non-international, and the obligation to account for missing persons and provide their families with any information on their fate is also incumbent on all parties to the conflict, including armed groups, *see* Rules 98 and 117, CIHL Study, Vol. I (Rules), pp. 340-343 and 421-427; General Assembly, "Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts", Resolution 3220 (XXIX), 6 November 1974, Article 2 ("Calls upon parties to armed conflicts, regardless of their character or locations, during and after the end of hostilities and in accordance with the Geneva Conventions of 1949, to take such actions as may be within their power to help locate and mark the graves of the dead, to facilitate the disinterment and the return of remains, if requested by their families, and to provide information about those who are missing in action"). If these obligations exist for armed groups during armed conflict, then it can be expected that they exist outside of an armed conflict, including in the context of a widespread or systematic attack.

¹²⁴ Third Preambular Paragraph and Article 1(2) of the 1992 Declaration; Article II of the 1994 Inter-American Convention; Article 2 of the 2006 Convention on Enforced Disappearance; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 1; 2007 WGEID Report, p. 11, para. 5 (part of the General Comment); 2010 WGEID Report Addendum, para. 29; ICC, *Burundi Decision 25 October 2017*, para. 120; IACtHR, *Caso Anzualdo Castro v. Peru, Sentencia (Excepción Preliminar, Fondo, Reparaciones y Costas*, 22 September 2009, paras 94-99; *Chitay Nech et al. v. Guatemala, Judgment (Preliminary Objections, Merits, Reparations, and Costs)*, 25 May 2010, paras 99-100. Removing the person from the protection of the law typically and in particular violates the right to personal liberty, *see* Article 5 of the ECHR; Article 9 of the 1966 ICCPR; Article XI of the 1994 Inter-American Convention; Article 17 of the 2006 Convention on Enforced Disappearance.

¹²⁵ Definitions of the concept of enforced disappearance in international legal instruments do not include a temporal requirement. *See also* 2007 WGEID Report, p. 12, paras 8-9 (part of the General Comment).

¹²⁶ Article 17(1) of the 1992 Declaration; Article III-1 of the 1994 Inter-American Convention; Article 8(1)(b) of the 2006 Convention on Enforced Disappearance; Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2001/68, 18 December 2000, paras 25-32; 2010 WGEID

77. *Mental element (mens rea)*. The perpetrator must have: (i) intentionally deprived a person of his or her liberty and be aware that the deprivation of liberty would be followed by a refusal to acknowledge such deprivation of liberty or to give information on the fate or whereabouts of the victim; or (ii) intentionally refused to disclose information regarding the fate or whereabouts of the person concerned and be aware that such refusal was preceded or accompanied by that deprivation of liberty.¹²⁷ However, under customary international law as applicable at the relevant time, there is no need to demonstrate or even presume the special intention of the perpetrator to remove the victim from the protection of the law.¹²⁸

(vi) *Persecution*

78. *Material elements (actus reus)*. The crime of persecution as a crime against humanity, within the meaning of Article 13(1)(h) of the Law, is committed through a specifically pleaded¹²⁹ act or omission that discriminates in fact and which denies

Report, p. 11, para. 1 (part of the General Comment); 2010 WGEID Report Addendum, para. 33; ICC, *Burundi Decision 25 October 2017*, para. 121; Human Rights Committee, *Quinteros Decision*, para. 14; ECtHR, *Case of El-Masri v. Former Republic of Macedonia*, 39630/09, *Judgment*, 13 December 2012, para. 240; *Case of Varnava and Others v. Turkey*, 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, *Judgment*, 18 September 2009, para. 148; IACtHR, *Velásquez-Rodríguez v. Honduras Judgment*, paras 155, 181; *Blake v. Guatemala Judgment*, para. 65; *Case of Goiburú et al. v. Peru, Judgment (Merits, Reparations and Costs)*, 22 September 2006, para. 81; *Heliodoro Portugal v. Panama Judgment*, paras 34-35, 106-107; *García and Family Members v. Guatemala Judgment*, paras 95, 112.

¹²⁷ Similarly, Paragraph 3 of the Elements of Crimes of Article 7(1)(i) of the Rome Statute.

¹²⁸ Similarly, 2002 Nowak Report, para. 69; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 10.1.2; 2007 WGEID Report, p. 10; 2010 WGEID Report Addendum, para. 31; 2005 ISWG Report para. 25.

¹²⁹ ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, *Appeal Judgment* (“*Kupreškić et al. Appeal Judgment*”), 23 October 2001, para. 98; *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Chamber, *Judgment* (“*Blaškić Appeal Judgment*”), 29 July 2004, para. 139; *Prosecutor v. Stakić*, IT-97-24-T, Trial Chamber, *Judgment* (“*Stakić Trial Judgment*”), 31 July 2003, para. 735; *Popović et al. Trial Judgment*, para. 965.

or infringes upon a fundamental human right laid down in international customary or treaty law.¹³⁰

79. The crime of persecution consists of one single act or omission or a series thereof¹³¹ that are: (i) prohibited under any provision in Articles 13 and 14 of the Law, such as arbitrary detention/imprisonment, cruel treatment, torture, pillaging or murder;¹³² or (ii) while not explicitly mentioned therein, they reach the same level of gravity as other crimes listed in Article 13 of the Law, whether considered in isolation or in conjunction with other underlying acts, in particular with their cumulative effect.¹³³ Such acts include harassment, humiliation, psychological abuse, forced labour assignments or other restrictive and discriminatory

¹³⁰ ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, Appeals Chamber, Judgement (“*Krnojelac Appeal Judgment*”), 17 September 2003, para. 185; *Prosecutor v. Vasiljević*, IT-98-32-A, Appeals Chamber, Judgement (“*Vasiljević Appeal Judgment*”), 25 February 2004, para. 113; *Prosecutor v. Simić*, IT-95-9-A, Appeals Chamber, Judgement (“*Simić Appeal Judgment*”), 28 November 2006, para. 177; *Karadžić Trial Judgment*, para. 497; *Mladić Trial Judgment*, para. 3228; ICTR, *Bogosora et al. Trial Judgment*, para. 2208; *Nahimana et al. Appeal Judgment*, para. 985; ECCC, *Duch Trial Judgment*, para. 376; *Co-Prosecutors v. Kaing Guek Eav*, 001/18-07-2007-ECCC/SC, Supreme Court Chamber, Appeal Judgment (“*Duch Appeal Judgment*”), 3 February 2012, para 257.

¹³¹ ICTY, *Kordić and Čerkez Trial Judgment*, para. 199; *Vasiljević Appeal Judgment*, para. 113; *Simić Appeal Judgment*, para. 178; ECCC, *Duch Appeal Judgment*, para. 258.

¹³² ICTY, *Kupreškić et al. Trial Judgment*, paras 594, 596, 600-605, 615(b), 617; *Kordić and Čerkez Trial Judgment*, para. 198; *Kvočka et al. Trial Judgment*, paras 185-186, 189; *Krnojelac Appeal Judgment*, para. 219; *Blaškić Appeal Judgment*, paras 143, 147-148, 155; *Brđanin Appeal Judgment*, para. 296; *Karadžić Trial Judgment*, paras 498, 502, 505, 509, 514, 521, 523-525, 527-529; *Mladić Trial Judgment*, paras 3229, 3231, 3234, 3240, 3253; ECCC, *Duch Trial Judgment*, para. 378; *Duch Appeal Judgment*, para. 253; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 668; *Ntaganda Trial Judgment*, para. 994.

¹³³ ICTY, *Kupreškić et al. Trial Judgment*, paras 615(e), 619, 622; *Kordić and Čerkez Trial Judgment*, paras 195, 199; *Krnojelac Trial Judgment*, para. 434; *Stakić Trial Judgment*, para. 736; *Kvočka et al. Appeal Judgment*, para. 321; *Simić Appeal Judgment*, para. 177; *Brđanin Appeal Judgment*, para. 296; *Karadžić Trial Judgment*, para. 499; *Mladić Trial Judgment*, para. 3229; ICTR, *Nahimana et al. Appeal Judgment*, para. 985; ECCC, *Duch Trial Judgment*, para. 378; *Duch Appeal Judgment*, paras 254, 257-258; ICC, *Ntaganda Trial Judgment*, para. 992.

measures.¹³⁴ The persecutory act or omission does not need to constitute a crime in international or national law.¹³⁵

80. Not every infringement of human rights resulting from the persecutory act(s) and omission(s) is relevant, but only a severe deprivation of a person's fundamental rights, that is, a gross and blatant denial of those rights.¹³⁶ The fundamental human rights whose infringement may constitute persecution can be found in international standards on human rights,¹³⁷ and they include the right to life, the right not to be subjected to torture and cruel, inhumane or degrading treatment, the right not to be subjected to arbitrary arrest or detention, the right to private property and the right to a fair trial.¹³⁸ What matters is that the person cannot enjoy these rights, making it immaterial whether the infringement was caused by the State or members of a non-state armed group.¹³⁹

81. The persecutory act(s) and/or omission(s) must discriminate in fact, which means that they must actually result in discriminatory consequences.¹⁴⁰ The

¹³⁴ ICTY, *Kupreškić et al. Trial Judgment*, paras 594-605, 609-614, 615(c), 617; *Kvočka et al. Trial Judgment*, paras 185-186, 190, 192; *Blaškić Appeal Judgment*, para. 155; *Kvočka et al. Appeal Judgment*, paras 323, 325; *Brđanin Appeal Judgment*, paras 296-297; *Karadžić Trial Judgment*, paras 498, 510, 523-525, 536; *Mladić Trial Judgment*, paras 3229, 3242-3244, 3264-3266; ECCC, *Duch Trial Judgment*, para. 378; *Duch Appeal Judgment*, paras 253-254; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 668.

¹³⁵ ICTY, *Kupreškić et al. Trial Judgment*, para. 614; *Krnojelac Trial Judgment*, para. 434; *Kvočka et al. Appeal Judgment*, paras 323; *Brđanin Appeal Judgment*, para. 296; *Popović et al. Trial Judgment*, para. 966; *Mladić Trial Judgment*, paras 3229; ICTR, *Nahimana et al. Appeal Judgment*, para. 985; ECCC, *Duch Appeal Judgment*, paras 261.

¹³⁶ ICTY, *Kupreškić et al. Trial Judgment*, paras 620-621; *Kordić and Čerkez Trial Judgment*, para. 196; *Popović et al. Trial Judgment*, para. 966; ECCC, *Duch Trial Judgment*, para. 378; *Duch Appeal Judgment*, paras 258.

¹³⁷ See e.g. UDHR; ICCPR; 1966 International Covenant of Economic, Social and Cultural Rights (UNTS, vol. 993, p. 3) and the ECHR.

¹³⁸ ICTY, *Blaškić Trial Judgment*, para. 232; ECCC, *Duch Appeal Judgment*, para. 254; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-309, Pre-Trial Chamber II, *Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda*, 9 June 2014, para. 58; *Ntaganda Trial Judgment*, para. 991; *Burundi Decision 25 October 2017*, para. 132; *Al Hassan Decision on Confirmation of Charges*, para. 664.

¹³⁹ Similarly, ICC, *Ntaganda Trial Judgment*, para. 993.

¹⁴⁰ ICTY, *Vasiljević Appeal Judgment*, para. 113; *Simić Appeal Judgment*, para. 177; *Krnojelac Trial Judgment*, para. 432; *Krnojelac Appeal Judgment*, para. 185; *Brđanin Trial Judgment*, para. 993; ICTR,

persecutory act(s) and/or omission(s) are considered discriminatory when the victims are targeted because of their perceived membership to a group, as defined by the perpetrator on a political, racial, ethnic or religious basis.¹⁴¹ While persecutory acts and/or omissions often form part of a discriminatory policy or pattern, the existence of such a policy is not a requirement for proving persecution.¹⁴²

82. *Mental element (mens rea)*. The perpetrator must have carried out each persecutory act or omission¹⁴³ deliberately¹⁴⁴ and with the specific intent to discriminate on one of the listed grounds, specifically political, racial, ethnic or religious.¹⁴⁵ The discriminatory intent requirement is not a legal element of the attack in general¹⁴⁶ nor of the other underlying crimes against humanity.¹⁴⁷ It need not be the primary intent with respect to the act, but it must be a significant one.¹⁴⁸

Nahimana et al. Appeal Judgment, para. 986; ECCC, Duch Trial Judgment, paras 376-377; Duch Appeal Judgment, paras 263, 267.

¹⁴¹ ICTY, *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Trial Chamber, Judgement (“*Naletilić and Martinović Trial Judgment*”), 31 March 2003, para. 636; Popović et al. Trial Judgment, para. 967; ECCC, Duch Trial Judgment, para. 377; Duch Appeal Judgment, paras 272, 275-276; ICC, Burundi Decision 25 October 2017, para. 133; Al Hassan Decision on Confirmation of Charges, para. 665.

¹⁴² ICTY, Krnojelac Trial Judgment, para. 435; Stakić Trial Judgment, para. 739; Brđanin Trial Judgment, para. 996; Popović et al. Trial Judgment, para. 967; Karadžić Trial Judgment, para. 500.

¹⁴³ ICTY, Krnojelac Trial Judgment, para. 436; Krnojelac Appeal Judgment, para. 184; Blaškić Appeal Judgment, para. 164; Popović et al. Trial Judgment, para. 969.

¹⁴⁴ ICTY, Stakić Trial Judgment, para. 738; Vasiljević Appeal Judgment, para. 113; *Prosecutor v. Popović et al.*, IT-05-88-T, Appeals Chamber, Judgement (“*Popović et al. Appeal Judgment*”), 30 January 2015, para. 737; ICTR, Bagosora et al. Trial Judgment, para. 2208; Nahimana et al. Appeal Judgment, para. 985; ECCC, Duch Trial Judgment, para. 379; ICC, Al Hassan Decision on Confirmation of Charges, para. 670.

¹⁴⁵ ICTY, Kordić and Čerkez Trial Judgment, para. 212; Stakić Trial Judgment, para. 738; Krnojelac Appeal Judgment, para. 185; Vasiljević Appeal Judgment, para. 113; *Prosecutor v. Stakić*, IT-97-24-A, Appeals Chamber, Judgement (“*Stakić Appeal Judgment*”), 22 March 2006, paras 327-328; ICTR, Nahimana et al. Appeal Judgment, para. 985; Bagosora et al. Trial Judgment, para. 2208; ECCC, Duch Trial Judgment, paras 379; Duch Appeal Judgment, paras 236-240; ICC, Al Hassan Decision on Confirmation of Charges, para. 671.

¹⁴⁶ ICTY, Blaškić Trial Judgment, para. 260; Krnojelac Trial Judgment, para. 436.

¹⁴⁷ ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Appeals Chamber, Judgement (“*Tadić Appeal Judgment*”), 15 July 1999, para. 305; Karadžić Trial Judgment, para. 500; ECCC, Duch Trial Judgment, para. 379; Duch Appeal Judgment, para. 238.

¹⁴⁸ ICTY, Krnojelac Trial Judgment, para. 435.

Personal motives or any additional motive of pursuing a military goal do not exclude discriminatory intent.¹⁴⁹

83. The discriminatory intent may be inferred from circumstantial evidence, taking into account for example the systematic nature of the crimes committed against the targeted group and the general conduct of the perpetrator as demonstrated by his behaviour.¹⁵⁰

2. War Crimes

(a) Contextual Requirements for War Crimes

84. The contextual requirements for war crimes committed in the context of an armed conflict not of an international character consist of: (i) the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organised armed groups or between such groups; (ii) a nexus between the underlying offence and the armed conflict; and (iii) knowledge of the existence of the armed conflict.

(i) *Existence of an armed conflict*

85. Article 14(2) of the Law provides that armed conflicts not of an international character take place in the territory of a state when there is protracted armed conflict between the organs of authority and organised armed groups or between such groups.¹⁵¹

¹⁴⁹ ICTY, *Kvočka et al. Appeal Judgment*, para. 463; *Popović et al. Appeal Judgment*, para. 733; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 671.

¹⁵⁰ ICTY, *Krnojelac Appeal Judgment*, para. 184; *Kvočka et al. Appeal Judgment*, para. 460; *Popović et al. Trial Judgment*, para. 969; ICTR, *Bagosora et al. Trial Judgment*, para. 2208; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 671.

¹⁵¹ ICTY, *Tadić Decision on Jurisdiction*, para. 70; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Appeals Chamber, *Judgement* (“*Boškoski and Tarčulovski Appeal Judgment*”), 19 May 2010, para. 21. See

86. *Hostilities*. Armed conflicts are characterised by the outbreak of hostilities that take place in the territory of a state.

87. *Parties to the hostilities*. In relation to the parties to the hostilities, Article 14(2) of the Law mentions two categories of possible parties to the armed conflict that ought to be construed in compliance with customary international law. “Organs of authority” include governmental authorities, such as a state’s regular armed forces, police units, national guards or other authorities of a similar nature,¹⁵² including armed groups and militias incorporated in armed forces.¹⁵³ “Organised armed groups” imply a degree of organisation but “do not necessarily need to be as organised as the armed forces of a State”.¹⁵⁴ They do not need to carry out sustained and concerted military operations, but they must be sufficiently organised to confront each other with military means.¹⁵⁵ When deciding whether a non-state entity can carry out protracted armed violence, the following indicative factors may be taken into account: (i) existence of a command structure, including headquarters, a general staff or high command, identifiable ranks and positions, and internal regulations; (ii) issuance of political statements or communiqués and the use of spokespersons; (iii) operational capacity and the ability to carry out military operations; (iv) logistical capacity, including the availability of weapons and equipment, and the capacity to move troops and to recruit and train personnel; (v) territorial control, including a division into zones of responsibility; (vi) an internal disciplinary system, including the

also ICC, *Ntaganda Trial Judgment*, para. 701; *Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, Trial Chamber I, *Judgment Pursuant to Article 74 of the Statute* (“*Lubanga Trial Judgment*”), 14 March 2012, para. 533.

¹⁵² ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber, *Judgment* (“*Boškoski and Tarčulovski Trial Judgment*”), 10 July 2008, paras 178, 195.

¹⁵³ Article 43(3) of Additional Protocol I.

¹⁵⁴ ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 195, 197; *Prosecutor v. Orić*, IT-03-68-T, Trial Chamber, *Judgment* (“*Orić Trial Judgment*”), 30 June 2006, para. 254; *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Chamber, *Judgment* (“*Haradinaj et al. Trial Judgment*”), 3 April 2008, para. 60; *Limaj et al. Trial Judgment*, para. 89.

¹⁵⁵ ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 197-198.

implementation of IHL through the armed group's ranks; and (vii) ability to speak with one voice on behalf of the armed group, for example in political negotiations or cease-fire agreements.¹⁵⁶

88. *Intensity*. In relation to the level of intensity of the conflict, Article 14(2) of the Law requires that hostilities between the parties must reach a certain degree of intensity, exceeding internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature. In this context, the notion of "protracted armed violence" informs the intensity test as it refers "more to the intensity of the armed violence than its duration".¹⁵⁷ Intensity may be inferred from, for example: (i) the seriousness and frequency of attacks; (ii) their spread over the territory and over a period of time, and whether any ceasefire orders have been issued; (iii) the increase and number of forces deployed; (iv) the mobilisation and distribution of weapons amongst the conflict parties; (v) the type of weapons used, in particular the use of heavy artillery; (vi) the type of military equipment, in particular the use of tanks; (vii) whether the situation attracted the attention of the United Nations Security Council, or other international organisations; (viii) the effects on the civilian population, the extent of destruction and the number of persons killed or displaced; and (ix) the manner in which the armed group was treated by others and under which body of law it claimed to be operating.¹⁵⁸

¹⁵⁶ See also Article 1(1) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International armed Conflicts (Protocol II), of 8 June 1977 ("Additional Protocol II"). See also ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 194-203. However, the degree of organisation for an armed group to a conflict to which Common Article 3 applies, does not need to be at the level of organisation required for parties to Additional Protocol II armed conflicts, see ICTY, *Boškoski and Tarčulovski Trial Judgment*, para. 197.

¹⁵⁷ ICTY, *Haradinaj et al. Trial Judgment*, para. 49. See also *Kordić and Čerkez Appeal Judgment*, para. 341; *Tadić Trial Judgment*, para. 562.

¹⁵⁸ ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 177, confirmed by *Boškoski and Tarčulovski Appeal Judgment*, paras 22, 24; ICC, *Ntaganda Trial Judgment*, paras 703-704, 716; *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Trial Chamber III, *Judgment Pursuant to Article 74 of the Statute* ("Bemba Trial

89. *Scope*. The temporal and geographical scope of armed conflicts not of an international character must be assessed on the facts of the case. As a rule, it extends beyond the exact time and place of hostilities; the applicable rules apply beyond the cessation of hostilities until a peaceful settlement is achieved.¹⁵⁹ Thus, the norms of IHL apply regardless of whether actual combat activities are taking place in a particular location.¹⁶⁰ On the other hand, cease-fire or other agreements between the parties are not sufficient on their own to determine the end of armed conflicts. Rather, if armed confrontations of certain intensity continue after the conclusion of a peace (or other) agreement, an armed conflict continues to exist and the IHL rules remain applicable¹⁶¹ up until there is a lasting absence of armed confrontations and the situation has sufficiently stabilised, so as to equate a peaceful settlement.¹⁶² In case of persons whose liberty has been restricted, IHL continues to apply until such deprivation or restriction of liberty comes to an end.¹⁶³

(ii) *Nexus to the armed conflict*

90. The alleged crimes must be sufficiently linked with the armed conflict. The armed conflict need not have been causal to the commission of the crime charged, but it must have played, at a minimum, a substantial part in the perpetrator's ability to commit that crime, his or her decision to commit it, the manner in which

Judgment"), 21 March 2016, para. 137; Lubanga Trial Judgment, para. 538; Katanga Trial Judgment, paras 1186-1187.

¹⁵⁹ ICTY, Tadić Decision on Jurisdiction, paras 67-70; Limaj et al. Trial Judgment, para. 84; Vasiljević Trial Judgment, para. 25; Kunarac et al. Appeal Judgment, para. 57.

¹⁶⁰ ICTY, Orić Trial Judgment, para. 255; Tadić Decision on Jurisdiction, para. 70.

¹⁶¹ ICTY, Boškoski and Tarčulovski Trial Judgment, para. 293; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2nd edition, 2017, ("2017 ICRC Commentary"), regarding Article 3, para. 512.

¹⁶² 2017 ICRC Commentary, paras 516-518.

¹⁶³ 1987 ICRC Commentary to Additional Protocol II, regarding Article 2(2), paras 4491-4496.

it was committed, or the purpose for which it was committed.¹⁶⁴ In determining the nexus, heed may be paid to: (i) the status of the perpetrator and victim; (ii) whether the act serves the ultimate goal of a military campaign; or (iii) whether the act was committed as part of, or in context of, the perpetrator's official duties.¹⁶⁵

(iii) Awareness of the existence of the armed conflict

91. The perpetrator must be aware of the factual circumstances establishing the armed conflict not of an international character.¹⁶⁶ Knowledge of the correct legal classification of the armed conflict is not necessary.¹⁶⁷

(b) Specific Requirements for War Crimes

92. All crimes must be committed against protected persons. The chapeau of Article 14(1)(c) of the Law referring to Common Article 3(1) requires that the victim was not taking active part in the hostilities at the time the offence was committed.¹⁶⁸ Active participation in hostilities means carrying out acts as part of the conduct of hostilities intended by their nature or purpose to cause actual harm

¹⁶⁴ ICTY, *Kunarac et al. Appeal Judgment*, para. 58; *Stakić Appeal Judgment*, para. 342; *Tadić Decision on Jurisdiction*, para. 70; ICTR, *Setako v. Prosecutor*, ICTR-04-81-A, Appeals Chamber, *Judgement*, 28 September 2011, para. 249; *Rutaganda v. Prosecutor*, ICTR-96-3-A, Appeals Chamber, *Judgement*, 26 May 2003, paras 569-570.

¹⁶⁵ ICTY, *Kunarac et al. Appeal Judgment*, para. 59; ICC, *Bemba Trial Judgment*, para. 143.

¹⁶⁶ ICTY, *Naletilić and Martinović Appeal Judgment*, paras 118-121; *Boškoski and Tarčulovski Trial Judgment*, para. 295. See also ICC, *Ntaganda Trial Judgment*, para. 698.

¹⁶⁷ ICTY, *Naletilić and Martinović Appeal Judgment*, para. 119; *Kordić and Čerkez Appeal Judgment*, para. 311.

¹⁶⁸ ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR73.9, Appeals Chamber, *Decision on Appeal from Denial of Judgment of Acquittal for Hostage-Taking* ("Karadžić Decision 11 December 2012"), 11 December 2012, paras 8, 21; IT-95-5/18-AR72.5, Appeals Chamber, *Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment*, 9 July 2009, paras 22-26; *Boškoski and Tarčulovski Appeal Judgment*, para. 66; *Prosecutor v. Strugar*, IT-01-42-A, Appeals Chamber, *Judgement* ("Strugar Appeal Judgment"), 17 July 2008, paras 172, 178; *Prosecutor v. Mucić et al.*, IT-96-21-A, Appeals Chamber, *Judgement* ("Mucić et al. Appeal Judgment"), 20 February 2001, paras 420, 424.

to the personnel or equipment of the adverse party.¹⁶⁹ Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, are protected under Common Article 3.¹⁷⁰ The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.¹⁷¹

(i) *Arbitrary detention*

93. *Material elements (actus reus)*. The crime of arbitrary detention as a war crime, within the meaning of Article 14(1)(c) of the Law, is committed through an act or omission resulting in depriving a person not taking active part in hostilities of his or her liberty without legal basis or without complying with basic procedural safeguards.

94. The deprivation of liberty is without legal basis when it is justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns make it absolutely necessary.¹⁷²

¹⁶⁹ ICTY, *Strugar Appeal Judgment*, para. 178; ICC, *Katanga Trial Judgment*, paras 789-790. See also Article 13(3) of Additional Protocol II.

¹⁷⁰ 2016 ICRC Commentary regarding Common Article 3, para. 539: “[p]ersons who are *hors de combat* by clearly expressing an intention to surrender are laying ‘down their arms’ in the sense of common Article 3 and come within the protective scope of the article. Common Article 3 then notes the following other factors potentially rendering a person *hors de combat*: ‘sickness, wounds, detention, or any other cause’. Sickness and wounds are typical incidences for members of armed forces during non-international armed conflict, as is detention, resorted to by both State and non-State Parties to the conflict. Other causes of being *hors de combat* could, for example, be shipwreck, parachuting from an aircraft in distress, or falling or otherwise being in the power of a Party to the conflict – for example at a checkpoint – even if the situation may not yet be regarded as amounting to detention. The addition of ‘any other cause’ indicates that the notion of ‘*hors de combat*’ in common Article 3 should not be interpreted in a narrow sense.”

¹⁷¹ ICTY, *Mladić Trial Judgment*, para. 3017; *Karadžić Decision 11 December 2012*, para. 22; *Boškoski and Tarčulovski Appeal Judgment*, para. 66.

¹⁷² ICTY, *Mucić et al. Appeal Judgment*, paras 320-322; *Kordić and Čerkez Appeal Judgment*, paras 72-73; ECCC, *Duch Trial Judgment*, para. 465.

95. The basic procedural safeguards encompass, in particular: (i) the obligation to inform a person who is arrested of the reasons for arrest; (ii) the obligation to bring a person arrested on a criminal charge promptly before a judge or other competent authority; and (iii) the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention.¹⁷³

96. When assessing the compliance with basic procedural safeguards, it is irrelevant whether: (i) the initial deprivation of liberty was justified;¹⁷⁴ or (ii) the perpetrator is personally responsible for the failure to have the detainee's procedural rights respected.¹⁷⁵

97. *Mental element (mens rea)*. The perpetrator must have acted intentionally in relation to his or her conduct. In addition, the perpetrator must have no reasonable grounds to believe that security concerns of the parties to the conflict make the detention absolutely necessary, or the perpetrator must know that the detainees have not been afforded the requisite procedural guarantees, or be reckless as to whether those guarantees have been afforded or not.¹⁷⁶

(ii) *Cruel treatment*

98. *Material elements (actus reus)*. The crime of cruel treatment as a war crime, within the meaning of Article 14(1)(c)(i) of the Law, is committed through an act or omission, which causes serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.¹⁷⁷

¹⁷³ Rule 99, CIHL Study, Vol. I (Rules), pp. 349-350. See also Article 6, Additional Protocol II.

¹⁷⁴ ICTY, *Mucić et al. Appeal Judgment*, para. 322. See also ICTY, *Kordić and Čerkez Appeal Judgment*, para. 73; ECCC, *Duch Trial Judgment*, paras 465.

¹⁷⁵ ICTY, *Mucić et al. Appeal Judgment*, para. 379.

¹⁷⁶ ICTY, *Mucić et al. Appeal Judgment*, para. 378.

¹⁷⁷ ICTY, *Mucić et al. Appeal Judgment*, para. 424. See also ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Appeals Chamber, *Judgement* ("Haradinaj et al. Appeal Judgment"), 19 July 2010, paras 93-94; *Blaškić Appeal Judgment*, para. 595.

99. The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as: (i) the severity of the alleged conduct; (ii) the nature of the act or omission; (iii) the context in which the conduct occurred; (iv) its duration and/or repetition; (v) its physical and mental effects on the victim; and (vi) the personal circumstances of the victim, including age, gender, and health.¹⁷⁸ The detention or confinement of persons in inhumane conditions may amount to cruel treatment in certain circumstances,¹⁷⁹ but it does not, in and of itself, constitute cruel treatment.

100. The suffering inflicted by the act upon the victim does not need to be lasting, so long as it is real and serious.¹⁸⁰

101. *Mental element (mens rea)*. The perpetrator must have acted intentionally or with the knowledge that the serious mental or physical suffering or injury, or the serious attack on human dignity, was a probable consequence of the act or omission.¹⁸¹

(iii) Torture

102. The material and mental elements of torture as a war crime under Article 14(1)(c)(i) of the Law are the same¹⁸² as those for torture as a crime against

¹⁷⁸ ICTY, *Popović et al. Trial Judgment*, fn. 3249; *Kvočka et al. Appeal Judgment*, paras 584-585; *Prosecutor v. Mrkšić et al.*, IT-95-13/1-T, Trial Chamber, *Judgement* (“*Mrkšić et al. Trial Judgment*”), 27 September 2007, paras 516, 525, 537; *Krnojelac Trial Judgment*, para. 131.

¹⁷⁹ ICTY, *Mucić et al. Trial Judgment*, paras 554-558.

¹⁸⁰ ICTY, *Krnojelac Trial Judgment*, para. 131.

¹⁸¹ ICTY, *Popović et al. Trial Judgment*, para. 974; *Mrkšić et al. Trial Judgment*, para. 516; *Limaj et al. Trial Judgment*, para. 231; *Prosecutor v. Strugar*, IT-01-42-T, Trial Chamber, *Judgement* (“*Strugar Trial Judgment*”), 31 January 2005, para. 261.

¹⁸² ICTY, *Krnojelac Trial Judgment*, para. 178; *Brđanin Trial Judgment*, para. 482; ECCC, *Duch Trial Judgment*, para. 439; *Case 002/02 Trial Judgment*, para. 759.

humanity under Article 13(1)(f) of the Law,¹⁸³ except for the contextual requirements and the protected status of the victim.

(iv) Murder

103. The material and mental elements of murder as a war crime under Article 14(1)(c)(i) of the Law are the same¹⁸⁴ as those for murder as a crime against humanity under Article 13(1)(a) of the Law,¹⁸⁵ except for the contextual requirements and the protected status of the victim.

C. MODES OF LIABILITY

104. The Specialist Prosecutor pleads the following modes of liability: commission pursuant to a joint criminal enterprise, aiding and abetting, and superior responsibility.¹⁸⁶ The objective and subjective elements of these modes of liability are set out below.

1. Joint Criminal Enterprise

105. Joint Criminal Enterprise (“JCE”) as mode of liability encompasses three forms or categories (basic, systemic, and extended). In the basic form (“JCE I”), several perpetrators act on the basis of a common purpose; in the systemic form (“JCE II”), a variant of the first form, the crimes are committed within an organised system of ill-treatment, by members of military or administrative units, such as in

¹⁸³ See *supra* paras 66-69 (Specific Requirements, Torture).

¹⁸⁴ ICTY, *Krnjelac Trial Judgment*, para. 323; *Naletilić and Martinović Trial Judgment*, para. 248; *Blagojević and Jokić Trial Judgment*, para. 556; ECCC, *Duch Trial Judgment*, para. 431; *Case 002/02 Trial Judgment*, para. 757.

¹⁸⁵ See *supra* paras 70-71 (Specific Requirements, Murder).

¹⁸⁶ Revised Indictment, paras 32-55, 173, 174 [68].

concentration or detention camps; in the extended form (“JCE III”), criminal responsibility is established for acts of a co-perpetrator that go beyond the common plan but which were a foreseeable consequence of the realisation of the plan.¹⁸⁷

(a) Objective Elements

106. All forms of JCE require the following objective elements: (i) a plurality of persons who act pursuant to a common purpose; (ii) a common purpose which amounts to or involves the commission of a crime provided for in the Law; and (iii) participation of the perpetrator in furthering the common design or purpose.¹⁸⁸

107. *Plurality of persons.* A JCE exists when a plurality of persons participates in the realisation of a common criminal objective.¹⁸⁹ The persons participating in the criminal enterprise need not be organised in a military, political, or administrative structure.¹⁹⁰ They must, however, be identified with specificity, for instance by name or by categories or groups of persons.¹⁹¹

¹⁸⁷ ICTY, *Kvočka et al. Appeal Judgment*, paras 82-83; *Vasiljević Appeal Judgment*, para. 98; *Tadić Appeal Judgment*, paras 196, 202-203, 228. ICTR, *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Appeals Chamber, *Judgement* (“*Ntakirutimana Appeal Judgment*”), 13 December 2004, para. 464.

¹⁸⁸ ICTY, *Mladić Trial Judgment*, para. 3561; *Karadžić Trial Judgment*, para. 561, referring to *Tadić Appeal Judgment*, paras 227; *Stakić Appeal Judgment*, para. 64. See also ICTR, *Karemera and Ngirumpatse v. Prosecutor*, ICTR-98-44-A, Appeals Chamber, *Judgement*, 29 September 2014, para. 110; *Ntakirutimana Appeal Judgment*, paras 461-468; STL, *Prosecutor v. Ayyash et al.*, STL-11-O1/I, Appeals Chamber, *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging* (“*Ayyash et al. Decision on Applicable Law*”), 16 February 2011, paras 236-249.

¹⁸⁹ ICTY, *Haradinaj et al. Trial Judgment*, para. 138; *Kvočka et al. Trial Judgment*, para. 307.

¹⁹⁰ ICTY, *Mladić Trial Judgment*, para. 3561; *Tadić Appeal Judgment*, para. 227.

¹⁹¹ ICTY, *Mladić Trial Judgment*, para. 3561; *Prosecutor v. Krajišnik*, IT-00-39-A, Appeals Chamber, *Judgement* (“*Krajišnik Appeal Judgment*”), 17 March 2009, paras 156-157; *Brđanin Appeal Judgment*, para. 430.

108. *Common purpose which amounts to or involves the commission of a crime.* There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.¹⁹² A common purpose does not presume preparatory planning or explicit agreement among JCE participants, or between JCE participants and third persons.¹⁹³ Moreover, a JCE may exist even if none or only some of the physical perpetrators of the crimes are members of the JCE, yet are used by one or more members of the JCE to commit crimes pursuant to the common purpose.¹⁹⁴

109. In JCE III, the perpetrator is responsible for crimes committed beyond the common purpose, but which are nevertheless an objectively foreseeable consequence of that common purpose.¹⁹⁵

110. *Contribution.* The perpetrator must have participated in the furthering of the common purpose at the core of the JCE by assisting in or contributing to the execution of the common plan or purpose, but need not have performed any part of the *actus reus* of the crime charged.¹⁹⁶ The perpetrator's contribution to the JCE need not be, as a matter of law, necessary or substantial, but it should at least be a

¹⁹² ICTY, *Tadić Appeal Judgment*, paras 227; *Prosecutor v. Furundžija*, IT-95-17/1-A, Appeals Chamber, *Judgement*, 21 July 2000, para. 119.

¹⁹³ ICTY, *Haradinaj et al. Trial Judgment*, para. 138; *Brđanin Appeal Judgment*, para. 418; *Kvočka et al. Appeal Judgment*, paras 117-119.

¹⁹⁴ ICTY, *Mladić Trial Judgment*, para. 3561; *Krajišnik Appeal Judgment*, paras 225-226, 235-236; *Brđanin Appeal Judgment*, paras 410, 413.

¹⁹⁵ See reference to the "person of reasonable prudence" test in STL, *Ayyash et al. Decision on Applicable Law*, para. 242.

¹⁹⁶ ICTY, *Krajišnik Appeal Judgment*, paras 215, 218, 695; *Tadić Appeal Judgment*, para. 227.

significant contribution to the crimes for which he or she is found responsible.¹⁹⁷

The contribution does not need to be criminal *per se*.¹⁹⁸

(b) Subjective Element

111. The subjective elements differ according to the category of JCE under consideration.

112. With regard to JCE I, the perpetrator must share the intent with the other participants to carry out the crimes forming part of the common purpose, including the special intent.¹⁹⁹

113. With regard to JCE II, personal knowledge of the system of ill-treatment is required as well as the intent to further this common concerted system of ill-treatment.²⁰⁰

114. With regard to JCE III, the perpetrator is responsible for crimes committed beyond the common purpose, if, under the circumstances of the case: (i) the perpetrator intended to participate in and contribute to the furtherance of the common purpose; (ii) it was foreseeable to the perpetrator that the extended crime might be perpetrated by one or more members of the group or by persons used by any member of the group, in carrying out the common purpose; and (iii) the perpetrator willingly took the risk that the extended crime might occur when participating in the common purpose.²⁰¹ Foreseeability occurs when the

¹⁹⁷ ICTY, *Mladić Trial Judgment*, para. 3561; *Krajišnik Appeal Judgment*, paras 215, 662, 675, 695-696; *Brđanin Appeal Judgment*, para. 430; *Kvočka et al. Appeal Judgment*, para. 97-98.

¹⁹⁸ ICTY, *Krajišnik Appeal Judgment*, para. 695.

¹⁹⁹ ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-A, Appeals Chamber, *Judgement* (“*Đorđević Appeal Judgment*”), 27 January 2014, para. 468.

²⁰⁰ ICTY, *Tadić Appeal Judgment*, para. 228; *Limaj et al. Trial Judgment*, para. 511; *Kvočka et al. Appeal Judgment*, para. 82.

²⁰¹ ICTY, *Tadić Appeal Judgment*, para. 228; *Šainović et al. Appeal Judgment*, para. 1557; *Brđanin Appeal Judgment*, paras 365, 411; *Stakić Appeal Judgment*, para. 65; *Kvočka et al. Appeal Judgment*, para. 83.

perpetrator was aware that the deviatory crime was a possible consequence in the execution of that common purpose.²⁰² The perpetrator willingly takes the risk when, with the awareness that such a crime was a possible consequence of the implementation of the enterprise, the perpetrator decides to participate in that enterprise.²⁰³

115. The following factors, among others, have been considered in determining whether the crime was foreseeable to the perpetrator: (i) knowledge of how the JCE is implemented on the ground;²⁰⁴ (ii) awareness of the criminal background and propensity of members of the enterprise to commit crimes;²⁰⁵ (iii) statements by the perpetrator;²⁰⁶ (iv) time and location of the deviatory crimes;²⁰⁷ (v) knowledge of personal motives of revenge of members of the enterprise or persons used thereby;²⁰⁸ (vi) awareness of the ethnic hatred between the parties to the conflict;²⁰⁹ and (vii) knowledge of the activities of the perpetrator-subordinates in the mistreatment of the prisoners.²¹⁰

²⁰² The possibility of the extended crime being committed must be sufficiently substantial as to be reasonably foreseeable, based on the information available to the perpetrator at the time. See ICTY, *Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, Appeals Chamber, *Judgement* (“*Stanišić and Župljanin Judgment*”), 30 June 2016, para. 627.

²⁰³ ICTY, *Brđanin Appeal Judgment*, para. 411.

²⁰⁴ ICTY, *Stanišić and Župljanin Judgment*, paras 627, 1002.

²⁰⁵ ICTY, *Stanišić and Župljanin Judgment*, paras 628, 647, 1002.

²⁰⁶ ICTY, *Šainović et al. Appeal Judgment*, para. 1090.

²⁰⁷ ICTY, *Popović et al. Appeal Judgment*, para. 1434.

²⁰⁸ ICTY, *Popović et al. Appeal Judgment*, para. 1434.

²⁰⁹ ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Appeals Chamber, *Judgement* (“*Tolimir Appeal Judgment*”), 8 April 2015, para. 520; *Stanišić and Župljanin Judgment*, para. 1002.

²¹⁰ ICTY, *Tolimir Appeal Judgment*, para. 539.

2. Aiding and Abetting

(a) Objective Elements

116. Aiding and abetting, either through an act or omission,²¹¹ requires that the perpetrator assists, encourages, or lends moral support to the commission of a crime where this support has a substantial effect on the perpetration of the crime.²¹² Aiding and abetting may occur before, during, or after the commission of the crime and in a different place from the crime.²¹³ It is unnecessary to establish that the crime would not have been committed without the contribution of the aider and abettor²¹⁴ or that there was a plan or agreement between the aider and abettor and the perpetrator.²¹⁵ There is also no requirement of a showing that the acts of the aider and abettor were specifically directed to assist, encourage, or lend moral support to the commission of the crimes.²¹⁶

(b) Subjective Element

117. The aider and abettor must have knowledge that his or her acts or omissions assist in the commission of the crime of the perpetrator.²¹⁷ In particular, the aider and abettor must be aware of the essential elements of the crime which was

²¹¹ ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, paras 49, 134, 154; *Blaškić Appeal Judgment*, para. 47.

²¹² ICTY, *Tadić Appeal Judgment*, para. 229; *Vasiljević Appeal Judgment*, para. 102; *Prosecutor v. Aleksovski*, IT-95-14/1-A, Appeals Chamber, *Judgment* (“*Aleksovski Appeal Judgment*”), 24 March 2000, paras 162, 164; ICTR, *Kalimanzira v. Prosecutor*, ICTR-05-88-A, Appeals Chamber, *Judgment* (“*Kalimanzira Appeal Judgment*”), 20 October 2010, para. 74; *Nahimana et al. Appeal Judgment*, para. 482; SCSL, *Prosecutor v. Taylor*, SCSL-03-01-A, Appeals Chamber, *Judgment* (“*Taylor Appeal Judgment*”), 26 September 2013, para. 475.

²¹³ ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, para. 81; *Simić Appeal Judgment*, para. 85; *Blaškić Appeal Judgment*, para. 48; *Mucić et al. Appeal Judgment*, para. 352; ICTR, *Nahimana et al. Appeal Judgment*, para. 482.

²¹⁴ ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, para. 81; *Simić Appeal Judgment*, para. 85; *Blaškić Appeal Judgment*, para. 48.

²¹⁵ ICTY, *Brđanin Appeal Judgment*, para. 263; *Tadić Appeal Judgment*, para. 229.

²¹⁶ ICTY, *Šainović et al. Appeal Judgment*, paras 1649-1651.

²¹⁷ ICTY, *Vasiljević Appeal Judgment*, para. 102; ICTR, *Kalimanzira Appeal Judgment*, para. 86; SCSL, *Taylor Appeal Judgment*, para. 437.

ultimately committed,²¹⁸ including the perpetrator's state of mind and any relevant specific intent,²¹⁹ although he or she need not share that specific intent.²²⁰

3. Superior Responsibility

(a) Objective Elements

118. For a superior to incur criminal liability, the following objective elements must be established: (i) the existence of superior-subordinate relationship; and (ii) the superior's failure to take necessary and reasonable measures to prevent the crime(s) of his or her subordinate(s) or to punish the perpetrator(s) thereof.²²¹ For the purposes of Article 16 of the Law, there is no requirement of causality between the superior's failure to prevent and the occurrence of the crime.²²²

119. *Existence of a superior-subordinate relationship.* The perpetrator must be a superior with *de jure* or *de facto* authority²²³ over subordinates who committed one or more crimes set out in Articles 13-14 of the Law. This relationship can be direct or indirect,²²⁴ within a hierarchy that is formal or informal,²²⁵ and civilian or military.²²⁶ To incur liability, a superior must have the material ability to prevent

²¹⁸ ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, paras 49, 159; *Brđanin Appeal Judgment*, para. 484.

²¹⁹ ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Appeals Chamber, *Judgment*, 9 May 2007, para. 127; *Vasiljević Appeal Judgment*, para. 142; *Krnjelac Appeal Judgment*, para. 52.

²²⁰ ICTY, *Simić Appeal Judgment*, para. 86; *Krnjelac Appeal Judgment*, para. 52; *Aleksovski Appeal Judgment*, para. 162.

²²¹ ICTY, *Aleksovski Appeal Judgment*, para. 72; ICTR, *Nahimana et al. Appeal Judgment*, para. 484.

²²² ICTY, *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-A, Appeals Chamber, *Judgment* ("*Hadžihasanović and Kubura Appeal Judgment*"), 22 April 2008, paras 38-40; *Blaškić Appeal Judgment*, paras 73-77.

²²³ ICTY, *Mucić et al. Appeal Judgment*, paras 192-193, 195; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Appeals Chamber, *Judgment (Reasons)* ("*Kayishema and Ruzindana Appeal Judgment*"), 1 June 2001, para. 294.

²²⁴ ICTY, *Prosecutor v. Halilović*, IT-01-48-A, Appeals Chamber, *Judgment* ("*Halilović Appeal Judgment*"), 16 October 2007, para. 59; *Mucić et al. Appeal Judgment*, paras 252, 303.

²²⁵ ICTY, *Halilović Appeal Judgment*, para. 59; *Mucić et al. Appeal Judgment*, paras 197, 303; ICTR, *Kayishema and Ruzindana Appeal Judgment*, para. 294.

²²⁶ ICTY, *Mucić et al. Appeal Judgment*, paras 195-196; ICTR, *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Appeals Chamber, *Judgment*, 23 May 2005, para. 85.

or punish the subordinate at the time of the commission of the crime (“effective control”).²²⁷ Factors to be considered in assessing effective control include, *inter alia*: (i) the perpetrator’s position; (ii) the perpetrator’s capacity to issue orders and whether those orders were in fact followed; (iii) the authority to take disciplinary measures; and (iv) the power to promote or fire personnel.²²⁸

120. *Failure to take necessary and reasonable measures*. The superior has two distinct duties: the duty to prevent (future) crimes and the duty to punish the subordinate for (past) crimes.²²⁹ The duty to prevent attaches to a superior from the moment he or she knows or has reason to know that a crime is about to be committed by the subordinate under his or her effective control, while the duty to punish arises after the subordinate has committed the crime.²³⁰ The superior may be held liable for violating either duty. Consequently, failure to prevent a crime cannot be cured by subsequently punishing the subordinate for the crime.²³¹

121. “Necessary” measures are measures appropriate for the superior to fulfil his or her duty to try genuinely to prevent or punish, and “reasonable” measures are those, which reasonably fall within the material powers of the superior.²³² What

²²⁷ ICTY, *Aleksvoski Appeal Judgment*, para. 76; *Halilović Appeal Judgment*, para. 59; *Mucić et al. Appeal Judgment*, paras 191-192, 196-198, 256, 266, 303; ICTR, *Prosecutor v. Ntawukulilyayo*, ICTR-05-82-T, Trial Chamber, *Judgement and Sentence* (“*Ntawukulilyayo Trial Judgment*”), 3 August 2010, para. 420; *Prosecutor v. Karera*, ICTR-01-74-T, Trial Chamber, *Judgement and Sentence*, 7 December 2007, para. 564; *Kayishema and Ruzindana Appeal Judgment*, para. 294.

²²⁸ ICTY, *Prosecutor v. Perišić*, IT-04-81-A, Appeals Chamber, *Judgement*, 28 February 2013, para. 97; *Strugar Appeal Judgment*, para. 254; *Halilović Appeal Judgment*, para. 66; *Orić Trial Judgment*, para. 312; *Mucić et al. Appeal Judgment*, paras 190, 206.

²²⁹ ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-T, Trial Chamber, *Public Judgement with Confidential Annex* (“*Đorđević Trial Judgment*”), 23 February 2011, para. 1888; *Prosecutor v. Delić*, IT-04-83-T, Trial Chamber, *Judgement* (“*Delić Trial Judgment*”), 15 September 2008, para. 69; *Hadžihasanović and Kubura Appeal Judgment*, para. 259; *Blaškić Appeal Judgment*, para. 83; *Mucić et al. Trial Judgment*, paras 333-334.

²³⁰ ICTY, *Delić Trial Judgment*, paras 69, 72; *Strugar Trial Judgment*, para. 416; *Kordić and Čerkez Trial Judgment*, paras 445-446.

²³¹ ICTY, *Delić Trial Judgment*, para. 69; *Strugar Trial Judgment*, para. 373; *Blaškić Trial Judgment*, para. 336.

²³² ICTY, *Đorđević Trial Judgment*, para. 1887; *Prosecutor v. Orić*, IT-03-68-A, Appeals Chamber, *Judgement*, 3 July 2008, para. 177; *Halilović Appeal Judgment*, para. 63.

constitutes “necessary and reasonable” is a matter of evidence and must be assessed *in concreto*.²³³ The duty to prevent may include measures such as to: (i) secure reports that military actions were carried out in accordance with international law;²³⁴ (ii) issue orders aimed at bringing the relevant practices into accord with the rules of armed conflict;²³⁵ (iii) take disciplinary measures to prevent the commission of atrocities; or (iv) insist before a superior authority that immediate action be taken.²³⁶ The duty to punish may include, at a minimum: (i) the obligation to investigate possible crimes or have the matter investigated; and, (ii) if the superior has no power to sanction, to report them to the competent authorities.²³⁷ The degree of effective control can be used to determine what measures are necessary and reasonable within the competence of the superior.²³⁸

(b) Subjective Element

122. According to Article 16(1)(c) of the Law, superiors must have actually known²³⁹ or must have had reason to know that the subordinates were about to commit a crime or had done so. In determining whether the superiors “had reason to know”, it must be shown that they must have had information available to them

²³³ ICTY, *Dorđević Trial Judgment*, para. 1887; *Delić Trial Judgment*, para. 76; *Blaškić Appeal Judgment*, paras 72, 417.

²³⁴ ICTY, *Delić Trial Judgment*, para. 76; *Strugar Trial Judgment*, para. 374.

²³⁵ ICTY, *Delić Trial Judgment*, para. 76; *Strugar Trial Judgment*, para. 374.

²³⁶ ICTY, *Strugar Trial Judgment*, para. 374.

²³⁷ ICTY, *Dorđević Trial Judgment*, para. 1890; *Hadžihasanović and Kubura Appeal Judgment*, para. 154; *Halilović Appeal Judgment*, para. 182; *Blaškić Appeal Judgment*, para. 83.

²³⁸ ICTY, *Dorđević Trial Judgment*, para. 1887; *Halilović Appeal Judgment*, para. 63; *Blaškić Appeal Judgment*, para. 72.

²³⁹ Factors to reach a finding on the superior’s actual knowledge include, for example: the number of illegal acts, their scope, whether their occurrence is widespread, the timing of their occurrence, the type and number of subordinates involved, the means of available communication, the scope and nature of the superior’s position and location of the superior at the time and the geographical location of the crimes, *see* ICTY, *Dorđević Trial Judgment*, para. 1885; *Orić Trial Judgment*, para. 319; *Blaškić Trial Judgment*, para. 307; *Mucić et al. Trial Judgment*, para. 386; ICTR, *Ntawukulilyayo Trial Judgment*, paras 420-421.

that was sufficiently alarming to put them on notice of crimes committed or about to be committed by their subordinates and justifying further inquiry.²⁴⁰ It is not necessary that the superior shares the same intent as the subordinate, notably special intent.²⁴¹ Knowledge requires an assessment of the specific situation of the superior at the time in question.²⁴²

VI. CHARGES

123. Before examining the supporting material in relation to each charge and determining whether a well-grounded suspicion has been established against the Suspects, the Pre-Trial Judge notes that the SPO has complied with the requirements under Rule 86(3) of the Rules by submitting: (i) a revised indictment; (ii) evidentiary material supporting the facts underpinning the charges; and (iii) an updated detailed outline and supplement demonstrating the relevance of each item of evidentiary material to each allegation.

A. CONTEXTUAL REQUIREMENTS

1. Contextual Requirements for Crimes Against Humanity

124. In the Revised Indictment, the SPO alleges that during the Indictment Period²⁴³ the crimes charged were part of a widespread or systematic attack directed against the civilian population of opponents in Kosovo and areas of northern Albania.²⁴⁴ According to the SPO, opponents included those who were or

²⁴⁰ ICTY, *Dorđević Trial Judgment*, para. 1886; *Krnojelac Appeal Judgment*, para. 59, 155; *Mucić et al. Appeal Judgment*, paras 238-239, 241; ICTR, *Nahimana et al. Appeal Judgment*, para. 791; *Prosecutor v. Bagilishema*, ICTR-95-1-A, Appeals Chamber, *Judgement (Reasons)*, 3 July 2002, paras 28, 42.

²⁴¹ ICTY, *Brđanin Trial Judgment*, paras 720-721; *Krnojelac Appeal Judgment*, para. 155; ICTR, *Nahimana et al. Appeal Judgment*, para. 865.

²⁴² ICTY, *Krnojelac Appeal Judgment*, para. 156; *Mucić et al. Appeal Judgment*, para. 239.

²⁴³ Revised Indictment, paras 16-17.

²⁴⁴ Revised Indictment, paras 16-17.

were perceived to have been: (i) collaborating or associating with FRY forces or officials or state institutions; or (ii) otherwise not supporting the aims or means of the Kosovo Liberation Army (“KLA”) and later of the Provisional Government of Kosovo (“PGoK”), including persons associated with the Democratic League of Kosovo (“LDK”) and persons of Serb, Roma, and other ethnicities.²⁴⁵

125. In relation to the existence of an attack, the Pre-Trial Judge finds that the supporting material indicates that, between at least March 1998 and September 1999, KLA members carried out multiple acts of violence and mistreatment against hundreds of civilians throughout Kosovo and in northern Albania.²⁴⁶ KLA members engaged in violent acts, such as arrests, detentions, mistreatment, torture and/or killings.²⁴⁷ Civilians were apprehended at checkpoints, on the road, at their homes or places of employment, many of whom were mistreated at the time of their arrest. Most of them were then transferred to one or more detention locations, where they were intimidated, mistreated, questioned, tortured and/or killed.²⁴⁸ This course of conduct suggests a campaign of violence and mistreatment amounting to an “attack”.

126. In relation to the target of the attack, the supporting material indicates that the aforementioned acts of violence and mistreatment were directed against civilians who were perceived to have been opponents of the KLA. Public statements had been calling for violence against opponents as early as 1994, often characterised as traitors, collaborators or pacifists,²⁴⁹ and intensified in the wake of the armed

²⁴⁵ Revised Indictment, para. 32.

²⁴⁶ IT-03-66 P212.4, pp. 4, 23-24 (00676473, 00676492-00676493); IT-04-84 P00931, paras 20, 22, 32, 37, 51, 62 (U0171203, U0171210, U0171213, U0171215, U0171221, U0171227); [REDACTED]; IT-03-66 P150, pp. 6-7 (K0350562-K0350563); [REDACTED]; IT-04-84 P00006, pp. 11, 17-19, 28-32 (00649677, 00649683-00649685, K0078704-K0078708). *See also infra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 362-417 (Counts 8-9).

²⁴⁷ IT-03-66 P212.4, pp. 4, 23-24 (00676473, 00676492-00676493); IT-04-84 P00931, paras 51, 62 (U0171221, U0171227); [REDACTED]; IT-04-84 P00006, p. 11 (00649677).

²⁴⁸ *See infra* paras 139-444 (Counts 2-3, 4-5, 6-7, 8-9, 10 and 1).

²⁴⁹ [REDACTED].

conflict²⁵⁰ in March 1998.²⁵¹ Those perceived as opponents of the KLA included: (i) the Serbian, Roma and Ashkali populations; (ii) Catholics; (iii) civilians allegedly collaborating with Serb authorities or allegedly interacting with Serbs; (iv) Albanians affiliated to or supporting the LDK or other parties perceived as anti-KLA; (v) Albanians not having joined or not supporting the KLA; and (vi) individuals with current or former employment perceived as anti-KLA (collectively, the “Opponents”).²⁵² The supporting material shows that, while a small number of these individuals were employed by or were affiliated with the Serbian/Yugoslavian military or police, they were not taking active part in the hostilities at the time of their apprehension and they were targeted because of their perceived Opponent status.²⁵³ Furthermore, KLA General Staff public statements and the Suspects’ personal statements expressly indicated that the acts of violence and mistreatment were a warning to all other Opponents,²⁵⁴ thereby also targeting and exerting pressure on the families and communities of the Opponents. Moreover, KLA members repeatedly declined to give accurate information about the detention and whereabouts of Opponents, thereby further affecting their families and communities.²⁵⁵ The large number and diverse categories of people targeted show that the attack was in fact directed against a significant segment of Kosovo’s civilian population.

127. In relation to the widespread nature of the attack, the supporting material shows that the acts of violence and mistreatment occurred on a large scale at more

²⁵⁰ See *infra* paras 131-137 (Contextual Requirements for War Crimes).

²⁵¹ [REDACTED].

²⁵² See *infra* para. 443 (Count 1). See also IT-04-84 P00931, paras 32, 62 (U0171213, U0171227); [REDACTED]; IT-04-84 P00006, p. 11 (00649677); IT-03-66 P150, pp. 6-7 (K0350562-K0350563); [REDACTED].

²⁵³ Jabllanicë/Jablanica: *infra* para. 144. Llapushnik/Lapušnik: *infra* para. 147. Kleçkë/Klečka: *infra* fn. 462. [REDACTED], Prizren: *infra* para. 206. Former Boarding School/Dormitory, Gjilan/Gnjilane: *infra* para. 218. Former Police Station, Suharekë/Suva Reka: *infra* para. 221.

²⁵⁴ See *supra* fns 249, 251. See also [REDACTED].

²⁵⁵ See *infra* paras 419-436 (Count 10).

than 30 sites, some of which encompassed several (detention) locations,²⁵⁶ in at least 16 municipalities of Kosovo and two districts of Albania.²⁵⁷ The supporting material indicates a large number of abductions, detentions, executions and disappearances between early 1998 and the summer of 1999, perpetrated by KLA members against hundreds of Serbs, Romas and Albanians perceived as non-supportive of the KLA.²⁵⁸ Moreover, in 1998-1999, it was well known in Kosovo that Opponents were being mistreated and/or killed.²⁵⁹ The large number of victims and the geographical spread of the (detention) locations where the acts of violence, mistreatment and killings occurred demonstrate that there was a widespread attack against the civilian population.

128. In relation to the systematic nature of the attack, the supporting material indicates that the aforementioned acts of violence and mistreatment occurred in an organised manner and followed a consistent pattern. KLA General Staff public statements, regulations and other publications, as well as the Suspects' personal statements repeatedly and publicly called for or endorsed violence against Opponents, thereby indicating an orchestration of the violence from the top.²⁶⁰ This is further corroborated by supporting material showing that senior KLA members, including the Suspects, other members of the General Staff and commanders, participated in the acts of violence and mistreatment.²⁶¹ Police and intelligence

²⁵⁶ See *infra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 362-417 (Counts 8-9);

²⁵⁷ See *infra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 362-417 (Counts 8-9); paras 419-436 (Count 10), paras 438-444 (Count 1).

²⁵⁸ IT-03-66 P212.4, pp. 23-25 (00676492-00676494); IT-03-66 P150, pp. 6-7 (K035-562-K035-563); [REDACTED]; IT-04-84 P00006, pp. 17-19, 28-32 (0064-9683-0064-9685, K007-8704-K0007-8708); [REDACTED].

²⁵⁹ [REDACTED].

²⁶⁰ See *supra* fns 249, 251.

²⁶¹ See *infra* paras 452-454 (Joint Criminal Enterprise I). See also e.g. Likoc/Likovac: *infra* para. 235. Llapushnik/Lapušnik: *infra* para. 148. Drenoc/Drenovac: *infra* paras 150, 375, 425. Malishevë/Mališevo: *infra* paras 153, 251, 384, 430. Bare and Bajgorë/Bajgora: *infra* para. 161. Zllash/Zlaš: *infra* para. 267. [REDACTED]: *infra* paras 169, 271, 359. [REDACTED]: *infra* para. 275. Kleçkë/Klečka: *infra* paras 175, 279, 359, 397, 401. [REDACTED]: *infra* paras 403, 434. Cahan: *infra* paras 183, 287. Kukës: *infra* paras 291, 359. [REDACTED]: *infra* para. 299. [REDACTED], Prizren: *infra* paras 207, 319. [REDACTED]: *infra*

structures were put in place by the KLA leadership and tasked with the identification and investigation of Opponents.²⁶² Some Opponents were named in KLA General Staff statements,²⁶³ while many others were included in lists of alleged collaborators.²⁶⁴ This demonstrates the organised and non-accidental targeting pattern of Opponents. Further, the KLA leadership considered [REDACTED], who deserved punitive measures, including killings.²⁶⁵ Many Opponents were detained at KLA headquarters, bases or barracks throughout Kosovo and northern Albania,²⁶⁶ and were also transferred between and held at multiple detention locations.²⁶⁷ This shows that the acts of violence and mistreatment involved a significant degree of coordination, resources and facilities. Measures taken against Opponents were reported back to the KLA General Staff.²⁶⁸ While some of these measures were publicly acknowledged by the KLA leadership as a warning to other Opponents,²⁶⁹ many other acts of violence and mistreatment were concealed, with KLA members repeatedly denying

para. 216. Novobërdë/Novo Brdo: *infra* para. 346. [REDACTED]: *infra* para. 413. [REDACTED]: *infra* para. 415.

²⁶² Around June 1998, the KLA General Staff established the G2 Intelligence Directorate, which was tasked to, *inter alia*, [REDACTED] and discover [REDACTED] inside and outside of the army. *See infra* paras 455-456 (Joint Criminal Enterprise I). [REDACTED]; *see also* para. 259 (Counts 4-5) [REDACTED].

²⁶³ [REDACTED].

²⁶⁴ [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED].

²⁶⁵ [REDACTED].

²⁶⁶ *See e.g.* Likoc/Likovac: *infra* para. 139. Jabllanicë/Jablanica: *infra* para. 142. Drenoc/Drenovac: *infra* para. 149. [REDACTED]: *infra* para. 156. Llapashticë/Lapaštica: *infra* para. 162. Kleçkë/Klečka: *infra* para. 175. Cahan: *infra* para. 181. Kukës: *infra* para. 184. [REDACTED]: *infra* para. 187. [REDACTED]: *infra* para. 190. [REDACTED], Prizren: *infra* para. 205. [REDACTED], Prizren: *infra* para. 208. Former Boarding School/Dormitory, Gjilan/Gnjilane: *infra* para. 217. Novobërdë/Novo Brdo: *infra* para. 223. [REDACTED]: *infra* para. 227.

²⁶⁷ *See e.g.* Likoc/Likovac: *infra* para. 235. Malishevë/Mališevo: *infra* paras 251, 381, 382, 384. Llapashticë/Lapaštica: *infra* para. 263. Potok: *infra* para. 391. [REDACTED]: *infra* para. 271. Kleçkë/Klečka: *infra* para. 279. [REDACTED]: *infra* paras 178, 283, 403.

²⁶⁸ [REDACTED].

²⁶⁹ *See supra* fns 249, 251. *See also* [REDACTED].

knowledge of the whereabouts of victims.²⁷⁰ The reporting, public acknowledgment and denial by KLA members is indicative of an organised context of the acts of violence. The multiple layers of organised conduct and the consistent pattern through which the aforementioned acts of violence and mistreatment unfolded demonstrate that there was a systematic attack against the civilian population.

129. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that, from at least March 1998 through September 1999, a widespread or systematic attack against the civilian population of Opponents was unfolding in Kosovo and northern Albania within the meaning of Article 13 of the Law.

2. Contextual Requirements for War Crimes

130. In the Revised Indictment, the SPO alleges that during the Indictment Period²⁷¹ the war crimes charged took place in the context of and were associated with an armed conflict in Kosovo, between the KLA and forces of the FRY and Republic of Serbia, including units of the Yugoslav Army (“VJ”), police and other units of the Ministry of Internal Affairs (“MUP”), and other groups fighting on behalf of the FRY and Serbia (collectively, “Serbian forces”).²⁷²

131. In relation to the existence of hostilities, the Pre-Trial Judge finds, based on the supporting material, that armed violence between Serbian forces, on the one

²⁷⁰ See *infra* paras 419-436 (Count 10).

²⁷¹ Revised Indictment, paras 16, 18.

²⁷² Revised Indictment, para. 18.

hand, and the KLA, on the other hand, was ongoing on the territory of Kosovo from at least March 1998.²⁷³

132. In relation to the parties to the hostilities, the supporting material indicates that Serbian forces acted as organs of authority of the governments of the FRY and the Republic of Serbia.²⁷⁴ The supporting material further indicates that the KLA was an organised entity with a command structure and a disciplinary regime, disposing of considerable operational capacity.²⁷⁵ Significantly, the intensity of the KLA military operations required Serbian forces to step up their security and defence measures in some areas.²⁷⁶ In addition, the KLA had a centralised command structure, comprising of a General Staff and a field structure consisting of operational zone commanders.²⁷⁷ The KLA was in a position to speak with one voice at the political level,²⁷⁸ and released communiqués and political declarations on a regular basis, giving updates about its military operations.²⁷⁹ The KLA exercised solid territorial control in vast parts of Kosovo, which it implemented through its centralised command structure down to its field structure of operational zone commanders, which in turn resulted in its ability to carry out concerted military operations.²⁸⁰ To this effect, it also had at its disposal weapons,

²⁷³ IT-05-87.1 P00738, pp. 18-23 (K0225278-K0225283); IT-04-84 P00931, paras 38 (U0171215-U0171216), 41 (U0171216-U0171217), 60-64 (U0171226-U0171228); [REDACTED]; IT-04-84 P01153.E, pp. 1-2; IT-05-87 5D00748-E, p. 1; IT-04-84 P01155.E, pp. 1-2; IT-04-84 P01157.E, p. 1; [REDACTED]; IT-05-87 1D00708-E, pp. 2-10 [REDACTED]; IT-05-87.1 P01369.E (whole document), for example, pp. 11-14 (03081359-03081362), 16-17 (03081364-03081365), 19 (03081367), 22-24 (03081370-03081372), 26-28 (03081374-03081376), 154 (03081502); and supporting material referred to in fn. 283.

²⁷⁴ IT-05-87.1 P01369.E (the whole document refers to VJ and MUP operations); IT-04-84 P01153.E, p. 1; IT-05-87 5D00748-E, p. 1; IT-04-84 P01157.E, p. 1; IT-05-87.1 P01029, pp. 105 (03525372), 144 (03525440), 157 (03525485), 161 (03525491), 167 (03525506).

²⁷⁵ IT-05-87.1 P00428, pp. 8-10 (5932-5934), 16-19 (5940-5943), 22-27 (5946-5951), 30-32 (5954-5956); IT-04-84 P01157.E, p. 1; IT-05-87.1 P01029, p. 4 (03524677); IT-04-84 P00931, paras 45-50, 61.

²⁷⁶ IT-04-84 P01157.E, pp. 1-6; IT-05-87 5D00748-E, p. 1.

²⁷⁷ IT-05-87.1 P00428, pp. 8 (5932), 32 (5956), 40 (5964), 43 (5967); [REDACTED].

²⁷⁸ See e.g. [REDACTED].

²⁷⁹ See e.g. [REDACTED].

²⁸⁰ IT-04-84 P00931, paras 48 (U0171219-U0171220), 61 (U0171226-U0171227); IT-05-87.1 P00428, p. 44 (5968); [REDACTED].

including automatic and heavy weaponry, such as pistols, automatic rifles, machine guns, hand grenades, mortars and rocket launchers.²⁸¹ Lastly, the KLA had significant financial resources, and recruited and trained large numbers of new recruits, not only locally but also from various countries of Europe.²⁸²

133. In relation to the level of intensity, the supporting material shows that intense fighting occurred between Serbian forces and the KLA in various parts of Kosovo,²⁸³ also due to the availability of a wide range of weaponry by both parties, including rocket launchers,²⁸⁴ mortars,²⁸⁵ automatic weapons,²⁸⁶ armoured vehicles and artillery.²⁸⁷ Sniper attacks²⁸⁸ and burning of houses²⁸⁹ have also been reported. On occasion, Serbian forces prepared to rely or had to rely upon air force, including shootings from helicopters.²⁹⁰ Lastly, the supporting material reveals a

²⁸¹ IT-04-84 P01153.E, p. 1; IT-05-87 5D00748-E, p. 1; IT-05-87 1D00708-E, p. 6 (1D08-0061); IT-05-87.1 P00428, pp. 55-56 (5979-5980); IT-04-84 P00931, paras 24-25 (U0171210-U0171211), 41-42 (U0171216-U0171217).

²⁸² IT-05-87.1 P00428, pp. 6-8 (5930-5932), 58-59 (5982-5983), 92 (6016); IT-05-87.1 P00738, pp. 18 (K0225278), 21 (K0225281); IT-04-84 P00931, para. 38 (U0171215-U0171216).

²⁸³ IT-05-87.1 P00428, pp. 16-17 (5940-5941); IT-05-87.1 P00738, pp. 11-12 (K0225279-K0225280); IT-05-87.1 P01029, for example, pp. 19 (03524814), 23-25 (03524828-03524831), 30-31 (03524848-03524852), 40 (03525165), 52 (03525239), 74 (03525295), 84 (03525312), 110 (03525382), 115 (03525386), 124 (03525412), 125 (03525395), 126 (03525414), 162 (03525493); IT-05-87.1 P01369.E, p. 11 (03081359); IT-04-84 P00931, paras 41 (U0171216), 54 (U0171223), 60 (U0171226).

²⁸⁴ IT-04-84 P00931, para. 61 (U0171226); IT-05-87.1 P01369.E, p. 10 (03081358); IT-04-84 P01153.E, p. 1.

²⁸⁵ IT-05-87.1 P00428, pp. 55 (5979), 191 (6195); IT-05-87.1 P01029, for example, pp. 31 (03524852), 40 (03525165), 52 (03525239), 61 (03525264), 62 (03525265), 64 (03525270), 69 (03525286), 74 (03525295), 123 (03525396), 126 (03525414), 155 (03525480), 182 (03525541); IT-05-87.1 P01369.E, pp. 12 (03081360), 14 (03081362), 15 (03081363).

²⁸⁶ IT-05-87 5D00748-E, p. 1; IT-05-87 1D00708-E, p. 6 (1D08-0061); IT-05-87.1 P00428 p. 55 (5979).

²⁸⁷ [REDACTED]; IT-04-84 P01155.E, pp. 1-2; IT-04-84 P01157.E, pp. 3-4; 043850-043850-ET Revised; IT-05-87.1 P01029, pp. 17 (03524808), 21 (03524820), 31 (03524852), 36 (03524860), 40-41 (03525165-03525176), 64 (03525270), 74 (03525295), 84 (03525312), 95 (03525354), 134 (03525427), 141 (03525437), 156 (03525482).

²⁸⁸ IT-05-87.1 P01029, pp. 61 (03525264), 143 (03525439); IT-04-84 P00931, paras 50 (U0171221), 54 (U0171223); IT-05-87.1 P01369.E, pp. 11 (03081359), 21 (03081368); IT-05-87.1 P00738, p. 10 (K0225278).

²⁸⁹ IT-05-87.1 P01029, pp. 51 (03525238), 55 (03525246), 62 (03525265), 67 (03525280), 74 (03525295), 81 (03525321), 135 (03525428), 137 (03525432), 142 (03525439), 144 (03525440), 149 (03525461), 167 (03525506).

²⁹⁰ IT-04-84 P01153.E, p. 1; IT-04-84 P01157.E, p. 3; [REDACTED].

significant exodus of displaced persons both within and outside of Kosovo, as a result of the hostilities.²⁹¹

134. With regard to the end of the armed conflict and related applicability of IHL rules, the Pre-Trial Judge notes that, on 9 June 1999²⁹² and 20 June 1999,²⁹³ respectively, the international security force (“KFOR”) reached two comprehensive ceasefire agreements with Serbian forces and the KLA. The first one, named the Military Technical Agreement (“MTA”), provided, *inter alia*, for the cessation of any hostile and provocative acts against any person in Kosovo as well as the phased withdrawal of Serbian forces from Kosovo.²⁹⁴ The second one, named Undertaking of Demilitarisation and Transformation by the Ushtria Çlirimtare e Kosovës (“KLA Undertaking”), provided, *inter alia*, for the cessation of all hostile acts as well as the phased demilitarisation of the KLA over a total period of 90 days.²⁹⁵ The supporting material indicates that, as a result of the progressive implementation of these agreements, in the subsequent months hostilities between the Serbian forces and the KLA progressively faded out. In the course of June 1999, Serbian forces prepared the retreat and began redeploying some of their units outside of Kosovo.²⁹⁶ Serbian forces²⁹⁷ and the KLA²⁹⁸ were found to be in violation of their respective agreements on some occasions during the summer of 1999. The supporting material further indicates that an incident took place on 10 August 1999, when 10 rounds of mortars were fired into the Serb village of [REDACTED], which, according to the KLA, was used to hide Serb

²⁹¹ [REDACTED]; IT-05-87.1 P01029, p. 130 (03525418); IT-05-87.1 P00738, pp. 12 (K0225280), 15 (K0225283).

²⁹² IT-05-87 6D00611-E.

²⁹³ [REDACTED].

²⁹⁴ IT-05-87 6D00611-E, pp. 2-4 (6D09-0141-6D09-0143).

²⁹⁵ [REDACTED].

²⁹⁶ IT-05-87.1 P01369.E, pp. 149 (03081497) (8 June 1999: drafting documents to prepare the retreat), 151-154 (03081499-03081502).

²⁹⁷ [REDACTED].

²⁹⁸ [REDACTED].

paramilitaries.²⁹⁹ Attacks with mortars and explosives against Serb religious sites were also reported towards the end of August 1999.³⁰⁰ According to the supporting material, on 16 September 1999 the KLA completed the process of demilitarisation,³⁰¹ as set out in the KLA Undertaking.³⁰²

135. Based on the supporting material, in the period when the MTA and the KLA Undertaking were being implemented, there existed the concrete risk of [REDACTED];³⁰³ and increasing efforts were made [REDACTED],³⁰⁴ who were in fear of attack by ethnic Albanians.³⁰⁵

136. The Pre-Trial Judge recalls that IHL applies beyond the cessation of hostilities, until a lasting absence of armed confrontations is achieved.³⁰⁶ While the organisation of the Serbian forces and the KLA was not substantially altered by the implementation of the two agreements, the level of intensity of the hostilities progressively decreased without, however, eliminating a real risk of resumption of violence between the parties through the summer of 1999. Accordingly, in the view of the Pre-Trial Judge, a lasting absence of armed confrontation, so as to equate to a peaceful settlement, was achieved approximately at the time when the KLA completed its demilitarisation process, on 16 September 1999.

137. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that, from at least March 1998 to approximately 16 September

²⁹⁹ [REDACTED].

³⁰⁰ [REDACTED].

³⁰¹ [REDACTED].

³⁰² [REDACTED].

³⁰³ [REDACTED].

³⁰⁴ [REDACTED].

³⁰⁵ [REDACTED].

³⁰⁶ See *supra* para. 89 (Contextual Requirements for War Crimes).

1999, a non-international armed conflict existed within the meaning of Article 14(2) of the Law between the Serbian forces and the KLA.

B. THE CRIMES CHARGED

1. Counts 2 and 3: Imprisonment and Arbitrary Detention

138. In the Revised Indictment, the SPO alleges that during the Indictment Period several individuals were deprived of their liberty without due process at the detention sites set out below, constituting the crime of imprisonment as a crime against humanity under Article 13(1)(e) of the Law and arbitrary detention as a war crime under Article 14(1)(c) of the Law.³⁰⁷

(a) Material Elements

(i) *Likoc/Likovac*

139. The Pre-Trial Judge finds that the supporting material indicates that, between at least April 1998 and January 1999, at least 25 individuals were taken into custody by KLA members and detained in a former police station housing the KLA headquarters³⁰⁸ and various other locations in or near Likoc/Likovac, Skënderaj/Srbica municipality.³⁰⁹ The detainees concerned were tied up and kept in rooms with barred windows.³¹⁰ The detainees were kept in custody for varying periods of time, ranging from a few hours³¹¹ to 40 days.³¹²

³⁰⁷ Revised Indictment, paras 59-94, 174 [68], Schedule A.

³⁰⁸ [REDACTED].

³⁰⁹ [REDACTED].

³¹⁰ [REDACTED].

³¹¹ [REDACTED].

³¹² [REDACTED].

140. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],³¹³ [REDACTED],³¹⁴ [REDACTED]³¹⁵, and [REDACTED].³¹⁶ They were held on the basis of their alleged and unspecified spying activities;³¹⁷ [REDACTED];³¹⁸ friendship or interaction with Serbs;³¹⁹ and/or [REDACTED].³²⁰

141. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.³²¹

(ii) Jabllanicë/Jablanica

142. The Pre-Trial Judge finds that the supporting material indicates that, between at least April and late July 1998, at least 13 individuals were taken into custody by KLA members and detained in the KLA guarded barracks compound with a four-room house,³²² at the exit of Jabllanicë/Jablanica, Gjakovë/Đakovica municipality.³²³ While in custody, the detainees were tied [REDACTED].³²⁴ The

³¹³ [REDACTED].

³¹⁴ [REDACTED].

³¹⁵ [REDACTED].

³¹⁶ [REDACTED].

³¹⁷ [REDACTED].

³¹⁸ [REDACTED].

³¹⁹ [REDACTED].

³²⁰ [REDACTED].

³²¹ [REDACTED].

³²² [REDACTED].

³²³ IT-04-84bis P00119, pp. 4247-4253, 4262, 4265; [REDACTED].

³²⁴ IT-04-84bis P00119, pp. 78-79 (4252-4253).

detainees were kept in custody for varying periods of time, ranging from [REDACTED]³²⁵ to six weeks.³²⁶

143. [REDACTED],³²⁷ [REDACTED].³²⁸ [REDACTED],³²⁹ [REDACTED],³³⁰ [REDACTED].³³¹ [REDACTED].³³²

144. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned, which comprised [REDACTED],³³³ [REDACTED]³³⁴ and [REDACTED]³³⁵ men, included [REDACTED]³³⁶ and [REDACTED].³³⁷ They were held on the basis of their alleged and unspecified spying activities;³³⁸ connections or links with Serbs [REDACTED];³³⁹ [REDACTED].³⁴⁰

145. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.³⁴¹

³²⁵ [REDACTED].

³²⁶ [REDACTED].

³²⁷ [REDACTED].

³²⁸ [REDACTED].

³²⁹ [REDACTED].

³³⁰ [REDACTED].

³³¹ [REDACTED].

³³² [REDACTED].

³³³ [REDACTED].

³³⁴ [REDACTED].

³³⁵ IT-04-84bis P00119, pp. 78-79 (4252-4253); [REDACTED].

³³⁶ [REDACTED].

³³⁷ [REDACTED].

³³⁸ IT-04-84bis P00119, pp. 4255-4256, 4265; [REDACTED].

³³⁹ [REDACTED].

³⁴⁰ [REDACTED].

³⁴¹ [REDACTED].

(iii) *Llapushnik/Lapušnik*

146. The Pre-Trial Judge finds that the supporting material indicates that, between approximately late April and late July 1998, as many as 30 individuals were taken into custody by KLA members and detained in the KLA prison compound in Llapushnik/Lapušnik, Drenas (Gllogoc)/Glogovac municipality,³⁴² which was fenced and consisted of a cowshed, a small house, a second bigger house, and a garage.³⁴³ The cowshed was guarded³⁴⁴ and detainees were kept chained therein.³⁴⁵ This detention site could accommodate up to 30 detainees at any given time.³⁴⁶ The detainees were kept in custody for varying periods of time, ranging from [REDACTED]³⁴⁷ to 85 days.³⁴⁸

147. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]³⁴⁹ and [REDACTED].³⁵⁰ They were held on the basis of their alleged and unspecified spying activities;³⁵¹ and/or friendship or acquaintances with [REDACTED].³⁵²

148. The circumstances of the detainees' arrest and detention and the mistreatment suffered³⁵³ suggest that the KLA members did not inform the

³⁴² [REDACTED].

³⁴³ [REDACTED].

³⁴⁴ [REDACTED].

³⁴⁵ [REDACTED].

³⁴⁶ [REDACTED].

³⁴⁷ [REDACTED].

³⁴⁸ [REDACTED].

³⁴⁹ [REDACTED].

³⁵⁰ [REDACTED].

³⁵¹ [REDACTED].

³⁵² [REDACTED].

³⁵³ See *infra* paras 241-244 (Counts 4-5).

detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.³⁵⁴

(iv) Drenoc/Drenovac

149. The Pre-Trial Judge finds that the supporting material indicates that, between approximately May and July 1998, at least 38 individuals were taken into custody by KLA members and detained in a former school building and in a registration office in Drenoc/Drenovac, Rahovec/Orahovac municipality.³⁵⁵ The detainees were kept in custody for varying periods of time, ranging between one night³⁵⁶ and more than a month.³⁵⁷

150. [REDACTED]³⁵⁸ [REDACTED]. [REDACTED].³⁵⁹ [REDACTED].³⁶⁰

151. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],³⁶¹ [REDACTED],³⁶² [REDACTED],³⁶³ [REDACTED],³⁶⁴ [REDACTED],³⁶⁵

³⁵⁴ [REDACTED].

³⁵⁵ [REDACTED].

³⁵⁶ [REDACTED].

³⁵⁷ [REDACTED].

³⁵⁸ [REDACTED].

³⁵⁹ [REDACTED].

³⁶⁰ [REDACTED].

³⁶¹ [REDACTED].

³⁶² [REDACTED].

³⁶³ [REDACTED].

³⁶⁴ [REDACTED].

³⁶⁵ [REDACTED].

[REDACTED],³⁶⁶ and [REDACTED].³⁶⁷ They were held on the basis of their alleged and unspecified spying activities;³⁶⁸ and/or friendship or dealings with Serbs.³⁶⁹

152. The circumstances of the detainees' arrest and detention and the mistreatment suffered³⁷⁰ – [REDACTED]³⁷¹ – suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.³⁷²

(v) Malishevë/Mališevo

153. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 17 and 26 or 27 July 1998, at least 48 individuals were taken into custody by KLA members and detained in a former police station compound with a two-storey building³⁷³ in Malishevë/Mališevo, in Malishevë/Mališevo municipality.³⁷⁴ The detainees included [REDACTED].³⁷⁵ They were kept in locked rooms, with small windows³⁷⁶ and iron bars,³⁷⁷ and were guarded by KLA members.³⁷⁸ The detainees were kept in custody for about 10 days.³⁷⁹ [REDACTED].³⁸⁰

³⁶⁶ [REDACTED].

³⁶⁷ [REDACTED].

³⁶⁸ [REDACTED].

³⁶⁹ [REDACTED].

³⁷⁰ See *infra* paras 245-248 (Counts 4-5).

³⁷¹ [REDACTED].

³⁷² [REDACTED].

³⁷³ [REDACTED].

³⁷⁴ [REDACTED].

³⁷⁵ [REDACTED].

³⁷⁶ [REDACTED].

³⁷⁷ [REDACTED].

³⁷⁸ [REDACTED].

³⁷⁹ [REDACTED].

³⁸⁰ [REDACTED].

154. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned were [REDACTED],³⁸¹ [REDACTED],³⁸² and included [REDACTED],³⁸³ [REDACTED],³⁸⁴ [REDACTED],³⁸⁵ [REDACTED],³⁸⁶ and [REDACTED].³⁸⁷ They were held on the basis of their alleged and unspecified spying activities,³⁸⁸ [REDACTED],³⁸⁹ and/or their [REDACTED] ethnicity.³⁹⁰

155. The circumstances of the detainees' arrest and detention and the mistreatment suffered³⁹¹ suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.³⁹²

(vi) [REDACTED]

156. The Pre-Trial Judge finds that the supporting material indicates that, in or around [REDACTED] 1998, at least five individuals were taken into custody by KLA members and detained in the KLA headquarters in [REDACTED], Prizren

³⁸¹ [REDACTED].

³⁸² [REDACTED].

³⁸³ [REDACTED].

³⁸⁴ [REDACTED].

³⁸⁵ [REDACTED].

³⁸⁶ [REDACTED].

³⁸⁷ [REDACTED].

³⁸⁸ [REDACTED].

³⁸⁹ [REDACTED].

³⁹⁰ [REDACTED].

³⁹¹ See *infra* paras 249-252 (Counts 4-5).

³⁹² [REDACTED].

municipality.³⁹³ The detainees concerned were held in a locked room with iron bars.³⁹⁴

157. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],³⁹⁵ [REDACTED]³⁹⁶ and [REDACTED].³⁹⁷ They were held on the basis of their alleged and unspecified spying activities;³⁹⁸ [REDACTED].³⁹⁹

158. The circumstances of the detainees' arrest and detention⁴⁰⁰ and the mistreatment suffered⁴⁰¹ suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴⁰²

(vii) *Bare and Bajgorë/Bajgora*

159. The Pre-Trial Judge finds that the supporting material indicates that, in August 1998, at least eight individuals were taken into custody by KLA members and detained in Bare,⁴⁰³ and that between August and mid-September 1998, at least

³⁹³ [REDACTED].

³⁹⁴ [REDACTED].

³⁹⁵ [REDACTED].

³⁹⁶ [REDACTED].

³⁹⁷ [REDACTED].

³⁹⁸ [REDACTED].

³⁹⁹ [REDACTED].

⁴⁰⁰ [REDACTED].

⁴⁰¹ See *infra* paras 253-256 (Counts 4-5).

⁴⁰² [REDACTED].

⁴⁰³ [REDACTED].

16 individuals were taken into custody by KLA members and detained in Bajgorë/Bajgora, both in Podujevë/Podujevo municipality.⁴⁰⁴ [REDACTED].⁴⁰⁵

160. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]⁴⁰⁶ and [REDACTED].⁴⁰⁷ They were held on the basis of their alleged and unspecified spying activities;⁴⁰⁸ and/or their Serb ethnicity.⁴⁰⁹

161. The circumstances of the detainees' arrest and detention, [REDACTED],⁴¹⁰ and the mistreatment suffered⁴¹¹ suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴¹²

(viii) Llapashticë/Lapaštica, [REDACTED], Majac/Majance, Potok, [REDACTED]

162. The Pre-Trial Judge finds that the supporting material indicates that several individuals were taken into custody by KLA members and detained in various locations as follows: at least 52 individuals near the military police and KLA Llap Zone headquarters in Llapashticë/Lapaštica (at least November 1998-April 1999);⁴¹³ [REDACTED];⁴¹⁴ [REDACTED] in Majac/Majance (between

⁴⁰⁴ [REDACTED].

⁴⁰⁵ [REDACTED].

⁴⁰⁶ [REDACTED].

⁴⁰⁷ [REDACTED].

⁴⁰⁸ [REDACTED].

⁴⁰⁹ [REDACTED].

⁴¹⁰ [REDACTED].

⁴¹¹ See *infra* paras 257-260 (Counts 4-5).

⁴¹² [REDACTED].

⁴¹³ [REDACTED].

⁴¹⁴ [REDACTED].

approximately 25 March and early April 1999);⁴¹⁵ [REDACTED] in Potok (early April 1999), all in Podujevë/Podujevo municipality;⁴¹⁶ and [REDACTED] in the KLA headquarters in [REDACTED], Prishtinë/Priština municipality (about [REDACTED] 1999).⁴¹⁷ [REDACTED].⁴¹⁸ Detainees in Llapashticë/Lapaštica were kept in a room that measured four by three metres, with a small window with metal bars, and which was originally a cowshed.⁴¹⁹ [REDACTED], the detainees concerned were held for varying periods of time, ranging from a few days to around five months.⁴²⁰ The detainees included, [REDACTED].⁴²¹

163. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁴²² [REDACTED],⁴²³ [REDACTED],⁴²⁴ and [REDACTED].⁴²⁵ They were held on the basis of their alleged and unspecified spying activities;⁴²⁶ their Serb ethnicity;⁴²⁷ [REDACTED];⁴²⁸ and/or their relations with Serbs.⁴²⁹

164. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

⁴¹⁵ [REDACTED].

⁴¹⁶ [REDACTED].

⁴¹⁷ [REDACTED].

⁴¹⁸ [REDACTED].

⁴¹⁹ [REDACTED].

⁴²⁰ [REDACTED].

⁴²¹ [REDACTED].

⁴²² [REDACTED].

⁴²³ [REDACTED].

⁴²⁴ [REDACTED].

⁴²⁵ [REDACTED].

⁴²⁶ [REDACTED].

⁴²⁷ [REDACTED].

⁴²⁸ [REDACTED].

⁴²⁹ [REDACTED].

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴³⁰

(ix) Zllash/Zlaš

165. The Pre-Trial Judge finds that the supporting material indicates that, in September 1998 and between approximately 1 and 19 April 1999, at least eight individuals were taken into custody by KLA members and detained in [REDACTED] Zllash/Zlaš ([REDACTED]) [REDACTED] located in a KLA detention compound in Zllash/Zlaš (April 1999), Prishtinë/Priština municipality.⁴³¹ [REDACTED].⁴³² Those held in April 1999 were kept in a barn that was locked with chains and guarded.⁴³³ The detainees were kept in custody for varying periods of time, ranging between 3⁴³⁴ and 18 days.⁴³⁵

166. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]⁴³⁶ and [REDACTED].⁴³⁷ They were held on the basis of their alleged collaboration, friendship or interaction with Serbs;⁴³⁸ [REDACTED].⁴³⁹

167. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

⁴³⁰ [REDACTED].

⁴³¹ [REDACTED].

⁴³² [REDACTED].

⁴³³ [REDACTED].

⁴³⁴ [REDACTED].

⁴³⁵ [REDACTED].

⁴³⁶ [REDACTED].

⁴³⁷ [REDACTED].

⁴³⁸ [REDACTED].

⁴³⁹ [REDACTED].

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention. [REDACTED].⁴⁴⁰ As for the [REDACTED] detainees, at the time of their release, on or around 19 April 1999 – the day of the Serbian offensive in the area⁴⁴¹ – [REDACTED],⁴⁴² [REDACTED].⁴⁴³

(x) [REDACTED]

168. The Pre-Trial Judge finds that the supporting material indicates that [REDACTED] 1998, [REDACTED], were taken into custody by [REDACTED] KLA members and [REDACTED] Skënderaj/Srbica municipality, and then detained at [REDACTED].⁴⁴⁴

169. [REDACTED],⁴⁴⁵ [REDACTED] collected their identification cards.⁴⁴⁶

170. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. [REDACTED].⁴⁴⁷ [REDACTED].⁴⁴⁸

171. The circumstances of the detainees' arrest and detention, and the mistreatment suffered⁴⁴⁹ – [REDACTED]⁴⁵⁰ [REDACTED]⁴⁵¹ – suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and

⁴⁴⁰ [REDACTED].

⁴⁴¹ [REDACTED].

⁴⁴² [REDACTED].

⁴⁴³ [REDACTED].

⁴⁴⁴ [REDACTED].

⁴⁴⁵ [REDACTED].

⁴⁴⁶ [REDACTED].

⁴⁴⁷ [REDACTED].

⁴⁴⁸ [REDACTED].

⁴⁴⁹ See *infra* paras 269-272 (Counts 4-5).

⁴⁵⁰ [REDACTED].

⁴⁵¹ [REDACTED].

detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴⁵²

(xi) [REDACTED]

172. The Pre-Trial Judge finds that the supporting material indicates that between approximately [REDACTED] and [REDACTED] 1998, at least four individuals were taken into custody by KLA members and detained in [REDACTED], Lipjan/Lipljan municipality.⁴⁵³ The detainees were kept under guard [REDACTED].⁴⁵⁴

173. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]⁴⁵⁵ [REDACTED].⁴⁵⁶ They were held on the basis of their alleged and unspecified spying activities;⁴⁵⁷ and/or [REDACTED].⁴⁵⁸

174. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴⁵⁹

⁴⁵² [REDACTED].

⁴⁵³ [REDACTED].

⁴⁵⁴ [REDACTED].

⁴⁵⁵ [REDACTED].

⁴⁵⁶ [REDACTED].

⁴⁵⁷ [REDACTED].

⁴⁵⁸ [REDACTED].

⁴⁵⁹ [REDACTED].

(xii) Klečkë/Klečka

175. The Pre-Trial Judge finds that the supporting material indicates that between at least November 1998 and June 1999, at least 20 individuals were taken into custody by KLA members and detained near Klečkë/Klečka, Lipjan/Lipljan municipality,⁴⁶⁰ in a two-storey building with a basement⁴⁶¹ (and surrounding buildings)⁴⁶² [REDACTED].⁴⁶³ The detainees were held for varying periods of time.⁴⁶⁴ On one occasion, Mr Veseli personally brought a detainee and handed him over to other KLA members.⁴⁶⁵

176. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁴⁶⁶ [REDACTED],⁴⁶⁷ [REDACTED],⁴⁶⁸ and [REDACTED].⁴⁶⁹ They were held on the basis of their alleged and unspecified spying activities;⁴⁷⁰ and/or their Serb ethnicity.⁴⁷¹

177. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴⁷²

⁴⁶⁰ [REDACTED]; IT-05-87 3D00140, p. 4; [REDACTED].

⁴⁶¹ [REDACTED].

⁴⁶² [REDACTED].

⁴⁶³ [REDACTED].

⁴⁶⁴ [REDACTED].

⁴⁶⁵ [REDACTED].

⁴⁶⁶ [REDACTED].

⁴⁶⁷ [REDACTED].

⁴⁶⁸ [REDACTED].

⁴⁶⁹ IT-05-87 3D00140, p. 2.

⁴⁷⁰ [REDACTED].

⁴⁷¹ [REDACTED].

⁴⁷² [REDACTED].

(xiii) [REDACTED]

178. The Pre-Trial Judge finds that the supporting material indicates that between approximately [REDACTED] 1999, at least 13 individuals were taken into custody by KLA members, detained in locked rooms and/or under armed guard, and [REDACTED]. More specifically, at least 13 individuals were held in [REDACTED] ([REDACTED] 1999),⁴⁷³ [REDACTED] detained in [REDACTED] ([REDACTED]), both in Kaçanik/Kaçanik municipality.⁴⁷⁴ [REDACTED],⁴⁷⁵ all but five detainees were released.⁴⁷⁶ [REDACTED] ([REDACTED] 1999),⁴⁷⁷ [REDACTED] (about [REDACTED] 1999).⁴⁷⁸ The detainees were restrained, held in locked rooms and under armed guard.⁴⁷⁹

179. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED].⁴⁸⁰ They were held on the basis of their alleged and unspecified spying activities.⁴⁸¹

180. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴⁸²

⁴⁷³ [REDACTED].

⁴⁷⁴ [REDACTED].

⁴⁷⁵ [REDACTED].

⁴⁷⁶ [REDACTED].

⁴⁷⁷ [REDACTED].

⁴⁷⁸ [REDACTED].

⁴⁷⁹ [REDACTED].

⁴⁸⁰ [REDACTED]

⁴⁸¹ [REDACTED].

⁴⁸² [REDACTED].

(xiv) Cahan, Albania

181. The Pre-Trial Judge finds that the supporting material indicates that between April and June 1999, at least 17 individuals were taken into custody by KLA members and detained at the KLA military barracks in Cahan, Albania.⁴⁸³ The detainees were kept in locked makeshift cells under armed guard.⁴⁸⁴ They remained in custody for varying periods of time.⁴⁸⁵

182. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁴⁸⁶ [REDACTED],⁴⁸⁷ [REDACTED]⁴⁸⁸ and [REDACTED].⁴⁸⁹ They were held on the basis of their alleged and unspecified spying activities,⁴⁹⁰ and/or [REDACTED].⁴⁹¹

183. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁴⁹²

⁴⁸³ [REDACTED].

⁴⁸⁴ [REDACTED].

⁴⁸⁵ [REDACTED].

⁴⁸⁶ [REDACTED].

⁴⁸⁷ [REDACTED].

⁴⁸⁸ [REDACTED].

⁴⁸⁹ [REDACTED].

⁴⁹⁰ [REDACTED].

⁴⁹¹ [REDACTED].

⁴⁹² [REDACTED].

(xv) *Kukës, Albania*

184. The Pre-Trial Judge finds that the supporting material indicates that between May and June 1999, at least 12 individuals were taken into custody by KLA members and detained in guarded rooms with barred windows⁴⁹³ at the Kukës Metal Factory, in Albania.⁴⁹⁴ The detainees concerned were handcuffed,⁴⁹⁵ guarded,⁴⁹⁶ and escorted to the toilet.⁴⁹⁷ They remained in custody for varying periods of time.⁴⁹⁸

185. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁴⁹⁹ [REDACTED],⁵⁰⁰ [REDACTED],⁵⁰¹ [REDACTED],⁵⁰² [REDACTED],⁵⁰³ and [REDACTED].⁵⁰⁴ They were held on the basis of their alleged and unspecified spying activities;⁵⁰⁵ [REDACTED];⁵⁰⁶ [REDACTED].⁵⁰⁷

186. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

⁴⁹³ [REDACTED].

⁴⁹⁴ [REDACTED].

⁴⁹⁵ [REDACTED].

⁴⁹⁶ [REDACTED].

⁴⁹⁷ [REDACTED].

⁴⁹⁸ [REDACTED].

⁴⁹⁹ [REDACTED].

⁵⁰⁰ [REDACTED].

⁵⁰¹ [REDACTED].

⁵⁰² [REDACTED].

⁵⁰³ [REDACTED].

⁵⁰⁴ [REDACTED].

⁵⁰⁵ [REDACTED].

⁵⁰⁶ [REDACTED].

⁵⁰⁷ [REDACTED].

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵⁰⁸

(xvi) [REDACTED]

187. The Pre-Trial Judge finds that the supporting material indicates that between approximately [REDACTED] 1999, at least 10 individuals were taken into custody by KLA members and detained as follows: three individuals in the KLA headquarters in [REDACTED], Malishevë/Mališevo municipality,⁵⁰⁹ and seven individuals in [REDACTED], Suharekë/Suva Reka municipality, [REDACTED].⁵¹⁰ The detainees were held for varying periods of time.⁵¹¹

188. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]⁵¹² and [REDACTED].⁵¹³ They were held on the basis of their alleged and unspecified spying activities,⁵¹⁴ [REDACTED].⁵¹⁵

189. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵¹⁶

⁵⁰⁸ [REDACTED].

⁵⁰⁹ [REDACTED].

⁵¹⁰ [REDACTED].

⁵¹¹ [REDACTED].

⁵¹² [REDACTED].

⁵¹³ [REDACTED].

⁵¹⁴ [REDACTED].

⁵¹⁵ [REDACTED].

⁵¹⁶ [REDACTED].

(xvii) [REDACTED]

190. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, [REDACTED] taken [REDACTED] by KLA members in different locations, [REDACTED],⁵¹⁷ [REDACTED],⁵¹⁸ [REDACTED]⁵¹⁹ [REDACTED], all in Drenas (Glllogoc)/Glogovac municipality.⁵²⁰ [REDACTED].⁵²¹

191. According to the supporting material, [REDACTED] justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of [REDACTED] liberty absolutely necessary. Notably, [REDACTED].⁵²² [REDACTED] held on the basis of [REDACTED] ethnicity.⁵²³

192. The circumstances of the [REDACTED] mistreatment suffered⁵²⁴ suggest that the KLA members did not inform [REDACTED] of the reason [REDACTED], nor did they show any documentation in this regard, or give [REDACTED] opportunity to challenge the [REDACTED].⁵²⁵

(xviii) [REDACTED]

193. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, at least three individuals were taken into custody by KLA members and detained at locations in or around [REDACTED],

⁵¹⁷ [REDACTED].

⁵¹⁸ [REDACTED].

⁵¹⁹ [REDACTED].

⁵²⁰ [REDACTED].

⁵²¹ [REDACTED].

⁵²² [REDACTED].

⁵²³ [REDACTED].

⁵²⁴ See *infra* paras 297-300 (Counts 4-5).

⁵²⁵ [REDACTED].

Prishtinë/Priština municipality.⁵²⁶ The detainees were held under armed guard and tied up.⁵²⁷

194. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]⁵²⁸ [REDACTED].⁵²⁹ [REDACTED];⁵³⁰ [REDACTED].⁵³¹

195. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁵³² suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵³³

(xix) [REDACTED]

196. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, at least nine individuals were taken into custody by KLA members and detained in [REDACTED] locations in [REDACTED], Viti/Vitina municipality.⁵³⁴ The detainees, some with their heads covered, were guarded [REDACTED].⁵³⁵

⁵²⁶ [REDACTED].

⁵²⁷ [REDACTED].

⁵²⁸ [REDACTED].

⁵²⁹ [REDACTED].

⁵³⁰ [REDACTED].

⁵³¹ [REDACTED].

⁵³² See *infra* paras 301-304 (Counts 4-5).

⁵³³ [REDACTED].

⁵³⁴ [REDACTED].

⁵³⁵ [REDACTED].

197. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁵³⁶ [REDACTED],⁵³⁷ and [REDACTED].⁵³⁸ They were held on the basis of their alleged knowledge of [REDACTED];⁵³⁹ [REDACTED];⁵⁴⁰ [REDACTED].⁵⁴¹

198. The circumstances of the detainees' arrest and detention, and the mistreatment suffered⁵⁴² – [REDACTED]⁵⁴³ [REDACTED]⁵⁴⁴ – suggest that KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵⁴⁵

(xx)[REDACTED], Prizren

199. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 15 and 23 June 1999, at least eight individuals were taken into custody by KLA members and detained in [REDACTED]⁵⁴⁶ guarded by armed KLA members,⁵⁴⁷ in [REDACTED] Prizren, in Prizren municipality.⁵⁴⁸ [REDACTED].⁵⁴⁹

⁵³⁶ [REDACTED].

⁵³⁷ [REDACTED].

⁵³⁸ [REDACTED].

⁵³⁹ [REDACTED].

⁵⁴⁰ [REDACTED].

⁵⁴¹ [REDACTED].

⁵⁴² See *infra* paras 305-308 (Counts 4-5).

⁵⁴³ [REDACTED].

⁵⁴⁴ [REDACTED].

⁵⁴⁵ [REDACTED].

⁵⁴⁶ [REDACTED].

⁵⁴⁷ [REDACTED].

⁵⁴⁸ [REDACTED].

⁵⁴⁹ [REDACTED].

200. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁵⁵⁰ [REDACTED],⁵⁵¹ [REDACTED],⁵⁵² and [REDACTED].⁵⁵³ They were held on the basis of their Serb ethnicity;⁵⁵⁴ [REDACTED];⁵⁵⁵ and/or [REDACTED].⁵⁵⁶

201. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁵⁵⁷ suggest that KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵⁵⁸

(xxi) Former MUP Building, Prizren

202. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 18 June 1999, at least 15 individuals were taken into custody by KLA members and detained in the former MUP building of Prizren, in Prizren municipality.⁵⁵⁹ Several detainees were handcuffed [REDACTED].⁵⁶⁰ [REDACTED].⁵⁶¹

⁵⁵⁰ [REDACTED].

⁵⁵¹ [REDACTED].

⁵⁵² [REDACTED].

⁵⁵³ [REDACTED].

⁵⁵⁴ [REDACTED].

⁵⁵⁵ [REDACTED].

⁵⁵⁶ [REDACTED]; 060650-TR-ET Part 3, p. 27.

⁵⁵⁷ See *infra* paras 309-312 (Counts 4-5).

⁵⁵⁸ [REDACTED].

⁵⁵⁹ [REDACTED].

⁵⁶⁰ [REDACTED].

⁵⁶¹ [REDACTED].

203. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],⁵⁶² [REDACTED],⁵⁶³ [REDACTED]⁵⁶⁴ [REDACTED]⁵⁶⁵ [REDACTED]. They were held on the basis of their alleged and unspecified spying activities;⁵⁶⁶ their [REDACTED] ethnicity;⁵⁶⁷ [REDACTED];⁵⁶⁸ [REDACTED];⁵⁶⁹ [REDACTED].⁵⁷⁰

204. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁵⁷¹ suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵⁷²

(xxii) [REDACTED], Prizren

205. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 19 June 1999, at least two individuals were taken into custody by KLA members and detained in [REDACTED], Prizren municipality.⁵⁷³ The detainees were handcuffed and held in a locked room.⁵⁷⁴ [REDACTED].⁵⁷⁵

⁵⁶² [REDACTED].

⁵⁶³ [REDACTED].

⁵⁶⁴ [REDACTED].

⁵⁶⁵ [REDACTED].

⁵⁶⁶ [REDACTED].

⁵⁶⁷ [REDACTED].

⁵⁶⁸ [REDACTED].

⁵⁶⁹ [REDACTED].

⁵⁷⁰ [REDACTED].

⁵⁷¹ See *infra* paras 313-316 (Counts 4-5).

⁵⁷² [REDACTED].

⁵⁷³ [REDACTED].

⁵⁷⁴ [REDACTED].

⁵⁷⁵ [REDACTED].

206. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. [REDACTED]⁵⁷⁶ [REDACTED].⁵⁷⁷ They were held on the basis of their alleged and unspecified spying activities;⁵⁷⁸ [REDACTED];⁵⁷⁹ [REDACTED];⁵⁸⁰ [REDACTED].⁵⁸¹

207. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁵⁸² suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁵⁸³

(xxiii) [REDACTED], Prizren

208. The Pre-Trial Judge finds that the supporting material indicates that, on or about 26 June 1999, at least three individuals were taken into custody by KLA members and detained in [REDACTED] Prizren, in Prizren municipality.⁵⁸⁴ [REDACTED].⁵⁸⁵

209. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty

⁵⁷⁶ [REDACTED].

⁵⁷⁷ [REDACTED].

⁵⁷⁸ [REDACTED].

⁵⁷⁹ [REDACTED].

⁵⁸⁰ [REDACTED].

⁵⁸¹ [REDACTED].

⁵⁸² See *infra* paras 317-320 (Counts 4-5).

⁵⁸³ [REDACTED].

⁵⁸⁴ [REDACTED].

⁵⁸⁵ [REDACTED].

absolutely necessary. Notably, the detainees concerned included [REDACTED],⁵⁸⁶ [REDACTED]⁵⁸⁷ and [REDACTED].⁵⁸⁸ They were held on the basis of [REDACTED]⁵⁸⁹ and/or [REDACTED].⁵⁹⁰

210. The supporting material indicates that the detainees concerned were not informed of the reason for their arrest and detention, nor were they shown any documentation in this regard, or given the opportunity to challenge the lawfulness of their detention.⁵⁹¹

(xxiv) Ferizaj/Uroševac

211. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, at least one individual was taken into custody and detained by KLA members in or around Ferizaj/Uroševac, in Ferizaj/Uroševac municipality.⁵⁹² The detainee was tied up, guarded, and held in a locked room.⁵⁹³

212. According to the supporting material, the apprehension and detention of this individual was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of his liberty absolutely necessary. Notably, the detainee concerned was held on the basis of his Serb ethnicity,⁵⁹⁴ and for having allegedly committed crimes.⁵⁹⁵

⁵⁸⁶ [REDACTED].

⁵⁸⁷ [REDACTED].

⁵⁸⁸ [REDACTED].

⁵⁸⁹ [REDACTED].

⁵⁹⁰ [REDACTED].

⁵⁹¹ [REDACTED].

⁵⁹² [REDACTED].

⁵⁹³ [REDACTED].

⁵⁹⁴ [REDACTED].

⁵⁹⁵ [REDACTED].

213. The circumstances of the detainee's arrest and detention, and the mistreatment suffered,⁵⁹⁶ suggest that the KLA members did not inform the detainee concerned of the reason for his arrest and detention, nor did they show any documentation in this regard, or give him the opportunity to challenge the lawfulness of his detention.⁵⁹⁷

(xxv) [REDACTED]

214. The Pre-Trial Judge finds that the supporting material indicates that, between [REDACTED], [REDACTED] were taken into custody by KLA members and detained in a house in [REDACTED], Ferizaj/Uroševac municipality.⁵⁹⁸ [REDACTED].⁵⁹⁹

215. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED].⁶⁰⁰ They were held [REDACTED]⁶⁰¹ [REDACTED].⁶⁰²

216. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁶⁰³ suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

⁵⁹⁶ See *infra* paras 328-331 (Counts 4-5).

⁵⁹⁷ [REDACTED].

⁵⁹⁸ [REDACTED].

⁵⁹⁹ [REDACTED].

⁶⁰⁰ [REDACTED].

⁶⁰¹ [REDACTED].

⁶⁰² [REDACTED].

⁶⁰³ See *infra* paras 332-335 (Counts 4-5).

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁶⁰⁴ [REDACTED].⁶⁰⁵ [REDACTED].⁶⁰⁶

(xxvi) Former Boarding School/Dormitory, Gjilan/Gnjilane

217. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, at least three individuals were taken into custody by KLA members and detained at a KLA headquarters located in the former Boarding School/Dormitory in Gjilan/Gnjilane, in Gjilan/Gnjilane municipality.⁶⁰⁷

218. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED].⁶⁰⁸ They were held on the basis of their [REDACTED] ethnicity,⁶⁰⁹ their alleged commission of crimes against Kosovo Albanians,⁶¹⁰ and because [REDACTED].⁶¹¹

219. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁶¹² suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁶¹³

⁶⁰⁴ [REDACTED].

⁶⁰⁵ [REDACTED].

⁶⁰⁶ [REDACTED].

⁶⁰⁷ [REDACTED].

⁶⁰⁸ [REDACTED].

⁶⁰⁹ [REDACTED].

⁶¹⁰ [REDACTED].

⁶¹¹ [REDACTED].

⁶¹² See *infra* paras 336-339 (Counts 4-5).

⁶¹³ [REDACTED].

(xxvii) Former Police Station, Suharekë/Suva Reka

220. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, at least one individual was taken into custody by KLA members and detained in a former police station in Suharekë/Suva Reka, in Suharekë/Suva Reka municipality, [REDACTED],⁶¹⁴ [REDACTED].⁶¹⁵ The detainee was in custody for approximately 11 days,⁶¹⁶ [REDACTED].⁶¹⁷

221. According to the supporting material, the apprehension and detention of this individual was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of [REDACTED] liberty absolutely necessary. [REDACTED].⁶¹⁸ [REDACTED].⁶¹⁹

222. The circumstances of the detainee's arrest and detention and the mistreatment suffered⁶²⁰ suggest that the KLA members did not inform the [REDACTED] of the reason for [REDACTED] arrest and detention, nor did they show any documentation in this regard, or give [REDACTED] the opportunity to challenge the lawfulness of [REDACTED] detention.⁶²¹

(xxviii) Novobërdë/Novo Brdo

223. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, at least four individuals were taken into custody by KLA members and

⁶¹⁴ [REDACTED].

⁶¹⁵ [REDACTED].

⁶¹⁶ [REDACTED].

⁶¹⁷ [REDACTED].

⁶¹⁸ [REDACTED].

⁶¹⁹ [REDACTED].

⁶²⁰ See *infra* paras 340-343 (Counts 4-5).

⁶²¹ [REDACTED].

detained in the KLA headquarters located [REDACTED] in Novobërdë/Novo Brdo, in Novobërdë/Novo Brdo municipality.⁶²²

224. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, they were held on the basis of their Serb ethnicity.⁶²³

225. The circumstances of the detainees' arrest and detention and the mistreatment suffered⁶²⁴ suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.⁶²⁵

(xxix) Former Police Station, Rahovec/Orahovac

226. The Pre-Trial Judge finds that the SPO has not provided sufficient supporting material to establish a well-grounded suspicion that, near the end of June 1999, at least one individual was taken into custody by KLA members and detained in the former police station in Rahovec/Orahovac, in Rahovec/Orahovac municipality. In particular, the supporting material concerning the incidents occurring in Rahovec/Orahovac in the second half of June 1999⁶²⁶ indicates that the victims were mistreated at their own houses or nearby and were subsequently taken away by KLA members, but provides no further concrete information as to whether and where they were detained, and under what conditions and circumstances.

⁶²² [REDACTED].

⁶²³ [REDACTED].

⁶²⁴ See *infra* paras 344-347 (Counts 4-5).

⁶²⁵ [REDACTED].

⁶²⁶ [REDACTED].

Accordingly, the Pre-Trial Judge does not consider these facts under Counts 2 and 3 of the Revised Indictment.

(xxx) [REDACTED]

227. The Pre-Trial Judge finds that the supporting material indicates that, in July or August 1999, at least one individual was taken into custody by KLA members and detained in a KLA base located in [REDACTED], Prishtinë/Priština municipality.⁶²⁷ [REDACTED].⁶²⁸

228. According to the supporting material, the apprehension and detention of this individual was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of [REDACTED] liberty absolutely necessary. [REDACTED].⁶²⁹ [REDACTED].⁶³⁰

229. The circumstances of the detainee's arrest and detention and the mistreatment suffered⁶³¹ suggest that the KLA members did not inform the detainee concerned of the reason for his arrest and detention, nor did they show any documentation in this regard, or give him the opportunity to challenge the lawfulness of his detention.⁶³²

(b) Mental Element

230. Regarding the mental element of the crimes, the intent of KLA members emerges from the deliberate manner in which they arbitrarily arrested and held the detainees at the aforementioned detention sites without affording any basic

⁶²⁷ [REDACTED].

⁶²⁸ [REDACTED].

⁶²⁹ [REDACTED].

⁶³⁰ [REDACTED].

⁶³¹ See *infra* para. 415 (Counts 8-9).

⁶³² [REDACTED].

guarantees. As further indications of KLA members' intent, the supporting material suggests that: (i) the KLA had a strategy of detaining suspected collaborators, and KLA commanders took decisions to detain or release accordingly;⁶³³ (ii) KLA members often executed arrests or interrogations based on lists of suspected collaborators or suspicious persons;⁶³⁴ (iii) KLA members made derogatory remarks about the detainees' perceived political affiliation, ethnicity, or the reasons for which detainees were arrested, detained and punished;⁶³⁵ (iv) [REDACTED];⁶³⁶ (v) detainees were suddenly released or transferred only because of Serbian forces⁶³⁷ [REDACTED]⁶³⁸ approaching a particular detention site; (vi) detainees were threatened with death if they were to reveal what had happened to them,⁶³⁹ or were asked to sign papers containing a commitment not to reveal what they had seen or heard during detention,⁶⁴⁰ or containing an acknowledgment that they had been treated well;⁶⁴¹ and (vii) the KLA did not have a proper court structure to conduct investigations and issue decisions, which were instead taken by the headquarters authority⁶⁴² or by commanders in charge of detention sites.⁶⁴³

(c) Conclusion

231. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-

⁶³³ [REDACTED].

⁶³⁴ [REDACTED].

⁶³⁵ [REDACTED].

⁶³⁶ [REDACTED].

⁶³⁷ [REDACTED].

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED].

⁶⁴⁰ [REDACTED].

⁶⁴¹ [REDACTED].

⁶⁴² [REDACTED].

⁶⁴³ [REDACTED].

grounded suspicion that imprisonment, a crime against humanity under Article 13(1)(e) of the Law, and arbitrary detention, a war crime under Article 14(1)(c) of the Law, were committed at the aforementioned detention sites throughout Kosovo and northern Albania against at least 392 individuals, from at least April 1998 until approximately August 1999.

2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment

232. In the Revised Indictment, the SPO alleges that during the Indictment Period other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against individuals apprehended and/or detained at the detention sites set out below.⁶⁴⁴

(a) Material Elements

(i) *Likoc/Likovac*

233. The Pre-Trial Judge finds that the supporting material indicates that, between approximately April 1998 and January 1999, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained in a former police station housing the KLA headquarters and various other locations in or near Likoc/Likovac, Skënderaj/Srbica municipality.

234. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,⁶⁴⁵ coupled with inadequate provision of food,⁶⁴⁶ water,⁶⁴⁷ sanitation and hygiene,⁶⁴⁸ bedding⁶⁴⁹ and medical care.⁶⁵⁰

⁶⁴⁴ Revised Indictment, paras 95-135, 174 [68].

⁶⁴⁵ See *supra* paras 139-141 (Counts 2-3).

⁶⁴⁶ [REDACTED].

⁶⁴⁷ [REDACTED].

⁶⁴⁸ [REDACTED].

⁶⁴⁹ [REDACTED].

⁶⁵⁰ [REDACTED].

235. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- On [REDACTED] 1998, KLA members apprehended [REDACTED].⁶⁵¹ [REDACTED]⁶⁵² [REDACTED].⁶⁵³ [REDACTED],⁶⁵⁴ [REDACTED],⁶⁵⁵ [REDACTED].⁶⁵⁶ [REDACTED], KLA members, [REDACTED],⁶⁵⁷ took [REDACTED] to [REDACTED] the KLA headquarters in Likoc/Likovac.⁶⁵⁸ [REDACTED] were severely beaten;⁶⁵⁹ [REDACTED] was hit several times.⁶⁶⁰ [REDACTED].⁶⁶¹ [REDACTED].⁶⁶² When the body [REDACTED] was found [REDACTED], it showed signs of beating.⁶⁶³
- Around [REDACTED] 1998,⁶⁶⁴ while detained in [REDACTED] in Likoc/Likovac,⁶⁶⁵ [REDACTED] was beaten, including with [REDACTED]⁶⁶⁶ [REDACTED] baseball bats,⁶⁶⁷ by several KLA members,⁶⁶⁸ [REDACTED].⁶⁶⁹ [REDACTED] was also [REDACTED] on at least one occasion⁶⁷⁰ and

⁶⁵¹ [REDACTED].

⁶⁵² [REDACTED].

⁶⁵³ [REDACTED].

⁶⁵⁴ [REDACTED].

⁶⁵⁵ [REDACTED].

⁶⁵⁶ [REDACTED].

⁶⁵⁷ [REDACTED].

⁶⁵⁸ [REDACTED].

⁶⁵⁹ [REDACTED].

⁶⁶⁰ [REDACTED].

⁶⁶¹ [REDACTED].

⁶⁶² [REDACTED].

⁶⁶³ [REDACTED].

⁶⁶⁴ [REDACTED].

⁶⁶⁵ [REDACTED].

⁶⁶⁶ [REDACTED].

⁶⁶⁷ [REDACTED].

⁶⁶⁸ [REDACTED].

⁶⁶⁹ [REDACTED].

⁶⁷⁰ [REDACTED].

threatened [REDACTED].⁶⁷¹ [REDACTED] KLA members released [REDACTED].⁶⁷²

- On [REDACTED] 1998,⁶⁷³ while detained at the KLA headquarters in Likoc/Likovac,⁶⁷⁴ [REDACTED] was held with his hands tied [REDACTED].⁶⁷⁵ He was only allowed to use the bathroom [REDACTED], while his hands were still tied [REDACTED].⁶⁷⁶
- On [REDACTED] 1998,⁶⁷⁷ KLA members [REDACTED] and [REDACTED] apprehended and beat [REDACTED] at the KLA headquarters in Likoc/Likovac, [REDACTED] screaming in pain.⁶⁷⁸
- On [REDACTED] 1998,⁶⁷⁹ while being [REDACTED] held [REDACTED] by armed KLA members, [REDACTED], were beaten [REDACTED], including by [REDACTED].⁶⁸⁰ [REDACTED] was threatened to be killed.⁶⁸¹ [REDACTED].⁶⁸² [REDACTED], they were transferred to the KLA headquarters in Likoc/Likovac, where they were again beaten, including in the presence of [REDACTED].⁶⁸³ While having visible injuries from the beatings, [REDACTED].⁶⁸⁴
- [REDACTED] 1998, while being detained [REDACTED] at the KLA headquarters in Likoc/Likovac,⁶⁸⁵ [REDACTED] was repeatedly taken

⁶⁷¹ [REDACTED].

⁶⁷² [REDACTED].

⁶⁷³ [REDACTED].

⁶⁷⁴ [REDACTED].

⁶⁷⁵ [REDACTED].

⁶⁷⁶ [REDACTED].

⁶⁷⁷ [REDACTED].

⁶⁷⁸ [REDACTED].

⁶⁷⁹ [REDACTED].

⁶⁸⁰ [REDACTED].

⁶⁸¹ [REDACTED].

⁶⁸² [REDACTED].

⁶⁸³ [REDACTED].

⁶⁸⁴ [REDACTED].

⁶⁸⁵ [REDACTED].

somewhere else, beaten, and then dragged back into the room, sometimes being kicked upon his return, [REDACTED].⁶⁸⁶ [REDACTED].⁶⁸⁷

- Between [REDACTED] 1998,⁶⁸⁸ while being detained at the KLA headquarters in Likoc/Likovac,⁶⁸⁹ [REDACTED] was repeatedly beaten, [REDACTED],⁶⁹⁰ by several KLA members, [REDACTED].⁶⁹¹ [REDACTED] was threatened several times [REDACTED],⁶⁹² [REDACTED].⁶⁹³ [REDACTED] witnessed several of the aforementioned KLA members beating [REDACTED], who was also held at the KLA headquarters in Likoc/Likovac.⁶⁹⁴ [REDACTED],⁶⁹⁵ [REDACTED].⁶⁹⁶ [REDACTED].⁶⁹⁷
- [REDACTED] 1998, [REDACTED],⁶⁹⁸ [REDACTED] was brought to the KLA headquarters in Likoc/Likovac, where he saw many other individuals being tied up and beaten by KLA members [REDACTED].⁶⁹⁹
- [REDACTED] 1999,⁷⁰⁰ armed KLA members apprehended [REDACTED],⁷⁰¹ and transported him to [REDACTED] Likoc/Likovac.⁷⁰² While being detained, [REDACTED] was severely beaten.⁷⁰³

⁶⁸⁶ [REDACTED].

⁶⁸⁷ [REDACTED].

⁶⁸⁸ [REDACTED].

⁶⁸⁹ [REDACTED].

⁶⁹⁰ [REDACTED].

⁶⁹¹ [REDACTED].

⁶⁹² [REDACTED].

⁶⁹³ [REDACTED].

⁶⁹⁴ [REDACTED].

⁶⁹⁵ [REDACTED].

⁶⁹⁶ [REDACTED].

⁶⁹⁷ [REDACTED].

⁶⁹⁸ [REDACTED].

⁶⁹⁹ [REDACTED].

⁷⁰⁰ [REDACTED].

⁷⁰¹ [REDACTED].

⁷⁰² [REDACTED].

⁷⁰³ [REDACTED].

236. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises,⁷⁰⁴ were bleeding,⁷⁰⁵ were unable to eat,⁷⁰⁶ lost weight,⁷⁰⁷ had their teeth broken,⁷⁰⁸ lost consciousness,⁷⁰⁹ were seriously wounded,⁷¹⁰ sustained broken bones,⁷¹¹ and had psychological and/or physical conditions that continued after their release.⁷¹² This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(ii) Jabllanicë/Jablanica

237. The Pre-Trial Judge finds that the supporting material indicates that, between at least April and late July 1998, KLA members caused serious physical and psychological injury and suffering to at least 11 persons detained at the KLA barracks compound at the exit of Jabllanicë/Jablanica, Gjakovë/Đakovica municipality.⁷¹³

238. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA barracks compound. These conditions were characterised by deprivation of liberty without

⁷⁰⁴ [REDACTED].

⁷⁰⁵ [REDACTED].

⁷⁰⁶ [REDACTED].

⁷⁰⁷ [REDACTED].

⁷⁰⁸ [REDACTED].

⁷⁰⁹ [REDACTED].

⁷¹⁰ [REDACTED].

⁷¹¹ [REDACTED].

⁷¹² [REDACTED].

⁷¹³ Schedule A, 14.1.

due process of law,⁷¹⁴ coupled with inadequate provision of food,⁷¹⁵ water,⁷¹⁶ sanitation and hygiene,⁷¹⁷ bedding⁷¹⁸ and medical care.⁷¹⁹

239. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular:

- In [REDACTED] 1998, while being detained at the KLA barracks compound, [REDACTED] were severely beaten by KLA members,⁷²⁰ including by [REDACTED].⁷²¹
- In [REDACTED] 1998, while being detained at the KLA barracks compound, [REDACTED] was severely beaten, including with baseball bats.⁷²²
- [REDACTED] 1998,⁷²³ while being detained at the KLA barracks compound, [REDACTED] was repeatedly and severely beaten, including with baseball bats [REDACTED],⁷²⁴ by several KLA members, including [REDACTED].⁷²⁵ [REDACTED].⁷²⁶ [REDACTED].⁷²⁷
- In [REDACTED] 1998,⁷²⁸ while being detained at the KLA barracks compound, [REDACTED] men [REDACTED] were repeatedly and severely

⁷¹⁴ See *supra* paras 142-145 (Counts 2-3).

⁷¹⁵ [REDACTED].

⁷¹⁶ [REDACTED].

⁷¹⁷ [REDACTED].

⁷¹⁸ [REDACTED].

⁷¹⁹ IT-04-84bis P00082.

⁷²⁰ IT-04-84bis P00119, pp. 4248-4252, 4262, 4265; [REDACTED].

⁷²¹ IT-04-84bis P00119, p. 4262; [REDACTED].

⁷²² [REDACTED].

⁷²³ [REDACTED].

⁷²⁴ [REDACTED].

⁷²⁵ [REDACTED].

⁷²⁶ [REDACTED].

⁷²⁷ [REDACTED].

⁷²⁸ [REDACTED].

beaten,⁷²⁹ including with baseball bats,⁷³⁰ by several KLA members, including [REDACTED].⁷³¹ [REDACTED].⁷³² [REDACTED].⁷³³

- Around [REDACTED] 1998,⁷³⁴ while being detained at the KLA barracks compound, [REDACTED] were severely beaten by KLA members.⁷³⁵ [REDACTED].⁷³⁶

240. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁷³⁷ were bleeding or spitting blood,⁷³⁸ were unable to drink or eat,⁷³⁹ or walk,⁷⁴⁰ lost consciousness,⁷⁴¹ sustained broken bones,⁷⁴² and had psychological and/or physical conditions that continued after their release.⁷⁴³ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

⁷²⁹ [REDACTED].

⁷³⁰ [REDACTED].

⁷³¹ [REDACTED].

⁷³² [REDACTED].

⁷³³ [REDACTED].

⁷³⁴ [REDACTED]; IT-04-84bis P00119, p. 4255.

⁷³⁵ IT-04-84bis P00119, pp. 4255-4256; [REDACTED].

⁷³⁶ [REDACTED].

⁷³⁷ [REDACTED].

⁷³⁸ [REDACTED].

⁷³⁹ [REDACTED].

⁷⁴⁰ [REDACTED].

⁷⁴¹ [REDACTED].

⁷⁴² [REDACTED].

⁷⁴³ [REDACTED].

(iii) *Llapushnik/Lapušnik*

241. The Pre-Trial Judge finds that the supporting material indicates that, between approximately late April and late July 1998, KLA members caused serious physical and psychological injury and suffering to several persons detained at the KLA prison compound in Llapushnik/Lapušnik, Drenas (Glllogoc)/Glogovac municipality.

242. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA prison compound. These conditions were characterised by deprivation of liberty without due process of law,⁷⁴⁴ coupled with inadequate sanitation and hygiene,⁷⁴⁵ and no medical care.⁷⁴⁶ Detainees were kept tied up,⁷⁴⁷ had to sleep on the floor of the cowshed, littered with old manure,⁷⁴⁸ and had to urinate in a plastic fuel drum.⁷⁴⁹

243. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular, while being detained in the cowshed belonging to the KLA prison compound,⁷⁵⁰ [REDACTED] were repeatedly and severely beaten,⁷⁵¹ including with sticks and rifles,⁷⁵² by KLA members, including [REDACTED].⁷⁵³ [REDACTED].⁷⁵⁴ KLA members would come from outside of the prison and severely beat the detainees.⁷⁵⁵

⁷⁴⁴ See *supra* paras 146-148 (Counts 2-3).

⁷⁴⁵ [REDACTED].

⁷⁴⁶ [REDACTED].

⁷⁴⁷ [REDACTED].

⁷⁴⁸ [REDACTED].

⁷⁴⁹ [REDACTED].

⁷⁵⁰ [REDACTED]

⁷⁵¹ [REDACTED].

⁷⁵² [REDACTED].

⁷⁵³ [REDACTED].

⁷⁵⁴ [REDACTED].

⁷⁵⁵ [REDACTED].

244. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁷⁵⁶ were bleeding,⁷⁵⁷ were unable to eat⁷⁵⁸ or walk,⁷⁵⁹ sustained broken bones,⁷⁶⁰ lost considerable weight,⁷⁶¹ lost their eyesight,⁷⁶² and had psychological and/or physical conditions that continued after their release.⁷⁶³ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(iv) Drenoc/Drenovac

245. The Pre-Trial Judge finds that the supporting material indicates that, between approximately May and July 1998, KLA members caused serious physical and psychological injury and suffering to several persons detained at the former school building and a registration office in Drenoc/Drenovac, Rahovec/Orahovac municipality.

246. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned former school building. These conditions were characterised by deprivation of liberty without due process of law,⁷⁶⁴ coupled with inadequate provision of food,⁷⁶⁵ sanitation and

⁷⁵⁶ [REDACTED].

⁷⁵⁷ [REDACTED].

⁷⁵⁸ [REDACTED].

⁷⁵⁹ [REDACTED].

⁷⁶⁰ [REDACTED].

⁷⁶¹ [REDACTED].

⁷⁶² [REDACTED].

⁷⁶³ [REDACTED].

⁷⁶⁴ See *supra* paras 149-152 (Counts 2-3).

⁷⁶⁵ [REDACTED].

hygiene,⁷⁶⁶ and bedding.⁷⁶⁷ Detainees were kept in dark rooms with no access to daylight.⁷⁶⁸

247. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular, while being detained in the former school building in Drenoc/Drenovac,⁷⁶⁹ [REDACTED] were severely beaten,⁷⁷⁰ including with wooden batons and baseball bats,⁷⁷¹ by KLA members, [REDACTED].⁷⁷² [REDACTED].⁷⁷³ Before being detained in the former school building, [REDACTED] was also detained and severely beaten [REDACTED].⁷⁷⁴ [REDACTED], while [REDACTED] held [REDACTED] in [REDACTED] Drenoc/Drenovac, [REDACTED] was hit by a KLA member.⁷⁷⁵

248. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁷⁷⁶ were bleeding,⁷⁷⁷ had their teeth broken,⁷⁷⁸ lost weight,⁷⁷⁹ would not eat,⁷⁸⁰ were unable to talk,⁷⁸¹ and lost consciousness.⁷⁸² This also demonstrates that the nature and

⁷⁶⁶ [REDACTED].

⁷⁶⁷ [REDACTED].

⁷⁶⁸ [REDACTED].

⁷⁶⁹ [REDACTED].

⁷⁷⁰ [REDACTED].

⁷⁷¹ [REDACTED].

⁷⁷² [REDACTED].

⁷⁷³ [REDACTED].

⁷⁷⁴ [REDACTED].

⁷⁷⁵ [REDACTED].

⁷⁷⁶ [REDACTED].

⁷⁷⁷ [REDACTED].

⁷⁷⁸ [REDACTED].

⁷⁷⁹ [REDACTED].

⁷⁸⁰ [REDACTED].

⁷⁸¹ [REDACTED].

⁷⁸² [REDACTED].

level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(v) *Malishevë/Mališevo*

249. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 17 and 26 or 27 July 1998, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained at various locations in or near Malishevë/Mališevo, in Malishevë/Mališevo municipality.

250. The supporting material indicates that KLA members established and maintained inhumane detention conditions at several of the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,⁷⁸³ coupled with inadequate provision of food and water,⁷⁸⁴ bedding⁷⁸⁵ and medical care.⁷⁸⁶ Thirteen detainees were kept in a 16-squaremetres room, with only small holes in the window.⁷⁸⁷

251. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- [REDACTED] July 1998,⁷⁸⁸ armed KLA members apprehended [REDACTED],⁷⁸⁹ beat them and drove them towards Malishevë/Mališevo at

⁷⁸³ See *supra* paras 153-155 (Counts 2-3).

⁷⁸⁴ [REDACTED].

⁷⁸⁵ [REDACTED].

⁷⁸⁶ [REDACTED].

⁷⁸⁷ [REDACTED].

⁷⁸⁸ [REDACTED].

⁷⁸⁹ [REDACTED].

gunpoint.⁷⁹⁰ On the way, [REDACTED] were beaten again [REDACTED].⁷⁹¹ [REDACTED].⁷⁹² [REDACTED] Malishevë/Mališevo, [REDACTED] they were kept in the basement and repeatedly beaten,⁷⁹³ including with rifles.⁷⁹⁴ [REDACTED] were also detained and beaten [REDACTED].⁷⁹⁵ KLA members also threatened the detainees with more severe harm [REDACTED].⁷⁹⁶

- [REDACTED] July 1998,⁷⁹⁷ [REDACTED] apprehended by armed KLA members,⁷⁹⁸ [REDACTED],⁷⁹⁹ [REDACTED] brought to the former police station building in Malishevë/Mališevo,⁸⁰⁰ [REDACTED].⁸⁰¹ [REDACTED], Mr Krasniqi once visited [REDACTED].⁸⁰²
- [REDACTED] July 1998,⁸⁰³ while being detained by KLA members [REDACTED],⁸⁰⁴ [REDACTED] could hear men screaming in pain, as though they were being beaten.⁸⁰⁵ [REDACTED],⁸⁰⁶ [REDACTED].⁸⁰⁷
- In July 1998, KLA members apprehended [REDACTED] and beat him, including with a rifle.⁸⁰⁸ [REDACTED].⁸⁰⁹ [REDACTED] drove

⁷⁹⁰ [REDACTED].

⁷⁹¹ [REDACTED].

⁷⁹² [REDACTED].

⁷⁹³ [REDACTED].

⁷⁹⁴ [REDACTED].

⁷⁹⁵ [REDACTED].

⁷⁹⁶ [REDACTED].

⁷⁹⁷ [REDACTED].

⁷⁹⁸ [REDACTED].

⁷⁹⁹ [REDACTED].

⁸⁰⁰ [REDACTED].

⁸⁰¹ [REDACTED].

⁸⁰² [REDACTED].

⁸⁰³ [REDACTED].

⁸⁰⁴ [REDACTED].

⁸⁰⁵ [REDACTED].

⁸⁰⁶ [REDACTED].

⁸⁰⁷ [REDACTED].

⁸⁰⁸ [REDACTED].

⁸⁰⁹ [REDACTED].

[REDACTED] to the former police building in Malishevë/Mališevo.⁸¹⁰ [REDACTED] was beaten.⁸¹¹ [REDACTED]. They were all beaten at least on one occasion by KLA members.⁸¹² [REDACTED] was threatened several times [REDACTED].⁸¹³ He could hear others screaming at night, as though they were being beaten.⁸¹⁴

252. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁸¹⁵ were bleeding,⁸¹⁶ lost consciousness,⁸¹⁷ sustained broken bones,⁸¹⁸ and had psychological and/or physical conditions that continued after their release.⁸¹⁹ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(vi) [REDACTED]

253. The Pre-Trial Judge finds that the supporting material indicates that, in or around [REDACTED] 1998,⁸²⁰ KLA members caused serious physical and psychological injury and suffering to three persons detained at [REDACTED] in [REDACTED], Prizren municipality.

⁸¹⁰ [REDACTED].

⁸¹¹ [REDACTED].

⁸¹² [REDACTED].

⁸¹³ [REDACTED].

⁸¹⁴ [REDACTED].

⁸¹⁵ [REDACTED].

⁸¹⁶ [REDACTED].

⁸¹⁷ [REDACTED].

⁸¹⁸ [REDACTED].

⁸¹⁹ [REDACTED].

⁸²⁰ [REDACTED].

254. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,⁸²¹ coupled with inadequate sanitation.⁸²² Detainees were kept in [REDACTED].⁸²³

255. Furthermore, the supporting material indicates that KLA members physically assaulted the three detainees. In particular, while being detained in [REDACTED],⁸²⁴ [REDACTED] were beaten,⁸²⁵ including with rifles.⁸²⁶

256. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁸²⁷ [REDACTED],⁸²⁸ were unable to talk,⁸²⁹ lost consciousness,⁸³⁰ suffered from memory impairment,⁸³¹ and had psychological and/or physical conditions that continued after their release.⁸³² This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

⁸²¹ See *supra* paras 156-158 (Counts 2-3).

⁸²² [REDACTED].

⁸²³ [REDACTED].

⁸²⁴ [REDACTED].

⁸²⁵ [REDACTED].

⁸²⁶ [REDACTED].

⁸²⁷ [REDACTED].

⁸²⁸ [REDACTED].

⁸²⁹ [REDACTED].

⁸³⁰ [REDACTED].

⁸³¹ [REDACTED].

⁸³² [REDACTED].

(vii) *Bare and Bajgorë/Bajgora*

257. The Pre-Trial Judge finds that the supporting material indicates that, between August and mid-September 1998, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained at the KLA detention sites in Bare and Bajgorë/Bajgora, both in Podujevë/Podujevo municipality.

258. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA detention sites. These conditions were characterised by deprivation of liberty without due process of law,⁸³³ coupled with inadequate provision of accommodation,⁸³⁴ food,⁸³⁵ water,⁸³⁶ sanitation and hygiene,⁸³⁷ and medical care.⁸³⁸

259. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- In August 1998,⁸³⁹ while being detained in Bare,⁸⁴⁰ [REDACTED] were repeatedly and severely beaten,⁸⁴¹ including with police batons, wooden sticks and rifles,⁸⁴² by KLA members, [REDACTED].⁸⁴³ [REDACTED] detainees told [REDACTED] that they had also been beaten

⁸³³ See *supra* paras 159-161 (Counts 2-3).

⁸³⁴ [REDACTED].

⁸³⁵ [REDACTED].

⁸³⁶ [REDACTED].

⁸³⁷ [REDACTED].

⁸³⁸ [REDACTED].

⁸³⁹ [REDACTED].

⁸⁴⁰ [REDACTED].

⁸⁴¹ [REDACTED].

⁸⁴² [REDACTED].

⁸⁴³ [REDACTED].

[REDACTED].⁸⁴⁴ [REDACTED].⁸⁴⁵ KLA members, [REDACTED],⁸⁴⁶ also threatened to kill [REDACTED].⁸⁴⁷

- [REDACTED] 1998,⁸⁴⁸ while being detained in Bajgorë/Bajgora, [REDACTED].⁸⁴⁹ He also witnessed [REDACTED].⁸⁵⁰

260. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals were bleeding,⁸⁵¹ were unable to stand or walk,⁸⁵² lost consciousness,⁸⁵³ had their teeth broken,⁸⁵⁴ sustained broken bones,⁸⁵⁵ lost considerable weight,⁸⁵⁶ [REDACTED].⁸⁵⁷ [REDACTED].⁸⁵⁸ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(viii) Llapashticë/Lapaštica and [REDACTED]

261. The Pre-Trial Judge finds that the supporting material indicates that, between at least November 1998 and March 1999, KLA members caused serious physical

⁸⁴⁴ [REDACTED].

⁸⁴⁵ [REDACTED].

⁸⁴⁶ [REDACTED].

⁸⁴⁷ [REDACTED].

⁸⁴⁸ [REDACTED].

⁸⁴⁹ [REDACTED].

⁸⁵⁰ [REDACTED].

⁸⁵¹ [REDACTED].

⁸⁵² [REDACTED].

⁸⁵³ [REDACTED].

⁸⁵⁴ [REDACTED].

⁸⁵⁵ [REDACTED].

⁸⁵⁶ [REDACTED].

⁸⁵⁷ [REDACTED].

⁸⁵⁸ [REDACTED].

and psychological injury and suffering to several persons apprehended and/or detained at a cowshed next to the KLA Llap Zone headquarters and other locations in Llapashticë/Lapaštica, Podujevë/Podujevo municipality, and at [REDACTED] in [REDACTED], Prishtinë/Priština municipality.

262. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA detention sites. These conditions were characterised by deprivation of liberty without due process of law,⁸⁵⁹ coupled with inadequate provision of food,⁸⁶⁰ water,⁸⁶¹ sanitation and hygiene,⁸⁶² bedding⁸⁶³ and medical care.⁸⁶⁴ The cowshed was a very cold room, with no heating, no light and frost on the walls.⁸⁶⁵ Detainees were forbidden to speak to each other.⁸⁶⁶

263. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- While being held in the cowshed in Llapashticë/Lapaštica for various amounts of time, [REDACTED],⁸⁶⁷ [REDACTED],⁸⁶⁸ [REDACTED],⁸⁶⁹ [REDACTED],⁸⁷⁰ [REDACTED],⁸⁷¹ [REDACTED],⁸⁷² [REDACTED],⁸⁷³

⁸⁵⁹ See *supra* paras 162-164 (Counts 2-3).

⁸⁶⁰ [REDACTED].

⁸⁶¹ [REDACTED].

⁸⁶² [REDACTED].

⁸⁶³ [REDACTED].

⁸⁶⁴ [REDACTED].

⁸⁶⁵ [REDACTED]. See also *supra* para. 162 (Counts 2-3).

⁸⁶⁶ [REDACTED].

⁸⁶⁷ [REDACTED].

⁸⁶⁸ [REDACTED].

⁸⁶⁹ [REDACTED].

⁸⁷⁰ [REDACTED].

⁸⁷¹ [REDACTED].

⁸⁷² [REDACTED].

⁸⁷³ [REDACTED].

[REDACTED]⁸⁷⁴ and others were repeatedly and severely beaten,⁸⁷⁵ including with wooden sticks,⁸⁷⁶ shovel handles,⁸⁷⁷ chains⁸⁷⁸ and rifles,⁸⁷⁹ by KLA members, [REDACTED].⁸⁸⁰ Some detainees were also electrocuted,⁸⁸¹ threatened to be killed,⁸⁸² forced to perform manual labour during their detention,⁸⁸³ or forced to beat each other.⁸⁸⁴

- [REDACTED],⁸⁸⁵ [REDACTED],⁸⁸⁶ [REDACTED].⁸⁸⁷ [REDACTED].⁸⁸⁸
[REDACTED].⁸⁸⁹ [REDACTED].⁸⁹⁰
- [REDACTED] detainees were mistreated [REDACTED], before being transferred to the cowshed in Llapashticë/Lapaštica. On or about [REDACTED] 1998,⁸⁹¹ armed KLA members apprehended [REDACTED] at his home, [REDACTED] and took him to a room in Llapashticë/Lapaštica,⁸⁹² where he was severely beaten,⁸⁹³ threatened to be killed,⁸⁹⁴ [REDACTED].⁸⁹⁵
On or about [REDACTED] 1999,⁸⁹⁶ KLA members apprehended

⁸⁷⁴ [REDACTED].

⁸⁷⁵ [REDACTED].

⁸⁷⁶ [REDACTED].

⁸⁷⁷ [REDACTED].

⁸⁷⁸ [REDACTED].

⁸⁷⁹ [REDACTED].

⁸⁸⁰ [REDACTED].

⁸⁸¹ [REDACTED].

⁸⁸² [REDACTED].

⁸⁸³ [REDACTED].

⁸⁸⁴ [REDACTED].

⁸⁸⁵ [REDACTED].

⁸⁸⁶ [REDACTED].

⁸⁸⁷ [REDACTED].

⁸⁸⁸ [REDACTED].

⁸⁸⁹ [REDACTED].

⁸⁹⁰ [REDACTED].

⁸⁹¹ [REDACTED].

⁸⁹² [REDACTED].

⁸⁹³ [REDACTED].

⁸⁹⁴ [REDACTED].

⁸⁹⁵ [REDACTED].

⁸⁹⁶ [REDACTED].

[REDACTED] and forcefully took him to [REDACTED] in [REDACTED],⁸⁹⁷ where he was threatened to be killed and beaten.⁸⁹⁸ [REDACTED].⁸⁹⁹

264. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁹⁰⁰ were bleeding,⁹⁰¹ were unable to sleep because of their wounds,⁹⁰² were unable to walk,⁹⁰³ lost consciousness,⁹⁰⁴ sustained broken bones,⁹⁰⁵ [REDACTED],⁹⁰⁶ and had psychological and/or physical conditions that continued after their release.⁹⁰⁷ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(ix) Zllash/Zlaš

265. The Pre-Trial Judge finds that the supporting material indicates that, in September 1998 and between approximately 1 and 19 April 1999, KLA members caused serious physical and psychological injury and suffering to at least eight persons apprehended and/or detained in a house in Zllash/Zlaš and in a barn belonging to the Zllash/Zlaš KLA detention compound, Prishtinë/Priština municipality.

⁸⁹⁷ [REDACTED].

⁸⁹⁸ [REDACTED].

⁸⁹⁹ [REDACTED].

⁹⁰⁰ [REDACTED].

⁹⁰¹ [REDACTED].

⁹⁰² [REDACTED].

⁹⁰³ [REDACTED].

⁹⁰⁴ [REDACTED].

⁹⁰⁵ [REDACTED].

⁹⁰⁶ [REDACTED].

⁹⁰⁷ [REDACTED].

266. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,⁹⁰⁸ coupled with inadequate provision of accommodation,⁹⁰⁹ food,⁹¹⁰ water,⁹¹¹ sanitation and hygiene,⁹¹² bedding⁹¹³ and medical care.⁹¹⁴ The barn where detainees were kept had no windows and no access to daylight.⁹¹⁵ It was cold and detainees slept in the water puddles on the floor.⁹¹⁶

267. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained both physically and psychologically. In particular:

- In [REDACTED] 1998,⁹¹⁷ armed KLA members apprehended [REDACTED],⁹¹⁸ and took him [REDACTED] in Zllash/Zlaš,⁹¹⁹ where he was repeatedly beaten,⁹²⁰ [REDACTED],⁹²¹ [REDACTED].⁹²²
- Between 1 and 19 April 1999,⁹²³ while being detained in a barn at the Zllash/Zlaš KLA detention compound,⁹²⁴ [REDACTED] were repeatedly and severely beaten,⁹²⁵ including with wooden sticks and metal bars,⁹²⁶ by

⁹⁰⁸ See *supra* paras 165-167 (Counts 2-3).

⁹⁰⁹ [REDACTED].

⁹¹⁰ [REDACTED].

⁹¹¹ [REDACTED].

⁹¹² [REDACTED].

⁹¹³ [REDACTED].

⁹¹⁴ [REDACTED].

⁹¹⁵ [REDACTED].

⁹¹⁶ [REDACTED].

⁹¹⁷ [REDACTED].

⁹¹⁸ [REDACTED].

⁹¹⁹ [REDACTED].

⁹²⁰ [REDACTED].

⁹²¹ [REDACTED].

⁹²² [REDACTED].

⁹²³ [REDACTED].

⁹²⁴ [REDACTED].

⁹²⁵ [REDACTED].

⁹²⁶ [REDACTED].

KLA members, including Salih Mustafa (also known as “Commander Cali”).⁹²⁷ Some detainees were also electrocuted,⁹²⁸ [REDACTED]⁹²⁹ [REDACTED],⁹³⁰ urinated on,⁹³¹ or threatened to be killed.⁹³² Detainees could hear the screams of others who were being beaten.⁹³³ [REDACTED],⁹³⁴ electrocuted,⁹³⁵ [REDACTED],⁹³⁶ and [REDACTED].⁹³⁷ [REDACTED].⁹³⁸

268. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,⁹³⁹ were bleeding,⁹⁴⁰ were unable to stand or walk,⁹⁴¹ lost consciousness,⁹⁴² had their teeth broken,⁹⁴³ sustained broken bones,⁹⁴⁴ [REDACTED],⁹⁴⁵ needed surgery,⁹⁴⁶ and had psychological and/or physical conditions that continued after their release.⁹⁴⁷ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

⁹²⁷ [REDACTED].

⁹²⁸ [REDACTED].

⁹²⁹ [REDACTED].

⁹³⁰ [REDACTED].

⁹³¹ [REDACTED].

⁹³² [REDACTED].

⁹³³ [REDACTED].

⁹³⁴ [REDACTED].

⁹³⁵ [REDACTED].

⁹³⁶ [REDACTED].

⁹³⁷ [REDACTED].

⁹³⁸ [REDACTED].

⁹³⁹ [REDACTED].

⁹⁴⁰ [REDACTED].

⁹⁴¹ [REDACTED].

⁹⁴² [REDACTED].

⁹⁴³ [REDACTED].

⁹⁴⁴ [REDACTED].

⁹⁴⁵ [REDACTED].

⁹⁴⁶ [REDACTED].

⁹⁴⁷ [REDACTED].

(x) [REDACTED]

269. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1998, KLA members caused serious physical and psychological injury and suffering to [REDACTED] detained at [REDACTED].

270. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,⁹⁴⁸ coupled with inadequate provision of food and water.⁹⁴⁹

271. Furthermore, the supporting material indicates that, between approximately [REDACTED] 1998,⁹⁵⁰ KLA members assaulted the detainees, both physically and psychologically. [REDACTED],⁹⁵¹ [REDACTED] were severely beaten,⁹⁵² [REDACTED],⁹⁵³ by KLA members, [REDACTED].⁹⁵⁴ [REDACTED].⁹⁵⁵ [REDACTED].⁹⁵⁶ [REDACTED].⁹⁵⁷ [REDACTED],⁹⁵⁸ [REDACTED].⁹⁵⁹ [REDACTED].⁹⁶⁰

272. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises

⁹⁴⁸ See *supra* paras 168-171 (Counts 2-3).

⁹⁴⁹ [REDACTED].

⁹⁵⁰ [REDACTED].

⁹⁵¹ [REDACTED].

⁹⁵² [REDACTED].

⁹⁵³ [REDACTED].

⁹⁵⁴ [REDACTED].

⁹⁵⁵ [REDACTED].

⁹⁵⁶ [REDACTED].

⁹⁵⁷ [REDACTED].

⁹⁵⁸ [REDACTED].

⁹⁵⁹ [REDACTED].

⁹⁶⁰ [REDACTED].

and swelling,⁹⁶¹ were bleeding,⁹⁶² sustained broken bones,⁹⁶³ [REDACTED],⁹⁶⁴ and had psychological and/or physical conditions that continued after their release.⁹⁶⁵ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xi) [REDACTED]

273. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1998, KLA members caused serious physical and psychological injury and suffering to at least four persons detained [REDACTED] in [REDACTED], Lipjan/Lipljan municipality.

274. The supporting material indicates that KLA members deprived detainees of their liberty without due process of law,⁹⁶⁶ [REDACTED].⁹⁶⁷

275. Furthermore, the supporting material indicates that KLA members mistreated at least three [REDACTED] detainees, both physically and psychologically. In particular:

- [REDACTED],⁹⁶⁸ [REDACTED],⁹⁶⁹ [REDACTED].⁹⁷⁰ [REDACTED].⁹⁷¹
 [REDACTED].⁹⁷²

⁹⁶¹ [REDACTED].

⁹⁶² [REDACTED].

⁹⁶³ [REDACTED].

⁹⁶⁴ [REDACTED].

⁹⁶⁵ [REDACTED].

⁹⁶⁶ See *supra* paras 172-174 (Counts 2-3).

⁹⁶⁷ [REDACTED].

⁹⁶⁸ [REDACTED].

⁹⁶⁹ [REDACTED].

⁹⁷⁰ [REDACTED].

⁹⁷¹ [REDACTED].

⁹⁷² [REDACTED].

- [REDACTED],⁹⁷³ [REDACTED],⁹⁷⁴ [REDACTED] were beaten by KLA members.⁹⁷⁵

276. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious physical pain and psychological injury to the detainees.⁹⁷⁶ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xii) *Kleçkë/Klečka*

277. The Pre-Trial Judge finds that the supporting material indicates that, between at least November 1998 and June 1999, KLA members caused serious physical and psychological injury and suffering to several persons detained in a two-storey building with a basement and other locations in or near Kleçkë/Klečka, Lipjan/Lipljan municipality, [REDACTED].

278. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,⁹⁷⁷ coupled with inadequate provision of accommodation,⁹⁷⁸ sanitation and hygiene.⁹⁷⁹ One of the rooms in which detainees were kept had bullet holes in the door and bloodstains on the wall.⁹⁸⁰

⁹⁷³ [REDACTED].

⁹⁷⁴ [REDACTED].

⁹⁷⁵ [REDACTED].

⁹⁷⁶ [REDACTED].

⁹⁷⁷ See *supra* paras 175-177 (Counts 2-3).

⁹⁷⁸ [REDACTED].

⁹⁷⁹ [REDACTED].

⁹⁸⁰ [REDACTED].

279. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular:

- [REDACTED],⁹⁸¹ [REDACTED],⁹⁸² [REDACTED].⁹⁸³ [REDACTED].⁹⁸⁴
[REDACTED],⁹⁸⁵ [REDACTED],⁹⁸⁶ [REDACTED].⁹⁸⁷
- [REDACTED],⁹⁸⁸ [REDACTED],⁹⁸⁹ [REDACTED] repeatedly and severely beaten,⁹⁹⁰ including with sticks.⁹⁹¹ [REDACTED] transferred to Kleçkë/Klečka.⁹⁹²
- [REDACTED],⁹⁹³ [REDACTED] detained in [REDACTED] Kleçkë/Klečka,⁹⁹⁴ [REDACTED] were repeatedly and severely beaten,⁹⁹⁵ [REDACTED].⁹⁹⁶ [REDACTED].⁹⁹⁷ [REDACTED].⁹⁹⁸
- [REDACTED] 1999,⁹⁹⁹ while being detained at a house [REDACTED] in Kleçkë/Klečka,¹⁰⁰⁰ [REDACTED] were repeatedly and severely beaten, including with batons.¹⁰⁰¹

⁹⁸¹ [REDACTED].

⁹⁸² [REDACTED].

⁹⁸³ [REDACTED].

⁹⁸⁴ [REDACTED].

⁹⁸⁵ [REDACTED].

⁹⁸⁶ [REDACTED].

⁹⁸⁷ [REDACTED].

⁹⁸⁸ [REDACTED].

⁹⁸⁹ [REDACTED].

⁹⁹⁰ [REDACTED].

⁹⁹¹ [REDACTED].

⁹⁹² [REDACTED].

⁹⁹³ [REDACTED].

⁹⁹⁴ [REDACTED].

⁹⁹⁵ [REDACTED].

⁹⁹⁶ [REDACTED].

⁹⁹⁷ [REDACTED].

⁹⁹⁸ [REDACTED].

⁹⁹⁹ IT-05-87 3D00140, p. 4 (3D00-1547); [REDACTED].

¹⁰⁰⁰ [REDACTED].

¹⁰⁰¹ [REDACTED].

- In [REDACTED] 1999,¹⁰⁰² while being detained [REDACTED] in Klečkë/Klečka, [REDACTED] were beaten.¹⁰⁰³ [REDACTED].¹⁰⁰⁴
- Between approximately [REDACTED],¹⁰⁰⁵ while being detained [REDACTED] in Klečkë/Klečka,¹⁰⁰⁶ [REDACTED] was beaten, [REDACTED],¹⁰⁰⁷ by other KLA members, [REDACTED].¹⁰⁰⁸ [REDACTED].¹⁰⁰⁹

280. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹⁰¹⁰ were bleeding,¹⁰¹¹ [REDACTED],¹⁰¹² were unable to stand,¹⁰¹³ lost consciousness,¹⁰¹⁴ sustained broken bones,¹⁰¹⁵ [REDACTED],¹⁰¹⁶ [REDACTED],¹⁰¹⁷ and had psychological and/or physical conditions that continued after their release.¹⁰¹⁸ [REDACTED].¹⁰¹⁹ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

¹⁰⁰² [REDACTED].

¹⁰⁰³ [REDACTED].

¹⁰⁰⁴ [REDACTED].

¹⁰⁰⁵ [REDACTED].

¹⁰⁰⁶ [REDACTED].

¹⁰⁰⁷ [REDACTED].

¹⁰⁰⁸ [REDACTED].

¹⁰⁰⁹ [REDACTED].

¹⁰¹⁰ [REDACTED].

¹⁰¹¹ [REDACTED].

¹⁰¹² [REDACTED].

¹⁰¹³ [REDACTED].

¹⁰¹⁴ [REDACTED].

¹⁰¹⁵ [REDACTED].

¹⁰¹⁶ [REDACTED].

¹⁰¹⁷ [REDACTED].

¹⁰¹⁸ [REDACTED].

¹⁰¹⁹ [REDACTED].

(xiii) [REDACTED]

281. The Pre-Trial Judge finds that the supporting material indicates that, between [REDACTED] and [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to at least nine persons detained at [REDACTED] Kaçanik/Kaçanik municipality, and [REDACTED], Ferizaj/Uroševac municipality.

282. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned detention locations. These conditions were characterised by deprivation of liberty without due process of law,¹⁰²⁰ coupled with inadequate provision of food,¹⁰²¹ water,¹⁰²² sanitation and hygiene,¹⁰²³ and bedding.¹⁰²⁴ [REDACTED].¹⁰²⁵

283. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular, while being detained [REDACTED],¹⁰²⁶ [REDACTED] were repeatedly beaten,¹⁰²⁷ including with automatic weapons.¹⁰²⁸ [REDACTED], the hands of the detainees were often tied.¹⁰²⁹ [REDACTED].¹⁰³⁰ Detainees could hear each other's screams while being beaten.¹⁰³¹

284. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical

¹⁰²⁰ See *supra* paras 178-180 (Counts 2-3).

¹⁰²¹ [REDACTED].

¹⁰²² [REDACTED].

¹⁰²³ [REDACTED].

¹⁰²⁴ [REDACTED].

¹⁰²⁵ [REDACTED].

¹⁰²⁶ [REDACTED].

¹⁰²⁷ [REDACTED].

¹⁰²⁸ [REDACTED].

¹⁰²⁹ [REDACTED].

¹⁰³⁰ [REDACTED].

¹⁰³¹ [REDACTED].

suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹⁰³² [REDACTED],¹⁰³³ and had psychological and/or physical conditions that continued after their release.¹⁰³⁴ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xiv) Cahan, Albania

285. The Pre-Trial Judge finds that the supporting material indicates that, between April and June 1999,¹⁰³⁵ KLA members caused serious physical and psychological injury and suffering to at least four persons detained at the KLA Military Barracks in Cahan, Albania.

286. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned military barracks. These conditions were characterised by deprivation of liberty without due process of law,¹⁰³⁶ coupled with inadequate provision of water,¹⁰³⁷ sanitation and hygiene,¹⁰³⁸ bedding¹⁰³⁹ and medical care.¹⁰⁴⁰ Detainees were kept in a small room with bloodstains on the wall,¹⁰⁴¹ rainwater leaked in and the stench of the nearby toilet reached the room.¹⁰⁴²

¹⁰³² [REDACTED].

¹⁰³³ [REDACTED].

¹⁰³⁴ [REDACTED].

¹⁰³⁵ [REDACTED].

¹⁰³⁶ See *supra* paras 181-183 (Counts 2-3).

¹⁰³⁷ [REDACTED].

¹⁰³⁸ [REDACTED].

¹⁰³⁹ [REDACTED].

¹⁰⁴⁰ [REDACTED].

¹⁰⁴¹ [REDACTED].

¹⁰⁴² [REDACTED].

287. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. [REDACTED] were repeatedly and severely beaten, including with wooden sticks,¹⁰⁴³ police batons,¹⁰⁴⁴ a whip or switch¹⁰⁴⁵ and an iron bar,¹⁰⁴⁶ by KLA members, [REDACTED].¹⁰⁴⁷ [REDACTED].¹⁰⁴⁸ The detainees were also threatened to be killed.¹⁰⁴⁹

288. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹⁰⁵⁰ had scars,¹⁰⁵¹ were bleeding,¹⁰⁵² were unable to move,¹⁰⁵³ and lost consciousness.¹⁰⁵⁴ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xv) Kukës, Albania

289. The Pre-Trial Judge finds that the supporting material indicates that, between May and June 1999, KLA members caused serious physical and psychological injury and suffering to several individuals detained at the Kukës Metal Factory, in Albania.

¹⁰⁴³ [REDACTED].

¹⁰⁴⁴ [REDACTED].

¹⁰⁴⁵ [REDACTED].

¹⁰⁴⁶ [REDACTED].

¹⁰⁴⁷ [REDACTED].

¹⁰⁴⁸ [REDACTED].

¹⁰⁴⁹ [REDACTED].

¹⁰⁵⁰ [REDACTED].

¹⁰⁵¹ [REDACTED].

¹⁰⁵² [REDACTED].

¹⁰⁵³ [REDACTED].

¹⁰⁵⁴ [REDACTED].

290. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned metal factory. These conditions were characterised by deprivation of liberty without due process of law,¹⁰⁵⁵ coupled with inadequate provision of food,¹⁰⁵⁶ water,¹⁰⁵⁷ sanitation and hygiene,¹⁰⁵⁸ bedding¹⁰⁵⁹ and medical care.¹⁰⁶⁰ Detainees slept on the cement floor,¹⁰⁶¹ one of the rooms had no access to daylight and bottles filled with urine were littered on the floor.¹⁰⁶²

291. Furthermore, the supporting material indicates that KLA members, including [REDACTED], Sabit Geci, [REDACTED] and [REDACTED],¹⁰⁶³ routinely assaulted those detained, both physically and psychologically. In particular, [REDACTED] were repeatedly and severely beaten,¹⁰⁶⁴ including with rubber batons,¹⁰⁶⁵ baseball bats,¹⁰⁶⁶ iron or metal bars,¹⁰⁶⁷ as well as guns, [REDACTED] and knives.¹⁰⁶⁸ [REDACTED].¹⁰⁶⁹ [REDACTED],¹⁰⁷⁰ [REDACTED],¹⁰⁷¹ [REDACTED].¹⁰⁷² KLA members shot at close range and wounded [REDACTED] detainees.¹⁰⁷³ On the way to the toilet, detainees would be harassed by a KLA member who tried to stab them.¹⁰⁷⁴ The detainees were also threatened with death and serious bodily

¹⁰⁵⁵ See *supra* paras 184-186 (Counts 2-3).

¹⁰⁵⁶ [REDACTED].

¹⁰⁵⁷ [REDACTED].

¹⁰⁵⁸ [REDACTED].

¹⁰⁵⁹ [REDACTED].

¹⁰⁶⁰ [REDACTED].

¹⁰⁶¹ [REDACTED].

¹⁰⁶² [REDACTED].

¹⁰⁶³ [REDACTED].

¹⁰⁶⁴ [REDACTED].

¹⁰⁶⁵ [REDACTED].

¹⁰⁶⁶ [REDACTED].

¹⁰⁶⁷ [REDACTED].

¹⁰⁶⁸ [REDACTED].

¹⁰⁶⁹ [REDACTED].

¹⁰⁷⁰ [REDACTED].

¹⁰⁷¹ [REDACTED].

¹⁰⁷² [REDACTED].

¹⁰⁷³ [REDACTED].

¹⁰⁷⁴ [REDACTED].

injury.¹⁰⁷⁵ Some detainees were forced to perform manual labour during their detention.¹⁰⁷⁶ [REDACTED].¹⁰⁷⁷

292. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on human dignity. In particular, these individuals sustained bruises and swelling,¹⁰⁷⁸ lost consciousness¹⁰⁷⁹ and control of bodily functions,¹⁰⁸⁰ had their vision temporarily impaired,¹⁰⁸¹ had their skin come off,¹⁰⁸² sustained broken bones,¹⁰⁸³ lost a considerable amount of weight,¹⁰⁸⁴ were seriously wounded,¹⁰⁸⁵ were covered in blood,¹⁰⁸⁶ were humiliated¹⁰⁸⁷ and had psychological and/or physical conditions that continued after their release.¹⁰⁸⁸ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xvi) [REDACTED]

293. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to several persons detained at [REDACTED] in

¹⁰⁷⁵ [REDACTED].

¹⁰⁷⁶ [REDACTED].

¹⁰⁷⁷ [REDACTED].

¹⁰⁷⁸ [REDACTED].

¹⁰⁷⁹ [REDACTED].

¹⁰⁸⁰ [REDACTED].

¹⁰⁸¹ [REDACTED].

¹⁰⁸² [REDACTED].

¹⁰⁸³ [REDACTED].

¹⁰⁸⁴ [REDACTED].

¹⁰⁸⁵ [REDACTED].

¹⁰⁸⁶ [REDACTED].

¹⁰⁸⁷ [REDACTED].

¹⁰⁸⁸ [REDACTED].

[REDACTED], Malishevë/Mališevo municipality, and [REDACTED] in [REDACTED], Suharekë/Suva Reka municipality, [REDACTED].

294. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned detention locations. These conditions were characterised by deprivation of liberty without due process of law,¹⁰⁸⁹ coupled with inadequate provision of food,¹⁰⁹⁰ water,¹⁰⁹¹ sanitation and hygiene,¹⁰⁹² and medical care.¹⁰⁹³ In [REDACTED], [REDACTED] detainees were held [REDACTED].¹⁰⁹⁴

295. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. [REDACTED],¹⁰⁹⁵ [REDACTED],¹⁰⁹⁶ [REDACTED],¹⁰⁹⁷ [REDACTED],¹⁰⁹⁸ [REDACTED],¹⁰⁹⁹ [REDACTED],¹¹⁰⁰ [REDACTED].¹¹⁰¹ [REDACTED],¹¹⁰² [REDACTED].¹¹⁰³

296. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling, and were bleeding from their injuries.¹¹⁰⁴ This also demonstrates that the nature and level of

¹⁰⁸⁹ See *supra* paras 187-189 (Counts 2-3).

¹⁰⁹⁰ [REDACTED].

¹⁰⁹¹ [REDACTED].

¹⁰⁹² [REDACTED].

¹⁰⁹³ [REDACTED].

¹⁰⁹⁴ [REDACTED].

¹⁰⁹⁵ [REDACTED].

¹⁰⁹⁶ [REDACTED].

¹⁰⁹⁷ [REDACTED].

¹⁰⁹⁸ [REDACTED].

¹⁰⁹⁹ [REDACTED].

¹¹⁰⁰ [REDACTED].

¹¹⁰¹ [REDACTED].

¹¹⁰² [REDACTED].

¹¹⁰³ [REDACTED].

¹¹⁰⁴ [REDACTED].

gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xvii) [REDACTED]

297. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999,¹¹⁰⁵ KLA members caused serious physical and psychological injury and suffering to [REDACTED] at [REDACTED] in Drenas (Glogoc)/Glogovac municipality.

298. The supporting material indicates that, at [REDACTED], KLA members established and maintained inhumane conditions. These conditions were characterised by deprivation of liberty without due process of law,¹¹⁰⁶ coupled with inadequate provision of accommodation,¹¹⁰⁷ food¹¹⁰⁸ and medical care.¹¹⁰⁹ [REDACTED].¹¹¹⁰

299. Furthermore, the supporting material indicates that, [REDACTED],¹¹¹¹ [REDACTED] repeatedly and severely beaten, including with rifles and wooden sticks,¹¹¹² by KLA members, [REDACTED].¹¹¹³ [REDACTED] repeatedly threatened to be killed,¹¹¹⁴ [REDACTED],¹¹¹⁵ [REDACTED].¹¹¹⁶ [REDACTED].¹¹¹⁷ [REDACTED].¹¹¹⁸

¹¹⁰⁵ [REDACTED].

¹¹⁰⁶ See *supra* paras 190-192 (Counts 2-3).

¹¹⁰⁷ [REDACTED].

¹¹⁰⁸ [REDACTED].

¹¹⁰⁹ [REDACTED].

¹¹¹⁰ [REDACTED].

¹¹¹¹ [REDACTED].

¹¹¹² [REDACTED].

¹¹¹³ [REDACTED].

¹¹¹⁴ [REDACTED].

¹¹¹⁵ [REDACTED].

¹¹¹⁶ [REDACTED].

¹¹¹⁷ [REDACTED].

¹¹¹⁸ [REDACTED].

300. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to [REDACTED], or constituted a serious attack on his human dignity. [REDACTED] scars,¹¹¹⁹ [REDACTED] bleeding,¹¹²⁰ [REDACTED],¹¹²¹ [REDACTED],¹¹²² and [REDACTED].¹¹²³ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xviii) [REDACTED]

301. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] persons apprehended and detained at detention locations near [REDACTED], Prishtinë/Priština municipality.

302. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned detention locations. These conditions were characterised by deprivation of liberty without due process of law,¹¹²⁴ coupled with inadequate provision of food and water.¹¹²⁵ [REDACTED].¹¹²⁶

303. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and detained, both physically and psychologically.

¹¹¹⁹ [REDACTED].

¹¹²⁰ [REDACTED].

¹¹²¹ [REDACTED].

¹¹²² [REDACTED].

¹¹²³ [REDACTED].

¹¹²⁴ See *supra* paras 193-195 (Counts 2-3).

¹¹²⁵ [REDACTED].

¹¹²⁶ [REDACTED].

[REDACTED], on [REDACTED] 1999,¹¹²⁷ [REDACTED] KLA members apprehended [REDACTED] and forcefully took him towards [REDACTED].¹¹²⁸ [REDACTED],¹¹²⁹ [REDACTED] KLA members apprehended [REDACTED] and took them to [REDACTED], beating them on the way.¹¹³⁰ Between approximately [REDACTED] 1999,¹¹³¹ while being detained [REDACTED] near [REDACTED],¹¹³² [REDACTED] were repeatedly and severely beaten,¹¹³³ [REDACTED],¹¹³⁴ [REDACTED],¹¹³⁵ and threatened to be killed,¹¹³⁶ by KLA members. Detainees could hear each other's screams while being beaten.¹¹³⁷

304. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹¹³⁸ were bleeding,¹¹³⁹ had their teeth broken,¹¹⁴⁰ and had psychological and/or physical conditions that continued after their release.¹¹⁴¹ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

¹¹²⁷ [REDACTED].

¹¹²⁸ [REDACTED].

¹¹²⁹ [REDACTED].

¹¹³⁰ [REDACTED].

¹¹³¹ [REDACTED].

¹¹³² [REDACTED].

¹¹³³ [REDACTED].

¹¹³⁴ [REDACTED].

¹¹³⁵ [REDACTED].

¹¹³⁶ [REDACTED].

¹¹³⁷ [REDACTED].

¹¹³⁸ [REDACTED].

¹¹³⁹ [REDACTED].

¹¹⁴⁰ [REDACTED].

¹¹⁴¹ [REDACTED].

(xix) [REDACTED]

305. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to at least six persons apprehended near and/or detained at [REDACTED], Viti/Vitina municipality.

306. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA detention locations. These conditions were characterised by deprivation of liberty without due process of law,¹¹⁴² coupled with inadequate provision of water,¹¹⁴³ bedding¹¹⁴⁴ and medical care.¹¹⁴⁵ [REDACTED].¹¹⁴⁶

307. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. [REDACTED],¹¹⁴⁷ [REDACTED] were repeatedly and severely beaten,¹¹⁴⁸ including with [REDACTED],¹¹⁴⁹ [REDACTED],¹¹⁵⁰ wooden sticks¹¹⁵¹ and boots,¹¹⁵² by KLA members. [REDACTED].¹¹⁵³ [REDACTED].¹¹⁵⁴ [REDACTED].¹¹⁵⁵

¹¹⁴² See *supra* paras 196-198 (Counts 2-3).

¹¹⁴³ [REDACTED].

¹¹⁴⁴ [REDACTED].

¹¹⁴⁵ [REDACTED].

¹¹⁴⁶ [REDACTED].

¹¹⁴⁷ [REDACTED].

¹¹⁴⁸ [REDACTED].

¹¹⁴⁹ [REDACTED].

¹¹⁵⁰ [REDACTED].

¹¹⁵¹ [REDACTED].

¹¹⁵² [REDACTED].

¹¹⁵³ [REDACTED].

¹¹⁵⁴ [REDACTED].

¹¹⁵⁵ [REDACTED].

Detainees [REDACTED],¹¹⁵⁶ [REDACTED] could hear or see others being beaten,¹¹⁵⁷ [REDACTED].¹¹⁵⁸ [REDACTED].¹¹⁵⁹

308. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹¹⁶⁰ were bleeding,¹¹⁶¹ were unable to sleep,¹¹⁶² lost consciousness,¹¹⁶³ suffered mental trauma,¹¹⁶⁴ sustained broken bones,¹¹⁶⁵ needed hospital treatment,¹¹⁶⁶ and had psychological and/or physical conditions that continued after their release.¹¹⁶⁷ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xx) [REDACTED], Prizren

309. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 15 and 23 June 1999, KLA members caused serious physical and psychological injury and suffering to at least seven persons apprehended and/or detained in [REDACTED] Prizren, in Prizren municipality.

¹¹⁵⁶ [REDACTED].

¹¹⁵⁷ [REDACTED].

¹¹⁵⁸ [REDACTED].

¹¹⁵⁹ [REDACTED].

¹¹⁶⁰ [REDACTED].

¹¹⁶¹ [REDACTED].

¹¹⁶² [REDACTED].

¹¹⁶³ [REDACTED].

¹¹⁶⁴ [REDACTED].

¹¹⁶⁵ [REDACTED].

¹¹⁶⁶ [REDACTED].

¹¹⁶⁷ [REDACTED].

310. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,¹¹⁶⁸ coupled with inadequate provision of food¹¹⁶⁹ and bedding.¹¹⁷⁰ [REDACTED] and had no access to daylight.¹¹⁷¹ Some of the detainees were kept [REDACTED],¹¹⁷² or were handcuffed throughout their detention.¹¹⁷³

311. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- On [REDACTED] June 1999,¹¹⁷⁴ armed KLA members apprehended [REDACTED] at gunpoint and took him to [REDACTED], beating him on the way, including with rifles.¹¹⁷⁵ He was taken to a room [REDACTED],¹¹⁷⁶ where he was repeatedly and severely beaten, including with baseball bats, pipes, sticks and knives.¹¹⁷⁷ [REDACTED] was also threatened to be killed, [REDACTED].¹¹⁷⁸ [REDACTED].¹¹⁷⁹ He could hear the screams of [REDACTED] being beaten.¹¹⁸⁰ He was released [REDACTED].¹¹⁸¹

¹¹⁶⁸ See *supra* paras 199-201 (Counts 2-3).

¹¹⁶⁹ [REDACTED].

¹¹⁷⁰ [REDACTED].

¹¹⁷¹ [REDACTED].

¹¹⁷² [REDACTED].

¹¹⁷³ [REDACTED].

¹¹⁷⁴ [REDACTED].

¹¹⁷⁵ [REDACTED].

¹¹⁷⁶ [REDACTED].

¹¹⁷⁷ [REDACTED].

¹¹⁷⁸ [REDACTED].

¹¹⁷⁹ [REDACTED].

¹¹⁸⁰ [REDACTED].

¹¹⁸¹ [REDACTED].

- Between [REDACTED] June 1999,¹¹⁸² while being held [REDACTED] in Prizren,¹¹⁸³ [REDACTED] were repeatedly beaten,¹¹⁸⁴ including with baseball bats [REDACTED].¹¹⁸⁵ Some detainees were [REDACTED],¹¹⁸⁶ questioned in a room with blood on the walls,¹¹⁸⁷ or threatened to be killed.¹¹⁸⁸ Detainees could hear the screams of others being beaten.¹¹⁸⁹

312. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained individuals, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹¹⁹⁰ had cuts on their skin,¹¹⁹¹ were unable to walk,¹¹⁹² lost consciousness,¹¹⁹³ sustained broken bones,¹¹⁹⁴ and had psychological and/or physical conditions that continued after their release.¹¹⁹⁵ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxi) Former MUP Building, Prizren

313. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 18 June 1999, KLA members caused serious physical and

¹¹⁸² [REDACTED].

¹¹⁸³ [REDACTED].

¹¹⁸⁴ [REDACTED].

¹¹⁸⁵ [REDACTED].

¹¹⁸⁶ [REDACTED].

¹¹⁸⁷ [REDACTED].

¹¹⁸⁸ [REDACTED].

¹¹⁸⁹ [REDACTED].

¹¹⁹⁰ [REDACTED].

¹¹⁹¹ [REDACTED].

¹¹⁹² [REDACTED].

¹¹⁹³ [REDACTED].

¹¹⁹⁴ [REDACTED].

¹¹⁹⁵ [REDACTED].

psychological injury and suffering to at least 14 persons [REDACTED] detained at the former MUP building in Prizren, in Prizren municipality.

314. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned building. These conditions were characterised by deprivation of liberty without due process of law,¹¹⁹⁶ coupled with inadequate provision of food and water,¹¹⁹⁷ sanitation and hygiene,¹¹⁹⁸ and medical care.¹¹⁹⁹ Detainees were held tied up,¹²⁰⁰ including to a radiator.¹²⁰¹

315. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular, while being held at the former MUP building in Prizren,¹²⁰² [REDACTED] were repeatedly and severely beaten,¹²⁰³ including with a rubber stick or baton,¹²⁰⁴ guns,¹²⁰⁵ belts,¹²⁰⁶ and water bottles.¹²⁰⁷ [REDACTED].¹²⁰⁸ [REDACTED] were [REDACTED] forced to perform manual labour while they were held in the building.¹²⁰⁹ Detainees could hear others being beaten.¹²¹⁰ [REDACTED] were beaten, including with wooden sticks¹²¹¹ and automatic

¹¹⁹⁶ See *supra* paras 202-204 (Counts 2-3).

¹¹⁹⁷ [REDACTED].

¹¹⁹⁸ [REDACTED].

¹¹⁹⁹ [REDACTED].

¹²⁰⁰ [REDACTED].

¹²⁰¹ [REDACTED].

¹²⁰² [REDACTED].

¹²⁰³ [REDACTED].

¹²⁰⁴ [REDACTED].

¹²⁰⁵ [REDACTED].

¹²⁰⁶ [REDACTED].

¹²⁰⁷ [REDACTED].

¹²⁰⁸ [REDACTED].

¹²⁰⁹ [REDACTED].

¹²¹⁰ [REDACTED].

¹²¹¹ [REDACTED].

guns,¹²¹² upon being apprehended and before being taken to the former MUP building.¹²¹³

316. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹²¹⁴ [REDACTED],¹²¹⁵ were bleeding,¹²¹⁶ became suicidal,¹²¹⁷ lost control of their bodily functions,¹²¹⁸ lost consciousness,¹²¹⁹ and sustained broken bones.¹²²⁰ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxii) [REDACTED], Prizren

317. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 19 June 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] detained at [REDACTED] in Prizren, in Prizren municipality.

318. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,¹²²¹

¹²¹² [REDACTED].

¹²¹³ [REDACTED].

¹²¹⁴ [REDACTED].

¹²¹⁵ [REDACTED].

¹²¹⁶ [REDACTED].

¹²¹⁷ [REDACTED].

¹²¹⁸ [REDACTED].

¹²¹⁹ [REDACTED].

¹²²⁰ [REDACTED].

¹²²¹ See *supra* paras 205-207 (Counts 2-3).

coupled with inadequate provision of food and water,¹²²² being handcuffed during detention,¹²²³ and sleeping on the concrete floor in the basement.¹²²⁴

319. Furthermore, the supporting material indicates that KLA members assaulted those apprehended and detained, both physically and psychologically. In particular:

- On [REDACTED] June 1999,¹²²⁵ armed KLA members, [REDACTED],¹²²⁶ apprehended [REDACTED],¹²²⁷ and took him to [REDACTED].¹²²⁸ Upon arrival, KLA members beat [REDACTED] with sticks and chains.¹²²⁹ [REDACTED] was repeatedly beaten, including with wooden sticks.¹²³⁰ [REDACTED].¹²³¹
- On [REDACTED] June 1999,¹²³² armed KLA members apprehended [REDACTED],¹²³³ and took him to [REDACTED],¹²³⁴ [REDACTED].¹²³⁵

320. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and

¹²²² [REDACTED].

¹²²³ [REDACTED].

¹²²⁴ [REDACTED].

¹²²⁵ [REDACTED].

¹²²⁶ [REDACTED].

¹²²⁷ [REDACTED].

¹²²⁸ [REDACTED].

¹²²⁹ [REDACTED].

¹²³⁰ [REDACTED].

¹²³¹ [REDACTED].

¹²³² [REDACTED].

¹²³³ [REDACTED].

¹²³⁴ [REDACTED].

¹²³⁵ [REDACTED].

swelling,¹²³⁶ were bleeding,¹²³⁷ were unable to sleep from the pain,¹²³⁸ needed hospital treatment for their injuries,¹²³⁹ and had psychological and/or physical conditions that continued after their release.¹²⁴⁰ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxiii) [REDACTED], Prizren

321. The Pre-Trial Judge finds that the supporting material indicates that, on or about 26 June 1999,¹²⁴¹ KLA members caused serious physical and psychological injury and suffering to at least three persons apprehended near and/or detained at [REDACTED] in Prizren, in Prizren municipality.

322. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,¹²⁴² coupled with inadequate provision of water,¹²⁴³ sanitation and hygiene,¹²⁴⁴ and medical care.¹²⁴⁵ The room where detainees were kept had bloodstains on the wall.¹²⁴⁶

323. Furthermore, the supporting material indicates that KLA members assaulted those apprehended and/or detained, both physically and psychologically. In particular, while being detained at [REDACTED] in Prizren, [REDACTED] were

¹²³⁶ [REDACTED].

¹²³⁷ [REDACTED].

¹²³⁸ [REDACTED].

¹²³⁹ [REDACTED].

¹²⁴⁰ [REDACTED].

¹²⁴¹ [REDACTED].

¹²⁴² See *supra* paras 208-210 (Counts 2-3).

¹²⁴³ [REDACTED].

¹²⁴⁴ [REDACTED].

¹²⁴⁵ [REDACTED].

¹²⁴⁶ [REDACTED].

severely beaten,¹²⁴⁷ including with baseball bats,¹²⁴⁸ chains,¹²⁴⁹ hammers,¹²⁵⁰ sticks,¹²⁵¹ and hoses,¹²⁵² by KLA members, who also repeatedly threatened to kill them.¹²⁵³ [REDACTED].¹²⁵⁴ [REDACTED] were ordered to undress and to have sex.¹²⁵⁵ [REDACTED] forced to drink paint thinner.¹²⁵⁶ [REDACTED].¹²⁵⁷ [REDACTED].¹²⁵⁸

324. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,¹²⁵⁹ were bleeding,¹²⁶⁰ were unable to stand¹²⁶¹ or walk,¹²⁶² lost consciousness,¹²⁶³ and had psychological and/or physical conditions that continued after their release.¹²⁶⁴ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

¹²⁴⁷ [REDACTED].

¹²⁴⁸ [REDACTED].

¹²⁴⁹ [REDACTED].

¹²⁵⁰ [REDACTED].

¹²⁵¹ [REDACTED].

¹²⁵² [REDACTED].

¹²⁵³ [REDACTED].

¹²⁵⁴ [REDACTED].

¹²⁵⁵ [REDACTED].

¹²⁵⁶ [REDACTED].

¹²⁵⁷ [REDACTED].

¹²⁵⁸ [REDACTED].

¹²⁵⁹ [REDACTED].

¹²⁶⁰ [REDACTED].

¹²⁶¹ [REDACTED].

¹²⁶² [REDACTED].

¹²⁶³ [REDACTED].

¹²⁶⁴ [REDACTED].

(xxiv) Rahovec/Orahovac

325. The Pre-Trial Judge finds that the supporting material indicates that, on or about [REDACTED] 1999 and [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] persons at their respective homes in Rahovec/Orahovac, in Rahovec/Orahovac municipality.

326. The supporting material indicates that KLA members assaulted these persons, both physically and psychologically. In particular:

- On or about [REDACTED] 1999,¹²⁶⁵ armed KLA members, [REDACTED],¹²⁶⁶ forcefully entered the house of [REDACTED] in Rahovec/Orahovac and started beating him in front of his wife, while ransacking and stealing from the property.¹²⁶⁷ [REDACTED] was then forced into a vehicle and driven away.¹²⁶⁸ The remaining KLA members set the house on fire.¹²⁶⁹
- On or about [REDACTED] 1999,¹²⁷⁰ armed KLA members, [REDACTED],¹²⁷¹ forcefully entered the house of [REDACTED] and started beating him,¹²⁷² asking for weapons.¹²⁷³ [REDACTED] could hear the beating.¹²⁷⁴ [REDACTED] was then forced into a vehicle and driven away.¹²⁷⁵
- [REDACTED] 1999,¹²⁷⁶ armed KLA members forcefully entered the house of [REDACTED] in Rahovec/Orahovac, assaulted [REDACTED],¹²⁷⁷ and took

¹²⁶⁵ [REDACTED].

¹²⁶⁶ [REDACTED].

¹²⁶⁷ [REDACTED].

¹²⁶⁸ [REDACTED].

¹²⁶⁹ [REDACTED].

¹²⁷⁰ [REDACTED].

¹²⁷¹ [REDACTED].

¹²⁷² [REDACTED].

¹²⁷³ [REDACTED].

¹²⁷⁴ [REDACTED].

¹²⁷⁵ [REDACTED].

¹²⁷⁶ [REDACTED].

¹²⁷⁷ [REDACTED].

him away.¹²⁷⁸ For the following [REDACTED] days, the same KLA members returned to the house, threatening and harassing [REDACTED],¹²⁷⁹ [REDACTED],¹²⁸⁰ [REDACTED].¹²⁸¹ [REDACTED].¹²⁸² On one of these occasions, KLA members also severely beat [REDACTED].¹²⁸³

327. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the mistreated persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises,¹²⁸⁴ were unable walk,¹²⁸⁵ suffered psychologically,¹²⁸⁶ and [REDACTED], until they abandoned their homes.¹²⁸⁷ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxv) Ferizaj/Uroševac

328. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] apprehended and detained in a house in or near Ferizaj/Uroševac, in Ferizaj/Uroševac municipality.

329. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned house. These

¹²⁷⁸ [REDACTED].

¹²⁷⁹ [REDACTED].

¹²⁸⁰ [REDACTED].

¹²⁸¹ [REDACTED].

¹²⁸² [REDACTED].

¹²⁸³ [REDACTED].

¹²⁸⁴ [REDACTED].

¹²⁸⁵ [REDACTED].

¹²⁸⁶ [REDACTED].

¹²⁸⁷ [REDACTED].

conditions were characterised by deprivation of liberty without due process of law,¹²⁸⁸ coupled with inadequate provision of food and water.¹²⁸⁹ [REDACTED].¹²⁹⁰

330. Furthermore, the supporting material indicates that KLA members assaulted [REDACTED], both physically and psychologically. In particular, on or about [REDACTED] 1999,¹²⁹¹ when [REDACTED] was trying to leave Ferizaj/Uroševac,¹²⁹² armed KLA members apprehended them [REDACTED].¹²⁹³ [REDACTED] was [REDACTED], forced into the trunk of a vehicle,¹²⁹⁴ and taken to a house outside of Ferizaj/Uroševac,¹²⁹⁵ where he was repeatedly beaten by KLA members, including with rifles.¹²⁹⁶ [REDACTED],¹²⁹⁷ [REDACTED].¹²⁹⁸ [REDACTED].¹²⁹⁹

331. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detainee, or constituted a serious attack on his human dignity. [REDACTED],¹³⁰⁰ [REDACTED],¹³⁰¹ [REDACTED].¹³⁰² This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

¹²⁸⁸ See *supra* paras 211-213 (Counts 2-3).

¹²⁸⁹ [REDACTED].

¹²⁹⁰ [REDACTED].

¹²⁹¹ [REDACTED].

¹²⁹² [REDACTED].

¹²⁹³ [REDACTED].

¹²⁹⁴ [REDACTED].

¹²⁹⁵ [REDACTED].

¹²⁹⁶ [REDACTED].

¹²⁹⁷ [REDACTED].

¹²⁹⁸ [REDACTED].

¹²⁹⁹ [REDACTED].

¹³⁰⁰ [REDACTED].

¹³⁰¹ [REDACTED].

¹³⁰² [REDACTED].

(xxvi) [REDACTED]

332. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] detained in [REDACTED], Ferizaj/Uroševac municipality.

333. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned house. These conditions were characterised by deprivation of liberty without due process of law,¹³⁰³ coupled with inadequate provision of water.¹³⁰⁴ The detainees were [REDACTED],¹³⁰⁵ [REDACTED],¹³⁰⁶ [REDACTED].¹³⁰⁷

334. Furthermore, the supporting material indicates that KLA members physically assaulted [REDACTED], both physically and psychologically. [REDACTED],¹³⁰⁸ [REDACTED],¹³⁰⁹ [REDACTED].¹³¹⁰ [REDACTED].¹³¹¹ [REDACTED].¹³¹² [REDACTED].¹³¹³

335. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, the detainee sustained bruises and swelling because of the beatings.¹³¹⁴ This also demonstrates that the nature and level of gravity of the

¹³⁰³ See *supra* paras 214-216 (Counts 2-3).

¹³⁰⁴ [REDACTED].

¹³⁰⁵ [REDACTED].

¹³⁰⁶ [REDACTED].

¹³⁰⁷ [REDACTED].

¹³⁰⁸ [REDACTED].

¹³⁰⁹ [REDACTED].

¹³¹⁰ [REDACTED].

¹³¹¹ [REDACTED].

¹³¹² [REDACTED].

¹³¹³ [REDACTED].

¹³¹⁴ [REDACTED].

aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxvii) Former Boarding School/Dormitory, Gjilan/Gnjilane

336. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] persons apprehended near and detained at a KLA headquarters located in the former Boarding School/Dormitory in Gjilan/Gnjilane, in Gjilan/Gnjilane municipality.

337. The supporting material indicates that, at the aforementioned boarding school, KLA members established and maintained inhumane conditions by depriving these persons of their liberty without due process of law.¹³¹⁵

338. Furthermore, the supporting material indicates that KLA members assaulted those apprehended and detained, both physically and psychologically. In particular:

- On [REDACTED] June 1999,¹³¹⁶ armed KLA members apprehended [REDACTED] at his home, forced him into a vehicle and took him to the former Boarding School/Dormitory at Gjilan/Gnjilane.¹³¹⁷ While held there, [REDACTED] was severely beaten,¹³¹⁸ including with sticks,¹³¹⁹ boots¹³²⁰ and

¹³¹⁵ See *supra* paras 217-219 (Counts 2-3).

¹³¹⁶ [REDACTED].

¹³¹⁷ [REDACTED].

¹³¹⁸ [REDACTED].

¹³¹⁹ [REDACTED].

¹³²⁰ [REDACTED].

batons,¹³²¹ and was threatened to be killed.¹³²² [REDACTED],¹³²³
 [REDACTED].¹³²⁴ [REDACTED].¹³²⁵ [REDACTED].¹³²⁶

- On or about [REDACTED] June 1999,¹³²⁷ armed KLA members apprehended [REDACTED] at his home, forced him into a vehicle and took him to the former Boarding School/Dormitoryi at Gjilan/Gnjilane.¹³²⁸ While held there, [REDACTED] was severely beaten, including with batons,¹³²⁹ and was threatened to be killed.¹³³⁰ He could hear other detainees screaming.¹³³¹ [REDACTED].¹³³²

339. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and detained persons, or constituted a serious attack on their human dignity. In particular, these persons sustained bruises and swelling,¹³³³ were bleeding,¹³³⁴ [REDACTED],¹³³⁵ [REDACTED],¹³³⁶ [REDACTED],¹³³⁷ and had psychological and/or physical conditions that continued after their release.¹³³⁸ This also demonstrates that the nature and level of gravity of

¹³²¹ [REDACTED].

¹³²² [REDACTED].

¹³²³ [REDACTED].

¹³²⁴ [REDACTED].

¹³²⁵ [REDACTED].

¹³²⁶ [REDACTED].

¹³²⁷ [REDACTED].

¹³²⁸ [REDACTED].

¹³²⁹ [REDACTED].

¹³³⁰ [REDACTED].

¹³³¹ [REDACTED].

¹³³² [REDACTED].

¹³³³ [REDACTED].

¹³³⁴ [REDACTED].

¹³³⁵ [REDACTED].

¹³³⁶ [REDACTED].

¹³³⁷ [REDACTED].

¹³³⁸ [REDACTED].

the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxviii) Former Police Station, Suharekë/Suva Reka

340. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, KLA members caused serious physical and psychological injury and suffering to one person detained at the former police station in Suharekë/Suva Reka, in Suharekë/Suva Reka municipality.

341. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned building. These conditions were characterised by deprivation of liberty without due process of law,¹³³⁹ coupled with inadequate provision of food and water.¹³⁴⁰

342. Furthermore, the supporting material indicates that KLA members routinely assaulted the detainee, both physically and psychologically. In particular, on [REDACTED] June 1999,¹³⁴¹ armed KLA members forced [REDACTED] to the Suharekë/Suva Reka police station,¹³⁴² where [REDACTED] detained.¹³⁴³ During this period, KLA members repeatedly beat [REDACTED] with rifles, batons and boots.¹³⁴⁴ [REDACTED],¹³⁴⁵ [REDACTED].¹³⁴⁶ [REDACTED] released after [REDACTED] days of detention [REDACTED].¹³⁴⁷

¹³³⁹ See *supra* paras 220-222 (Counts 2-3).

¹³⁴⁰ [REDACTED].

¹³⁴¹ [REDACTED].

¹³⁴² [REDACTED].

¹³⁴³ [REDACTED].

¹³⁴⁴ [REDACTED].

¹³⁴⁵ [REDACTED].

¹³⁴⁶ [REDACTED].

¹³⁴⁷ [REDACTED].

343. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering [REDACTED], or constituted a serious attack on [REDACTED] human dignity. [REDACTED] sustained bruises [REDACTED],¹³⁴⁸ and needed bandages to attend [REDACTED] injuries.¹³⁴⁹ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxix) Novobërdë/Novo Brdo

344. The Pre-Trial Judge finds that the supporting material indicates that, on or about [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] apprehended in [REDACTED] and detained at the KLA headquarters in Novobërdë/Novo Brdo, in Novobërdë/Novo Brdo municipality.

345. The supporting material indicates that, at the aforementioned KLA headquarters, KLA members established and maintained inhumane conditions of detention by depriving [REDACTED] liberty without due process of law.¹³⁵⁰

346. Furthermore, the supporting material indicates that, in [REDACTED] 1999, KLA members assaulted [REDACTED], both physically and psychologically. [REDACTED] in [REDACTED].¹³⁵¹ [REDACTED].¹³⁵² KLA members then forced [REDACTED] into a vehicle, hitting [REDACTED] in the process,¹³⁵³ and took [REDACTED] to the KLA headquarters, [REDACTED], in Novobërdë/Novo Brdo,

¹³⁴⁸ [REDACTED].

¹³⁴⁹ [REDACTED].

¹³⁵⁰ See *supra* paras 223-225 (Counts 2-3).

¹³⁵¹ [REDACTED].

¹³⁵² [REDACTED].

¹³⁵³ [REDACTED].

where [REDACTED] severely beaten and threatened to be killed.¹³⁵⁴
[REDACTED].¹³⁵⁵

347. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering [REDACTED], or constituted a serious attack on [REDACTED] human dignity. [REDACTED],¹³⁵⁶ [REDACTED].¹³⁵⁷ This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(b) Mental Element

348. The supporting material indicates the failure to ensure humane detention conditions,¹³⁵⁸ the deliberate manner in which those apprehended and/or detained were assaulted both physically and psychologically,¹³⁵⁹ the types of instruments used in and the brutality of the physical assaults,¹³⁶⁰ as well as the grave injuries caused.¹³⁶¹ This demonstrates that at least some of the KLA members partaking in the aforementioned acts and omissions meant to cause serious mental or physical suffering or injury or to commit a serious attack upon the human dignity of the apprehended and/or detained individuals.

¹³⁵⁴ [REDACTED].

¹³⁵⁵ [REDACTED].

¹³⁵⁶ [REDACTED].

¹³⁵⁷ [REDACTED].

¹³⁵⁸ See *supra* paras 234, 238, 242, 246, 250, 254, 258, 262, 266, 270, 274, 278, 282, 286, 290, 294, 298, 302, 306, 310, 314, 318, 322, 329, 333, 337, 341, 345.

¹³⁵⁹ See *supra* paras 235, 239, 243, 247, 251, 255, 259, 263, 267, 271, 275, 279, 283, 287, 291, 295, 299, 303, 307, 311, 315, 319, 323, 326, 330, 334, 338, 342, 346.

¹³⁶⁰ See *supra* paras 235, 239, 243, 247, 251, 255, 259, 263, 267, 271, 275, 279, 283, 287, 291, 295, 299, 303, 307, 311, 315, 319, 323, 326, 330, 334, 338, 342, 346.

¹³⁶¹ See *supra* paras 236, 240, 244, 248, 252, 256, 260, 264, 268, 272, 276, 280, 284, 288, 292, 296, 300, 304, 308, 312, 316, 320, 324, 327, 331, 335, 339, 343, 347.

(c) Conclusion

349. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against individuals apprehended and/or detained at the aforementioned detention sites between approximately April 1998 and August 1999.

3. Counts 6 and 7: Torture

350. In the Revised Indictment, the SPO alleges that, during the Indictment Period, torture, a crime against humanity under Article 13(1)(f) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against individuals apprehended and/or detained at the detention sites indicated under Counts 4-5.¹³⁶²

(a) Material Elements

351. The Pre-Trial Judge finds that the supporting material indicates that, through the acts and omissions described in relation to Counts 4-5, certain KLA members inflicted severe pain or suffering on individuals apprehended and/or detained at detention locations indicated under the aforementioned counts.

352. The supporting material indicates that detainees were deprived of food and/or water,¹³⁶³ sanitation facilities,¹³⁶⁴ and medical care,¹³⁶⁵ were kept tied up for

¹³⁶² Revised Indictment, paras 136, 174 [68].

¹³⁶³ Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Drenoc/Drenovac: *supra* para. 246. Malishevë/Mališevo: *supra* para. 250. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. [REDACTED]: *supra* para. 270. [REDACTED]: *supra* para. 282. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. [REDACTED]: *supra* para. 298. [REDACTED]: *supra* para. 302. [REDACTED]: *supra* para. 306. [REDACTED], Prizren: *supra* para. 310. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 318. [REDACTED], Prizren: *supra* para. 322. Ferizaj/Uroševac: *supra* para. 329. [REDACTED]: *supra* para. 333. Former Police Station, Suharekë/Suva Reka: *supra* para. 341.

¹³⁶⁴ Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Llapushnik/Lapušnik: *supra* para. 242. Drenoc/Drenovac: *supra* para. 246. [REDACTED]: *supra* para. 254. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. Kleçkë/Klečka: *supra* para. 278. [REDACTED]: *supra* para. 282. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 322.

¹³⁶⁵ Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Llapushnik/Lapušnik: *supra* para. 242. Malishevë/Mališevo: *supra* para. 250. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. [REDACTED]: *supra* para. 298. [REDACTED]: *supra* para. 306. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 322.

an extended period,¹³⁶⁶ or were otherwise held in inhumane detention conditions.¹³⁶⁷ Some detainees were forced to perform manual labour.¹³⁶⁸ The supporting material further indicates that KLA members repeatedly and/or severely beat apprehended and/or detained individuals,¹³⁶⁹ including with

¹³⁶⁶ Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 242. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. [REDACTED]: *supra* para. 282. [REDACTED]: *supra* para. 302. [REDACTED], Prizren: *supra* para. 310. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 318. Ferizaj/Uroševac: *supra* para. 329. [REDACTED]: *supra* para. 333. Former Police Station, Suharekë/Suva Reka: *supra* para. 342.

¹³⁶⁷ Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Llapushnik/Lapušnik: *supra* para. 242. Drenoc/Drenovac: *supra* para. 246. Malishevë/Mališevo: *supra* para. 250. [REDACTED]: *supra* para. 254. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. Kleçkë/Klečka: *supra* para. 278. [REDACTED]: *supra* para. 282. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. [REDACTED]: *supra* para. 298. [REDACTED]: *supra* para. 306. [REDACTED], Prizren: *supra* para. 310. [REDACTED], Prizren: *supra* para. 318. [REDACTED], Prizren: *supra* para. 322. [REDACTED]: *supra* para. 333.

¹³⁶⁸ Likoc/Likovac: *supra* para. 235. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Kukës: *supra* para. 291. Former MUP Building, Prizren: *supra* para. 315. Rahovec/Orahovac: *supra* para. 326.

¹³⁶⁹ Likoc/Likovac: *supra* para. 235. Jabllanicë/Jablanica: *supra* para. 239. Llapushnik/Lapušnik: *supra* para. 243. Drenoc/Drenovac: *supra* para. 247. Malishevë/Mališevo: *supra* para. 251. [REDACTED]: *supra* para. 255. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 271. Kleçkë/Klečka: *supra* para. 279. [REDACTED]: *supra* para. 283. Cahan: *supra* para. 287. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. Rahovec/Orahovac: *supra* para. 326. Ferizaj/Uroševac: *supra* para. 330. [REDACTED]: *supra* para. 334. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Former Police Station, Suharekë/Suva Reka: *supra* para. 342. Novobërdë/Novo Brdo: *supra* para. 346.

wooden sticks,¹³⁷⁰ rifles,¹³⁷¹ baseball bats¹³⁷² and other objects.¹³⁷³ Detainees were electrocuted,¹³⁷⁴ stabbed or cut,¹³⁷⁵ burned,¹³⁷⁶ or urinated on.¹³⁷⁷ Some detainees had salt rubbed into their wounds,¹³⁷⁸ others had their fingers, nails or teeth pulled with pliers.¹³⁷⁹ Apprehended and/or detained individuals could hear and/or see others being mistreated,¹³⁸⁰ including their relatives.¹³⁸¹ Some detainees were

¹³⁷⁰ Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 243. Drenoc/Drenovac: *supra* para. 247. Malishevë/Mališevo: *supra* para. 251. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 271. Kleçkë/Kleçka: *supra* para. 279. Cahan: *supra* para. 287. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338.

¹³⁷¹ Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 243. Malishevë/Mališevo: *supra* para. 251. [REDACTED]: *supra* para. 255. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. [REDACTED]: *supra* para. 283. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Ferizaj/Uroševac: *supra* para. 330. [REDACTED]: *supra* para. 334. Former Police Station, Suharekë/Suva Reka: *supra* para. 342.

¹³⁷² Likoc/Likovac: *supra* para. 235. Jabllanicë/Jablanica: *supra* para. 239. Drenoc/Drenovac: *supra* para. 247. Kukës: *supra* para. 291. [REDACTED], Prizren: *supra* para. 311. [REDACTED], Prizren: *supra* para. 323.

¹³⁷³ Likoc/Likovac: *supra* para. 235. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. Kleçkë/Kleçka: *supra* para. 279. Cahan: *supra* para. 287. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Former Police Station, Suharekë/Suva Reka: *supra* para. 342.

¹³⁷⁴ Likoc/Likovac: *supra* para. 235. Drenoc/Drenovac: *supra* para. 247. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267.

¹³⁷⁵ Jabllanicë/Jablanica: *supra* para. 239. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 283.

¹³⁷⁶ Zllash/Zlaš: *supra* para. 267. Kukës: *supra* para. 291.

¹³⁷⁷ Zllash/Zlaš: *supra* para. 267. [REDACTED], Prizren: *supra* para. 311.

¹³⁷⁸ Zllash/Zlaš: *supra* para. 267. Kukës: *supra* para. 291.

¹³⁷⁹ Llapushnik/Lapušnik: *supra* para. 243. [REDACTED]: *supra* para. 307. Former MUP Building, Prizren: *supra* para. 315.

¹³⁸⁰ Likoc/Likovac: *supra* para. 235. Malishevë/Mališevo: *supra* para. 251. Bare and Bajgorë/Bajgora: *supra* para. 259. Zllash/Zlaš: *supra* para. 267. Kleçkë/Kleçka: *supra* para. 279. [REDACTED]: *supra* para. 283. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED]: *supra* para. 334. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338.

¹³⁸¹ Likoc/Likovac: *supra* para. 235. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Kleçkë/Kleçka: *supra* para. 279. [REDACTED]: *supra* para. 307.

forced to beat each other.¹³⁸² Others were subjected to mock executions,¹³⁸³ or were forced to watch the purported execution of others.¹³⁸⁴ Apprehended and/or detained individuals were routinely threatened to be killed.¹³⁸⁵

353. These acts and omissions resulted in severe pain and suffering for the apprehended and/or detained individuals, including severe bruising,¹³⁸⁶ bleeding,¹³⁸⁷ loss of consciousness,¹³⁸⁸ broken bones or teeth,¹³⁸⁹ inability to eat or

¹³⁸² Likoc/Likovac: *supra* para. 235. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Kukës *supra* para. 291. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338.

¹³⁸³ [REDACTED]. [REDACTED]: *supra* para. 307.

¹³⁸⁴ [REDACTED].

¹³⁸⁵ Likoc/Likovac: *supra* para. 235. Malishevë/Mališevo: *supra* para. 251. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 271. [REDACTED]: *supra* para. 275. Kleçkë/Klečka: *supra* para. 279. Cahan: *supra* para. 287. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. [REDACTED]: *supra* para. 334. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Novobërdë/Novo Brdo: *supra* para. 346.

¹³⁸⁶ Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. [REDACTED]: *supra* para. 256. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš: *supra* para. 268. [REDACTED]: *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. [REDACTED]: *supra* para. 284. Cahan: *supra* para. 288. Kukës: *supra* para. 292. [REDACTED]: *supra* para. 296. [REDACTED]: *supra* para. 304. [REDACTED]: *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. Former MUP Building, Prizren: *supra* para. 316. [REDACTED], Prizren: *supra* para. 320. [REDACTED], Prizren: *supra* para. 324. Ferizaj/Uroševac: *supra* para. 331. [REDACTED]: *supra* para. 335. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339. Former Police Station, Suharekë/Suva Reka: *supra* para. 343.

¹³⁸⁷ Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš: *supra* para. 268. [REDACTED]: *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. Cahan: *supra* para. 288. Kukës: *supra* para. 292. [REDACTED]: *supra* para. 296. [REDACTED]: *supra* para. 300. [REDACTED]: *supra* para. 304. [REDACTED]: *supra* para. 308. Former MUP Building, Prizren: *supra* para. 316. [REDACTED], Prizren: *supra* para. 320. [REDACTED], Prizren: *supra* para. 324. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

¹³⁸⁸ Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. [REDACTED]: *supra* para. 256. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš: *supra* para. 268. Kleçkë/Klečka: *supra* para. 280. Cahan: *supra* para. 288. Kukës: *supra* para. 292. [REDACTED]: *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. Former MUP Building, Prizren: *supra* para. 316. [REDACTED], Prizren: *supra* para. 324. Ferizaj/Uroševac: *supra* para. 331. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

¹³⁸⁹ Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš:

drink,¹³⁹⁰ inability to stand or walk,¹³⁹¹ as well as psychological and/or physical conditions that continued after the mistreatment.¹³⁹²

(b) Mental Element

354. The supporting material indicates the deliberate manner in which the apprehended and/or detained individuals were physically assaulted, the particularly brutal nature of the various forms of physical mistreatment, the types of objects used therefor, the death threats, the severe injuries caused as well as the escalation of the mistreatment despite the detainees' worsening condition. This demonstrates that at least some of the KLA members, partaking in the aforementioned acts and omissions, intended to inflict upon the individuals concerned severe pain and suffering.

355. Moreover, the supporting material indicates that this infliction was done for one or more of the following purposes: to obtain information or a confession; to punish, intimidate or coerce the mistreated individual or a third person; and/or to

supra para. 268. [REDACTED]; *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. Kukës: *supra* para. 292. [REDACTED]; *supra* para. 300. [REDACTED]; *supra* para. 304. [REDACTED]; *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. Former MUP Building, Prizren: *supra* para. 316. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

¹³⁹⁰ Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. [REDACTED]; *supra* para. 300.

¹³⁹¹ Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]; *supra* para. 264. Zllash/Zlaš: *supra* para. 268. Kleçkë/Klečka: *supra* para. 280. Cahan: *supra* para. 288. [REDACTED]; *supra* para. 300. [REDACTED], Prizren: *supra* para. 324. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

¹³⁹² Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Malishevë/Mališevo: *supra* para. 252. [REDACTED]; *supra* para. 256. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]; *supra* para. 264. Zllash/Zlaš: *supra* para. 268. [REDACTED]; *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. [REDACTED]; *supra* para. 284. Kukës: *supra* para. 292. [REDACTED]; *supra* para. 304. [REDACTED]; *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. [REDACTED], Prizren: *supra* para. 320. [REDACTED], Prizren: *supra* para. 324. Ferizaj/Uroševac: *supra* para. 331. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339. Novobërdë/Novo Brdo: *supra* para. 347.

discriminate against the mistreated individual or a third person, including on ethnic, religious and political grounds.

356. Accordingly, mistreated individuals were questioned about: (i) alleged spies or collaborators in their area of residence or in their work relations;¹³⁹³ (ii) their or their relatives' relations or interaction with such alleged spies or collaborators;¹³⁹⁴ (iii) their or their relatives' alleged collaboration with Serb authorities or their alleged friendship or interaction with Serbs;¹³⁹⁵ (iv) the activities or employees of the Serbian military or police;¹³⁹⁶ and/or (v) alleged crimes or other anti-KLA activities they or other individuals had carried out.¹³⁹⁷ Some of those mistreated were forced to confess about alleged crimes or anti-KLA activities;¹³⁹⁸ and/or to provide statements or information about themselves or other individuals.¹³⁹⁹

357. Mistreated individuals were punished because of: (i) their or their relatives' alleged collaboration with Serb authorities or their alleged friendship or interaction with Serbs;¹⁴⁰⁰ (ii) their or their relatives' alleged political affiliation to

¹³⁹³ Likoc/Likovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Former MUP Building, Prizren: [REDACTED].

¹³⁹⁴ Drenoc/Drenovac: [REDACTED]. Kleçkë/Klečka: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹³⁹⁵ Likoc/Likovac: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹³⁹⁶ Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. [REDACTED]: [REDACTED].

¹³⁹⁷ Bare and Bajgorë/Bajgora: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former Police Station in Suharekë/Suva Reka: [REDACTED].

¹³⁹⁸ Jabllanicë/Jablanica: IT-04-84bis P00119, p. 4256. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED].

¹³⁹⁹ Llapushnik/Lapušnik: 050951-050965, paras 5, 7-8 (050953-050954). Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED].

¹⁴⁰⁰ Likoc/Likovac: [REDACTED]. Jabllanicë/Jablanica: IT-04-84bis P00119, pp. 4249-4250, 4255-4256, 4265; [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

or sympathy towards the LDK;¹⁴⁰¹ (iii) not having joined or allegedly not supporting the KLA;¹⁴⁰² (iv) their current or former employment perceived as anti-KLA;¹⁴⁰³ and/or (v) crimes or other anti-KLA activities they or their relatives had carried out.¹⁴⁰⁴ Some of those mistreated individuals were intimidated or coerced with a view to: (i) providing weapons;¹⁴⁰⁵ (ii) beating other detainees;¹⁴⁰⁶ or (iii) performing other acts.¹⁴⁰⁷

358. Mistreated individuals were discriminated against on account of their or their relatives' ethnicity,¹⁴⁰⁸ religion¹⁴⁰⁹ and/or alleged political affiliation.¹⁴¹⁰

359. Furthermore, the supporting material indicates that Mr Thaçi, Mr Veseli and Mr Selimi personally participated in some of the aforementioned acts. In particular:

¹⁴⁰¹ Likoc/Likovac: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Cahan: [REDACTED]. [REDACTED]: [REDACTED].

¹⁴⁰² Likoc/Likovac: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹⁴⁰³ Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹⁴⁰⁴ Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹⁴⁰⁵ [REDACTED], Prizren: [REDACTED]. Ferizaj/Uroševac: [REDACTED]. [REDACTED]: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

¹⁴⁰⁶ Likoc/Likovac: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Kukës: [REDACTED]. Former Boarding School/Dormitory, Gjilan/Gnjilane: [REDACTED].

¹⁴⁰⁷ Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED].

¹⁴⁰⁸ Jabllanicë/Jablanica: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED]. Ferizaj/Uroševac: [REDACTED]. Former Boarding School/Dormitory, Gjilan/Gnjilane: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

¹⁴⁰⁹ Kukës: [REDACTED]. Former MUP Building, Prizren: [REDACTED].

¹⁴¹⁰ See *supra* fns 1401-1402.

- [REDACTED], Mr Selimi [REDACTED],¹⁴¹¹ [REDACTED].¹⁴¹²
- [REDACTED], Mr Thaçi [REDACTED].¹⁴¹³ [REDACTED].¹⁴¹⁴
[REDACTED].¹⁴¹⁵ [REDACTED].¹⁴¹⁶
- [REDACTED], Mr Selimi [REDACTED].¹⁴¹⁷ [REDACTED].¹⁴¹⁸
- [REDACTED], Mr Veseli [REDACTED].¹⁴¹⁹

(c) Conclusion

360. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that torture, a crime against humanity under Article 13(1)(f) of the Law and torture, a war crime under Article 14(1)(c)(i) of the Law, were committed against individuals apprehended and/or detained at detention locations indicated under Counts 4-5 between approximately April 1998 and August 1999.

¹⁴¹¹ Likoc/Likovac: [REDACTED].

¹⁴¹² Likoc/Likovac: *supra* para. 235.

¹⁴¹³ [REDACTED]: [REDACTED].

¹⁴¹⁴ [REDACTED]: [REDACTED].

¹⁴¹⁵ [REDACTED]: [REDACTED].

¹⁴¹⁶ [REDACTED]: [REDACTED].

¹⁴¹⁷ Kleçkë/Klečka: *supra* para. 279. [REDACTED].

¹⁴¹⁸ Kleçkë/Klečka: [REDACTED].

¹⁴¹⁹ Kukës: [REDACTED].

4. Counts 8 and 9: Murder

361. In the Revised Indictment, the SPO alleges that, during the Indictment Period, murder, a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against individuals in Kosovo and northern Albania following arrests or abductions, and at or in connection with detention sites indicated under Counts 4-5, as well as in the midst of KLA withdrawals after offensives by FRY forces in the locations set out below.¹⁴²⁰

(a) Material Elements

(i) *Likoc/Likovac*

362. The Pre-Trial Judge finds that the supporting material indicates that, in Likoc/Likovac, Skënderaj/Srbica municipality, KLA members killed: (i) [REDACTED] between [REDACTED] 1998; (ii) [REDACTED] in [REDACTED] 1998; and (iii) [REDACTED] around [REDACTED] 1999.

363. [REDACTED] 1998, six armed men abducted [REDACTED].¹⁴²¹ Several KLA members also abducted [REDACTED],¹⁴²² [REDACTED].¹⁴²³ [REDACTED] and taken to Likoc/Likovac.¹⁴²⁴ [REDACTED].¹⁴²⁵ [REDACTED].¹⁴²⁶ [REDACTED] at the KLA headquarters in Likoc/Likovac, KLA members severely beat the detainees, [REDACTED].¹⁴²⁷ After [REDACTED], some detainees [REDACTED] home.¹⁴²⁸

¹⁴²⁰ Revised Indictment, paras 137-171, 174 [68], Schedule B.

¹⁴²¹ [REDACTED].

¹⁴²² [REDACTED].

¹⁴²³ See *supra* para. 235 (Counts 4-5). [REDACTED].

¹⁴²⁴ [REDACTED].

¹⁴²⁵ [REDACTED].

¹⁴²⁶ [REDACTED].

¹⁴²⁷ [REDACTED].

¹⁴²⁸ [REDACTED].

[REDACTED].¹⁴²⁹ [REDACTED] were not released.¹⁴³⁰ [REDACTED], the bodies of [REDACTED] were found [REDACTED], in [REDACTED].¹⁴³¹ The corpses belonging to [REDACTED] had bullet holes [REDACTED] and exhibited signs of a brutal beating.¹⁴³² [REDACTED]'s corpses had [REDACTED] gunshot wounds [REDACTED].¹⁴³³ [REDACTED].¹⁴³⁴

364. [REDACTED] 1998, [REDACTED] was taken by uniformed KLA members to the KLA headquarters in Likoc/Likovac.¹⁴³⁵ He [REDACTED] was accused of being a spy and collaborating with Serbs.¹⁴³⁶ His body was found in [REDACTED].¹⁴³⁷ His corpse showed signs of multiple injuries: [REDACTED] bullets in [REDACTED], [REDACTED] bullets in [REDACTED], [REDACTED].¹⁴³⁸ [REDACTED] 1998, [REDACTED] was abducted and detained in Likoc/Likovac.¹⁴³⁹ [REDACTED].¹⁴⁴⁰

365. On [REDACTED] January 1999, four KLA members, [REDACTED], arrested [REDACTED],¹⁴⁴¹ and brought him to the KLA headquarters in Likoc/Likovac.¹⁴⁴² He was accused of collaborating with Serbs.¹⁴⁴³ [REDACTED].¹⁴⁴⁴ His remains have not been found.¹⁴⁴⁵

¹⁴²⁹ [REDACTED].

¹⁴³⁰ [REDACTED].

¹⁴³¹ [REDACTED].

¹⁴³² [REDACTED].

¹⁴³³ [REDACTED].

¹⁴³⁴ [REDACTED].

¹⁴³⁵ [REDACTED].

¹⁴³⁶ [REDACTED].

¹⁴³⁷ [REDACTED].

¹⁴³⁸ [REDACTED].

¹⁴³⁹ [REDACTED].

¹⁴⁴⁰ [REDACTED].

¹⁴⁴¹ [REDACTED].

¹⁴⁴² [REDACTED].

¹⁴⁴³ [REDACTED].

¹⁴⁴⁴ [REDACTED].

¹⁴⁴⁵ [REDACTED].

(ii) *Jabllanicë/Jablanica*

366. The Pre-Trial Judge finds that the supporting material indicates that, in Jabllanicë/Jablanica, Gjakovë/Đakovica municipality, KLA members killed: (i) [REDACTED] around or after [REDACTED] 1998; and (ii) [REDACTED] in [REDACTED] 1998 and [REDACTED] 1998, [REDACTED].

367. Around [REDACTED] 1998,¹⁴⁴⁶ [REDACTED] was brought to the KLA barracks compound in Jabllanicë/Jablanica by KLA members.¹⁴⁴⁷ [REDACTED].¹⁴⁴⁸ [REDACTED], KLA members, among them [REDACTED],¹⁴⁴⁹ started beating them.¹⁴⁵⁰ The beatings were [REDACTED] and [REDACTED], involving kicking, punching, and hitting them with a baseball bat,¹⁴⁵¹ [REDACTED].¹⁴⁵² [REDACTED] was very badly beaten [REDACTED].¹⁴⁵³ [REDACTED] never saw him again.¹⁴⁵⁴ [REDACTED].¹⁴⁵⁵ A missing persons report indicates that [REDACTED] was last seen in Jabllanicë/Jablanica on [REDACTED] 1998.¹⁴⁵⁶

368. In [REDACTED] 1998,¹⁴⁵⁷ [REDACTED] were detained [REDACTED] in the barracks compound in Jabllanicë/Jablanica, which was under the command of [REDACTED].¹⁴⁵⁸ [REDACTED] were in poor physical condition after having been badly beaten by KLA members.¹⁴⁵⁹ [REDACTED],¹⁴⁶⁰ [REDACTED].¹⁴⁶¹

¹⁴⁴⁶ [REDACTED].

¹⁴⁴⁷ [REDACTED].

¹⁴⁴⁸ *See supra* para. 143 (Counts 2-3). [REDACTED].

¹⁴⁴⁹ [REDACTED].

¹⁴⁵⁰ *See supra* para. 239 (Counts 4-5). [REDACTED].

¹⁴⁵¹ [REDACTED].

¹⁴⁵² [REDACTED].

¹⁴⁵³ [REDACTED].

¹⁴⁵⁴ [REDACTED].

¹⁴⁵⁵ [REDACTED].

¹⁴⁵⁶ IT-04-84 P01276, p. 1 (U015-4141).

¹⁴⁵⁷ [REDACTED]; IT-04-84bis P00119, p. 81 (4255).

¹⁴⁵⁸ IT-04-84bis P00119, pp. 4264-4265; [REDACTED].

¹⁴⁵⁹ *See supra* para. 239 (Counts 4-5). [REDACTED]; IT-04-84bis P00119, pp. 81-82 (4255-4256); [REDACTED].

¹⁴⁶⁰ [REDACTED].

¹⁴⁶¹ [REDACTED].

[REDACTED] were brutally beaten [REDACTED] by KLA members, [REDACTED].¹⁴⁶² After the beatings, [REDACTED] was in a bad condition.¹⁴⁶³ [REDACTED].¹⁴⁶⁴ A medical report indicates that [REDACTED] was disoriented, bruised, and swollen [REDACTED].¹⁴⁶⁵ [REDACTED].¹⁴⁶⁶ [REDACTED] 1998, [REDACTED].¹⁴⁶⁷ An autopsy report dated [REDACTED] 1998, indicates that a body, [REDACTED] identified through DNA testing as belonging to [REDACTED],¹⁴⁶⁸ was discovered [REDACTED] with a gunshot wound [REDACTED].¹⁴⁶⁹ [REDACTED].¹⁴⁷⁰

(iii) Llapushnik/Lapušnik

369. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed: (i) [REDACTED] in Llapushnik/Lapušnik, Drenas (Glogoc)/Glogovac municipality, [REDACTED] June 1998; and (ii) [REDACTED] near Llapushnik/Lapušnik, Drenas (Glogoc)/Glogovac municipality, on 25 or 26 July 1998.

370. On [REDACTED] June 1998,¹⁴⁷¹ [REDACTED], a detainee,¹⁴⁷² was brought into the yard of the Lapushnik/Lapušnik prison compound and was shot in the vicinity of the following KLA members: [REDACTED].¹⁴⁷³ [REDACTED].¹⁴⁷⁴ When it got dark, [REDACTED] removed [REDACTED]'s body from Llapushnik/Lapušnik

¹⁴⁶² [REDACTED].

¹⁴⁶³ [REDACTED].

¹⁴⁶⁴ [REDACTED]; IT-04-84bis P00082.

¹⁴⁶⁵ IT-04-84bis P00082.

¹⁴⁶⁶ [REDACTED].

¹⁴⁶⁷ [REDACTED].

¹⁴⁶⁸ IT-04-84bis P00428; [REDACTED].

¹⁴⁶⁹ IT-04-84bis P00484.E, pp. 2, 5-6.

¹⁴⁷⁰ IT-04-84 D166.E, pp. 1 and 20.

¹⁴⁷¹ IT-03-66 P183, p. 8 (U003-4908-U003-4908).

¹⁴⁷² *See supra* para. 243 (Counts 4-5). [REDACTED].

¹⁴⁷³ [REDACTED]. *See also* [REDACTED].

¹⁴⁷⁴ [REDACTED].

prison.¹⁴⁷⁵ [REDACTED]'s body was later seen on the roadside, [REDACTED], with [REDACTED] bullets in the chest.¹⁴⁷⁶

371. On 25 or 26 July 1998, the day of a Serb offensive against Llapushnik/Lapušnik,¹⁴⁷⁷ KLA members took approximately 30 detainees from the Llapushnik/Lapušnik prison compound through the Berishë/Beriša mountains.¹⁴⁷⁸ Upon reaching a nearby forest, [REDACTED],¹⁴⁷⁹ [REDACTED] KLA members released 20 detainees from this group of 30 and shot at the remaining 10 detainees with AK-47s, [REDACTED].¹⁴⁸⁰ The bodies of the executed detainees were left at the execution site.¹⁴⁸¹ [REDACTED].¹⁴⁸² The bodies of [REDACTED] were exhumed from [REDACTED] and the cause of death for [REDACTED] was determined to be gunshot wounds [REDACTED], while the cause of death for [REDACTED] could not be ascertained.¹⁴⁸³ [REDACTED],¹⁴⁸⁴ [REDACTED],¹⁴⁸⁵ [REDACTED],¹⁴⁸⁶ [REDACTED],¹⁴⁸⁷ [REDACTED],¹⁴⁸⁸ [REDACTED]¹⁴⁸⁹ [REDACTED].

¹⁴⁷⁵ [REDACTED].

¹⁴⁷⁶ [REDACTED]; IT-03-66 P183, pp. 9-11 (U003-4909-U003-4909, U003-4910-U003-4910, U003-4911-U003-4911).

¹⁴⁷⁷ IT-03-66 P245.1a, p. 1 (U008-7028-U008-7043).

¹⁴⁷⁸ [REDACTED].

¹⁴⁷⁹ [REDACTED].

¹⁴⁸⁰ [REDACTED].

¹⁴⁸¹ [REDACTED].

¹⁴⁸² [REDACTED].

¹⁴⁸³ IT-03-66 P111, U00079551-U0079600, pp. 2, 8 (U0079552, U0079558); [REDACTED]. IT-03-66 P111, 0323-2041-0323-2390, pp. 109 (0323-2041), 121 (0323-2215), 150 (0323-2244), 199 (0323-2293), 223 (0323-2317), 241 (0323-2335), 261 (0323-2355), 277 (0323-2371), 283 (0323-2377). DNA testing was used to identify the remains. *See* IT-03-66 P111, U0086010-U0086033, p. 74 (U0086033); IT-03-66 P112, U0086123-U0086138, pp. 18-19 (U0086127-0086128).

¹⁴⁸⁴ [REDACTED].

¹⁴⁸⁵ [REDACTED].

¹⁴⁸⁶ [REDACTED]; IT-03-66 P245.1a, pp. 1, 5-6.

¹⁴⁸⁷ [REDACTED].

¹⁴⁸⁸ [REDACTED].

¹⁴⁸⁹ [REDACTED], IT-03-66 P245.1a, pp. 1, 26. *See also* IT-03-66 P245.15a, pp. 1-2.

(iv) *Drenoc/Drenovac*

372. The Pre-Trial Judge finds that the supporting material indicates that, in Drenoc/Drenovac, Rahovec/Orahovac municipality, KLA members killed detainees: (i) [REDACTED] around or after [REDACTED] 1998; (ii) [REDACTED] around or after [REDACTED] 1998; (iii) [REDACTED] around or after [REDACTED] 1998; (iv) [REDACTED] in [REDACTED] 1998; (v) [REDACTED] around or after [REDACTED] 1998; and (vi) [REDACTED] around or after [REDACTED] 1998.

373. The KLA considered [REDACTED] to be collaborators.¹⁴⁹⁰ [REDACTED] was arrested and detained in the Drenoc/Drenovac school building on [REDACTED] 1998.¹⁴⁹¹ [REDACTED] beat the detainees.¹⁴⁹² [REDACTED] was beaten day and night.¹⁴⁹³ [REDACTED].¹⁴⁹⁴

374. [REDACTED] was considered a spy and collaborator.¹⁴⁹⁵ He was seen detained in the Drenoc/Drenovac school building¹⁴⁹⁶ and covered in blood.¹⁴⁹⁷ After 45 days in detention, he was killed by KLA members.¹⁴⁹⁸ [REDACTED].¹⁴⁹⁹

375. [REDACTED] were accused of being spies and collaborators.¹⁵⁰⁰ [REDACTED],¹⁵⁰¹ [REDACTED] on [REDACTED] 1998 [REDACTED] detained.¹⁵⁰² [REDACTED] severely beaten while detained.¹⁵⁰³ [REDACTED].¹⁵⁰⁴ On

¹⁴⁹⁰ [REDACTED].

¹⁴⁹¹ [REDACTED].

¹⁴⁹² [REDACTED].

¹⁴⁹³ See *supra* para. 247 (Counts 4-5). [REDACTED].

¹⁴⁹⁴ [REDACTED].

¹⁴⁹⁵ [REDACTED].

¹⁴⁹⁶ [REDACTED].

¹⁴⁹⁷ See *supra* para. 247 (Counts 4-5). [REDACTED].

¹⁴⁹⁸ [REDACTED].

¹⁴⁹⁹ [REDACTED].

¹⁵⁰⁰ [REDACTED].

¹⁵⁰¹ [REDACTED].

¹⁵⁰² [REDACTED].

¹⁵⁰³ See *supra* para. 247 (Counts 4-5). [REDACTED].

¹⁵⁰⁴ [REDACTED].

[REDACTED] 1998, [REDACTED] Drenoc/Drenovac [REDACTED].¹⁵⁰⁵
 [REDACTED].¹⁵⁰⁶ [REDACTED];¹⁵⁰⁷ [REDACTED] his family never saw or heard
 from him again.¹⁵⁰⁸ On or about [REDACTED] 1998, [REDACTED] forcibly
 removed from Drenoc/Drenovac [REDACTED].¹⁵⁰⁹ [REDACTED].¹⁵¹⁰
 [REDACTED].¹⁵¹¹ [REDACTED].¹⁵¹² [REDACTED];¹⁵¹³ [REDACTED].¹⁵¹⁴

376. KLA members arrested [REDACTED] and ultimately took him to
 Drenoc/Drenovac.¹⁵¹⁵ He was accused of being a spy.¹⁵¹⁶ KLA members could be
 heard shouting and swearing at [REDACTED].¹⁵¹⁷ [REDACTED].¹⁵¹⁸ Some of
 [REDACTED]'s remains were found in [REDACTED];¹⁵¹⁹ [REDACTED],¹⁵²⁰
 [REDACTED].¹⁵²¹ [REDACTED].¹⁵²²

377. [REDACTED] was arrested in [REDACTED] 1998 by KLA members
 [REDACTED].¹⁵²³ His family was told that he would be taken for interrogation and
 brought back.¹⁵²⁴ He was subsequently detained in Drenoc/Drenovac for

¹⁵⁰⁵ [REDACTED].

¹⁵⁰⁶ [REDACTED].

¹⁵⁰⁷ [REDACTED].

¹⁵⁰⁸ [REDACTED].

¹⁵⁰⁹ See *infra* para. 425 (Count 10). [REDACTED].

¹⁵¹⁰ [REDACTED].

¹⁵¹¹ See *infra* para. 425 (Count 10). [REDACTED].

¹⁵¹² See *infra* para. 426 (Count 10). [REDACTED].

¹⁵¹³ [REDACTED].

¹⁵¹⁴ [REDACTED].

¹⁵¹⁵ [REDACTED].

¹⁵¹⁶ [REDACTED].

¹⁵¹⁷ [REDACTED].

¹⁵¹⁸ [REDACTED].

¹⁵¹⁹ [REDACTED].

¹⁵²⁰ [REDACTED].

¹⁵²¹ [REDACTED].

¹⁵²² [REDACTED].

¹⁵²³ [REDACTED].

¹⁵²⁴ [REDACTED].

[REDACTED] days and severely beaten [REDACTED].¹⁵²⁵ [REDACTED].¹⁵²⁶ His remains were never found.¹⁵²⁷

378. Members of [REDACTED] KLA unit arrested [REDACTED] on [REDACTED] 1998 and handed him over to the KLA in Drenoc/Drenovac.¹⁵²⁸ He was suspected of being a collaborator.¹⁵²⁹ While in detention, [REDACTED] was badly beaten.¹⁵³⁰ [REDACTED]; he was badly beaten and covered in blood.¹⁵³¹ [REDACTED]'s remains were found in [REDACTED];¹⁵³² [REDACTED].¹⁵³³ [REDACTED].¹⁵³⁴

(v) Malishevë/Mališevo and Volljakë/Volujak Cave

379. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed: (i) [REDACTED] in Malishevë/Mališevo, in Malishevë/Mališevo municipality, on 18 or 19 July 1998; (ii) [REDACTED] in Malishevë/Mališevo and surroundings, Malishevë/Mališevo municipality, around or after 26 or 27 July 1998; and (iii) nine Serb males from Opterushë/Opteruša, 15 Serb males from Reti/Retimlje [REDACTED], in the Volljakë/Volujak Cave, Klinë/Klina municipality, on 26 or 27 July 1998.

380. [REDACTED],¹⁵³⁵ [REDACTED].¹⁵³⁶ In the evening of 18 or 19 July 1998,¹⁵³⁷ KLA members took out, in [REDACTED] separate groups, Serb detainees

¹⁵²⁵ See *supra* para. 247 (Counts 4-5). [REDACTED].

¹⁵²⁶ [REDACTED].

¹⁵²⁷ See *infra* para. 427 (Count 10). [REDACTED].

¹⁵²⁸ [REDACTED].

¹⁵²⁹ [REDACTED].

¹⁵³⁰ See *supra* para. 247 (Counts 4-5). [REDACTED].

¹⁵³¹ [REDACTED].

¹⁵³² See *infra* para. 428 (Count 10). [REDACTED].

¹⁵³³ [REDACTED].

¹⁵³⁴ [REDACTED].

¹⁵³⁵ [REDACTED].

¹⁵³⁶ [REDACTED].

¹⁵³⁷ [REDACTED].

[REDACTED].¹⁵³⁸ These Serb detainees included [REDACTED],¹⁵³⁹ [REDACTED].¹⁵⁴⁰ Each of the [REDACTED] groups were taken away in a [REDACTED] van by KLA members.¹⁵⁴¹ The detainees were taken into the woods, [REDACTED], and executed by masked KLA members [REDACTED].¹⁵⁴² Their bodies were buried [REDACTED].¹⁵⁴³ The remains of [REDACTED] individuals were found [REDACTED].¹⁵⁴⁴ [REDACTED] were identified as belonging to [REDACTED],¹⁵⁴⁵ [REDACTED],¹⁵⁴⁶ [REDACTED],¹⁵⁴⁷ [REDACTED],¹⁵⁴⁸ [REDACTED],¹⁵⁴⁹ [REDACTED],¹⁵⁵⁰ [REDACTED],¹⁵⁵¹ [REDACTED],¹⁵⁵² [REDACTED],¹⁵⁵³ [REDACTED],¹⁵⁵⁴ [REDACTED],¹⁵⁵⁵ [REDACTED].¹⁵⁵⁶ The cause of death for [REDACTED] was determined to be blunt force trauma [REDACTED].¹⁵⁵⁷ The cause of death for the remaining individuals included gunshot wounds [REDACTED].¹⁵⁵⁸

¹⁵³⁸ [REDACTED].

¹⁵³⁹ *See supra* para. 251 (Counts 4-5). [REDACTED].

¹⁵⁴⁰ *See supra* para. 251 (Counts 4-5). [REDACTED].

¹⁵⁴¹ [REDACTED].

¹⁵⁴² [REDACTED].

¹⁵⁴³ [REDACTED].

¹⁵⁴⁴ [REDACTED].

¹⁵⁴⁵ [REDACTED].

¹⁵⁴⁶ [REDACTED].

¹⁵⁴⁷ [REDACTED].

¹⁵⁴⁸ [REDACTED].

¹⁵⁴⁹ [REDACTED].

¹⁵⁵⁰ [REDACTED].

¹⁵⁵¹ [REDACTED].

¹⁵⁵² [REDACTED].

¹⁵⁵³ [REDACTED].

¹⁵⁵⁴ [REDACTED].

¹⁵⁵⁵ [REDACTED].

¹⁵⁵⁶ [REDACTED].

¹⁵⁵⁷ [REDACTED].

¹⁵⁵⁸ [REDACTED].

381. [REDACTED].¹⁵⁵⁹ [REDACTED].¹⁵⁶⁰ [REDACTED].¹⁵⁶¹ [REDACTED].¹⁵⁶² [REDACTED].¹⁵⁶³ [REDACTED].¹⁵⁶⁴ [REDACTED].¹⁵⁶⁵ The remains of [REDACTED] were found in [REDACTED].¹⁵⁶⁶ The cause of death for [REDACTED] could not be determined, [REDACTED].¹⁵⁶⁷ The cause of death for [REDACTED] was a gunshot wound [REDACTED].¹⁵⁶⁸ [REDACTED].¹⁵⁶⁹

382. On 18 July 1998, KLA units attacked the villages of Optrushë/Opteraša, Reti/Retimlje, and Zoçisht/Zoçište.¹⁵⁷⁰ The Serb villagers surrendered to the KLA.¹⁵⁷¹ KLA members then took [REDACTED] to [REDACTED] where [REDACTED] were beaten.¹⁵⁷² [REDACTED], *inter alia*, [REDACTED].¹⁵⁷³ After [REDACTED] were detained by the KLA in Drenoc/Drenovac before being transferred to Malishevë/Mališevo.¹⁵⁷⁴

383. The village of Reti/Retimlje [REDACTED].¹⁵⁷⁵ On 18 July 1998, [REDACTED].¹⁵⁷⁶ KLA soldiers ordered [REDACTED] get on [REDACTED]¹⁵⁷⁷ including [REDACTED].¹⁵⁷⁸ [REDACTED] drove towards Drenoc/Drenovac.¹⁵⁷⁹

¹⁵⁵⁹ [REDACTED].

¹⁵⁶⁰ [REDACTED].

¹⁵⁶¹ *See supra* paras 247, 251 (Counts 4-5). [REDACTED].

¹⁵⁶² [REDACTED].

¹⁵⁶³ [REDACTED].

¹⁵⁶⁴ [REDACTED].

¹⁵⁶⁵ [REDACTED].

¹⁵⁶⁶ [REDACTED].

¹⁵⁶⁷ [REDACTED].

¹⁵⁶⁸ [REDACTED].

¹⁵⁶⁹ [REDACTED].

¹⁵⁷⁰ [REDACTED].

¹⁵⁷¹ [REDACTED].

¹⁵⁷² [REDACTED].

¹⁵⁷³ [REDACTED].

¹⁵⁷⁴ [REDACTED].

¹⁵⁷⁵ [REDACTED].

¹⁵⁷⁶ [REDACTED].

¹⁵⁷⁷ [REDACTED].

¹⁵⁷⁸ [REDACTED].

¹⁵⁷⁹ [REDACTED].

The [REDACTED] KLA unit, [REDACTED], brought [REDACTED] detainees from Drenoc/Drenovac to Malishevë/Mališevo.¹⁵⁸⁰

384. Around the time of the Serb offensive in Lapushnik/Lapušnik, and as part of the emptying of the Malishevë/Mališevo prison, which was completed on 28 July 1998, the detainees who had arrived from Drenoc/Drenovac were [REDACTED],¹⁵⁸¹ [REDACTED].¹⁵⁸² [REDACTED].¹⁵⁸³ [REDACTED].¹⁵⁸⁴ [REDACTED] transferred [REDACTED], whereupon they were brought to a location between [REDACTED] and Volljakë/Volujak and all executed; [REDACTED].¹⁵⁸⁵

385. [REDACTED]¹⁵⁸⁶ [REDACTED].¹⁵⁸⁷ [REDACTED],¹⁵⁸⁸ [REDACTED],¹⁵⁸⁹
 [REDACTED].¹⁵⁹⁰ [REDACTED].¹⁵⁹¹ [REDACTED].¹⁵⁹² [REDACTED].¹⁵⁹³
 [REDACTED],¹⁵⁹⁴ [REDACTED],¹⁵⁹⁵ [REDACTED],¹⁵⁹⁶ [REDACTED],¹⁵⁹⁷

1580 [REDACTED].

1581 [REDACTED].

1582 [REDACTED].

1583 [REDACTED].

1584 [REDACTED].

1585 [REDACTED].

1586 [REDACTED].

1587 [REDACTED].

1588 [REDACTED].

1589 [REDACTED].

1590 [REDACTED].

1591 [REDACTED].

1592 [REDACTED].

1593 [REDACTED].

1594 [REDACTED].

1595 [REDACTED].

1596 [REDACTED].

1597 [REDACTED].

[REDACTED],¹⁵⁹⁸ [REDACTED],¹⁵⁹⁹ [REDACTED].¹⁶⁰⁰ [REDACTED],¹⁶⁰¹
 [REDACTED].¹⁶⁰² [REDACTED].¹⁶⁰³ [REDACTED].¹⁶⁰⁴

(vi) Bajgorë/Bajgora

386. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in Bajgorë/Bajgora, Podujevë/Podujevo municipality, around or after 30 August 1998.

387. [REDACTED]'s name was on a list of persons suspected as co-operating or associating with Serbs.¹⁶⁰⁵ He was subsequently detained in [REDACTED] Bajgorë/Bajgora,¹⁶⁰⁶ [REDACTED].¹⁶⁰⁷ While detained, [REDACTED] was described as being in a bad state, [REDACTED].¹⁶⁰⁸ [REDACTED],¹⁶⁰⁹ [REDACTED].¹⁶¹⁰ [REDACTED].¹⁶¹¹ A KLA member [REDACTED] telling [REDACTED] that he had [REDACTED] to admit that he had been collaborating with Serbs or he would be killed.¹⁶¹² [REDACTED].¹⁶¹³ [REDACTED].¹⁶¹⁴ He was never seen at the Bajgorë/Bajgora detention centre again.¹⁶¹⁵ Thereafter, [REDACTED] his remains

¹⁵⁹⁸ [REDACTED].

¹⁵⁹⁹ [REDACTED].

¹⁶⁰⁰ [REDACTED].

¹⁶⁰¹ [REDACTED].

¹⁶⁰² [REDACTED].

¹⁶⁰³ [REDACTED].

¹⁶⁰⁴ [REDACTED].

¹⁶⁰⁵ [REDACTED].

¹⁶⁰⁶ [REDACTED].

¹⁶⁰⁷ [REDACTED].

¹⁶⁰⁸ [REDACTED].

¹⁶⁰⁹ [REDACTED].

¹⁶¹⁰ [REDACTED].

¹⁶¹¹ [REDACTED].

¹⁶¹² [REDACTED].

¹⁶¹³ [REDACTED].

¹⁶¹⁴ [REDACTED].

¹⁶¹⁵ [REDACTED].

were recovered.¹⁶¹⁶ An autopsy of [REDACTED]'s remains determined the cause of death to be blunt force trauma [REDACTED].¹⁶¹⁷ [REDACTED].¹⁶¹⁸ [REDACTED].¹⁶¹⁹

(vii) Majac/Majance

388. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in Majac/Majance, Podujevë/Podujevo municipality, in early April 1999.

389. [REDACTED],¹⁶²⁰ [REDACTED],¹⁶²¹ [REDACTED]¹⁶²² were detained in Llapashticë/Lapaštica¹⁶²³ and Majac/Majance.¹⁶²⁴ [REDACTED],¹⁶²⁵ [REDACTED],¹⁶²⁶ [REDACTED]¹⁶²⁷ were beaten and mistreated during their detention.¹⁶²⁸ [REDACTED] ([REDACTED]¹⁶²⁹ [REDACTED]¹⁶³⁰), [REDACTED].¹⁶³¹ [REDACTED].¹⁶³² [REDACTED].¹⁶³³ [REDACTED].¹⁶³⁴ [REDACTED] the bodies

¹⁶¹⁶ [REDACTED].

¹⁶¹⁷ [REDACTED].

¹⁶¹⁸ [REDACTED].

¹⁶¹⁹ [REDACTED].

¹⁶²⁰ [REDACTED].

¹⁶²¹ [REDACTED].

¹⁶²² [REDACTED].

¹⁶²³ See *supra* para. 162 (Counts 2-3). [REDACTED].

¹⁶²⁴ [REDACTED].

¹⁶²⁵ [REDACTED].

¹⁶²⁶ [REDACTED].

¹⁶²⁷ [REDACTED].

¹⁶²⁸ See *supra* para. 263 (Counts 4-5).

¹⁶²⁹ [REDACTED].

¹⁶³⁰ [REDACTED].

¹⁶³¹ [REDACTED].

¹⁶³² [REDACTED].

¹⁶³³ [REDACTED].

¹⁶³⁴ [REDACTED].

[REDACTED] found [REDACTED].¹⁶³⁵ [REDACTED].¹⁶³⁶ [REDACTED].¹⁶³⁷
[REDACTED].¹⁶³⁸

(viii) Potok

390. The Pre-Trial Judge finds that the supporting material indicates that [REDACTED] were killed in Potok, Podujevë/Podujevo municipality, in early April 1999.

391. [REDACTED] had been detained in Llapashticë/Lapaštica by the KLA;¹⁶³⁹ [REDACTED].¹⁶⁴⁰ Their names were on a list [REDACTED].¹⁶⁴¹ [REDACTED] were continuously interrogated during their detention.¹⁶⁴² [REDACTED] was beaten while detained.¹⁶⁴³ [REDACTED].¹⁶⁴⁴ [REDACTED];¹⁶⁴⁵ [REDACTED].¹⁶⁴⁶ [REDACTED]'s remains were found [REDACTED].¹⁶⁴⁷ [REDACTED].¹⁶⁴⁸ [REDACTED].¹⁶⁴⁹

¹⁶³⁵ [REDACTED].

¹⁶³⁶ [REDACTED].

¹⁶³⁷ [REDACTED].

¹⁶³⁸ [REDACTED].

¹⁶³⁹ *See supra* para. 162 (Counts 2-3). [REDACTED].

¹⁶⁴⁰ [REDACTED].

¹⁶⁴¹ [REDACTED].

¹⁶⁴² [REDACTED].

¹⁶⁴³ *See supra* para. 263 (Counts 4-5). [REDACTED].

¹⁶⁴⁴ [REDACTED].

¹⁶⁴⁵ [REDACTED].

¹⁶⁴⁶ [REDACTED].

¹⁶⁴⁷ [REDACTED].

¹⁶⁴⁸ [REDACTED].

¹⁶⁴⁹ [REDACTED].

(ix) [REDACTED]

392. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed an unidentified Roma man in [REDACTED], Podujevë/Podujevo municipality, around late March or the beginning of April 1999.

393. Around the end of March 1999 or the beginning of April 1999, a Roma man arrived in the village of [REDACTED].¹⁶⁵⁰ The KLA military police and the KLA [REDACTED], were stationed in [REDACTED].¹⁶⁵¹ The Roma man was kept tied up in the middle of the village¹⁶⁵² and [REDACTED] was abused by KLA members and civilians; [REDACTED].¹⁶⁵³ [REDACTED].¹⁶⁵⁴ [REDACTED], shooting and killing him on Latif Gashi's orders; his body was left where he had been struck down by gunfire.¹⁶⁵⁵ [REDACTED].¹⁶⁵⁶

(x) *Zllash/Zlaš*

394. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in Zllash/Žlaš, Prishtinë/Priština municipality, between approximately 19 and around the end of April 1999.

395. [REDACTED], detained at the Zllash/Zlaš detention compound by KLA members,¹⁶⁵⁷ was mistreated [REDACTED].¹⁶⁵⁸ [REDACTED].¹⁶⁵⁹ [REDACTED].¹⁶⁶⁰

¹⁶⁵⁰ [REDACTED].

¹⁶⁵¹ [REDACTED].

¹⁶⁵² [REDACTED].

¹⁶⁵³ [REDACTED].

¹⁶⁵⁴ [REDACTED].

¹⁶⁵⁵ [REDACTED].

¹⁶⁵⁶ [REDACTED].

¹⁶⁵⁷ See *supra* para. 165 (Counts 2-3), para. 267 (Counts 4-5). [REDACTED].

¹⁶⁵⁸ See *supra* para. 267 (Counts 4-5). [REDACTED].

¹⁶⁵⁹ [REDACTED].

¹⁶⁶⁰ [REDACTED].

[REDACTED].¹⁶⁶¹ His body was discovered [REDACTED].¹⁶⁶² [REDACTED].¹⁶⁶³
 [REDACTED].¹⁶⁶⁴ His body showed a bullet hole [REDACTED] and signs of
 mistreatment, [REDACTED].¹⁶⁶⁵

(xi) Klečkë/Klečka

396. The Pre-Trial Judge finds that the supporting material indicates that, in Klečkë/Klečka, Lipjan/Lipljan municipality, KLA members killed: (i) [REDACTED] on 3 April 1999; (ii) [REDACTED] on [REDACTED] 1999; (iii) [REDACTED] on 5 April 1999; (iv) [REDACTED] on 5 April 1999; and (v) [REDACTED] around April 1999.

397. [REDACTED] was detained in Klečkë/Klečka prison from 21 March 1999 to 2 April 1999.¹⁶⁶⁶ One day after he was released, [REDACTED] was arrested again and killed near Klečkë/Klečka village.¹⁶⁶⁷ KLA members [REDACTED]¹⁶⁶⁸ shot at him with their AK 47s.¹⁶⁶⁹ [REDACTED]¹⁶⁷⁰ [REDACTED] were also present during the killing of [REDACTED].¹⁶⁷¹

398. KLA members arrested [REDACTED] on [REDACTED] 1999 [REDACTED].¹⁶⁷² [REDACTED] detained in a house and beaten, [REDACTED]

¹⁶⁶¹ [REDACTED].

¹⁶⁶² [REDACTED].

¹⁶⁶³ [REDACTED].

¹⁶⁶⁴ [REDACTED].

¹⁶⁶⁵ [REDACTED].

¹⁶⁶⁶ [REDACTED].

¹⁶⁶⁷ [REDACTED].

¹⁶⁶⁸ [REDACTED].

¹⁶⁶⁹ [REDACTED].

¹⁶⁷⁰ [REDACTED].

¹⁶⁷¹ [REDACTED].

¹⁶⁷² [REDACTED].

screams could be heard by other detainees.¹⁶⁷³ [REDACTED].¹⁶⁷⁴ [REDACTED].¹⁶⁷⁵
[REDACTED].¹⁶⁷⁶ [REDACTED].¹⁶⁷⁷ [REDACTED].¹⁶⁷⁸ [REDACTED].¹⁶⁷⁹

399. [REDACTED] were detained by the KLA in Kleçkë/Klečka until 3 or 5 April 1999.¹⁶⁸⁰ On the orders of Fatmir Limaj, KLA members¹⁶⁸¹ took [REDACTED] towards the mountains and killed them with their AK 47.¹⁶⁸² [REDACTED].¹⁶⁸³

400. KLA members [REDACTED]¹⁶⁸⁴ took [REDACTED] to Kleçkë/Klečka around 9 February 1999.¹⁶⁸⁵ [REDACTED] were kept in burned houses in Kleçkë/Klečka where they were questioned and slapped around every [REDACTED] by [REDACTED] KLA members.¹⁶⁸⁶ On 5 April 1999, [REDACTED] were taken to [REDACTED] and executed by the Kleçkë/Klečka prison warden on the orders of Fatmir Limaj,¹⁶⁸⁷ in the presence of Fatmir Limaj and other KLA members.¹⁶⁸⁸ [REDACTED] were buried [REDACTED].¹⁶⁸⁹ [REDACTED].¹⁶⁹⁰ [REDACTED].¹⁶⁹¹ [REDACTED].¹⁶⁹²

¹⁶⁷³ See *supra* para. 279 (Counts 4-5). [REDACTED].

¹⁶⁷⁴ [REDACTED].

¹⁶⁷⁵ [REDACTED].

¹⁶⁷⁶ [REDACTED].

¹⁶⁷⁷ [REDACTED].

¹⁶⁷⁸ [REDACTED].

¹⁶⁷⁹ [REDACTED].

¹⁶⁸⁰ [REDACTED].

¹⁶⁸¹ [REDACTED].

¹⁶⁸² [REDACTED].

¹⁶⁸³ [REDACTED].

¹⁶⁸⁴ [REDACTED].

¹⁶⁸⁵ [REDACTED].

¹⁶⁸⁶ [REDACTED].

¹⁶⁸⁷ [REDACTED].

¹⁶⁸⁸ [REDACTED].

¹⁶⁸⁹ [REDACTED].

¹⁶⁹⁰ [REDACTED].

¹⁶⁹¹ [REDACTED].

¹⁶⁹² [REDACTED].

401. On 11 April 1999, KLA members intercepted [REDACTED],¹⁶⁹³ transported and held them in a burned house in Klečkë/Klečka.¹⁶⁹⁴ KLA members [REDACTED] took [REDACTED], to a nearby field [REDACTED].¹⁶⁹⁵ [REDACTED].¹⁶⁹⁶ Shortly after being taken to the field, shots were heard from Kalashnikovs.¹⁶⁹⁷ [REDACTED].¹⁶⁹⁸ [REDACTED].¹⁶⁹⁹ [REDACTED].¹⁷⁰⁰ KLA members [REDACTED].¹⁷⁰¹ [REDACTED].¹⁷⁰² [REDACTED].¹⁷⁰³ [REDACTED] the remains [REDACTED],¹⁷⁰⁴ [REDACTED],¹⁷⁰⁵ [REDACTED],¹⁷⁰⁶ [REDACTED],¹⁷⁰⁷ [REDACTED]¹⁷⁰⁸ were found.¹⁷⁰⁹ [REDACTED].¹⁷¹⁰ [REDACTED].¹⁷¹¹

(xii) [REDACTED]

402. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in [REDACTED], Ferizaj/Uroševac municipality, around [REDACTED] 1999.

403. [REDACTED] had been in KLA custody since beginning of [REDACTED] 1999 [REDACTED].¹⁷¹² [REDACTED], they were taken to

¹⁶⁹³ [REDACTED].

¹⁶⁹⁴ *See supra* para. 279 (Counts 4-5). [REDACTED].

¹⁶⁹⁵ [REDACTED].

¹⁶⁹⁶ [REDACTED].

¹⁶⁹⁷ [REDACTED].

¹⁶⁹⁸ [REDACTED].

¹⁶⁹⁹ [REDACTED].

¹⁷⁰⁰ [REDACTED].

¹⁷⁰¹ [REDACTED].

¹⁷⁰² [REDACTED].

¹⁷⁰³ [REDACTED].

¹⁷⁰⁴ [REDACTED].

¹⁷⁰⁵ [REDACTED].

¹⁷⁰⁶ [REDACTED].

¹⁷⁰⁷ [REDACTED].

¹⁷⁰⁸ [REDACTED].

¹⁷⁰⁹ [REDACTED].

¹⁷¹⁰ [REDACTED].

¹⁷¹¹ [REDACTED].

¹⁷¹² *See supra* para. 178 (Counts 2-3), para. 283 (Counts 4-5).

[REDACTED] Ferizaj/Uroševac.¹⁷¹³ The detainees were beaten by [REDACTED] and then left locked in [REDACTED].¹⁷¹⁴ [REDACTED].¹⁷¹⁵ [REDACTED] KLA members¹⁷¹⁶ [REDACTED]¹⁷¹⁷ [REDACTED] took the detainees, [REDACTED], out of the room in which they were being held and beat them.¹⁷¹⁸ [REDACTED].¹⁷¹⁹ [REDACTED].¹⁷²⁰ [REDACTED].¹⁷²¹ [REDACTED] were never seen again.¹⁷²²

(xiii) Kukës, Albania

404. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] at the Kukës Metal Factory in Kukës, Albania, on [REDACTED].

405. On or about 3 June 1999, KLA members, [REDACTED], beat [REDACTED] and shot at him with automatic weapons.¹⁷²³ On or about 4 June 1999, certain KLA members, [REDACTED],¹⁷²⁴ shot and wounded him,¹⁷²⁵ [REDACTED].¹⁷²⁶ [REDACTED].¹⁷²⁷ [REDACTED]¹⁷²⁸ [REDACTED],¹⁷²⁹ [REDACTED].¹⁷³⁰ [REDACTED] died [REDACTED] of being shot.¹⁷³¹

¹⁷¹³ [REDACTED].

¹⁷¹⁴ [REDACTED].

¹⁷¹⁵ [REDACTED].

¹⁷¹⁶ [REDACTED].

¹⁷¹⁷ [REDACTED].

¹⁷¹⁸ [REDACTED].

¹⁷¹⁹ [REDACTED].

¹⁷²⁰ [REDACTED].

¹⁷²¹ [REDACTED].

¹⁷²² See *infra* para. 434 (Count 10). [REDACTED].

¹⁷²³ See *supra* para. 291 (Counts 4-5). [REDACTED].

¹⁷²⁴ [REDACTED].

¹⁷²⁵ [REDACTED].

¹⁷²⁶ [REDACTED].

¹⁷²⁷ [REDACTED].

¹⁷²⁸ [REDACTED].

¹⁷²⁹ [REDACTED].

¹⁷³⁰ [REDACTED].

¹⁷³¹ [REDACTED].

(xiv) Former MUP Building, Prizren

406. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in the former MUP building in Prizren, in Prizren municipality, on 17 or 18 June 1999.

407. [REDACTED],¹⁷³² [REDACTED].¹⁷³³ On 17 June 1999, he was taken by two KLA members to the former MUP building for questioning.¹⁷³⁴ A day later, he was found deceased [REDACTED] in [REDACTED] the former MUP building, [REDACTED].¹⁷³⁵ The approximate date of his death was determined to be 18 June 1999 or earlier.¹⁷³⁶ [REDACTED]¹⁷³⁷ [REDACTED] his body had welts and bruises [REDACTED].¹⁷³⁸ [REDACTED].¹⁷³⁹ [REDACTED].¹⁷⁴⁰

(xv) Rahovec/Orahovac

408. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed: (i) [REDACTED], in Rahovec/Orahovac municipality, around or after [REDACTED]; (ii) [REDACTED], Rahovec/Orahovac municipality, around or after [REDACTED] June 1999; and (iii) [REDACTED], in Rahovec/Orahovac municipality, around or after [REDACTED].

409. On [REDACTED],¹⁷⁴¹ [REDACTED] armed KLA members, [REDACTED], went to [REDACTED]'s apartment,¹⁷⁴² demanded that he hand over weapons¹⁷⁴³

¹⁷³² [REDACTED].

¹⁷³³ [REDACTED].

¹⁷³⁴ [REDACTED].

¹⁷³⁵ See *supra* para. 315 (Counts 4-5). [REDACTED].

¹⁷³⁶ [REDACTED].

¹⁷³⁷ [REDACTED].

¹⁷³⁸ [REDACTED].

¹⁷³⁹ [REDACTED].

¹⁷⁴⁰ [REDACTED].

¹⁷⁴¹ [REDACTED].

¹⁷⁴² [REDACTED].

¹⁷⁴³ [REDACTED].

and beat him.¹⁷⁴⁴ After seising weapons,¹⁷⁴⁵ they pushed around [REDACTED], pointed their rifles at him and took him away,¹⁷⁴⁶ alleging they were taking him to [REDACTED] for questioning and would bring him back.¹⁷⁴⁷ [REDACTED], however, was never seen again¹⁷⁴⁸ and is presumed dead.¹⁷⁴⁹ [REDACTED] was beaten¹⁷⁵⁰ and forcefully taken¹⁷⁵¹ by [REDACTED] armed¹⁷⁵² KLA members, [REDACTED],¹⁷⁵³ from his house in Rahovec/Orahovac¹⁷⁵⁴ on [REDACTED].¹⁷⁵⁵ The remaining KLA members set his house on fire.¹⁷⁵⁶ [REDACTED]'s remains were found [REDACTED].¹⁷⁵⁷

410. Around or after [REDACTED] June 1999, [REDACTED] armed men in masks and black camouflage KLA uniforms assaulted [REDACTED] at his house in Rahovec/Orahovac.¹⁷⁵⁸ He was then taken away by two armed and uniformed KLA members who said [REDACTED] that they needed to take [REDACTED] to [REDACTED] and they would bring him back in 15 minutes.¹⁷⁵⁹ [REDACTED] was never seen again.¹⁷⁶⁰

411. On [REDACTED] 1999,¹⁷⁶¹ [REDACTED] was abducted from his home in Rahovec/Orahovac by [REDACTED] armed KLA members in black uniforms with

¹⁷⁴⁴ See *supra* para. 326 (Counts 4-5). [REDACTED].

¹⁷⁴⁵ [REDACTED].

¹⁷⁴⁶ [REDACTED].

¹⁷⁴⁷ [REDACTED].

¹⁷⁴⁸ [REDACTED].

¹⁷⁴⁹ [REDACTED].

¹⁷⁵⁰ [REDACTED].

¹⁷⁵¹ [REDACTED].

¹⁷⁵² [REDACTED].

¹⁷⁵³ [REDACTED].

¹⁷⁵⁴ [REDACTED].

¹⁷⁵⁵ See *supra* para. 326 (Counts 4-5). [REDACTED].

¹⁷⁵⁶ [REDACTED].

¹⁷⁵⁷ [REDACTED].

¹⁷⁵⁸ [REDACTED].

¹⁷⁵⁹ [REDACTED].

¹⁷⁶⁰ [REDACTED].

¹⁷⁶¹ [REDACTED].

[REDACTED] symbol with a red eagle on their sleeves.¹⁷⁶² [REDACTED].¹⁷⁶³ One of the KLA members [REDACTED] introduced himself as leader of the group in Albanian;¹⁷⁶⁴ [REDACTED].¹⁷⁶⁵ [REDACTED] was told that he would be taken to [REDACTED] for an informative conversation and then brought back.¹⁷⁶⁶ When [REDACTED] objected to the abduction, they were pushed around and some of their property was damaged by the KLA members.¹⁷⁶⁷ In the [REDACTED] days following [REDACTED]'s abduction, the KLA members [REDACTED].¹⁷⁶⁸ [REDACTED].¹⁷⁶⁹ [REDACTED].¹⁷⁷⁰ [REDACTED] remains were never found.¹⁷⁷¹

(xvi) [REDACTED]

412. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in [REDACTED], Ferizaj/Uroševac municipality, around or after [REDACTED] 1999.

413. On [REDACTED] 1999, [REDACTED] was taken [REDACTED] to [REDACTED] by a dozen KLA members; he was told that he had to be sent to [REDACTED] for a conversation.¹⁷⁷² [REDACTED] KLA [REDACTED]

¹⁷⁶² See *supra* para. 326 (Counts 4-5). [REDACTED].

¹⁷⁶³ [REDACTED].

¹⁷⁶⁴ [REDACTED].

¹⁷⁶⁵ [REDACTED].

¹⁷⁶⁶ [REDACTED].

¹⁷⁶⁷ [REDACTED].

¹⁷⁶⁸ [REDACTED].

¹⁷⁶⁹ [REDACTED].

¹⁷⁷⁰ [REDACTED].

¹⁷⁷¹ [REDACTED].

¹⁷⁷² [REDACTED].

interrogated [REDACTED].¹⁷⁷³ [REDACTED].¹⁷⁷⁴ [REDACTED].¹⁷⁷⁵
 [REDACTED].¹⁷⁷⁶ [REDACTED] was never seen again.¹⁷⁷⁷

(xvii) [REDACTED]

414. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed an unidentified elderly Serb man in [REDACTED], Prishtinë/Priština municipality, in July or August 1999.

415. In July or August 1999, KLA member [REDACTED], drove a [REDACTED] old Serb man to [REDACTED], located in [REDACTED].¹⁷⁷⁸ Upon arrival at [REDACTED], it could be seen that the elderly Serb man had been badly beaten.¹⁷⁷⁹ The man was brought in because he was a Serb and kept at [REDACTED] for [REDACTED] days.¹⁷⁸⁰ He was beaten during this time by KLA members, [REDACTED] and another KLA member from [REDACTED].¹⁷⁸¹ [REDACTED].¹⁷⁸² [REDACTED], the decision was taken that the elderly Serb man should be killed in order to prevent discovery of the abuse that had been inflicted on him.¹⁷⁸³ [REDACTED].¹⁷⁸⁴ KLA members [REDACTED] carried out the killing [REDACTED].¹⁷⁸⁵ The elderly Serb man was buried by [REDACTED] KLA members [REDACTED].¹⁷⁸⁶

¹⁷⁷³ [REDACTED].

¹⁷⁷⁴ [REDACTED].

¹⁷⁷⁵ [REDACTED].

¹⁷⁷⁶ [REDACTED].

¹⁷⁷⁷ [REDACTED].

¹⁷⁷⁸ See *supra* para. 227 (Counts 2-3). [REDACTED].

¹⁷⁷⁹ [REDACTED].

¹⁷⁸⁰ [REDACTED].

¹⁷⁸¹ [REDACTED].

¹⁷⁸² [REDACTED].

¹⁷⁸³ [REDACTED].

¹⁷⁸⁴ [REDACTED].

¹⁷⁸⁵ [REDACTED].

¹⁷⁸⁶ [REDACTED].

(b) Mental Element

416. Regarding the mental element of the crime, the supporting material indicates the deliberate manner in which the individuals in KLA custody were mistreated and executed, also considering the degree of violence and type of instruments used in the physical assault;¹⁷⁸⁷ the refusal to provide medical treatment despite requests from the victims, fellow detainees, family members or advice from doctors;¹⁷⁸⁸ the acknowledgment of killings by KLA members¹⁷⁸⁹ and other statements regarding liquidation;¹⁷⁹⁰ the circumstances of the victims' abductions and their non-release from KLA custody;¹⁷⁹¹ the circumstances of the victims' death or when they were last seen;¹⁷⁹² and the refusal by KLA members to disclose the whereabouts of the victims to their families.¹⁷⁹³ This demonstrates that KLA members involved in the aforementioned acts and omissions meant to kill or at least wilfully cause serious injury or grievous bodily harm, which they should reasonably have known might lead to the victims' deaths.

(c) Conclusion

417. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that murder, as a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against individuals apprehended and/or detained at the

¹⁷⁸⁷ [REDACTED]; IT-04-84bis P484.E, pp. 2, 5-6 ([REDACTED]); [REDACTED].

¹⁷⁸⁸ [REDACTED].

¹⁷⁸⁹ [REDACTED].

¹⁷⁹⁰ [REDACTED]; IT-04-84bis P119, p. 81 (4255); [REDACTED].

¹⁷⁹¹ [REDACTED].

¹⁷⁹² [REDACTED].

¹⁷⁹³ [REDACTED].

aforementioned locations throughout Kosovo and northern Albania between approximately April 1998 and August 1999.

5. Count 10: Enforced Disappearance of Persons

418. In the Revised Indictment, the SPO alleges that, during the Indictment Period, enforced disappearance as a crime against humanity under Article 13(1)(i) of the Law, was committed against individuals following arrests or abductions, and at or in connection with detention sites in the locations set out below.¹⁷⁹⁴

(a) Material Elements

(i) *Likoc/Likovac*

419. The Pre-Trial Judge finds that the supporting material indicates that, in Likoc/Likovac, Skënderaj/Srbica municipality, KLA members caused the enforced disappearance of: (i) [REDACTED] on [REDACTED] 1998; and (ii) [REDACTED] in January 1999.

420. While some detainees were released from KLA custody on [REDACTED] 1998, [REDACTED], and [REDACTED] were held back.¹⁷⁹⁵ [REDACTED] later, [REDACTED] went to Likoc/Likovac to speak to KLA member [REDACTED] about the whereabouts of [REDACTED],¹⁷⁹⁶ [REDACTED].¹⁷⁹⁷ KLA member [REDACTED] told them that [REDACTED] were in [REDACTED].¹⁷⁹⁸ [REDACTED].¹⁷⁹⁹ [REDACTED], the bodies of the [REDACTED] missing men were

¹⁷⁹⁴ Revised Indictment, paras 172, 174 [68], Schedule C.

¹⁷⁹⁵ See *supra* para. 235 (Counts 4-5), para. 363 (Counts 8-9).

¹⁷⁹⁶ [REDACTED].

¹⁷⁹⁷ [REDACTED].

¹⁷⁹⁸ [REDACTED].

¹⁷⁹⁹ [REDACTED].

found [REDACTED].¹⁸⁰⁰ While the [REDACTED] persons were in KLA custody, KLA members concealed their fate and made no effort to ascertain their whereabouts.

421. On [REDACTED] January 1999, [REDACTED] was arrested and taken into KLA custody.¹⁸⁰¹ [REDACTED]'s family went to look for him [REDACTED].¹⁸⁰² [REDACTED].¹⁸⁰³ After [REDACTED] visits to Likoc/Likovac, KLA member [REDACTED]¹⁸⁰⁴ warned [REDACTED]'s family not to return to Likoc/Likovac [REDACTED].¹⁸⁰⁵ [REDACTED].¹⁸⁰⁶ [REDACTED].¹⁸⁰⁷ [REDACTED].¹⁸⁰⁸ [REDACTED].¹⁸⁰⁹ [REDACTED]'s remains have never been found.¹⁸¹⁰

(ii) *Jabllanicë/Jablanica*

422. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in Jabllanicë/Jablanica, Gjakovë/Đakovica municipality, in [REDACTED] 1998.

423. In [REDACTED] 1998, [REDACTED] was detained in a KLA guarded barracks compound in Jabllanicë/Jablanica.¹⁸¹¹ Around that time, [REDACTED]'s family began to enquire into [REDACTED]'s whereabouts.¹⁸¹² Members of [REDACTED]'s family were told that he had gone to [REDACTED], which they understood to mean that he had disappeared.¹⁸¹³ Later [REDACTED], they spoke

¹⁸⁰⁰ See *supra* para. 363 (Counts 8-9).

¹⁸⁰¹ See *supra* para. 365 (Counts 8-9).

¹⁸⁰² [REDACTED].

¹⁸⁰³ [REDACTED].

¹⁸⁰⁴ [REDACTED].

¹⁸⁰⁵ [REDACTED].

¹⁸⁰⁶ [REDACTED].

¹⁸⁰⁷ [REDACTED].

¹⁸⁰⁸ [REDACTED].

¹⁸⁰⁹ [REDACTED].

¹⁸¹⁰ [REDACTED].

¹⁸¹¹ See *supra* para. 368 (Counts 8-9).

¹⁸¹² IT-04-84bis P00050, pp. 48-49 (4817-4818), 53 (4822).

¹⁸¹³ IT-04-84bis P00050, pp. 48-49 (4817-4818), 53-56 (4822-4825).

to [REDACTED], two KLA members,¹⁸¹⁴ and were told that [REDACTED] had not been in Jabllanicë/Jablanica.¹⁸¹⁵ [REDACTED]'s family also spoke to [REDACTED],¹⁸¹⁶ who told them that [REDACTED] had been with the KLA until [REDACTED] 1998.¹⁸¹⁷ [REDACTED] also promised to get back to them with further information, but he never did. When [REDACTED]'s family attempted to meet with him again, they were denied access and told by guards to go back home and never come back again.¹⁸¹⁸

(iii) Drenoc/Drenovac

424. The Pre-Trial Judge finds that the supporting material indicates that, in Drenoc/Drenovac, Rahovec/Orahovac municipality, KLA members caused the enforced disappearance of: (i) [REDACTED] in [REDACTED] 1998; and (ii) [REDACTED] in [REDACTED] 1998.

425. [REDACTED] to Drenoc/Drenovac on [REDACTED] 1998 and was subsequently detained until on or around [REDACTED] 1998, when [REDACTED] were forcibly taken away [REDACTED].¹⁸¹⁹ [REDACTED], and [REDACTED] received [REDACTED] upon his arrival in Drenoc/Drenovac.¹⁸²⁰ A few days after his arrest, his family went to Drenoc/Drenovac to find him; KLA members at Drenoc/Drenovac acknowledged that he was there, but did not let the family see him.¹⁸²¹ A week later, [REDACTED]'s family returned to Drenoc/Drenovac; they

¹⁸¹⁴ IT-04-84bis P00050, pp. 10-11 (4776-4777).

¹⁸¹⁵ IT-04-84bis P00050, pp. 10-12 (4776-4778), 32-35 (4801-4804).

¹⁸¹⁶ IT-04-84bis P00050, p. 13 (4779).

¹⁸¹⁷ IT-04-84bis P00050, pp. 17-18 (4783-4784).

¹⁸¹⁸ IT-04-84bis P00050, pp. 13-16 (4779-4782).

¹⁸¹⁹ *See supra* para. 150 (Counts 2-3). [REDACTED].

¹⁸²⁰ [REDACTED].

¹⁸²¹ [REDACTED].

were told that [REDACTED].¹⁸²² [REDACTED].¹⁸²³ Thereafter, [REDACTED]'s family could not get through to Drenoc/Drenovac, as KLA members had been instructed not to let them pass through a checkpoint.¹⁸²⁴ From 1999 [REDACTED]'s family enquired with [REDACTED],¹⁸²⁵ [REDACTED]¹⁸²⁶ and [REDACTED]¹⁸²⁷ regarding [REDACTED] fate and whereabouts, but received no answers.¹⁸²⁸ [REDACTED].¹⁸²⁹ [REDACTED].¹⁸³⁰ [REDACTED]'s family met with [REDACTED] KLA members [REDACTED], who said they did not know anything about [REDACTED]'s fate, [REDACTED].¹⁸³¹ [REDACTED].¹⁸³² [REDACTED].¹⁸³³

426. [REDACTED] 1998;¹⁸³⁴ thereafter, his family never saw or heard from him again.¹⁸³⁵ [REDACTED] after [REDACTED]'s disappearance, KLA members, [REDACTED], intimated that [REDACTED] was arrested but failed to provide his family with any concrete information [REDACTED].¹⁸³⁶ [REDACTED].¹⁸³⁷ In [REDACTED] 1998, [REDACTED]'s family [REDACTED], but received no information in response.¹⁸³⁸ In [REDACTED] 1999, and in response to [REDACTED]'s enquiries, [REDACTED] replied that he had no concrete information regarding [REDACTED]'s whereabouts [REDACTED].¹⁸³⁹ [REDACTED] family also requested

¹⁸²² [REDACTED].

¹⁸²³ [REDACTED].

¹⁸²⁴ [REDACTED].

¹⁸²⁵ [REDACTED].

¹⁸²⁶ [REDACTED].

¹⁸²⁷ [REDACTED].

¹⁸²⁸ [REDACTED].

¹⁸²⁹ [REDACTED].

¹⁸³⁰ [REDACTED].

¹⁸³¹ [REDACTED].

¹⁸³² [REDACTED].

¹⁸³³ [REDACTED].

¹⁸³⁴ *See supra* para. 150 (Counts 2-3). [REDACTED].

¹⁸³⁵ [REDACTED].

¹⁸³⁶ [REDACTED].

¹⁸³⁷ [REDACTED].

¹⁸³⁸ [REDACTED].

¹⁸³⁹ [REDACTED].

information [REDACTED] from [REDACTED].¹⁸⁴⁰ [REDACTED], but received no further information.¹⁸⁴¹ [REDACTED]¹⁸⁴² [REDACTED],¹⁸⁴³ [REDACTED].¹⁸⁴⁴ [REDACTED].¹⁸⁴⁵ [REDACTED];¹⁸⁴⁶ [REDACTED], the circumstances of [REDACTED]'s disappearance [REDACTED] were never clarified.¹⁸⁴⁷

427. [REDACTED] was arrested in [REDACTED] 1998 by KLA members, [REDACTED] and subsequently detained in Drenoc/Drenovac.¹⁸⁴⁸ [REDACTED] after [REDACTED]'s arrest, his family went to Drenoc/Drenovac to enquire into his whereabouts; [REDACTED].¹⁸⁴⁹ [REDACTED].¹⁸⁵⁰ KLA member [REDACTED] said that [REDACTED] was in [REDACTED], but [REDACTED]'s family understood this as a way of stopping their enquiries.¹⁸⁵¹ [REDACTED].¹⁸⁵² [REDACTED].¹⁸⁵³ [REDACTED].¹⁸⁵⁴ [REDACTED].¹⁸⁵⁵ The family ultimately did not receive any information regarding [REDACTED]'s fate.¹⁸⁵⁶

428. KLA members arrested [REDACTED] on [REDACTED] 1998 and took him to Drenoc/Drenovac.¹⁸⁵⁷ Thereafter, [REDACTED]'s family visited Drenoc/Drenovac [REDACTED].¹⁸⁵⁸ [REDACTED], when they made enquiries at Drenoc/Drenovac,

¹⁸⁴⁰ [REDACTED].

¹⁸⁴¹ [REDACTED].

¹⁸⁴² [REDACTED].

¹⁸⁴³ [REDACTED].

¹⁸⁴⁴ [REDACTED].

¹⁸⁴⁵ [REDACTED].

¹⁸⁴⁶ [REDACTED].

¹⁸⁴⁷ [REDACTED].

¹⁸⁴⁸ *See supra* para. 247 (Counts 4-5), para. 377 (Counts 8-9).

¹⁸⁴⁹ [REDACTED].

¹⁸⁵⁰ [REDACTED].

¹⁸⁵¹ [REDACTED].

¹⁸⁵² [REDACTED].

¹⁸⁵³ [REDACTED].

¹⁸⁵⁴ [REDACTED].

¹⁸⁵⁵ [REDACTED].

¹⁸⁵⁶ [REDACTED].

¹⁸⁵⁷ *See supra* para. 247 (Counts 4-5), para. 378 (Counts 8-9).

¹⁸⁵⁸ [REDACTED].

[REDACTED]'s family were told to return home.¹⁸⁵⁹ [REDACTED].¹⁸⁶⁰ [REDACTED].¹⁸⁶¹ [REDACTED],¹⁸⁶² [REDACTED].¹⁸⁶³ [REDACTED].¹⁸⁶⁴ Around [REDACTED] 1998, the [REDACTED] family went to visit KLA member [REDACTED] in Drenoc/Drenovac to enquire after their family member; [REDACTED] simply stated that he would look into the matter.¹⁸⁶⁵ In [REDACTED], [REDACTED]'s family went to [REDACTED] to enquire into [REDACTED]'s fate, but they received no further information.¹⁸⁶⁶ The [REDACTED] also went to [REDACTED], but they were unable to meet up with him [REDACTED].¹⁸⁶⁷ [REDACTED] remains were found [REDACTED].¹⁸⁶⁸

(iv) Malishevë/Mališevo

429. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in Malishevë/Mališevo, in Malishevë/Mališevo municipality, around or after 26 or 27 July 1998.

430. [REDACTED] was detained in Drenoc/Drenovac from 7 June 1998 until he was transferred with other detainees to Malishevë/Mališevo prison on or about 19 or 20 July 1998.¹⁸⁶⁹ From the time of his arrest, [REDACTED]'s family visited Drenoc/Drenovac several times.¹⁸⁷⁰ [REDACTED] told [REDACTED]'s family that

¹⁸⁵⁹ [REDACTED].

¹⁸⁶⁰ [REDACTED].

¹⁸⁶¹ [REDACTED].

¹⁸⁶² [REDACTED].

¹⁸⁶³ [REDACTED].

¹⁸⁶⁴ [REDACTED].

¹⁸⁶⁵ [REDACTED].

¹⁸⁶⁶ [REDACTED].

¹⁸⁶⁷ [REDACTED].

¹⁸⁶⁸ See *supra* para. 378 (Counts 8-9). [REDACTED].

¹⁸⁶⁹ See *supra* paras 247, 251 (Counts 4-5), para. 381 (Counts 8-9).

¹⁸⁷⁰ [REDACTED].

[REDACTED] had not done anything wrong [REDACTED].¹⁸⁷¹ [REDACTED].¹⁸⁷² [REDACTED].¹⁸⁷³ On [REDACTED], KLA member [REDACTED] told [REDACTED]'s family that he was not at Drenoc/Drenovac.¹⁸⁷⁴ [REDACTED].¹⁸⁷⁵ [REDACTED] refused to provide any further information to [REDACTED]'s family.¹⁸⁷⁶ [REDACTED]'s family met with [REDACTED], requesting [REDACTED]'s release; he told them that [REDACTED]'s disappearance [REDACTED] should not have happened.¹⁸⁷⁷ In [REDACTED], [REDACTED]'s family also enquired with KLA member [REDACTED], who promised to look into the matter, but no information was subsequently obtained.¹⁸⁷⁸ Upon meeting KLA members [REDACTED] in [REDACTED], [REDACTED]'s family was told that they were lucky to have survived and should not speak badly of the KLA.¹⁸⁷⁹ [REDACTED] told [REDACTED]'s family to get out of his office and refused to provide any explanations regarding [REDACTED]'s fate or whereabouts, when the family insisted that they would continue looking for [REDACTED].¹⁸⁸⁰ In [REDACTED], [REDACTED]'s family also made enquiries [REDACTED], but no information was provided to [REDACTED]'s family.¹⁸⁸¹ The family also tried to meet [REDACTED], but they were not able to meet them.¹⁸⁸² [REDACTED]'s remains were found [REDACTED].¹⁸⁸³

¹⁸⁷¹ [REDACTED].

¹⁸⁷² [REDACTED].

¹⁸⁷³ [REDACTED].

¹⁸⁷⁴ [REDACTED].

¹⁸⁷⁵ [REDACTED].

¹⁸⁷⁶ [REDACTED].

¹⁸⁷⁷ [REDACTED].

¹⁸⁷⁸ [REDACTED].

¹⁸⁷⁹ [REDACTED].

¹⁸⁸⁰ [REDACTED].

¹⁸⁸¹ [REDACTED].

¹⁸⁸² [REDACTED].

¹⁸⁸³ See *supra* para. 381 (Counts 8-9). [REDACTED].

(v) *Zllash/Zlaš*

431. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in Zllash/Zlaš, Prishtinë/Priština municipality, on or about 19 April 1999.

432. [REDACTED] was arrested by KLA member [REDACTED] and detained in a barn at the Zllash/Zlaš KLA detention compound from approximately [REDACTED] April 1999.¹⁸⁸⁴ Around [REDACTED]'s family members spoke to [REDACTED].¹⁸⁸⁵ [REDACTED].¹⁸⁸⁶ On one occasion, [REDACTED] ran into [REDACTED].¹⁸⁸⁷ [REDACTED]'s family also met [REDACTED] at [REDACTED] with [REDACTED] told them [REDACTED].¹⁸⁸⁸ In [REDACTED], [REDACTED]'s family was told by KLA member [REDACTED].¹⁸⁸⁹ [REDACTED]'s remains were found [REDACTED].¹⁸⁹⁰

(vi) [REDACTED]

433. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in [REDACTED], Ferizaj/Uroševac municipality, on or about [REDACTED] 1999.

434. KLA members held [REDACTED] in custody [REDACTED] from approximately [REDACTED] 1999.¹⁸⁹¹ [REDACTED] around [REDACTED] 1999, [REDACTED] were never seen again.¹⁸⁹² KLA members concealed the fate of

¹⁸⁸⁴ See *supra* para. 165 (Counts 2-3), para. 267 (Counts 4-5).

¹⁸⁸⁵ [REDACTED].

¹⁸⁸⁶ [REDACTED].

¹⁸⁸⁷ [REDACTED].

¹⁸⁸⁸ [REDACTED].

¹⁸⁸⁹ [REDACTED].

¹⁸⁹⁰ See *supra* para. 395 (Counts 8-9). [REDACTED].

¹⁸⁹¹ See *supra* para. 178 (Counts 2-3), para. 283 (Counts 4-5).

¹⁸⁹² See *supra* para. 403 (Counts 8-9).

[REDACTED] and made no effort to ascertain their whereabouts. [REDACTED]'s family enquired, [REDACTED], with KLA member [REDACTED],¹⁸⁹³ who told them that [REDACTED].¹⁸⁹⁴ KLA member [REDACTED],¹⁸⁹⁵ told [REDACTED]'s family that [REDACTED] had been taken in for questioning because he was a suspected collaborator, [REDACTED].¹⁸⁹⁶ When [REDACTED] pressed him about [REDACTED]'s whereabouts, [REDACTED] told him [REDACTED].¹⁸⁹⁷ Family members made many other enquires [REDACTED] to ascertain [REDACTED] whereabouts, but to no avail.¹⁸⁹⁸

(b) Mental Element

435. The supporting material indicates that KLA members: (i) intentionally deprived the persons of their liberty and were aware that the deprivation of liberty would be followed by a refusal to acknowledge such deprivation of liberty or to give information on the fate or whereabouts of the victims; or (ii) intentionally refused to disclose information regarding the fate or whereabouts of the persons concerned and were aware that such refusal was preceded or accompanied by that deprivation of liberty.¹⁸⁹⁹

¹⁸⁹³ [REDACTED].

¹⁸⁹⁴ [REDACTED].

¹⁸⁹⁵ *See supra* para. 403 (Counts 8-9).

¹⁸⁹⁶ [REDACTED].

¹⁸⁹⁷ [REDACTED].

¹⁸⁹⁸ [REDACTED].

¹⁸⁹⁹ As regards the awareness of or intentional deprivation of liberty, *see supra*: para. 140 (Counts 2-3), paras 363, 365 (Counts 8-9) [REDACTED]; para. 144 (Counts 2-3), para. 368 (Counts 8-9) [REDACTED]; para. 151 (Counts 2-3), paras 375, 377-378 (Counts 8-9) [REDACTED]; paras 151, 154 (Counts 2-3), para. 381 (Counts 8-9) [REDACTED]; para. 166 (Counts 2-3), para. 395 (Counts 8-9) [REDACTED]; para. 179 (Counts 2-3), para. 403 (Counts 8-9) [REDACTED]. As regards the awareness of or intentional refusal to acknowledge the deprivation of liberty or give information on the fate or whereabouts of the victim, *see*: [REDACTED]; IT-04-84bis P00050, pp. 10-12 (4776-4778), 32-35 (4801-4804) ([REDACTED]); [REDACTED].

(c) Conclusion

436. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that KLA members caused the enforced disappearance, a crime against humanity under Article 13(1)(i) of the Law, of individuals following arrests or abductions, and at or in connection with detention sites between approximately April 1998 and March 1999.

6. Count 1: Persecution

437. In the Revised Indictment, the SPO alleges that during the Indictment Period persecution on political and/or ethnic grounds, a crime against humanity under Article 13(1)(h) of the Law, was committed against opponents in multiple municipalities in Kosovo and the districts of Kukës and Has in northern Albania.¹⁹⁰⁰

(a) Material Elements

438. The Pre-Trial Judge finds that the supporting material indicates that, through the crimes charged under Counts 2-10 and through other acts of equal gravity, KLA members denied, in a gross and blatant manner, fundamental rights of individuals throughout Kosovo and northern Albania, including at locations indicated under the aforementioned counts, resulting in discriminatory consequences.

439. As specified under Counts 2-10, the supporting material indicates that KLA members committed the crimes of imprisonment/arbitrary detention,¹⁹⁰¹ other

¹⁹⁰⁰ Revised Indictment, paras 57-58, 174 [68].

¹⁹⁰¹ See *supra* paras 139-231 (Counts 2-3).

inhumane acts/cruel treatment,¹⁹⁰² torture,¹⁹⁰³ murder¹⁹⁰⁴ and enforced disappearance,¹⁹⁰⁵ constituting a gross and blatant denial of the right to life, the right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, as well as the rights to liberty and not to be subjected to arbitrary arrest or detention.¹⁹⁰⁶

440. Furthermore, the supporting material indicates that KLA members also engaged in: (i) unlawful appropriation and/or destruction of private property;¹⁹⁰⁷ (ii) unlawful proceedings, [REDACTED];¹⁹⁰⁸ and (iii) other restrictive measures, such as forced labour,¹⁹⁰⁹ arbitrary searches,¹⁹¹⁰ intimidation and/or harassment,¹⁹¹¹ and coercing statements and confessions.¹⁹¹² These acts typically occurred in the overall context of arbitrary arrests and detentions, severe mistreatments and

¹⁹⁰² See *supra* paras 233-349 (Counts 4-5).

¹⁹⁰³ See *supra* paras 351-360 (Counts 6-7).

¹⁹⁰⁴ See *supra* paras 362-417 (Counts 8-9).

¹⁹⁰⁵ See *supra* paras 419-436 (Count 10).

¹⁹⁰⁶ The right of life is protected by Article 3 of the UDHR, Article 6(1) of the ICCPR and by Article 2(1) of the ECHR. The right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment is protected by Article 5 of the UDHR, Article 7 of the ICCPR and Article 3 of the ECHR. The right to liberty and not to be subjected to arbitrary arrest or detention is protected by Articles 3 and 9 of the UDHR, Article 9 of the ICCPR and Article 5 of the ECHR.

¹⁹⁰⁷ Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED].

¹⁹⁰⁸ [REDACTED], see Cahan, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], see Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED].

¹⁹⁰⁹ Likoc/Likovac: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED].

¹⁹¹⁰ Jabllanicë/Jablanica: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

¹⁹¹¹ Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Rahovec/Orahovac: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

¹⁹¹² Jabllanicë/Jablanica: IT-04-84bis P00119, p. 4256. Llapushnik/Lapušnik: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Kukës, Albania: [REDACTED].

killings, and were undertaken against individuals who were the victims of one or more of the crimes charged under Counts 2-10 and/or against these individuals' family members. Considering their nature, context and timing, these acts reach the same level of gravity as crimes under Article 13 of the Law and constitute a blatant and gross denial of the right to private property, right to a fair trial as well as the prohibition of forced labour, the prohibition of arbitrary searches and the rights to liberty, respect for dignity and security.¹⁹¹³

441. The supporting material further indicates that the aforementioned acts mainly targeted and primarily affected Serbs, Romas, Catholic Albanians and Albanians holding political views perceived as anti-KLA, as well as such individuals' family members, and resulted therefore in actual discriminatory consequences against them.

(b) Mental Element

442. The supporting material indicates the deliberate manner in which KLA members carried out or were involved in each of the aforementioned crimes and other persecutory acts.

443. Moreover, the supporting material indicates that the aforementioned crimes and other persecutory acts were carried out with the specific intent to discriminate on ethnic, religious and/or political grounds. In particular, individuals were

¹⁹¹³ The right to property is protected by Article 17 of the UDHR and by Article 1 of the 1952 Protocol to the ECHR. The right to a fair trial is protected by Article 10 of the UDHR, Article 9(3) of the ICCPR and Article 6(1) of the ECHR. The prohibition against forced labour is enshrined in Article 8(3)(a) of the ICCPR and Article 4(2) of the ECHR. The prohibition against arbitrary searches is included in the right to privacy, protected by Article 12 of the UDHR, Article 17 of the ICCPR and Article 8 of the ECHR. The rights to liberty and security are protected by Article 9 of the ICCPR and Article 5(1) of the ECHR. The right to dignity is protected by Article 1 of the UDHR and Article 10(1) of the ICCPR.

targeted because of their: (i) Serb ethnicity;¹⁹¹⁴ (ii) Roma or Ashkali ethnicity;¹⁹¹⁵ (iii) Catholic religion;¹⁹¹⁶ (iv) affiliation to or sympathy towards the LDK or other parties perceived as anti-KLA;¹⁹¹⁷ (v) not having joined or not supporting the KLA;¹⁹¹⁸ (vi) current or former employment perceived as anti-KLA;¹⁹¹⁹ and/or (vii) alleged collaboration with Serb authorities or alleged friendship or interaction with Serbs.¹⁹²⁰

(c) Conclusion

444. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that persecution, a crime against humanity under

¹⁹¹⁴ Jabllanicë/Jablanica: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. Ferizaj/Uroševac: [REDACTED]. Dormitory, Gjilan/Gnjilane: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED].

¹⁹¹⁵ Jabllanicë/Jablanica: [REDACTED]. Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED]. [REDACTED]: [REDACTED].

¹⁹¹⁶ Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED].

¹⁹¹⁷ Likoc/Likovac: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. Zllash/Zlaš: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Cahan, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹⁹¹⁸ Likoc/Likovac: [REDACTED]. [REDACTED]: [REDACTED]. Cahan, Albania: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹⁹¹⁹ Likoc/Likovac: [REDACTED]. Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

¹⁹²⁰ Likoc/Likovac: [REDACTED]. Jabllanicë/Jablanica: IT-04-84bis P00119, pp. 4249-4250, 4255-4256, 4265; [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]; [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. [REDACTED]: [REDACTED]. Cahan, Albania: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former Police Station in Suharekë/Suva Reka: [REDACTED].

Article 13(1)(h) of the Law, was committed against individuals on ethnic, religious and/or political grounds throughout Kosovo and northern Albania, including at locations indicated under Counts 2-10, between approximately April 1998 and August 1999.

7. Additional Requirements for Crimes Against Humanity and War Crimes

445. The Pre-Trial Judge will hereunder make his findings with regard to the additional requirements for crimes against humanity and war crimes.

(a) Crimes Against Humanity

446. Regarding the nexus between the incidents under Counts 1, 2, 4, 6, 8 and 10 and the attack against the civilian population, the findings made in sections VI.B.1 to VI.B.6 show that KLA members targeted particular categories of individuals, namely those falling within the definition of Opponents of the KLA,¹⁹²¹ as opposed to random individuals. Notably, the incidents occurred during the campaign of violence and mistreatment of civilians who were perceived, by KLA members, to be Opponents. Therefore, the incidents found under Counts 1, 2, 4, 6, 8 and 10 were part of the attack against the civilian population.¹⁹²²

447. Regarding the perpetrators' knowledge of the attack against the civilian population, the Pre-Trial Judge recalls that police and intelligence structures had been put in place by the KLA leadership for the purpose of identifying and investigating Opponents.¹⁹²³ Some Opponents were named in KLA General Staff statements,¹⁹²⁴ while others were included in lists of alleged collaborators and suspected persons, and targeted accordingly.¹⁹²⁵ Moreover, KLA commanders with authority to release detainees decided on whether to release them on the basis of

¹⁹²¹ See *supra* para. 126 (Contextual Requirements for Crimes Against Humanity).

¹⁹²² See *supra* para. 126 (Contextual Requirements for Crimes Against Humanity).

¹⁹²³ Around June 1998, the KLA General Staff established the G2 Intelligence Directorate, which was tasked to, *inter alia*, [REDACTED] and discover [REDACTED] inside and outside the army. See *infra* paras 455-456 (Joint Criminal Enterprise). [REDACTED].

¹⁹²⁴ [REDACTED].

¹⁹²⁵ [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED].

information provided by subordinates, who were directly involved in the arrest and/or detention of persons.¹⁹²⁶ The findings made in section VI.C regarding the modes of liability charged indicate that the Suspects had knowledge of the ongoing pattern of violence.¹⁹²⁷ Moreover, on some occasions, the Suspects themselves participated in the arrest and detention of Opponents,¹⁹²⁸ or were present at locations where Opponents were mistreated.¹⁹²⁹ This course of action must be placed within a wider framework of public statements, regulations, directions and orders issued at the relevant time by the KLA leadership, including the Suspects, which encouraged the attack against Opponents.¹⁹³⁰ Therefore, the perpetrators acted in the knowledge of the attack against the civilian population.

(b) War Crimes

448. Regarding the protected status of the victims under Counts 3, 5, 7 and 9, the findings made in sections VI.B.1 to VI.B.4 show that KLA members exercised custody (arbitrary detention)¹⁹³¹ or control (cruel treatment, torture, murder)¹⁹³² over the victims, as soon as they fell into the hands of the KLA members. Therefore, at the time when the crimes were committed, the targeted individuals

¹⁹²⁶ [REDACTED].

¹⁹²⁷ See *infra* para. 473 (Joint Criminal Enterprise I), para. 477 (Joint Criminal Enterprise III), para. 481 (Aiding and Abetting), paras 489, 496, 503, 510 (Superior Responsibility).

¹⁹²⁸ [REDACTED].

¹⁹²⁹ See *infra* paras 457, 462, 466, 470 (Joint Criminal Enterprise I).

¹⁹³⁰ See *supra* paras 125-128 (Contextual Requirements for Crimes Against Humanity).

¹⁹³¹ See *supra* paras 139-231 (Counts 2-3).

¹⁹³² In relation to Count 5, see Likoc/Likovac: *supra* para. 235. Malishevë/Mališevo: *supra* para. 251. Llapashiticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. Rahovec/Orahovac: *supra* para. 326. Ferizaj/Uroševac: *supra* para. 330. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Novobërdë/Novo Brdo: *supra* para. 346. In relation to Count 9, see [REDACTED] (in relation to an unidentified Roma man in [REDACTED]); [REDACTED].

were taking no active part in the hostilities and were entitled to the protection of IHL for such time as they were under the custody or control of the KLA members.

449. Regarding the nexus between the incidents under Counts 3, 5, 7 and 9 and the non-international armed conflict, the findings made in sections VI.A and VI.B.1 to VI.B.4 show that, during the Indictment Period, one of the goals of the KLA was to prevent Opponents from harming the KLA itself.¹⁹³³ Accordingly, arrests, detention, acts of cruel treatment and torture, and murder were often executed on the basis of lists of suspected collaborators or otherwise suspicious people, who regularly included persons of Serb, Roma or Ashkali ethnicity or persons with suspected ties, either personal or professional, with Serbian authorities or institutions,¹⁹³⁴ which constituted the opposing party to the armed conflict.¹⁹³⁵ Therefore, the crimes charged took place in the context of the ongoing armed conflict between the Serbian forces and the KLA.

450. Lastly, regarding the awareness of the factual circumstances establishing the armed conflict and the status of the victims, the Pre-Trial Judge recalls the findings made in sections VI.A and VI.B.1 to VI.B.4, which show, *inter alia*: (i) the dissemination of the KLA's strategy and messages to counter the [REDACTED] waged by Serbia against the KLA¹⁹³⁶ by targeting Opponents; (ii) the issuance of communiqués, political declarations and statements which included information on the status of the hostilities;¹⁹³⁷ (iii) the presence at the detention sites of one or more KLA commanders in charge of the detention site;¹⁹³⁸ (iv) the fact that measures taken against Opponents were reported back to the KLA General Staff;¹⁹³⁹ and (v) that detainees were often released or transferred in connection to

¹⁹³³ [REDACTED].

¹⁹³⁴ [REDACTED].

¹⁹³⁵ See *supra* para. 132 (Contextual Requirements for War Crimes).

¹⁹³⁶ See also [REDACTED].

¹⁹³⁷ See *supra* para. 132 (Contextual Requirements for War Crimes).

¹⁹³⁸ [REDACTED].

¹⁹³⁹ [REDACTED].

military operations by Serbian forces.¹⁹⁴⁰ Therefore, KLA members were aware of the existence of the ongoing non-international armed conflict and knew that the Opponents whom they arrested, detained, killed or otherwise mistreated were taking no active part in the hostilities, as they were under the KLA custody or control.

C. THE MODES OF LIABILITY CHARGED

1. Joint Criminal Enterprise I

451. In the Revised Indictment, the SPO alleges that the Suspects committed, as members of a JCE, the crimes under Counts 1-10.¹⁹⁴¹

(a) Material Elements

(i) *Plurality of persons*

452. The Pre-Trial Judge finds that the supporting material indicates that a plurality of persons, including Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi, was involved in the crimes committed at the locations indicated under Counts 1-10. Other persons involved included Azem Syla,¹⁹⁴² Lahi Brahimaj,¹⁹⁴³ Fatmir Limaj,¹⁹⁴⁴ Sylejman Selimi,¹⁹⁴⁵ Rrustem Mustafa,¹⁹⁴⁶ Shukri Buja,¹⁹⁴⁷

¹⁹⁴⁰ [REDACTED].

¹⁹⁴¹ Revised Indictment, paras 32-33, 35-51, 173.

¹⁹⁴² [REDACTED].

¹⁹⁴³ IT-04-84bis P00064, pp. 5074-5075; [REDACTED]. Jabllanicë/Jablanica: IT-04-84bis P00119, pp. 4262, 4264-4265; [REDACTED].

¹⁹⁴⁴ [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Kukës: [REDACTED].

¹⁹⁴⁵ IT-05-87 6D00067, p. 14 (U003-9097). Likoc/Likovac: [REDACTED].

¹⁹⁴⁶ [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]

¹⁹⁴⁷ [REDACTED].

Latif Gashi,¹⁹⁴⁸ Sabit Geci,¹⁹⁴⁹ as well as other KLA members, including zone commanders and deputy commanders.¹⁹⁵⁰

(ii) Common purpose

453. The supporting material further indicates that the aforementioned individuals shared a common purpose between at least March 1998 and September 1999 to gain and exercise control over all of Kosovo¹⁹⁵¹ by means including unlawfully intimidating, mistreating, committing violence against and removing persons who were perceived to have been Opponents.¹⁹⁵²

454. This common purpose involved the commission of the crimes of persecution, imprisonment, arbitrary detention, other inhumane acts, cruel treatment, torture, murder and enforced disappearance. Its existence and contours are indicated by: (i) early public statements of the KLA, preceding the period of the charges;¹⁹⁵³ (ii) communiqués and political declarations of the KLA General Staff,¹⁹⁵⁴ public statements of KLA General Staff members,¹⁹⁵⁵ as well as other KLA publications,¹⁹⁵⁶ during the period of the charges; (iii) regulations, structures, directions and orders drafted, issued or approved by the Suspects;¹⁹⁵⁷ (iv) the pattern of crimes

¹⁹⁴⁸ Bare and Bajgorë/Bajgora: [REDACTED]; Llapashticë/Lapaštica and Related Locations: [REDACTED].

¹⁹⁴⁹ [REDACTED]. [REDACTED]: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED].

¹⁹⁵⁰ Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 148. Malishevë/Mališevo: *supra* para. 384. Bare and Bajgorë/Bajgora: *supra* para. 161. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* paras 169, 271, 359. [REDACTED]: *supra* para. 275. Kleçkë/Klečka: *supra* paras 397, 401. [REDACTED]: *supra* paras 403, 434. Cahan: *supra* paras 183, 287. Kukës: *supra* paras 291, 359. [REDACTED]: *supra* para. 299. [REDACTED], Prizren: *supra* paras 207, 319. [REDACTED]: *supra* para. 216. Novobërdë/Novo Brdo: *supra* para. 346. [REDACTED]: *supra* para. 413. [REDACTED]: *supra* para. 415.

¹⁹⁵¹ [REDACTED].

¹⁹⁵² See *supra* para. 125 (Contextual Requirements for Crimes Against Humanity).

¹⁹⁵³ [REDACTED].

¹⁹⁵⁴ [REDACTED].

¹⁹⁵⁵ [REDACTED]

¹⁹⁵⁶ [REDACTED].

¹⁹⁵⁷ [REDACTED].

committed at the locations indicated under Counts 1-10;¹⁹⁵⁸ and (v) the personal participation of the Suspects and other senior KLA/PGoK members in the commission of the crimes.¹⁹⁵⁹

(iii) Significant contribution

a. Mr Thaçi

455. The supporting material indicates that Mr Thaçi significantly contributed to the common purpose of the JCE. Mr Thaçi was a founding member of the KLA General Staff.¹⁹⁶⁰ As of approximately June 1998, Mr Thaçi was also Chief of the KLA Information Department¹⁹⁶¹ and Chief of the KLA Political Department (departments were also known as [REDACTED]).¹⁹⁶² After the creation of the PGoK, by late March 1999, Mr Thaçi became Prime Minister of Kosovo,¹⁹⁶³ and also served as Commander-in-Chief of the KLA.¹⁹⁶⁴ In this capacity, Mr Thaçi: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise contributed to the crimes under Counts 1-10; (iii) coordinated or otherwise contributed to efforts to deny or provide incorrect information to international monitors and the public regarding the commission of crimes under Counts 1-10; and (iv) otherwise provided

¹⁹⁵⁸ See *supra* Counts 1-10.

¹⁹⁵⁹ See *supra* para. 452. See also e.g. Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 148. Drenoc/Drenovac: *supra* paras 150, 375, 425. Malishevë/Mališevo: *supra* paras 153, 251, 384, 430. Bare and Bajgorë/Bajgora: *supra* para. 161. Zilash/Zlaš: *supra* para. 267. [REDACTED]: *supra* paras 169, 271, 359. [REDACTED]: *supra* para. 275. Kleçkë/Klečka: *supra* paras 175, 279, 359, 397, 401. [REDACTED]: *supra* paras 403, 434. Cahan: *supra* paras 183, 287. Kukës: *supra* paras 291, 359. [REDACTED]: *supra* para. 299. [REDACTED], Prizren: *supra* paras 207, 319. [REDACTED]: *supra* para. 216. Novobërdë/Novo Brdo: *supra* para. 346. [REDACTED]: *supra* para. 413. [REDACTED]: *supra* para. 415.

¹⁹⁶⁰ [REDACTED].

¹⁹⁶¹ [REDACTED].

¹⁹⁶² [REDACTED].

¹⁹⁶³ [REDACTED].

¹⁹⁶⁴ [REDACTED].

information and political, logistical, military or financial support to, as well as coordinated with and liaised between, JCE members in furtherance of the common purpose.

456. As regards Mr Thaçi's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that his authority within the KLA was apparent and that other General Staff members deferred to Mr Thaçi in their decision-making.¹⁹⁶⁵ He also had the power to appoint key governmental figures as well as to promote, dismiss, commend and reproach combat members of the KLA as well as to issue or terminate disciplinary measures against them.¹⁹⁶⁶ Furthermore, the supporting material indicates that KLA General Staff decisions were made unanimously and its members, including Mr Thaçi, formulated or approved KLA communiqués and public statements.¹⁹⁶⁷ Many of such statements, including those referenced above, repeatedly and publicly called for or endorsed violence against Opponents,¹⁹⁶⁸ some of whom were specifically named and presented as [REDACTED].¹⁹⁶⁹ Furthermore, around June 1998, the KLA General Staff established the Intelligence Service Department (also known as [REDACTED]), which was tasked to, *inter alia*, [REDACTED] and discover [REDACTED] inside and outside the army.¹⁹⁷⁰ In July 1998, Mr Thaçi, as member of the KLA General Staff, approved the Provisional Regulations of the Internal Life of the Army ("Provisional Regulations"), which stated, *inter alia*, that the KLA Military Police [REDACTED].¹⁹⁷¹ The KLA General Staff, including Mr Thaçi, did not delineate the scope of [REDACTED], thereby opening the door to abuse. In

¹⁹⁶⁵ [REDACTED]; IT-05-87 6D00067, p. 23 (U003-9108) ("We were waging the war. Hashim's presence was important for morale").

¹⁹⁶⁶ See *infra* paras 485-486 (Superior Responsibility).

¹⁹⁶⁷ [REDACTED].

¹⁹⁶⁸ See *supra* fns 1953, 1954, 1955, 1956.

¹⁹⁶⁹ [REDACTED].

¹⁹⁷⁰ [REDACTED]; see also *supra* para. 259 (Counts 4-5) [REDACTED].

¹⁹⁷¹ [REDACTED]. See also [REDACTED].

fact, the KLA General Staff considered [REDACTED], who deserved punitive measures, including killings.¹⁹⁷² Mr Thaçi, as member of the KLA General Staff, would then be informed of [REDACTED].¹⁹⁷³ The supporting material further indicates that, in 1998-1999, it was common knowledge in Kosovo, and therefore known to Mr Thaçi, that persons accused of collaborating with the Serbs were being killed.¹⁹⁷⁴

457. As regards Mr Thaçi's participation in or contribution to the crimes committed under Counts 1-10, the supporting material indicates that he personally participated in such crimes [REDACTED]. [REDACTED].¹⁹⁷⁵ [REDACTED].¹⁹⁷⁶ [REDACTED].¹⁹⁷⁷ [REDACTED], the supporting material indicates that, during the Indictment Period, Mr Thaçi visited several other locations indicated under Counts 1-10.¹⁹⁷⁸

458. As regards Mr Thaçi's contributions to efforts to deny or provide incorrect information regarding the commission of crimes, the supporting material indicates at least two occasions when Mr Thaçi personally provided false information. [REDACTED].¹⁹⁷⁹ [REDACTED].¹⁹⁸⁰ The supporting material also indicates further instances when Mr Thaçi contributed to the dissemination of misleading or incomplete information about KLA activities.¹⁹⁸¹

¹⁹⁷² [REDACTED].

¹⁹⁷³ [REDACTED].

¹⁹⁷⁴ [REDACTED].

¹⁹⁷⁵ Drenoc/Drenovac: *supra* paras 150, 375, 425.

¹⁹⁷⁶ [REDACTED]: *supra* paras 169, 271, 359.

¹⁹⁷⁷ [REDACTED].

¹⁹⁷⁸ IT-05-87 6D00067, pp. 14, 23 (U003-9097, U003-9104) (in 1998, Mr Thaçi and Mr Veseli frequently visited the Drenoc/Drenovac area); [REDACTED]; *see also* para. 142 (Counts 2-3), para. 239 (Counts 4-5) and para. 368 (Counts 8-9) [REDACTED]; *see also* para. 153 (Counts 2-3), para. 251 (Counts 4-5) and paras 380-384 (Counts 8-9) [REDACTED]; *see also* para. 184 (Counts 2-3), para. 291 (Counts 4-5) and para. 405 (Counts 8-9) [REDACTED].

¹⁹⁷⁹ [REDACTED].

¹⁹⁸⁰ [REDACTED]; *see also* para. 172 (Counts 2-3) and para. 275 (Counts 4-5) [REDACTED].

¹⁹⁸¹ [REDACTED].

459. As regards Mr Thaçi's support for and coordination between JCE members, the supporting material indicates that he: (i) sought to secure financial support for the KLA;¹⁹⁸² (ii) was a primary contact for some of the zone commanders;¹⁹⁸³ (iii) was in regular contact with operational zones;¹⁹⁸⁴ and (iv) frequently visited multiple locations indicated under Counts 1-10 to oversee the organisation of the units, maintain contact and provide supplies,¹⁹⁸⁵ as well as to provide other information, including about [REDACTED].¹⁹⁸⁶

b. Mr Veseli

460. The supporting material indicates that Mr Veseli significantly contributed to the common purpose of the JCE. Mr Veseli was a founding member of the KLA General Staff.¹⁹⁸⁷ At least from June 1998, Mr Veseli was also a member of the KLA Political Directorate and Head of the Intelligence Service Department.¹⁹⁸⁸ After the creation of the PGoK, in late March 1999, Mr Veseli was assigned as Chief of the Kosovo Intelligence Service ("SHIK") and he was reporting to Mr Thaçi.¹⁹⁸⁹ In this capacity, Mr Veseli: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise contributed to the crimes committed under Counts 1-10; and (iii) otherwise provided information and political, logistical, military or financial support to, as well as

¹⁹⁸² [REDACTED].

¹⁹⁸³ [REDACTED].

¹⁹⁸⁴ [REDACTED].

¹⁹⁸⁵ [REDACTED]; *see supra* fn. 1978.

¹⁹⁸⁶ [REDACTED].

¹⁹⁸⁷ [REDACTED].

¹⁹⁸⁸ [REDACTED].

¹⁹⁸⁹ [REDACTED].

coordinated and liaised between, JCE members in furtherance of the common purpose.

461. As regards Mr Veseli's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that his authority within the KLA was apparent.¹⁹⁹⁰ Mr Veseli was a close associate of Mr Thaçi,¹⁹⁹¹ [REDACTED].¹⁹⁹² As a member of the KLA General Staff, Mr Veseli approved the aforementioned KLA public statements and regulations.¹⁹⁹³ Furthermore, Mr Veseli oversaw the KLA's intelligence services, which were tasked with the identification and investigation of Opponents, including collaborators within the KLA.¹⁹⁹⁴ [REDACTED],¹⁹⁹⁵ [REDACTED] many others were included in lists of alleged collaborators.¹⁹⁹⁶ Zone intelligence sectors reported directly to Mr Veseli about their activity, in parallel to the zone commanders.¹⁹⁹⁷ In this context, Mr Veseli confirmed that the G2 focused on [REDACTED] and [REDACTED].¹⁹⁹⁸

462. As regards Mr Veseli's participation in or contribution to the crimes committed under Counts 1-10, the supporting material indicates that he personally participated in such crimes in relation to at least three locations. [REDACTED].¹⁹⁹⁹ [REDACTED].²⁰⁰⁰ [REDACTED].²⁰⁰¹ Furthermore, the supporting

¹⁹⁹⁰ [REDACTED].

¹⁹⁹¹ [REDACTED].

¹⁹⁹² [REDACTED].

¹⁹⁹³ [REDACTED].

¹⁹⁹⁴ [REDACTED]; [REDACTED].

¹⁹⁹⁵ [REDACTED].

¹⁹⁹⁶ [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED].

¹⁹⁹⁷ [REDACTED].

¹⁹⁹⁸ [REDACTED].

¹⁹⁹⁹ See *supra* para. 457. Drenoc/Drenovac: *supra* para. 150 (Counts 2-3), *supra* para. 375 (Counts 8-9).

²⁰⁰⁰ Kleçkë/Klečka: [REDACTED].

²⁰⁰¹ Kukës: [REDACTED].

material indicates that, during the Indictment Period, Mr Veseli visited several other locations indicated under Counts 1-10.²⁰⁰²

463. As regards Mr Veseli's support for and coordination between JCE members, the supporting material indicates that he: (i) was a primary contact for some of the zone commanders;²⁰⁰³ (ii) accompanied Mr Thaçi to meetings with third parties,²⁰⁰⁴ including talks with international representatives where allegations about the KLA taking prisoners were raised;²⁰⁰⁵ and (iii) frequently visited locations indicated under Counts 1-10 to maintain contact and provide supplies to JCE members.²⁰⁰⁶

c. Mr Selimi

464. The supporting material indicates that Mr Selimi significantly contributed to the common purpose of the JCE. Mr Selimi was a founding member of the KLA and was part of the KLA General Staff throughout 1997, 1998, and into 1999.²⁰⁰⁷ As early as March 1998, he was Chief of the Operational Directorate [REDACTED], transferring to the post of Inspector General of the KLA General Staff in July 1998.²⁰⁰⁸ In early April 1999, Mr Selimi became Minister of Public Order of the PGoK.²⁰⁰⁹ In this capacity, Mr Selimi: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise

²⁰⁰² IT-05-87 6D00067, pp. 14, 23 (U003-9097, U003-9104) (in 1998, Mr Thaçi and Mr Veseli frequently visited the Drenoc/Drenovac area); [REDACTED]; *see also* para. 142 (Counts 2-3), para. 239 (Counts 4-5) and para. 368 (Counts 8-9) [REDACTED].

²⁰⁰³ [REDACTED].

²⁰⁰⁴ [REDACTED].

²⁰⁰⁵ [REDACTED].

²⁰⁰⁶ [REDACTED]. *See also supra* para. 462.

²⁰⁰⁷ [REDACTED].

²⁰⁰⁸ [REDACTED].

²⁰⁰⁹ [REDACTED].

contributed to the crimes committed under Counts 1-10; and (iii) otherwise provided information and political, logistical, military, or financial support to, as well as coordinated and liaised between, JCE members in furtherance of the common purpose.

465. As regards Mr Selimi's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that Mr Selimi, as a member of the KLA General Staff, approved the aforementioned KLA public statements and regulations.²⁰¹⁰ He also sought to solidify the recognition of the General Staff's political authority.²⁰¹¹ Furthermore, Mr Selimi participated in the formation of the zone structures, coordinated between operational zones, was involved in the recruitment and the instruction of soldiers, was present when commanders were appointed,²⁰¹² and signed or participated in other appointment decisions.²⁰¹³ Mr Selimi was [REDACTED] present on the ground including in Dukagjin, Drenica, Pashtrik, Neredime, Shala and Llap zones.²⁰¹⁴ He reported to the General Staff concerning events in the zones.²⁰¹⁵

466. As regards Mr Selimi's participation in or contribution to the crimes committed under Counts 1-10, the supporting material indicates that he personally participated in such crimes [REDACTED]. [REDACTED].²⁰¹⁶ [REDACTED].²⁰¹⁷ [REDACTED].²⁰¹⁸ [REDACTED].²⁰¹⁹ [REDACTED].²⁰²⁰ [REDACTED].²⁰²¹ Furthermore, the supporting material indicates that, during the

²⁰¹⁰ See *supra* para. 454 and fns 1953, 1954, 1955, 1956 and 1957.

²⁰¹¹ [REDACTED].

²⁰¹² [REDACTED].

²⁰¹³ [REDACTED].

²⁰¹⁴ [REDACTED].

²⁰¹⁵ [REDACTED].

²⁰¹⁶ [REDACTED]. See also *supra* para. 150 (Counts 2-3).

²⁰¹⁷ See *supra* para. 375 (Counts 8-9). [REDACTED].

²⁰¹⁸ [REDACTED].

²⁰¹⁹ [REDACTED]. See also para. 169 (Counts 2-3), para. 271 (Counts 4-5).

²⁰²⁰ [REDACTED].

²⁰²¹ [REDACTED]. See also para. 279 (Counts 4-5) and para. 359 (Counts 6-7).

Indictment Period, Mr Selimi [REDACTED]²⁰²² [REDACTED] visited other locations indicated under Counts 1-10.²⁰²³ In addition, Mr Selimi participated in a series of meetings between zone commanders and General Staff members in which orders were issued for collaborators to be detained and for detention facilities to be set up for that purpose.²⁰²⁴ These instructions were implemented by zone commanders.²⁰²⁵

467. As concerns Mr Selimi's support for and coordination between JCE members, the supporting material indicates that Mr Selimi: (i) sought to secure financial support for the KLA;²⁰²⁶ (ii) was a primary contact for some of the zone commanders and was in regular contact with operational zones;²⁰²⁷ and (iii) frequently visited multiple locations indicated under Counts 1-10 to oversee the organisation of the units, maintain contact and provide supplies,²⁰²⁸ as well as to provide other information, including about [REDACTED].²⁰²⁹

d. Mr Krasniqi

468. The supporting material indicates that Mr Krasniqi significantly contributed to the common purpose of the JCE. Mr Krasniqi was a member of the KLA General Staff since the end of 1996 or the beginning of 1997.²⁰³⁰ From at least June 1998, he became the KLA spokesperson and Chief of the Local Government Department.²⁰³¹

²⁰²² [REDACTED].

²⁰²³ [REDACTED]; *see also* para. 153 (Counts 2-3), para. 251 (Counts 4-5) and paras 380-384 (Counts 8-9) [REDACTED]; IT-05-87 6D00067, p. 14 (U003-9097) (Mr Selimi was "always present" in the Drenica area).

²⁰²⁴ [REDACTED].

²⁰²⁵ [REDACTED].

²⁰²⁶ [REDACTED].

²⁰²⁷ [REDACTED].

²⁰²⁸ [REDACTED]; *see also* para. 142 (Counts 2-3), para. 239 (Counts 4-5) and para. 368 (Counts 8-9) [REDACTED]. *See also* fn. 2023.

²⁰²⁹ [REDACTED].

²⁰³⁰ IT-04-84 P340, p. 21 (3305); [REDACTED].

²⁰³¹ [REDACTED].

Mr Krasniqi was also part of the Political Directorate of the KLA,²⁰³² which was headed by Mr Thaçi.²⁰³³ From at least November 1998, Mr Krasniqi was appointed KLA Deputy Commander for Support and continued to be one of the KLA political representatives and its spokesperson; in the absence of the commander, he was replacing him and took all of his authority and functions.²⁰³⁴ In this capacity, Mr Krasniqi: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise contributed to the crimes committed under Counts 1-10; (iii) coordinated or otherwise contributed to efforts to deny or provide incorrect information to international monitors and the public regarding the commission of crimes under Counts 1-10; and (iv) otherwise provided information and political, logistical, military or financial support to, as well as coordinated with and liaised between, JCE members in furtherance of the common purpose.

469. As regards Mr Krasniqi's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that such involvement was part and parcel of Mr Krasniqi's position as KLA spokesperson and as member of the KLA Political Department. In particular, Mr Krasniqi drafted the aforementioned Provisional Regulations,²⁰³⁵ and was also responsible for communicating with domestic and international delegations²⁰³⁶ and publicising the policy of the General Staff.²⁰³⁷ Per a decision of the General Staff, only the KLA spokesperson was authorised to make known its political positions;²⁰³⁸ this order was

²⁰³² [REDACTED].

²⁰³³ [REDACTED].

²⁰³⁴ [REDACTED].

²⁰³⁵ See *supra* para. 456. See also [REDACTED].

²⁰³⁶ [REDACTED].

²⁰³⁷ [REDACTED].

²⁰³⁸ [REDACTED].

conveyed to the zone commands.²⁰³⁹ As member of the KLA General Staff and as the KLA spokesperson, Mr Krasniqi was involved in the development and dissemination of KLA policies through the drafting and/or issuance of General Staff communiqués and political statements.²⁰⁴⁰ [REDACTED],²⁰⁴¹ [REDACTED] were used by zone commanders as policy statements to guide their organisation.²⁰⁴²

470. As regards Mr Krasniqi's participation in or contribution to the crimes under Counts 1-10, the supporting material indicates that Mr Krasniqi personally visited a number of sites in KLA controlled areas including Likoc/Likovac,²⁰⁴³ Jabllanicë/Jablanica,²⁰⁴⁴ Malishevë/Malishevo,²⁰⁴⁵ Kleçkë/Klečka,²⁰⁴⁶ Shala and Llap operational zones,²⁰⁴⁷ and Kukës, Albania.²⁰⁴⁸ In addition to the contributions enumerated above, Mr Krasniqi participated in a series of meetings between zone commanders and General Staff members in which orders were issued for collaborators to be detained and for detention facilities to be set up for that purpose.²⁰⁴⁹ These instructions were implemented by zone commanders.²⁰⁵⁰

471. As regards Mr Krasniqi's contribution to efforts to deny or provide incorrect information regarding the commission of crimes, the supporting material indicates that Mr Krasniqi sought to justify KLA actions taken against persons designated as [REDACTED].²⁰⁵¹ [REDACTED].²⁰⁵² Mr Krasniqi also declared that

²⁰³⁹ [REDACTED].

²⁰⁴⁰ [REDACTED].

²⁰⁴¹ [REDACTED].

²⁰⁴² [REDACTED].

²⁰⁴³ [REDACTED].

²⁰⁴⁴ [REDACTED].

²⁰⁴⁵ [REDACTED].

²⁰⁴⁶ [REDACTED].

²⁰⁴⁷ [REDACTED].

²⁰⁴⁸ [REDACTED].

²⁰⁴⁹ [REDACTED].

²⁰⁵⁰ [REDACTED].

²⁰⁵¹ [REDACTED].

²⁰⁵² [REDACTED].

[REDACTED].²⁰⁵³ Despite such statements, when face-to-face with [REDACTED], members of the General Staff, including Mr Krasniqi, who were regularly notified of abductions, murders and kidnappings of Serbs and the killing and disappearance of Albanians, in particular senior members of the LDK, would flatly deny allegations related to the killing of collaborators.²⁰⁵⁴

472. As regards Mr Krasniqi's support for and coordination between JCE members, the supporting material indicates that Mr Krasniqi: (i) was a primary contact for some of the zone commanders, who received orders, instructions and information through him;²⁰⁵⁵ (ii) was in regular contact with operational zones,²⁰⁵⁶ including for nominating commanders for appointments,²⁰⁵⁷ receiving reports on the outcome of operations,²⁰⁵⁸ resolving disputes between commanders,²⁰⁵⁹ and issuing orders, including those of a disciplinary nature²⁰⁶⁰ and on the release of detainees;²⁰⁶¹ and (iii) frequently visited multiple locations indicated under Counts 1-10 to oversee the organisation of the units, maintain contact and provide supplies,²⁰⁶² as well as to provide other information, including about [REDACTED].²⁰⁶³

(b) Subjective Element

473. The supporting material further indicates that the Suspects shared the intent to commit the crimes under Counts 1-10 forming part of the common purpose of the JCE. Accordingly, their intent is apparent from: (i) the personal statements of

²⁰⁵³ [REDACTED].

²⁰⁵⁴ [REDACTED].

²⁰⁵⁵ [REDACTED].

²⁰⁵⁶ [REDACTED].

²⁰⁵⁷ [REDACTED].

²⁰⁵⁸ [REDACTED].

²⁰⁵⁹ [REDACTED].

²⁰⁶⁰ [REDACTED].

²⁰⁶¹ [REDACTED].

²⁰⁶² IT-04-84bis T675-T771, pp. 681-685; [REDACTED].

²⁰⁶³ [REDACTED].

the Suspects;²⁰⁶⁴ (ii) public statements of the KLA General Staff and/or the PGoK leadership, as well as regulations, structures, directions and orders drafted, issued or approved by the Suspects;²⁰⁶⁵ and (iii) their individual conduct, as specified above.²⁰⁶⁶

(c) Conclusion

474. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is well-grounded suspicion that the Suspects committed, as members of a JCE, the crimes under Counts 1-10, within the meaning of Article 16(1)(a) of the Law.

2. Joint Criminal Enterprise III

475. In the Revised Indictment, the SPO alternatively alleges that, to the extent that some of the crimes under Counts 1-10 did not fall within the aforementioned JCE, the Suspects are nevertheless responsible according to Article 16(1)(a) of the Law for the commission of such crimes, as it was foreseeable to them that the crimes were a possible consequence of the implementation of the JCE's common purpose and they willingly took that risk.²⁰⁶⁷

476. The Pre-Trial Judge assesses this mode of liability in the alternative, in the event that some of the crimes under Counts 1-10 went beyond the common purpose of the aforementioned JCE. Accordingly, regarding the objective elements of this mode of liability, the Pre-Trial Judge refers to the above findings: that a JCE to gain and exercise control over all of Kosovo by means including unlawfully

²⁰⁶⁴ [REDACTED].

²⁰⁶⁵ See *supra* para. 454 and fns 1953, 1954, 1955, 1956 and 1957.

²⁰⁶⁶ See *supra* paras 455-472.

²⁰⁶⁷ Revised Indictment, paras 34-35.

intimidating, mistreating, committing violence against and removing Opponents existed, and that the Suspects were members thereof.²⁰⁶⁸ Furthermore, the organised manner in which the JCE was implemented, notably, the pattern of intimidations, detentions, mistreatment and killings of Opponents,²⁰⁶⁹ made any of the crimes under Counts 1-10 an objectively foreseeable consequence of the implementation of the JCE's common purpose.

477. Regarding the subjective element of this mode of liability, the Pre-Trial Judge found above that the Suspects intended to participate in and contribute to the furtherance of the common purpose.²⁰⁷⁰ In addition, the supporting material indicates that it was foreseeable to the Suspects that any of the crimes under Counts 1-10 might be perpetrated in carrying out the common purpose of the JCE. In particular, the Suspects: (i) repeatedly and publicly called for or endorsed violence against Opponents through their personal statements and the public statements of KLA/PGoK leadership;²⁰⁷¹ and (ii) established, maintained or had knowledge of the intelligence and police structures tasked with the identification investigation and neutralisation of Opponents.²⁰⁷² Furthermore, the Suspects' willingness to take the risk that crimes beyond the common purpose might be committed can be inferred from: (i) their knowledge that KLA recruits were being deployed with minimal training and negligible or no information on IHL obligations;²⁰⁷³ (ii) their awareness that no clear definition for [REDACTED] and no procedure for determining such a role was provided by the KLA leadership, thereby opening the door to abuse;²⁰⁷⁴ and (iii) despite such awareness and the

²⁰⁶⁸ See *supra* paras 452-474 (Joint Criminal Enterprise I).

²⁰⁶⁹ See *supra* paras 139-444 (Counts 1-10) and paras 455-472 (Joint Criminal Enterprise I).

²⁰⁷⁰ See *supra* para. 473 (Joint Criminal Enterprise I).

²⁰⁷¹ See *supra* fns 1953, 1954, 1955, 1956 (Joint Criminal Enterprise I).

²⁰⁷² See *supra* paras 455-472 (Joint Criminal Enterprise I); [REDACTED].

²⁰⁷³ [REDACTED].

²⁰⁷⁴ See *supra* para. 456 (Joint Criminal Enterprise I).

common knowledge of crimes against Opponents occurring in Kosovo,²⁰⁷⁵ their continued endorsement of violence against Opponents and their personal participation in or contribution to the commission of crimes under Counts 1-10.²⁰⁷⁶

478. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the Suspects' alleged responsibility under JCE I, there is well-grounded suspicion that Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi committed crimes under Counts 1-10, as it was foreseeable to them that such crimes were a possible consequence of the implementation of the JCE's common purpose and they willingly took that risk, within the meaning of Article 16(1)(a) of the Law.

3. Aiding and Abetting

479. Further, and alternatively to the alleged responsibility for commission, the SPO alleges in the Revised Indictment that the Suspects are criminally responsible for aiding and abetting the crimes under Counts 1-10, according to Article 16(1)(a) of the Law.²⁰⁷⁷

480. Regarding the objective elements of this mode of liability, the supporting material indicates that the Suspects' acts and omissions amounted to practical assistance, encouragement or moral support in committing the aforementioned crimes. In particular, the Suspects: (i) participated in the formulation and approval of public statements of the KLA General Staff as well as regulations, structures, directions and orders directed against Opponents;²⁰⁷⁸ (ii) personally participated in some of the crimes under Counts 1-10;²⁰⁷⁹ and (iii) visited many of the locations

²⁰⁷⁵ [REDACTED].

²⁰⁷⁶ See *supra* paras 455-472 (Joint Criminal Enterprise I).

²⁰⁷⁷ Revised Indictment, paras 52, 173.

²⁰⁷⁸ See *supra* paras 456, 461, 465, 469 and fns 1953, 1954, 1955, 1956, 1957 (Joint Criminal Enterprise I).

²⁰⁷⁹ See *supra* paras 457, 462, 466, 470 (Joint Criminal Enterprise I).

indicated under Counts 1-10 and offered various forms of practical and moral support.²⁰⁸⁰ Given that all four Suspects were senior KLA leaders and members of the KLA General Staff, with widely acknowledged authority,²⁰⁸¹ their aforementioned contribution had a substantial effect on the perpetration of the crimes.

481. Regarding the subjective element of this mode of liability, the supporting material indicates that the Suspects were aware of the essential elements of the crimes ultimately committed and they knew that their conduct assisted in their commission. In particular, the Suspects acquired such knowledge from: (i) their personal participation in the commission of some of the crimes and their visits to locations indicated under Counts 1-10;²⁰⁸² (ii) the political, logistical, financial and military support they provided to JCE members;²⁰⁸³ (iii) reports sent to the KLA General Staff and regular communications with zone commanders;²⁰⁸⁴ (iv) meetings with international representatives;²⁰⁸⁵ and (v) publicly available information.²⁰⁸⁶

482. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, further to and in the alternative to the Suspects' alleged responsibility for commission, there is well-grounded suspicion that Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi aided and abetted the crimes under Counts 1-10, within the meaning of Article 16(1)(a) of the Law.

²⁰⁸⁰ See *supra* paras 459, 463, 467, 472 (Joint Criminal Enterprise I).

²⁰⁸¹ See *supra* paras 455, 460, 464, 468 (Joint Criminal Enterprise I).

²⁰⁸² See *supra* paras 457, 462, 466, 470 (Joint Criminal Enterprise I).

²⁰⁸³ SITF00243018-00243022-ET Revised, p. 3; [REDACTED].

²⁰⁸⁴ [REDACTED].

²⁰⁸⁵ [REDACTED].

²⁰⁸⁶ [REDACTED].

4. Superior Responsibility

483. Further, and alternatively to the modes of liability under Article 16(1)(a) of the Law, the SPO alleges in the Revised Indictment that the Suspects are criminally responsible as superiors, according to Article 16(1)(c) of the Law, for all crimes charged under Counts 1-10.²⁰⁸⁷

(a) Mr Thaçi

484. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Thaçi was one of the founding members of the KLA General Staff²⁰⁸⁸ and remained so through the Indictment Period.²⁰⁸⁹ The General Staff was a body comprising a very limited number of persons that functioned on the basis of a division of tasks and responsibilities among its members.²⁰⁹⁰ As of approximately June 1998, Mr Thaçi was also Chief of the KLA Information Department²⁰⁹¹ and Chief of the KLA Political Department.²⁰⁹² Under the Regulations on Discipline of the Kosovo Liberation Army (“KLA Disciplinary Regulations”), Chiefs of Departments were entrusted with essentially the same powers as the highest ranking commanders.²⁰⁹³ Subsequent to the creation of the PGoK, by the end of March 1999, Mr Thaçi became Prime Minister, after approval by the zone commanders.²⁰⁹⁴ As Prime Minister, Mr Thaçi also

²⁰⁸⁷ Revised Indictment, paras 53-55, 173, 174 [68].

²⁰⁸⁸ [REDACTED].

²⁰⁸⁹ [REDACTED].

²⁰⁹⁰ [REDACTED].

²⁰⁹¹ [REDACTED].

²⁰⁹² [REDACTED].

²⁰⁹³ [REDACTED].

²⁰⁹⁴ [REDACTED]. *See also* [REDACTED].

served as Commander-in-Chief of the KLA²⁰⁹⁵ and, as such, signed the KLA Undertaking on 21 June 1999.²⁰⁹⁶

485. The supporting material indicates that, in his capacity as chief of two Directorates, under the KLA Disciplinary Regulations, Mr Thaçi had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat members of the KLA.²⁰⁹⁷ Other examples of powers that Mr Thaçi exercised under his different roles during the Indictment Period include: (i) leading deployments of KLA recruits into Kosovo in spring 1998;²⁰⁹⁸ (ii) welcoming and deploying recruits to designated positions;²⁰⁹⁹ (iii) issuing instructions to commanders on behalf of the KLA General Staff on operational matters (such as coordinating the supply line for weapons and ammunitions),²¹⁰⁰ or other civilian and administrative matters;²¹⁰¹ (iv) intervening personally, along with other KLA General Staff members, to resolve disputes between commanders regarding division of areas of responsibility;²¹⁰² and (v) participating in the appointment of commanders.²¹⁰³ The supporting material also indicates that Mr Thaçi's leading authority within the KLA was apparent and that other KLA General Staff members deferred to Mr Thaçi in their decision-making.²¹⁰⁴

486. According to the supporting material, in his capacity as Prime Minister, Mr Thaçi had the power to, *inter alia*, appoint key governmental figures²¹⁰⁵ such as

²⁰⁹⁵ [REDACTED].

²⁰⁹⁶ [REDACTED]. *See also supra* para. 134 (Contextual Requirements for War Crimes).

²⁰⁹⁷ [REDACTED].

²⁰⁹⁸ [REDACTED].

²⁰⁹⁹ [REDACTED].

²¹⁰⁰ [REDACTED].

²¹⁰¹ [REDACTED].

²¹⁰² [REDACTED].

²¹⁰³ [REDACTED].

²¹⁰⁴ [REDACTED]; IT-05-87 6D00067, p. 23 (U003-9108) ("We were waging the war. Hashim's presence was important for morale").

²¹⁰⁵ [REDACTED].

the Minister of Defence (reporting directly to the Prime Minister),²¹⁰⁶ the KLA Chief of Staff,²¹⁰⁷ the Commander of the National Guard,²¹⁰⁸ and the Chief of the Intelligence Service (reporting directly to the Prime Minister).²¹⁰⁹

487. This shows that Mr Thaçi had the material ability to prevent the commission of crimes and punish his subordinates at the time of the commission of such crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Thaçi and the KLA members at the locations included in the Revised Indictment.

488. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Thaçi's subordinates.²¹¹⁰

489. Regarding Mr Thaçi's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed, including at the times alleged in the Revised Indictment.²¹¹¹ He also witnessed victims being mistreated by KLA members on site.²¹¹² Mr Thaçi's knowledge came also from other sources. For example, as member of the KLA General Staff and Commander in Chief, Mr Thaçi met operational zone commanders in the field.²¹¹³ Reports were also sent to the KLA General Staff, including Mr Thaçi, and regular

²¹⁰⁶ [REDACTED].

²¹⁰⁷ [REDACTED].

²¹⁰⁸ [REDACTED].

²¹⁰⁹ [REDACTED].

²¹¹⁰ *See supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

²¹¹¹ Likoc/Likovac: [REDACTED]; the wider Drenica operation zone: IT-05-87 6D00067, pp. 14, 21, 23 (U003-9097, U003-9104, U003-9106); Jabllanicë/Jablanica: [REDACTED]; Drenoc/Drenovac: [REDACTED]; Malishevë/Mališevo: [REDACTED]; Kleçkë/Klečka: [REDACTED]; Bare and Bajgorë/Bajgora: [REDACTED]; Shala and LLap operational zones: [REDACTED]; Kukës: [REDACTED]; Rahovec/Orahovac: [REDACTED].

²¹¹² *See supra* para. 271 (Counts 4-5), para. 457 (Joint Criminal Enterprise).

²¹¹³ [REDACTED].

communications with zone commanders took place.²¹¹⁴ Based on the supporting material, throughout the Indictment Period, Mr Thaçi also had a number of meetings with representatives of the international community, in which he was explicitly put on notice of crimes committed or being committed by KLA members.²¹¹⁵ Moreover, Mr Thaçi and other high-ranking KLA members, in particular General Staff members, had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled daily communication between Mr Thaçi and KLA members in the operational zones.²¹¹⁶ All of the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.²¹¹⁷ It follows that Mr Thaçi knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

490. Regarding Mr Thaçi's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the KLA General Staff, Chief of the Information Department, Chief of the Political Department, Prime Minister and KLA Commander in Chief, Mr Thaçi had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Thaçi took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Thaçi condoned the actions of his subordinates through his presence on site

²¹¹⁴ [REDACTED].

²¹¹⁵ [REDACTED].

²¹¹⁶ [REDACTED].

²¹¹⁷ [REDACTED].

and his failure to act when witnessing victims being mistreated by KLA members.²¹¹⁸

491. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the Law, there is well-grounded suspicion that Mr Thaçi is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

(b) Mr Veseli

492. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Veseli was one of the founding members of the KLA General Staff²¹¹⁹ and a member of the KLA Political Directorate [REDACTED].²¹²⁰ Between at least June 1998 and March 1999 he was the Director of the G2 [REDACTED] before becoming, in late March 1999, Chief of the SHIK, after the creation of the PGoK.²¹²¹ Mr Veseli was appointed to that position by Mr Thaçi²¹²² and he reported to him.²¹²³ Under the KLA Disciplinary Regulations, chiefs of Departments/Directorates were entrusted with essentially the same powers as the highest ranking commanders.²¹²⁴

493. According to the supporting material, in his capacity as chief of a Directorate, under the KLA Disciplinary Regulations, Mr Veseli had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat

²¹¹⁸ See *supra* para. 271 (Counts 4-5), para. 457 (Joint Criminal Enterprise); [REDACTED].

²¹¹⁹ [REDACTED].

²¹²⁰ [REDACTED].

²¹²¹ [REDACTED].

²¹²² [REDACTED].

²¹²³ [REDACTED].

²¹²⁴ [REDACTED].

members of the KLA.²¹²⁵ Other examples of powers that Mr Veseli exercised under his different roles during the Indictment Period include: (i) leading deployments of KLA recruits into Kosovo in spring 1998;²¹²⁶ (ii) welcoming and deploying recruits to designated positions;²¹²⁷ (iii) conducting investigations;²¹²⁸ (iv) intervening personally, along with other KLA General Staff members, to resolve disputes between commanders regarding division of areas of responsibility;²¹²⁹ (v) transferring²¹³⁰ and releasing²¹³¹ a detainee; and (vi) dealing with a request to discipline Ramush Haradinaj for the way he treated his troops.²¹³² The supporting material also indicates that Mr Veseli, as a senior leadership figure, had authority and standing within the KLA.²¹³³

494. This shows that Mr Veseli had the material ability to prevent the commission of crimes and punish his subordinates at the time of the commission of such crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Veseli and the KLA members at the locations included in the Revised Indictment.

495. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Veseli's subordinates.²¹³⁴

496. Regarding Mr Veseli's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed,

²¹²⁵ [REDACTED].

²¹²⁶ [REDACTED].

²¹²⁷ [REDACTED].

²¹²⁸ [REDACTED].

²¹²⁹ [REDACTED].

²¹³⁰ [REDACTED].

²¹³¹ [REDACTED].

²¹³² [REDACTED].

²¹³³ [REDACTED].

²¹³⁴ See *supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

including at the times alleged in the Revised Indictment.²¹³⁵ He also witnessed victims being mistreated by KLA members on site.²¹³⁶ Mr Veseli's knowledge came also from other sources. For example, as member of the KLA General Staff, Mr Veseli met operational zone commanders in the field.²¹³⁷ Reports were also sent to the KLA General Staff, including Mr Veseli, and regular communications with zone commanders took place.²¹³⁸ Significantly, in his capacity as Chief of the Intelligence Service Department, Mr Veseli, along with the other members of the General Staff, had direct access to information coming directly from the operational zone personnel regarding the identification of Opponents.²¹³⁹ Moreover, in July 1998, Mr Veseli, along with Mr Thaçi, participated in a meeting with representatives of the international community, in which he was explicitly put on notice of crimes committed or being committed by KLA members.²¹⁴⁰ Generally, as a high-ranking KLA member, Mr Veseli had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled daily communication between him and KLA members in the operational zones.²¹⁴¹ All of the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.²¹⁴² It follows that Mr Veseli knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

²¹³⁵ Likoc/Likovac: [[REDACTED]]; the wider Drenica operation zone: IT-05-87 6D00067, p. 14 (U003-9097); Jabllanicë/Jablanica: [REDACTED]; Drenoc/Drenovac: [REDACTED]; Malishevë/Mališevo: [REDACTED]; Kleçkë/Klečka: [REDACTED]; Kukës: [REDACTED]; Rahovec/Orahovac: [REDACTED].

²¹³⁶ See *supra* para. 175 (Counts 2-3), para. 291 (Counts 4-5) and para. 462 (Joint Criminal Enterprise I).

²¹³⁷ [REDACTED].

²¹³⁸ [REDACTED].

²¹³⁹ [REDACTED].

²¹⁴⁰ [REDACTED].

²¹⁴¹ [REDACTED].

²¹⁴² [REDACTED].

497. Regarding Mr Veseli's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the KLA General Staff, member of the KLA Political Directorate, and Chief of the Intelligence Service Department, Mr Veseli had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Veseli took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Veseli condoned the actions of his subordinates through his presence on site and his failure to act when witnessing victims being mistreated by KLA members.²¹⁴³

498. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the Law, there is well-grounded suspicion that Mr Veseli is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

(c) Mr Selimi

499. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Selimi was one of the founding members of the KLA General Staff and remained so throughout 1998 and into 1999.²¹⁴⁴ Around March 1998, Mr Selimi became Chief of G3,²¹⁴⁵ before taking up the position of Inspector General of the KLA General Staff, from July 1998.²¹⁴⁶ In

²¹⁴³ See *supra* para. 175 (Counts 2-3), para. 291 (Counts 4-5) and para. 462 (Joint Criminal Enterprise I). [REDACTED].

²¹⁴⁴ [REDACTED].

²¹⁴⁵ [REDACTED].

²¹⁴⁶ [REDACTED].

early April 1999, Mr Selimi was appointed Minister of Public Order of the PGoK by Mr Thaçi.²¹⁴⁷ Under the KLA Disciplinary Regulations, Chiefs of Departments/Directorates were entrusted essentially with the same powers as the highest ranking commanders.²¹⁴⁸ Furthermore, in his capacity as Inspector General, Mr Selimi's tasks included assessing the readiness of the KLA units from an operational point of view as well as determining whether there was a lack of discipline, in which case he informed the responsible commander.²¹⁴⁹ Generally, Mr Selimi was at all times regarded as an authoritative figure within the KLA,²¹⁵⁰ one that visited most often the commanders on the ground²¹⁵¹ and one of the few KLA General Staff members to remain in Kosovo until the end of the armed conflict, while most of the other members were in Albania.²¹⁵²

500. According to the supporting material, in his capacity as Chief of a Directorate, under the KLA Disciplinary Regulations, Mr Selimi had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat members of the KLA.²¹⁵³ Other examples of powers that Mr Selimi exercised under his different roles during the Indictment Period include: (i) deploying KLA recruits;²¹⁵⁴ (ii) taking part in the appointment of zone commanders;²¹⁵⁵ (iii) being involved in investigations into disciplinary matters;²¹⁵⁶

²¹⁴⁷ [REDACTED].

²¹⁴⁸ [REDACTED].

²¹⁴⁹ [REDACTED].

²¹⁵⁰ [REDACTED].

²¹⁵¹ [REDACTED].

²¹⁵² [REDACTED].

²¹⁵³ [REDACTED].

²¹⁵⁴ [REDACTED].

²¹⁵⁵ [REDACTED].

²¹⁵⁶ [REDACTED].

(iv) inquiring about the reasons to arrest and disarm individuals;²¹⁵⁷ and (v) taking decisions to release detainees.²¹⁵⁸

501. This shows that Mr Selimi had the material ability to prevent the commission of crimes and punish his subordinates at the time of the commission of such crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Selimi and the KLA members at the locations included in the Revised Indictment.

502. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Selimi's subordinates.²¹⁵⁹

503. Regarding Mr Selimi's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed, including at the times alleged in the Revised Indictment.²¹⁶⁰ In fact, Mr Selimi was [REDACTED] present on the ground including in Dukagjin, Drenica, Pashtrik, Neredime, Shala and Llap zones.²¹⁶¹ Mr Selimi himself admitted that he was aware that persons other than combatants were detained by KLA members, at least prior to 28 November 1998, without knowing the exact detention location.²¹⁶² He also witnessed victims being mistreated by KLA members on site or condoned such mistreatment when participating in interrogations.²¹⁶³ Mr Selimi's knowledge came also from other sources. For example, as member of the KLA General Staff,

²¹⁵⁷ [REDACTED].

²¹⁵⁸ [REDACTED].

²¹⁵⁹ See *supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

²¹⁶⁰ Likoc/Likovac: [REDACTED]; the wider Drenica operation zone: IT-05-87 6D00067, p. 14 (U003-9097); Jabllanicë/Jablanica: [REDACTED]; Drenoc/Drenovac: [REDACTED]; Kleçkë/Klečka: [REDACTED]; Bare and Bajgorë/Bajgora: [REDACTED]; Shala and Llap operational zones: [REDACTED]; Rahovec/Orahovac: [REDACTED].

²¹⁶¹ [REDACTED].

²¹⁶² [REDACTED].

²¹⁶³ See *supra* paras 271, 279 (Counts 4-5), para. 359 (Counts 6-7), para. 466 (Joint Criminal Enterprise I).

Mr Selimi met operational zone commanders in the field.²¹⁶⁴ Reports were also sent to the KLA General Staff, including Mr Selimi, and regular communications with zone commanders took place.²¹⁶⁵ Generally, as a high-ranking KLA member and General Staff member, he had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled his communication with KLA members in the operational zones.²¹⁶⁶ All the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.²¹⁶⁷ It follows that Mr Selimi knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

504. Regarding Mr Selimi's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the KLA General Staff, Chief of Operational Directorate, Inspector General, and Minister of Public Order, Mr Selimi had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Selimi took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Selimi condoned the actions of his subordinates through his presence on site, his participation in interrogations, and his failure to act when witnessing victims being mistreated by KLA members.²¹⁶⁸

505. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the

²¹⁶⁴ [REDACTED].

²¹⁶⁵ [REDACTED].

²¹⁶⁶ [REDACTED].

²¹⁶⁷ [REDACTED].

²¹⁶⁸ See *supra* paras 271, 279 (Counts 4-5), para. 359 (Counts 6-7), para. 466 (Joint Criminal Enterprise I). [REDACTED].

Law, there is well-grounded suspicion that Mr Selimi is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

(d) Mr Krasniqi

506. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Krasniqi was a member of the KLA General Staff since the end of 1996 or the beginning of 1997.²¹⁶⁹ In 1998, he was a member of the KLA Political Directorate,²¹⁷⁰ Chief of the Local Government Department²¹⁷¹ and was appointed official spokesperson of the KLA as of June of that year.²¹⁷² In November 1998, Mr Krasniqi was also formally appointed Deputy Commander for support and continued to be one of the KLA political representatives and its Spokesperson.²¹⁷³ Under the KLA Disciplinary Regulations, chiefs of Departments/Directorates were entrusted with essentially the same powers as the highest ranking commanders.²¹⁷⁴

507. Based on the supporting material, as chief of a Directorate and, subsequently, Deputy Commander, under the KLA Disciplinary Regulations, Mr Krasniqi had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat members of the KLA.²¹⁷⁵ The supporting material also suggests that, during the Indictment Period, Mr Krasniqi was the one tasked with disseminating all orders, instructions and information on behalf of the General

²¹⁶⁹ IT-04-84 P00340, p. 21 (3305).

²¹⁷⁰ [REDACTED].

²¹⁷¹ [REDACTED].

²¹⁷² [REDACTED].

²¹⁷³ [REDACTED].

²¹⁷⁴ [REDACTED].

²¹⁷⁵ [REDACTED].

Staff;²¹⁷⁶ consequently, zone commanders communicated via Mr Krasniqi with the General Staff and coordinated their work through him, because he was the only General Staff member that people knew publicly.²¹⁷⁷ The public character of Mr Krasniqi, as the only widely known member of the KLA General Staff, conferred upon him respect and regard among KLA members²¹⁷⁸ and with the international community.²¹⁷⁹ Examples of Mr Krasniqi's exercise of his authority under his different roles during the Indictment Period include: (i) intervening personally, along with other KLA General Staff members, to resolve disputes between commanders regarding division of areas of responsibility;²¹⁸⁰ (ii) issuing an order for the arrest of a KLA member [REDACTED];²¹⁸¹ (iii) issuing an order to release prisoners;²¹⁸² and (iv) taking part in the appointment of commanders and other senior officials.²¹⁸³

508. This shows that Mr Krasniqi had the material ability to prevent the commission of crimes by and punish his subordinates at the time of the commission of the crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Krasniqi and the KLA members at the locations included in the Revised Indictment.

509. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Krasniqi's subordinates.²¹⁸⁴

²¹⁷⁶ [REDACTED].

²¹⁷⁷ [REDACTED].

²¹⁷⁸ [REDACTED].

²¹⁷⁹ [REDACTED].

²¹⁸⁰ [REDACTED].

²¹⁸¹ [REDACTED].

²¹⁸² [REDACTED].

²¹⁸³ [REDACTED].

²¹⁸⁴ See *supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

510. Regarding Mr Krasniqi's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed, including at the times alleged in the Revised Indictment.²¹⁸⁵ Mr Krasniqi's knowledge came also from other sources. For example, Mr Krasniqi received reports from zone commanders on the outcome of military operations, including the taking of prisoners,²¹⁸⁶ or how to deal with them.²¹⁸⁷ He was also personally put on notice about crimes being committed, including kidnapping, killings and disappearances.²¹⁸⁸ Further, as member of the KLA General Staff and due to his specific role as KLA spokesperson, Mr Krasniqi met and maintained close contact with the operational zone commanders in the field.²¹⁸⁹ Reports were also sent to the KLA General Staff, including Mr Krasniqi, and regular communications with zone commanders took place.²¹⁹⁰ Generally, as a high-ranking KLA member and General Staff member, he had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled him to communicate daily with KLA members in the operational zones.²¹⁹¹ All the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.²¹⁹² It follows that Mr Krasniqi knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

511. Regarding Mr Krasniqi's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the

²¹⁸⁵ Likoc/Likovac: [REDACTED]; Jabllanicë/Jablanica: IT-04-84bis P00064, pp. 135-136 (5075-5076); [REDACTED]; Kleçkë/Klečka: [REDACTED]; Shala and Llap operational zones: [REDACTED]; Malishevë/Mališevo: [REDACTED]; Kukës: [REDACTED].

²¹⁸⁶ [REDACTED].

²¹⁸⁷ [REDACTED].

²¹⁸⁸ [REDACTED].

²¹⁸⁹ [REDACTED].

²¹⁹⁰ [REDACTED].

²¹⁹¹ [REDACTED].

²¹⁹² [REDACTED].

KLA General Staff, member of the KLA Political Directorate, Chief of the Local Government Department, official spokesperson of the KLA, and Deputy Commander, Mr Krasniqi had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Krasniqi took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Krasniqi condoned the actions of his subordinates through his presence on site and his failure to act when witnessing victims being mistreated by KLA members.²¹⁹³ Mr Krasniqi also participated in a series of meetings between zone commanders and General Staff members in which orders were issued for collaborators to be detained and for detention facilities to be set up for that purpose.²¹⁹⁴

512. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the Law, there is well-grounded suspicion that Mr Krasniqi is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

VII. RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY

513. As a general rule, Rule 88(1) of the Rules provides that an indictment shall be made public upon confirmation. Further, pursuant to Rules 95(1) and (2)(b) and 102(1)(a) of the Rules, any disclosure of material, including the names of witnesses and victims, will take place after the initial appearance of the Accused, for whom

²¹⁹³ See *supra* para. 251 (Counts 4-5), para. 470 (Joint Criminal Enterprise). [REDACTED].

²¹⁹⁴ [REDACTED].

an indictment has been confirmed. In exceptional circumstances, and upon a showing of good cause, however, pursuant to Rules 88(2) and 105(1) of the Rules, the SPO may apply for the temporary non-disclosure of the indictment, related documents, and the identities of victims and witnesses to continue after confirmation of the indictment or initial appearance of the Accused, as the case may be. It is highlighted that Rule 105(1) measures are provisional in nature, allowing for the protection of vulnerable witnesses and victims until such time a request for protective measures is submitted.

514. With respect to the Suspects' risk of flight, the Pre-Trial Judge considers their: (i) awareness of the notification of the confirmed charges, as contained in the indictment to be served, and potential penalties; (ii) awareness of publicly reported convictions of former senior KLA members and named JCE members;²¹⁹⁵ (iii) former or current senior positions in the KLA and/or the Kosovo government,²¹⁹⁶ which would allow them to mobilise a vast network of supporters and officials;²¹⁹⁷ (iv) ability to travel to jurisdictions which would have no obligation to transfer them to the Specialist Chambers; and (v) significant funds and resources that demonstrate their incentive and means to flee.²¹⁹⁸

515. With respect to the interference with victims, witnesses, and alleged accomplices, the Pre-Trial Judge considers the Suspects' positions of authority and influence in Kosovo and consequent ability to mobilise supporters in their efforts to obstruct the investigations and proceedings against them.²¹⁹⁹ The Pre-Trial

²¹⁹⁵ Submission on Related Orders, paras 19-24, 31.

²¹⁹⁶ See *supra* paras 455, 460, 464, 468 (Joint Criminal Enterprise I).

²¹⁹⁷ Submission on Related Orders, paras 4-5, 32.

²¹⁹⁸ Submission on Related Orders, para. 32.

²¹⁹⁹ Submission on Related Orders, paras 4-5, 34.

Judge further considers the alleged attempts already made by the Suspects to delegitimise the KSC²²⁰⁰ and obstruct past²²⁰¹ and present²²⁰² proceedings.

516. With respect to the further commission of crimes, the Pre-Trial Judge notes that the Suspects are alleged to be part of a joint criminal enterprise targeting KLA Opponents.²²⁰³ Considering the alleged attempts to obstruct proceedings²²⁰⁴ and the pervasive climate of intimidation that has marred cases against former KLA members,²²⁰⁵ the Pre-Trial Judge finds that there is a significant risk that crimes of violence may be committed against those individuals the Suspects perceive to be against them.

517. In light of the factors enumerated in paragraphs 514-516 above, the Pre-Trial Judge finds that the SPO has demonstrated good cause justifying exceptional circumstances that allow, pursuant to Rule 88(2) of the Rules, the temporary non-disclosure of the following documents, including annexes, as the case may be: (i) the indictment as confirmed (“Confirmed Indictment”); and (ii) F00002, F00003, F00005, F00006, F00008, F00011, F00012, F00014, F00018, F00022, F00024 (“Related Documents”).

518. In light of the factors enumerated in paragraphs 515-516 above, the Pre-Trial Judge also finds that the SPO has demonstrated exceptional circumstances, pursuant to Rule 105(1) of the Rules, justifying interim non-disclosure of the identities of witnesses and victims, until appropriate protective measures have been ordered.

²²⁰⁰ Submission on Related Orders, para. 7; Annex 2 of Submission on Related Orders, Part 1A, Part II.

²²⁰¹ Submission on Related Orders, paras 8-9.

²²⁰² Submission on Related Orders, paras 10-17; Annex 3 of Submission on Related Orders, p. 8.

²²⁰³ Revised Indictment, para. 32.

²²⁰⁴ *See supra* para. 515.

²²⁰⁵ Submission on Related Orders, paras 18-26.

519. As a result, the non-disclosure of the Confirmed Indictment towards the public²²⁰⁶ shall be maintained until further order of the Pre-Trial Judge, but no later than the initial appearance of the Accused, as per Rule 88(2) of the Rules. The Accused shall be served with the strictly confidential Confirmed Indictment with redactions, as appropriate, pursuant to Rules 87(1) and 105(1) of the Rules. Notwithstanding the confidentiality of the Confirmed Indictment, pursuant to Rule 88(3) of the Rules, the SPO and the Registrar, as the case may be, may disclose the redacted version or part thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

520. Non-disclosure of the Related Documents and supporting material to the Confirmed Indictment shall also be maintained until further order of the Pre-Trial Judge, as provided in Rule 88(2) of the Rules. However, the supporting material shall be made available to the Accused with redactions, as appropriate, no later than 30 days of their initial appearance, as per Rules 102(1)(a) and 105(1) of the Rules.

VIII. DISPOSITION

521. In light of the foregoing, the Pre-Trial Judge hereby:

- a. **CONFIRMS** the following charges against Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi:
 - i. persecution (Count 1), imprisonment (Count 2), other inhumane acts (Count 4), torture (Count 6), murder (Count 8) and enforced

²²⁰⁶ For the purposes of this decision, public shall mean all persons, organisations, entities, Third States, clients, associations and groups, including the media, other than the judges of the Specialist Chambers (and their staff), the Registry, the SPO, and the Accused.

- disappearance of persons (Count 10), as crimes against humanity punishable under Articles 13 and 16(1)(a) of the Law; and
- ii. arbitrary detention (Count 3), cruel treatment (Count 5), torture (Count 7) and murder (Count 9), as war crimes punishable under Articles 14(1)(c) and 16(1)(a) of the Law;
- b. **ORDERS** the Specialist Prosecutor to submit, within one week of the notification of the present decision, a further revised indictment, taking into account the findings in paragraph 226, which shall be considered the “Confirmed Indictment”;
 - c. **AUTHORISES** the SPO to redact the name and identifying information of any victim or witness from the Confirmed Indictment, Related Documents, and supporting material, and assign and use provisional pseudonyms to these victims and witnesses;
 - d. **ORDERS** the SPO to submit a strictly confidential, redacted version of the Confirmed Indictment within one week of notification of the present decision;
 - e. **ORDERS** the Registry to serve on the Accused, in consultation with the SPO, the strictly confidential, redacted version of the Confirmed Indictment;
 - f. **AUTHORISES** the SPO and the Registrar, as the case may be, to disclose the strictly confidential, redacted Confirmed Indictment or parts thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of the investigation or prosecution;
 - g. **ORDERS** the non-disclosure of the Related Documents and supporting material until further order;
 - h. **ORDERS** the non-disclosure of the Confirmed Indictment to the public until further order; and
 - i. **ORDERS** the SPO to submit a request for protective measures, if any, in relation to victims and witnesses identified in the Confirmed Indictment,

Related Documents and supporting material within one week of the initial appearance of the Accused.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Monday, 26 October 2020
At The Hague, the Netherlands.