



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-06  
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
Jakup Krasniqi**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Dr Fidelma Donlon

**Date:** 15 February 2021

**Language:** English

**Classification:** Confidential and *Ex Parte*

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**First Registry Report to the Pre-Trial Judge on Victims' Applications for  
Participation in the Proceedings**

**with confidential and *ex parte* Annexes 1-19**

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**Head of Victims' Participation Office**

Silke Studzinsky

## I. INTRODUCTION

1. The Victims' Participation Office ("VPO") hereby files the first report ("Report") on victims' applications for participation in the proceedings pursuant to Rule 113(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules").
2. With this Report, the VPO submits to the Pre-Trial Judge eighteen (18) applications for the status of a participating victim in the proceedings and provides recommendations on admissibility and protective measures, as well as preliminary observations on grouping for the purpose of common representation.

## II. PROCEDURAL HISTORY

3. On 26 October 2020, the Pre-Trial Judge confirmed the indictment ("Confirmed Indictment") against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, Jakup Krasniqi (collectively, "the Accused").<sup>1</sup>
4. A public redacted version of the Confirmed Indictment was filed on 4 November 2020, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.<sup>2</sup>
5. On 4 January 2021, the Pre-Trial Judge issued the "Framework Decision on Victims' Applications"<sup>3</sup> ("Framework Decision") setting out the principles governing the application process and the role of the VPO.<sup>4</sup> As noted by the Pre-Trial Judge in the Framework Decision, the VPO plays a central role in this process by, *inter alia*, informing potential applicants, assisting applicants in the application process and collecting applications. In order to perform these tasks successfully, the Pre-Trial

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<sup>1</sup> KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("Confirmation Decision"), 26 October 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00034/A01, Specialist Prosecutor, Indictment, 30 October 2020, strictly confidential and *ex parte*. A public redacted corrected Confirmed Indictment, correcting certain clerical errors, was submitted on 4 November 2020, F00045/A03, public.

<sup>3</sup> KSC-BC-2020-06/ F00159, Framework Decision on Victims' Applications, 4 January 2021, public.

<sup>4</sup> See Framework Decision, paras 14-17.

Judge noted in the Framework Decision that the Specialist Prosecutor's Office ("SPO") should indicate to the VPO any person who has suffered harm as a direct result of a crime in the Confirmed Indictment.<sup>5</sup> The VPO notes that it has been granted access to the un-redacted version of the Confirmed Indictment, which contains a table with all names of victims identified by the SPO thus far. The SPO has also indicated that it will further provide the VPO with a list that contains the names of potential victims.

6. To date, the VPO has received nineteen (19) applications from persons applying for admission to participate in the proceedings as victims. The majority of applications were sent by applicants via e-mail, with application forms and supporting documentation attached. Eight (8) applications were sent by two different lawyers. One applicant, who has been assigned pseudonym Victim-15/06, withdrew the application, and this application is therefore not included in this Report.

### III. CLASSIFICATION

7. The VPO files this Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Report so that it can be disclosed to the Parties, as it contains no identifying information of the applicants. In the event that the Pre-Trial Judge decides to re-classify this Report as public, this Report also constitutes the Report to the Parties pursuant to Rule 113(2) of the Rules.<sup>6</sup>

8. Together with this Report, the VPO submits 19 confidential and *ex parte* Annexes.<sup>7</sup> Annex 1 contains tables indicating the number and details of applicants recommended for admission (Group A) and not recommended for admission (Group B).<sup>8</sup> The remaining 18 annexes are summaries of the applications prepared by the VPO,

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<sup>5</sup> See Framework Decision, para. 14.

<sup>6</sup> See Framework Decision, para. 50.

<sup>7</sup> See Framework Decision, para. 24(e)a-b.

<sup>8</sup> See Framework Decision, para. 24(e)a.

along with basic information on the applicants, a summary of the alleged events and harm suffered, and any request for protective measures.<sup>9</sup>

9. The application summaries in the Annexes do contain identifying information and are therefore filed as confidential and *ex parte* pursuant to Rule 113(2) and Rule 82(1) of the Rules.

10. The application forms and supporting documentation have been disclosed only to the Pre-Trial Judge through Legal Workflow in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.<sup>10</sup>

#### IV. ASSESSMENT OF APPLICATIONS

11. The VPO has assessed the formal completeness of the application forms and the content of the applications in light of the requirements stemming from the definition of a participating victim under Article 22(1) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 113(1) of the Rules.

##### A. COMPLETENESS OF APPLICATION FORMS

12. In order for an application to be considered complete<sup>11</sup>, the VPO assesses whether:

- (i) there is sufficient proof of identity and kinship (for indirect victims) and/or legal guardianship;
- (ii) personal details are complete;
- (iii) all relevant sections of the application form are filled in;
- (iv) the date/period and location of the crimes as well as the harm suffered are sufficiently clearly indicated;
- (v) relevant and sufficient documentation has been submitted to the extent possible; and
- (vi) the application is signed by the applicant or legal guardian.

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<sup>9</sup> See Framework Decision, para. 24(e)b.

<sup>10</sup> See Framework Decision, para. 25.

<sup>11</sup> See Framework Decision, para. 22.

13. The VPO sought additional information/documentation from Victims-01/06 to 05/06, Victim-08/06, Victim-12/06, Victim-14/06, Victim-16/06 to 18/06 and Victim-19/06. Victims-01/06 to 05/06 and Victims-16/06 to 18/06 were contacted through their lawyers, who assisted them with their applications, while the other applicants were contacted directly. The responses from the applicants/lawyers are summarized in a note to the file for each application. The notes have been uploaded to Legal Workflow. The VPO included the additional information and clarifications received from the applicants/lawyers into the application summaries annexed to this Report.

14. In line with the above requirements, all applications submitted with this Report can be considered as formally complete.

## **B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF**

### **1. Standard of proof**

15. Pursuant to Rule 113(4) of the Rules, in deciding whether a victim may participate in the proceedings, the Panel shall consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment.

16. In assessing the applications and making its recommendation in the present Report, the VPO applied the *prima facie*<sup>12</sup> standard for all requirements as well as any supporting evidentiary material.

### **2. Criteria of Admissibility**

17. Article 22(1) of the Law provides that a victim is a natural person who has personally suffered harm, including physical, mental and material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers.

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<sup>12</sup> *Prima facie* means that the Pre-Trial Judge reviews the submitted information and supporting material on a case-by-case basis, taking into account: (i) all relevant circumstances as apparent at first sight; and (ii) the intrinsic coherence of the application. See Framework Decision, para. 29.

18. Rule 113(1) of the Rules further stipulates that a person claiming to be a victim of a crime alleged in the indictment may file an application for admission as a victim participating in the proceedings, specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm.

19. In assessing whether the applicants meet the definitions set out in Article 22 (1) of the Law and Rule 113(1) of the Rules, the VPO considered the requirements listed below, in light of the description of the events and supporting material, if available.

20. As regards evidentiary material, the VPO considered whether the applicants produced *prima facie* at least some evidence of meeting the requirements under Article 22(1) of the Law and Rule 113(1) of the Rules. However, given that over 20 years have passed since the described events took place, the VPO has taken into consideration any constraints affecting the applicants' ability to produce evidence and assessed this against the overall credibility and coherence of their statements.<sup>13</sup> This approach comports with the guidelines set out in the Framework Decision, where it is stated that applicants *may* submit supporting documents, to the extent available.<sup>14</sup>

21. The VPO has based its assessment and recommendation to the Pre-Trial Judge on the following requirements:

**(a) Natural person**

22. The VPO notes that the applications do not raise questions regarding the requirement for an applicant to be a "natural person". All applicants submitted valid supporting documentation, such as an ID card or passport.

**(b) Alleged crimes**

23. The VPO assessed whether acts described in the applications appear to constitute crimes within the scope of the Confirmed Indictment, which includes the listed crimes

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<sup>13</sup> See, e.g., STL, *Prosecutor v. Ayyash et al.*, Transmission of Applications for the Status of Victim Participating in the Proceedings, F0119, 9 February 2012, para. 25; see also *Prosecutor v. Ayyash et al.*, Pre-Trial Judge, Decision Relating to Victims' Participation in the Proceedings and their Legal Representation, F0128, 17 April 2020, paras 30-32; ICC, *The Prosecutor v. Bosco Ntaganda*, Pre-Trial Chamber II, Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, ICC-01/04-02/06-211, 15 January 2014, para. 19.

<sup>14</sup> See Framework Decision, paras. 31, 35- 37.

of persecution, imprisonment, illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder and enforced disappearance of persons.<sup>15</sup>

24. In addition, the VPO evaluated whether the alleged events have taken place within the geographical and temporal scope of the indictment, thus in Kosovo and areas of northern Albania between March 1998 and September 1999.<sup>16</sup>

25. When assessing this requirement on a *prima facie* basis, the VPO did not only consider the alleged crime sites listed in the Confirmed Indictment. This is in line with several paragraphs<sup>17</sup> of the Confirmed Indictment.

26. For example, paragraph 57 of the Confirmed Indictment charging persecution reads as follows:

During the Indictment Period, the JCE Members and Tools conducted a campaign of persecution against Opponents, including in multiple municipalities in Kosovo and [...] in northern Albania. The persecutory acts described below are illustrative of a wider campaign of persecution against Opponents implemented throughout Kosovo, before, during and after the Indictment Period.

27. In addition, paragraph 136 of the Confirmed Indictment charging murder reads as follows:

During the Indictment Period, JCE Members and Tool, through their acts and omissions, caused the death of persons in Kosovo and northern Albania, including following arrests or abductions, and at or in connection with detention sites. [...] including those identified in Schedule A. [...]

28. Likewise, paragraph 171 of the Confirmed Indictment charging the enforced disappearance of persons reads as follows:

During the Indictment Period, JCE Members and Tools arrested, abducted or detained persons by or with authorization, support or acquiescence of the KLA/PGoK in Kosovo and northern Albania, including in areas under

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<sup>15</sup> Confirmed Indictment, para. 173.

<sup>16</sup> Confirmed Indictment, para. 16.

<sup>17</sup> Confirmed Indictment, paras 57, 59, 94, 95, 136 and 171.

KLA/PGoK control and at or in connection with detention sites including those identified in Schedule A. [...]

29. The use of the words “including” and “illustrative” in the above paragraphs makes it clear that the specific crime sites in the Confirmed Indictment are *included* or *illustrative* and that the alleged crimes described in the application forms need not be limited to the specific crime sites charged in the Confirmed Indictment.

30. Therefore, in conducting its assessment, the VPO considered as an act “falling within the scope” of the indictment any event that could constitute a crime alleged in the Confirmed Indictment that occurred between March 1998 and September 1999 in the territory of Kosovo and northern Albania by or with the authorization or support of KLA members.

31. The applicants alleged the following crimes: persecution, imprisonment/illegal or arbitrary arrest and detention, cruel treatment/other inhumane acts, torture, murder and enforced disappearances. All of the crimes alleged in the applications under Group A are crimes listed in the Confirmed Indictment that fall within the temporal and geographical scope of the Confirmed Indictment.

**(c) Harm**

32. The VPO assessed the types of harm alleged and supporting documentation, if any (for example, medical records to demonstrate physical and/or mental harm). In reviewing the applications, the VPO assessed all three types of harm, namely physical, mental and material harm, which is described sufficiently in detail in all applications. The evidentiary material submitted for harm includes: medical reports, attestations issued by qualified professionals such as psychologists, psychiatrists or counsellors, as well as photographs of destroyed property.<sup>18</sup>

33. Regarding the requirement that harm has to be suffered *personally*, six (6) applicants can be considered direct victims, while eleven (11) applicants may be

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<sup>18</sup> In cases where no supporting documentation was submitted as regards harm, the VPO did not consider these applications to be incomplete or inadmissible. See paragraph 20 above.

considered indirect victims, whose family members either have been killed or have disappeared.

34. For indirect victims, the VPO assessed whether the applicants have alleged that the harm they have suffered arises from the harm suffered by the direct victim and whether the harm is a result of a personal relationship with the direct victim.<sup>19</sup>

35. When mental and/or material harm has resulted from the killing or disappearance of a direct victim, the VPO assumed that the harm of close family members of the direct victim can be presumed and does not need to be separately supported.<sup>20</sup> In particular, first-degree relatives may be presumed to have a special bond of affection with the direct victim.<sup>21</sup>

36. The applicants who applied as indirect victims are all immediate family members (spouses, siblings, children) of direct victims and claim to have suffered mental and/or material harm as a result of enforced disappearances and/or murder. As evidentiary material, they all submitted sufficient proof of kinship (birth certificates, marriage certificates or death certificates).

#### **(d) Direct result**

37. The VPO assessed whether there is evidence of a causal link between harm and crime.<sup>22</sup> The VPO assessed that all applicants in Group A (recommended for admission) meet this requirement on a *prima facie* basis.

### **3. General description of the applications**

38. Applicants under pseudonyms Victim-01/06, Victim-02/06, Victim-03/06, Victim-04/06 and Victim-05/06 are of Serbian ethnicity and claim to be direct victims of kidnapping, torture, unlawful detention and cruel treatment at the same detention site

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<sup>19</sup> See Framework Decision, para. 34.

<sup>20</sup> See ECCC, *Kaing Guek Eav alias Duch, Appeal Judgement*, F28, 3 February 2012, para. 448.

<sup>21</sup> See STL, *Prosecutor v. Salim Jamil Ayyash et al*, Pre-Trial Judge, Decision on Victims' Participation in the Proceedings, F0236, 8 May 2012, para. 84.

<sup>22</sup> See Framework Decision, para. 39. More details on meeting the "direct result" requirement can be found in the description of the events in the application forms and the application summaries annexed to this Report.

listed in the Confirmed Indictment, within the indictment period. They allege to have suffered physical, mental and material harm as a consequence of these crimes. Applicants Victim-01/06, Victim-02/06, Victim-03/06, and Victim-05/06 submitted no supporting documentation as regards harm, while Victim-04/06 submitted a psychiatric report on the mental harm suffered.

39. Applicant Victim-06/06 is of Albanian ethnicity and claims to have been shot in 1997 by the KLA and suffered physical and mental harm as a consequence. This applicant is the only applicant in this Report not recommended for admission as a participating victim (Group B).

40. Applicant Victim-07/06 is of Serbian ethnicity and claims to be a direct victim of kidnapping, torture, unlawful detention and cruel treatment by the KLA in an unknown location in Kosovo within the indictment period. The applicant alleges to have suffered physical, mental and material harm as a consequence of these crimes. The applicant has submitted medical certificates on physical and mental harm and photographs of destroyed property, as well as documents on loss of earnings as supporting documentation for material harm.

41. Applicant Victim-08/06 is of Serbian ethnicity and claims to be an indirect victim of the kidnapping and enforced disappearance of her husband by the KLA on the territory of Kosovo within the indictment period. Despite several efforts to obtain information about the applicant's husband, his fate remains unknown to this day. The applicant submitted a report from a psychologist as supporting documentation for the mental harm suffered.

42. Applicants Victim-09/06, Victim-10/06 and Victim-11/06 are of Albanian ethnicity and claim to be indirect victims, members of the same family, whose husband/father was detained by the KLA within the indictment period on the territory of Kosovo. The family was informed of his arrest, but the circumstances of his disappearance and his fate remain unknown. The applicants allege to have suffered mental harm. They did not submit any supporting documentation on harm.

43. Applicant Victim-12/06 is of Albanian ethnicity and claims to be an indirect victim of the killing of his brother by the KLA on the territory of Kosovo within the indictment period. He alleges that, as a consequence, he and the whole family have suffered mental harm. He did not submit any supporting documentation on harm.

44. Applicant Victim-13/06 is of Serbian ethnicity and claims to be an indirect victim of the kidnapping and enforced disappearance of his father by the KLA in the territory of Kosovo within the indictment period. The applicant alleges to have suffered mental and material harm. He has not submitted any supporting documentation on harm.

45. Applicant Victim-14/06 is of Serbian ethnicity and claims to be an indirect victim who has suffered mental harm as a consequence of the killing of his father by the KLA on the territory of Kosovo within the indictment period. He alleges that, as a consequence, he has suffered mental harm. He did not submit any supporting documentation on harm.

46. Applicants Victim-16/06, Victim-17/06 and Victim-18/06 are members of the same family, whose husband/father was kidnapped and killed by the KLA on the territory of Kosovo within the indictment period. His remains were found. In 2010, the UNMIK Office of Missing Persons and Forensics established his identity. The applicants claim that, as a consequence, they have suffered mental harm. Victim-17/06 submitted a medical report as supporting documentation for harm, while the other two applicants did not submit any supporting documentation.

47. Applicant Victim-19/06 is a Kosovo Albanian and claims to be an indirect victim of the killing of her brother by the KLA on the territory of Kosovo within the indictment period. She alleges that, as a consequence, she has suffered mental harm. She did not provide any supporting documentation on harm.

### C. RECOMMENDATION ON ADMISSIBILITY

48. The VPO recommends to the Pre-Trial Judge to admit the following seventeen (17) applicants as participating victims: Victim-01/06, Victim-02/06, Victim-03/06, Victim-04/06, Victim-05/06, Victim-07/06, Victim-08/06, Victim-09/06, Victim-10/06, Victim-11/06, Victim-12/06, Victim 13/06, Victim-14/06, Victim-16/06, Victims-17/06, Victim-18/06 and Victim-19/06 (Group A).

49. The VPO recommends to the Pre-Trial Judge to deny the admission of one (1) applicant, Victim-06/06 (Group B), since the events described in the application form fall outside the temporal scope of the indictment.

### V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

50. Pursuant to Article 22(4) of the Law, victims participating in proceedings shall form one group unless a Panel orders that they should be divided into more than one group. Rule 113(8) of the Rules sets out the criteria that may be taken into consideration by the VPO in making a recommendation to the Pre-Trial Judge on grouping, including any conflicting interests that may hinder common representation, any similar interests that may facilitate common representation, and the rights of the Accused and the interests of a fair and expeditious trial.<sup>23</sup>

51. The Pre-Trial Judge has indicated in the Framework Decision that dividing applicants into more than one group should be done exceptionally, i.e., when the situation or the specificity of the victims is so different that their interests are irreconcilable, making their common representation impracticable.<sup>24</sup> Accordingly, the Pre-Trial Judge stated in the Framework Decision:

[T]he fact that victims suffered different forms of harm, were subjected to different crimes, have different ethnicities, reside in different areas, originate from different countries, speak different languages, have different political views, or have an additional interest or view, which is not shared but not disputed by other victims, may not automatically warrant separate

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<sup>23</sup> See Framework Decision, para. 42.

<sup>24</sup> See Framework decision, para. 43.

representation. Conversely, where several of the aforementioned considerations overlap, namely, that the victims suffered harm as a direct result of distinct crimes, which took place in different circumstances, on different dates and in different locations, using distinct *modi operandi* and targeting different individuals, the division of victims in more than one group may be warranted. The same applies where one fundamental consideration makes their interests irreconcilable, such as some of the victims having caused harm to other victims.<sup>25</sup>

52. The applicants' interests do not appear to differ *per se* as regards the outcome of the proceedings (i.e., desire for justice and/or reparations). However, having considered the information provided in their applications, the VPO considers it essential to obtain additional information from the victim applicants in order to assess whether there are any conflicting interests that may hinder common representation in order to make an informed recommendation on grouping to the Pre-Trial Judge.

53. The VPO continues to be in contact with the applicants and is undertaking a range of further steps to ascertain whether there are circumstances that would warrant the division of the victim applicants into more than one group. Such steps are designed to, *inter alia*, further ascertain whether there are potentially irreconcilable interests among the applicants that would make their common representation impracticable.

54. Consistent with the Framework Decision<sup>26</sup>, the VPO will file further reports with the Pre-Trial Judge on a regular basis, as well as further reports to the Parties corresponding with its reports to the Pre-Trial Judge. In particular, the VPO will supplement its preliminary observations on grouping and common representation in a further report to the Pre-Trial Judge.

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<sup>25</sup> Framework Decision, para. 43 (internal citations omitted).

<sup>26</sup> See Framework Decision, paras 56(e)-(f).

## VI. PROTECTIVE MEASURES

### A. PROTECTIVE MEASURES

55. As indicated by the Pre-Trial Judge in the Framework Decision<sup>27</sup>, the measures relevant at this stage of the proceedings are the following: the redaction of names and identifying information from the Specialist Chambers' public records (Rule 80(4)(a)(i)); non-disclosure to the public of any records identifying the applicant (Rule 80(4)(a)(ii)); the assignment of a pseudonym (Rule 80(4)(a)(vi)); non-disclosure to the Accused by Specialist Counsel of any material or information that may lead to the disclosure of the identity of the applicant (Rule 80(4)(d)); or, in exceptional circumstances, and subject to any necessary safeguards, the non-disclosure to the Parties of any aforementioned material (Rule 80(4)(e)).

56. The protective measures requested by the applicants can be summarized as follows:

- five (5) applicants requested non-disclosure to the public;<sup>28</sup>
- one (1) applicant requested non-disclosure to the Accused;<sup>29</sup>
- four (4) applicants requested non-disclosure to the public and the Accused;<sup>30</sup>
- eight (8) applicants requested non-disclosure to the public, the Accused and Defence Counsel.<sup>31</sup>

57. The majority of the applicants have expressed concerns for their safety and the safety of their families, stemming from a general climate of witness and victim intimidation in Kosovo.

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<sup>27</sup> See Framework Decision, para. 46.

<sup>28</sup> Victim-01/06, Victim-02/06, Victim-03/06, Victim-04/06 and Victim-05/06.

<sup>29</sup> Victim-19/06.

<sup>30</sup> Victim-06/06, Victim-09/06, Victim-10/06 and Victim-11/06.

<sup>31</sup> Victim-07/06, Victim-08/06, Victim-12/06, Victim-13/06, Victim-14/06, Victim-16/06, Victim-17/06 and Victim-18/06.

## B. RECOMMENDATION

58. In making the recommendation for protective measures, the VPO has taken into consideration the legal test, as instructed by the Pre-Trial Judge in the Framework Decision.<sup>32</sup> The VPO has assessed whether there are objectively justifiable risks and whether the proposed protective measures are necessary and proportionate in view of the rights of the Accused. Accordingly, the question that arises is the extent to which it is necessary at this stage to protect the identifying information of the applicants, both those recommended for admission and those not recommended.<sup>33</sup>

59. The VPO notes that ensuring the safety and security of victims is extremely important for a successful system of victims' participation before the Specialist Chambers. Victims will only apply and participate in the proceedings if they will feel safe in doing so. Concerns over a dangerous climate of intimidation of witnesses and victims in Kosovo<sup>34</sup> and the fact that Kosovo is a small country, where people live in tight-knit communities and the Accused have immense influence, connections, resources, and support structures, affect all victims applying for participation. Applying for participation in the proceedings as a victim poses not only a risk of stigma but also of retaliation and violence by other members of the community, in particular for those applicants living in Kosovo and the applicants that still have family in Kosovo.

60. This demonstrates that there are objectively justifiable risks to all applicants, without the need for applicants to specifically list concrete threats against them or

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<sup>32</sup> See Framework Decision, paras 47-49.

<sup>33</sup> Rule 113(1) of the Rules provides that application forms shall not be disclosed to the Parties. This Rule already ensures a certain degree of protection to victim applicants. However, without further protective measures granted under Rule 80 of the Rules, the applicants risk their identities being disclosed to the public, the Accused and the Parties.

<sup>34</sup> The Pre-Trial Judge has also identified in other decisions in this case that there are risks posed by the Accused of obstructing the progress of proceedings by influencing witnesses and victims. See, e.g., Confirmation Decision, F00026/RED, para. 516; KSC-BC-2020-06, F00027/RED, Public Redacted Version of Decision on Arrest Warrants and Transfer Orders, 26 October 2020, para. 33.

their families.<sup>35</sup> Revealing identifying information, both of victim applicants and of victims admitted for participation, would therefore pose a security risk not only to the applicants and participating victims but also to their families. Furthermore, revealing the names of victims to the public could have a more far-reaching effect, as it could discourage victims from applying.<sup>36</sup>

61. The VPO requests the Pre-Trial Judge to grant the following protective measures to all applicants: the redaction of names and identifying information from the Specialist Chambers' public records (Rule 80(4)(a)(i)); non-disclosure to the public of any records identifying the applicant (Rule 80(4)(a)(ii)); and the assignment of a pseudonym (Rule 80(4)(a)(vi)). These protective measures are intended to ensure that the identifying information of applicants is not shared with the outside world. The VPO considers that these protective measures are both necessary and proportionate for the reasons described above.

62. In addition, the VPO requests the Pre-Trial Judge to grant protective measures under Rule 80(4)(d) (Anonymity towards the Accused) and Rule 80(4)(e) (Anonymity towards Specialist Counsel) to both the applicants residing in Kosovo and the applicants of Albanian ethnicity living in the diaspora and having family in Kosovo.<sup>37</sup>

63. The VPO considers that these additional protective measures are strictly necessary, in light of the objectively justifiable and heightened risk to the applicants and their families living in Kosovo, and that no less restrictive measures are sufficient or feasible to protect those applicants or their families, taking into account their individual circumstances. Moreover, the VPO is of the view that the relevant protective measures are proportionate at this early stage of the proceedings where the precise role of participating victims is yet to be determined.

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<sup>35</sup> See ICC, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Trial Chamber, Decision on 'Prosecution's First Request for In-Court Protective Measures for Trial Witnesses', 3 September 2013, ICC-01/09-01/11-902-Red2, para. 14.

<sup>36</sup> In its many outreach activities in Kosovo in the last three years, the VPO noticed a general reluctance and skepticism from victims towards participation in the proceedings because they feared for their safety and the safety of their families.

<sup>37</sup> Victim-09/06, Victim-10/06, Victim-11/06, Victim-12/06, Victim-14/06 and Victim-19/06.

64. The role and involvement of participating victims will develop throughout the proceedings, depending on the engagement of individual participating victims and subject to instructions on modalities of participation determined by the Panel. Some participating victims will testify on harm and suffering, for example, while others will be less involved, and it will be for the Panel to scrutinise carefully the precise circumstances and the potential prejudice to the Accused.<sup>38</sup>

65. At this stage, non-disclosure of the identities of certain victims to the Accused and Specialist Counsel is a proportionate measure and would not irreversibly prejudice the rights of the Accused.<sup>39</sup> By contrast, revealing the identities of the applicants at this stage of proceedings would create an irreversible situation that cannot be corrected at a later stage. Such disclosure would unnecessarily expose the applicants and put them at risk for the reasons described above, taking into account their individual circumstances.<sup>40</sup>

66. Therefore, the VPO recommends that the Pre-Trial Judge grant the above-requested respective protective measures, as they are strictly necessary, appropriate and proportionate at this stage of the proceedings.<sup>41</sup>

**Word count: 4836**



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**Dr Fidelma Donlon**

**Registrar**

15 February 2021

At The Hague, the Netherlands

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<sup>38</sup> See, e.g., ICC, *Prosecutor v Lubanga*, Trial Chamber, Decision on victims' participation ("*Lubanga decision*"), ICC-01/04-01/06-1119, para. 13 (finding "that the greater the extent and the significance of the proposed participation, the more likely will be that the Chamber will require the victim to identify himself or herself").

<sup>39</sup> See *Lubanga decision*, para. 26.

<sup>40</sup> A more detailed description of individual situations is provided for each applicant in the annexed application summaries.

<sup>41</sup> See Framework Decision, para. 47.