



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

Annex to
Order on the Conduct of Proceedings
Public

- I. PUBLIC CHARACTER OF PROCEEDINGS 2
- II. WORKING LANGUAGE 3
- III. ATTITUDE TOWARDS THE TRIAL PANEL AND THE PARTIES 3
- IV. MATTERS NOT IN DISPUTE..... 4
- V. EXHIBITS 4
 - A. Authenticity and Reliability 5
 - B. Relevance and Probative Value 5
 - C. Presentation and Admission of Evidence 6
 - D. Bar Table Motions..... 7
- VI. WITNESSES 7
 - A. Protective Measures 7
 - B. Interview of Witnesses by the Opposing Party 8
 - C. Witness Familiarisation and Other Support Services..... 12
 - D. Witness Preparation 13
 - E. Examination by Video-Conference and Examination Away From Trial Venue 16
 - F. Scheduling of Witnesses and Material To Be Used in Examination 17
 - 1. Direct Examination 17
 - 2. Cross-Examination..... 18
 - G. Order of Questioning 19
 - H. Questioning of Witnesses 19
 - I. Objections 21
 - J. Use of Prior Statements..... 22
 - K. Expert Witnesses..... 22
 - L. Written Statements or Transcripts 24
 - M. Self-Incrimination of Witnesses and Incrimination by Family Members 24
- VII. STATUS CONFERENCES ON PROCEDURAL MATTERS 24
- VIII. RECORDING OF USE OF TIME 25
- IX. FINAL TRIAL BRIEFS..... 26
- X. LEGAL WORKFLOW 26

I. PUBLIC CHARACTER OF PROCEEDINGS

1. In accordance with Article 40(4),¹ Parties shall respect the public character of the proceedings. Legal argument by the Parties shall be heard in closed or private session only where strictly necessary in accordance with Rule 120.²

2. Parties shall endeavor to file all written submissions as public documents, and to confine confidential matters as much as possible to confidential or strictly confidential annexes. Where a Party files a motion confidentially or strictly confidentially, it is presumed, until it is demonstrated to the contrary, that there is good cause for that classification, and, pursuant to Rule 82(4), the opposing Party must respect it until the Trial Panel issues an order altering that classification. Parties shall promptly file, where possible, public redacted versions of submissions which are filed on a confidential or strictly confidential basis.

3. Parties are instructed to refrain as much as possible from filing submissions or annexes *ex parte*. The Trial Panel will exercise heightened scrutiny of reasons presented to justify *ex parte* filings.

4. Parties may refer to matters subject to confidentiality during open session and in public written submissions in a manner which does not defeat the purpose of the confidential classification. In the event a Party believes that confidential information has been disclosed during an open session, the Party shall immediately alert the Panel and request redaction. Such requests shall be sent via email to the Court Officer and the Chambers' legal officer(s) present in the courtroom, copying the Panel's email

¹ Any reference to "Article" in this order is a reference to a provision of the Law on Specialist Chambers and Specialist Prosecutor's Office.

² Any reference to "Rule" in this order is a reference to a provision of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers.

address, and shall indicate the word(s) to be redacted as well as the relevant page(s) and line number(s) of the real-time transcript.

II. WORKING LANGUAGE

5. The Trial Panel adopts the approach taken by the Single Judge in respect of the language of proceedings as specified in his Decision on Working Language issued on 29 October 2020 and determines that English shall be the working language for trial proceedings in the present case and that the Parties shall continue to comply with the directions contained in that decision.³

III. ATTITUDE TOWARDS THE TRIAL PANEL AND THE PARTIES

6. In accordance with Article 10 of the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers (“Code of Conduct”), Counsel and Prosecutors have a general duty of candour towards the Trial Panel.

7. Communications with the Judges are regulated by Article 11 of the Code of Conduct. Contacts by a Party with the Trial Panel should in general be copied to, or otherwise notified to, the opposing Party.

8. Parties shall at all times demonstrate courtesy to the opposing Party, in and out of court. Personal comments relating to, and personal criticism of, an opposing Party will not be tolerated by the Trial Panel. Parties shall refrain from sharp tactics and shall as far as possible inform other participants in advance of oral and written applications they intend to make to the Panel.

³ F00060, Pre-Trial Judge, *Decision on Working Language*, 29 October 2020.

9. The Trial Panel expects Parties to discuss regularly issues arising from the case among themselves with a view to finding solutions that do not require litigation or reduce the scope thereof.

IV. MATTERS NOT IN DISPUTE

10. Consistent with Rules 95(4)(a), 118(4) and 156, the Parties are instructed to consult with each other periodically before and during trial in order to determine whether facts material to their respective cases are in dispute. The Trial Panel shall inquire during trial, as the need arises, from the Parties to ascertain the extent to which a specific fact or issue is in dispute and to articulate in general terms the nature of that dispute.

11. In accordance with Rule 156, the Trial Panel shall not generally require evidence pertaining to facts and issues not in dispute and may rely on agreement between the Parties regarding such matters. Where a Party decides, nevertheless, to call evidence in respect of an agreed fact, it should do so efficiently.

12. The Trial Panel shall not generally permit questions to witnesses on matters which are not in dispute between the Parties.

V. EXHIBITS

13. The Trial Panel will generally hear and rule upon submissions from the Parties about the admissibility of each exhibit at the time that the exhibit is tendered in evidence. Where it is more practical to do so, the Trial Panel might also decide to postpone decisions on admission until the end of a witness's testimony.

14. A Party which objects to a proposed exhibit shall make its objection prior to or at the time that the tendering Party requests the admission in evidence of the proposed exhibit.

A. AUTHENTICITY AND RELIABILITY

15. In accordance with Rule 138(1), a Party shall not seek to tender or present evidence that it knows or suspects to be false. The Trial Panel expects the tendering Party to have taken reasonable steps to ensure that the evidence placed before the Panel is capable of reasonable belief for the purpose for which it is being offered. It is the Party's responsibility to be in a position to provide to the Trial Panel, when requested to do so, information regarding the origin of a proposed exhibit and the steps taken to verify that the information in question is capable of reasonable belief.

B. RELEVANCE AND PROBATIVE VALUE

16. In evaluating which exhibits to tender for admission, the Trial Panel encourages the Parties to set for themselves a high threshold of evaluation so as to ensure that only evidence of high probative value is tendered. It is for the tendering Party to demonstrate the relevance and probative value of an exhibit, and the connection of an exhibit with the testimony of the witness through whom the Party seeks to tender the exhibit. Parties should only seek to tender exhibits through a witness that are clearly relevant to that witness's evidence.

C. PRESENTATION AND ADMISSION OF EVIDENCE

17. A Party should only include on its lists of proposed witnesses and exhibits those witnesses it genuinely intends to call at trial and those exhibits it genuinely intends to produce at trial.

18. A Party must seek leave of the Trial Panel to add exhibits or witnesses to its Rule 95(4)-(5) or Rule 119(2)(a)-(b) lists. Any such request shall be filed at the earliest possible opportunity and, but for exceptional circumstances, sufficiently in advance of the commencement of the Party's case. Consistent with paragraph 16, before the commencement of its case and during the presentation of that case, a Party must carefully consider whether it still intends to rely upon all of the witnesses and proposed exhibits appearing on its lists. As soon as a Party has determined that it does not intend to rely on a certain exhibit or call a listed witness, it shall give notice of that fact to the opposing Party and to the Panel.

19. In relation to lengthy documents or books of which only a part is relevant, the tendering Party shall indicate the pages of the document, in the original language and in English, which it seeks to have admitted in evidence. Where the entire document is tendered into evidence, the Party should likewise endeavour to identify those sections of the document on which it seeks to rely for the purpose of its case.

20. An exhibit submitted during trial may in appropriate circumstances (such as matters of authenticity, translation or disclosure) be marked for identification pending the receipt of further information. Such proposed evidence is not admitted until the Trial Panel makes a ruling on its admissibility, either orally or in writing, at which point it will be given an official exhibit number. Untranslated documents used during the examination of a witness may either be marked for identification pending translation and further order of the Trial Panel, or denied admission.

21. When the Trial Panel admits an exhibit, the Court Management Unit (“CMU”), at the direction of the Presiding Judge, shall assign a number to that exhibit. The Parties shall thereafter use the assigned exhibit number when referring to that exhibit.

D. BAR TABLE MOTIONS

22. With a view to ensuring the expeditiousness of proceedings, Parties should consider seeking the admission of evidence through bar table motions.

23. In any request for the admission of evidence from the bar table, the requesting Party shall:

- i. provide a short description of each proposed exhibit;
- ii. clearly specify the relevance of the proposed exhibit by reference to the relevant paragraph(s) of the Indictment and the probative value of each proposed exhibit; and
- iii. provide indicators of the proposed exhibit’s authenticity, where the document does not on its face contain sufficient indicators thereof.

VI. WITNESSES

A. PROTECTIVE MEASURES

24. Parties are instructed to file applications for protective measures as early as possible, and in any event sufficiently early to permit the opposing Party to respond meaningfully.

25. Applications for protective measures shall clearly specify the measures sought and shall indicate with specificity the circumstances objectively justifying the issuance of those protective measures.

26. Where a witness advises the calling Party that he or she no longer needs protective measures, the calling Party shall promptly notify the Witness Protection and Support Office (“WPSO”) and the Panel and facilitate compliance with the waiver requirements of Rule 81(6).

B. INTERVIEW OF WITNESSES BY THE OPPOSING PARTY

27. If, prior to testimony, an opposing Party wishes to interview a witness on the list of the presenting Party, it shall notify the presenting Party and CMU at least ten days prior to the intended interview. The presenting Party shall ascertain in good faith if the witness consents to being interviewed by the opposing Party and shall also inform the witness of the possibility of having a representative of the presenting Party, a legal representative of the witness and/or a WPSO representative present during the interview. The presenting Party shall inform the opposing Party and CMU whether the witness consents. In addition, where the presenting Party believes that the safety and security of a witness may be at stake, or for other legitimate reason, it may request the Trial Panel to permit it to attend any meeting between the opposing Party and the witness, regardless of the witness's expressed preferences. The procedure in this paragraph shall not apply to an interview conducted by the Specialist Prosecutor’s Office (“SPO”) with an opposing Party witness concerning unrelated cases unless the SPO plans to ask questions at that interview that are relevant to the present case.

28. The opposing Party conducting the interview (“interviewing Party”) shall:

- i. ensure that the interview is conducted effectively and expeditiously;
- ii. prepare copies of all documents to be shown to the witness in a language which he or she understands together with an English translation to be provided to the presenting Party;

- iii. refrain from talking to the witness outside the timeframe of the interview and the video-recording, so that all statements and utterances made are duly recorded;
- iv. refrain from any action that could be regarded as threatening or provocative; and
- v. otherwise comply with any order made by the Trial Panel.

29. The Registry, through CMU, shall facilitate the preparation and conduct of any interview under this section. Communications between the presenting Party or the interviewing Party and CMU shall occur via the email address CMUCourtOfficers@scp-ks.org. These communications shall be filed as correspondence in the case file in accordance with the Practice Direction on Files and Filings (KSC-BD-15).

30. Once a witness has agreed to be interviewed, the presenting Party shall provide CMU with the following information:

- i. the preferred dates for, and an estimate of the duration of, the interview;
- ii. whether protective measures have been ordered, requested or will be requested under Rule 80 in relation to the witness and whether the witness has any special needs as defined in Rule 146 or requires special measures as listed in Rule 80(4)(c);
- iii. an updated Witness Information Form (“WIF”) for the witness;
- iv. the language which the witness is expected to use during the interview;
- v. any information as to the persons expected to be present at the interview, including any indication of whether the witness may require the presence of a representative of the presenting Party, a WPSO representative or a legal representative; and
- vi. any other information that may facilitate the preparation for the interview, as required by CMU or WPSO.

31. CMU may seek additional information, if required, to facilitate the preparation for the interview. The Panel shall be seized in relation to any unresolved dispute between the Parties and WPSO or CMU regarding measures recommended by the Parties and/or by WPSO/CMU.

32. The Registry shall facilitate the process by:

- i. providing a venue for the interview and audio-video recording equipment;
- ii. providing interpretation, where necessary;
- iii. ensuring that a Court Officer or another designated representative of the Registry is present during the interview; and
- iv. ensuring that a witness-support representative is on site, where considered necessary by WPSO.

33. Prior to the commencement of the interview, the Court Officer or another designated representative of the Registry shall advise the witness that he or she:

- i. is not required to participate in the interview and can decide to stop being interviewed at any time;
- ii. can refuse to answer questions, in particular if they are thought to be potentially self-incriminating;
- iii. can ask for a recess at any time; and
- iv. can ask to meet with a WPSO representative at any time during the interview.

34. During the interview, the Court Officer or another designated representative of the Registry shall:

- i. ensure the presence of only the authorized individuals;
- ii. verify the identity of the witness;

- iii. ensure that all individuals present identify themselves on the record;
- iv. ensure that the interview is audio-video-recorded;
- v. ensure the safety and well-being of the witness; and
- vi. ensure that the procedural elements of the interview are conducted in accordance with the Law, the Rules, the Order on the Conduct of Proceedings, and any subsequent order, decision, observations, or recommendations of the Panel.

35. The Court Officer may terminate the interview if he or she considers that the interviewing Party has not complied with its obligations under the present order. The Registry shall immediately inform the Trial Panel of the circumstances that led to the termination of the interview.

36. The Parties shall respect the Registry's neutrality and shall refrain from seeking to involve its representative in the proceedings. Should the witness need to consult with a legal representative during the interview, the interview shall be suspended so that this can be arranged. The Registry shall inform the Defence Office, so that the necessary arrangements to assign Counsel to the witness may be made.

37. If the interviewing Party intends to show confidential or strictly confidential records to the witness other than the witness's own statements, it shall apply for leave of the Panel.

38. Documents shown to the witness during the interview shall not become part of the record unless and until admitted by the Trial Panel in the course of trial proceedings.

39. Following the completion of the interview, the Registry shall prepare:

- i. a memorandum recording the process (indicating time, place, attendees, classification – i.e., public, confidential or strictly confidential – and any other relevant circumstance) and submit it to the Parties and the Trial Panel; and

- ii. the audio-video recording of the session and submit copies thereof to the Parties and to the Trial Panel.

40. The video recording of the interview does not become part of the record unless admitted in evidence by the Trial Panel *proprio motu* or upon an application by a Party, where the conditions for its admission under the Rules are met. Where admission of such a video recording is sought, CMU shall also produce the transcript of the interview.

C. WITNESS FAMILIARISATION AND OTHER SUPPORT SERVICES

41. The Panel directs the Parties to coordinate with WPSO as regards all aspects of witness familiarisation and other WPSO services and to follow the guidelines, instructions and time limits:

- i. as set out in the Registry submissions of 27 August 2021 (F00286),⁴ paragraphs 5-25 and with the following specific directions from the Panel:
 - (a) the calling Party shall communicate to WPSO directly an up-to-date list of witnesses 14 (fourteen) days in advance of their expected testimony and shall maintain regular contact with WPSO with a view to providing timely updates of that list no later than 7 (seven) days before the commencement of trial;
 - (b) the cut-off date for contact between the calling Party and the witness shall be the moment the witness takes the solemn declaration under Rule 141(2) or 149(5); and

⁴ F00286, *Registry Submission for Trial Preparation Conferences and on the Draft Order on the Conduct of Proceedings (F00267/A01)*, 27 August 2021; F00310, *Registry Report Pursuant to the Oral Order of 1 September 2021 in relation to the Registrar's Submissions on the Conduct of Proceedings (F00286)*, 10 September 2021.

- (c) Witnesses 04841 and 04842, notwithstanding the aforementioned cut-off date, can still conduct their ordinary duties with SPO and speak with their colleagues about matters not related to the present case; and
- ii. taking in consideration the Registry Practice Directions KSC-BD-19 and KSC-BD-40, the Registry Protocol KSC-BD-20 and the Registry Instructions KSC-BD-41 and KSC-BD-42/Rev1.

D. WITNESS PREPARATION

42. The Trial Panel shall permit witness preparation in accordance with the principles in this section.

43. The purpose of witness preparation is:

- i. to assist the witness who will be giving evidence during the proceedings by helping to ensure:
 - (a) that the witness gives relevant, accurate and structured testimony; and
 - (b) the well-being of the witness.
- ii. for the calling Party to assess and clarify the witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings.

44. Any attempt to influence a witness to testify to factual events that the witness did not observe or perceive is prohibited. Coaching, training or practising are not allowed.

45. Witness preparation is to be carried out in good faith and in keeping with the applicable standards of professional conduct and ethics.

46. Witness preparation is the responsibility of the calling Party, who shall determine travel dates, times for preparation sessions and other practical arrangements in

co-ordination with the Registry in accordance with paragraph 41. If it needs the assistance of the Registry for that purpose, the calling Party is requested to indicate to WPSO its intention to carry out a preparation session with a witness as early as possible through the WIF, and to coordinate with WPSO to enable proper logistical planning. The calling Party shall exercise particular care with regard to vulnerable witnesses and shall liaise with WPSO in this regard, to ensure proper assistance for such witnesses.

47. When conducting the witness preparation, the lawyer should be accompanied by at least one other lawyer of the calling Party's team unless exceptional circumstances render this impossible.

48. If the witness so requests, his or her legal representative shall be permitted to attend the preparation session.

49. Witness preparation may be conducted at the seat of the Specialist Chambers or at the place of testimony, if elsewhere, or any other place. In determining where to conduct witness preparation, the calling Party shall give due regard to the security of the witness in co-ordination with WPSO.

50. The calling Party shall conduct its preparation session after witness statements have been taken, if applicable, and disclosed to the opposing Party.

51. Subject to the witness's availability and travel logistics, the calling Party shall endeavour to complete its preparation sessions as early as possible and, in any event, at least 24 hours before the witness's testimony is due to commence.

52. The calling Party shall keep a log of each preparation session which shall list the location and duration of the session, and the attendees at the session. After conducting a witness preparation session, the calling Party shall promptly provide the opposing Party and the Trial Panel with a copy of the log.

53. At least 24 hours before testimony, the calling Party shall provide the opposing Party and the Trial Panel with all of the information that is subject to the calling Party's disclosure obligations, including: a) any clarifications, changes or corrections made by the witness to his or her previous statements and the reasons advanced by the witness, if any, to justify the change or correction; and b) any new information obtained from the witness.

54. During preparation sessions, the questioning lawyer must:

- i. reiterate the witness's obligation to tell the truth;
- ii. explain the purpose of the preparation session;
- iii. provide the witness with an opportunity to review his or her prior statements;
- iv. provide the witness with an opportunity to confirm whether his or her prior statements are accurate and to explain any changes as necessary; and
- v. indicate that if the witness is concerned that information could be self-incriminatory that he or she is permitted to seek the advice of a counsel before answering such questions.

55. During preparation sessions, the questioning lawyer shall not:

- i. seek to influence the substance of the witness's answers, either directly or indirectly (including, for instance, by informing the witness of the type of evidence that would assist the calling Party's case, by suggesting whether or not the witness's answers are right, or leading the witness in an inappropriate way);
- ii. train the witness or practice the questions and answers expected during the witness's in-court testimony so that the witness memorises those questions and answers;
- iii. inform the witness of the evidence of other witnesses (including oral testimony and prior recorded statements of other witnesses); and

- iv. disclose information that is subject to protective measures ordered by a Panel.

56. Where, as part of the investigation, a person was given a notification in accordance with Rule 43 and he or she is re-interviewed by the Specialist Prosecutor prior to giving evidence, the Specialist Prosecutor shall renew that notification where there remains a reasonable suspicion that the person committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers. Where an individual was interviewed during investigation without being given such notification, but the Specialist Prosecutor at the time of the preparation session has grounds to believe that the person committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers, the Specialist Prosecutor shall provide a Rule 43 notification to the person.

E. EXAMINATION BY VIDEO-CONFERENCE AND EXAMINATION AWAY FROM TRIAL VENUE

57. Where the calling Party intends to call a witness via video-conference pursuant to Rule 144, it shall apply to the Panel at least three weeks in advance or, in unforeseen circumstances, as soon as the need arises. Urgent applications may be made orally. In order to facilitate the Panel's determination of the application, the presenting Party shall provide the Registrar and the Panel with the information required by the Registry Practice Direction on Video Links (KSC-BD-23/COR).

58. Where the calling Party intends to examine a witness away from the trial venue pursuant to Rule 145, it shall apply to the Panel at least four weeks in advance, or in unforeseen circumstances, as soon as the need arises.

F. SCHEDULING OF WITNESSES AND MATERIAL TO BE USED IN EXAMINATION

1. Direct Examination

59. The presenting Party is instructed to present its case in a logical manner, and to notify the Trial Panel of the overall sequence in which it proposes to present its case. Parties are instructed to seek agreement, where possible, regarding the order in which witnesses are to be called. Where both Defence teams intend to call the same witness, Defence counsel shall consult with each other regarding the nature and scope of their case and endeavour to avoid repetitions in the presentation of their respective cases. The Trial Panel reserves its right to order the Parties to amend the order in which they propose to call witnesses.

60. The SPO shall file, by 1 October 2021,⁵ a list of anticipated witnesses indicating: (a) the order in which the witnesses will be called; (b) the approximate time necessary for the direct examination of each witness; (c) whether the witness is expected to testify in person or via video-conference; (d) the issues, facts and circumstances in relation to which each witness will be examined; (e) a tentative list of (proposed) exhibits that the SPO intends to use with each witness; and (f) any applicable protective measures.

61. At the end of the SPO case, the Defence shall file its list of witnesses and exhibits, as provided in Rule 119(2)(a)-(b), including the information provided in paragraph 60.

62. During its case, each presenting Party shall file, seven days in advance, a list of witnesses for the upcoming week, indicating any updates to the information listed in paragraph 60, including a final exhibit list to be used with each witness.

63. If the presenting Party becomes aware of any additional material, not included in the weekly witness list, which it wishes to use during the direct examination of a

⁵ Oral Order on SPO Witness and Exhibit List, 8 September 2021, p. 707, line 21 to p. 708, line 14.

witness, it shall notify the opposing Party and the Trial Panel without delay. The presenting Party shall submit a final list of the material to be used. If, in exceptional circumstances, any of the additional material that the presenting Party wishes to use during the direct examination of the witness is not included on its exhibit list, the Party shall apply to the Trial Panel to amend that list.

64. No later than 24 hours before a witness is due to testify, the calling Party shall upload to Legal Workflow its final presentation queue that includes all documents it intends to use with the witness.

65. The presenting Party shall notify the Trial Panel, the opposing Party and the Registry as soon as possible of any changes to the order of witnesses. The presenting Party shall also ensure that, at the conclusion of the evidence of a witness, there is another witness ready to begin to testify. If one of the proposed witnesses is not able to testify at the scheduled time or if there is no cross-examination of a witness, or if cross-examination proceeds faster than expected, the presenting Party shall ensure that an alternative witness can be called so as to avoid any delay in the proceedings. Parties are advised to consult WPSO to ensure the feasibility of changes to the order of appearance of witnesses, considering the logistics involved in ensuring the timely presence of witnesses at trial.

2. Cross-Examination

66. Within 24 hours of notification of the weekly list of witnesses, each opposing Party shall file a notice with an estimate of the time it expects to take cross-examining each witness. Where both Defence teams intend to cross-examine a witness, Defence counsel are expected to consult with each other regarding the nature and scope of their intended cross-examinations and provide a time estimate thereof that avoids repetition of questions put to the witness by a prior cross-examiner.

67. Immediately upon the completion of direct examination, the cross-examining Party shall release to the Trial Panel and the opposing Party a presentation queue listing all documents or other material that it intends to use during cross-examination. This list shall indicate the exhibit number of any exhibit already admitted in evidence by the Trial Panel or the ERN of the document if not already admitted. The presentation queue shall also list any documents or other material not previously disclosed. Any opposing Party may request a short adjournment in order to examine such material.

G. ORDER OF QUESTIONING

68. Where the Specialist Prosecutor calls a witness, the order of questioning the witness is:

- Prosecution
- Counsel for the Accused, as provided in paragraph 74.

69. Where counsel for an Accused calls a witness, the order of questioning the witness is:

- Counsel for the Accused
- Remaining counsel for the Accused
- Prosecution.

70. The Presiding Judge may, when the interests of justice require, vary the order of questioning.

H. QUESTIONING OF WITNESSES

71. When questioning a witness, and when presenting material during questioning, a Party shall focus on the allegations set forth in the Indictment, and valid lines of

arguments which may be advanced by the Defence in response thereto. Parties shall avoid putting questions, or tendering exhibits, intended to advance a *tu quoque* defence or any other defence that has been ruled by the Panel to be invalid. Parties should, therefore, be prepared to provide an explanation, if requested by the Panel, of the basis and reason for any particular line of questioning.

72. A Party shall structure its questioning of a witness so that as much of it as possible may be heard in public session. Questions requiring the Trial Panel to enter closed or private session shall to the extent possible be grouped together.

73. Cross-examination will be limited to matters set out in Rule 143(3). The cross-examining Party will use its best efforts to avoid unnecessary, irrelevant or repetitive questioning of the opposing Party's witnesses. Therefore, as provided in paragraph 66, Defence counsel are advised to coordinate their cross-examination with the other Defence counsel and, where possible, to designate one counsel to cross-examine a witness in respect of common issues in order to avoid repetitive questions.

74. The order in which the Defence teams conduct their cross-examination of Prosecution witnesses will follow the order in which their clients are listed in the Indictment, unless counsel agree otherwise among themselves.

75. The Trial Panel will not, at the present time, set a time limit for the cross-examination of the opposing Party's witnesses. Parties are instructed to ensure, however, that they make effective use of time. The Trial Panel reserves the possibility of setting time-limits should this be necessary to guarantee the expeditiousness of proceedings.

76. The Trial Panel shall permit redirect examination in accordance with Rule 127(3) only on matters arising in cross-examination. Redirect examination on new matters shall only be permitted with the Trial Panel's leave.

77. The Trial Panel shall not generally permit re-cross-examination, but may do so where new material is introduced during redirect examination. In such circumstances, a Party is entitled to further cross-examine the witness on that new material. Where questions put to a witness by the Trial Panel after cross-examination and redirect examination raise entirely new matters, any Party may orally apply for leave to further examine the witness on those new matters.

78. Parties shall avoid lengthy or complicated questions that may confuse a witness, and shall put questions one by one in sequence to a witness, rather than in combined questions. Parties shall be mindful of the need for interpreters to interpret questions and answers so as to ensure that the record provides a complete and accurate account of both questions and answers.

79. In accordance with Rule 127(3), any Judge of the Trial Panel may question a witness at any time.

80. When referring to any material during the questioning of a witness, the examining Party shall identify such material by reference to the relevant exhibit number, if already admitted, or ERN number. When using audio-visual material, the ERN number of the corresponding English language transcript shall also be indicated.

I. OBJECTIONS

81. Any Party wishing to object to a question during testimony of a witness shall stand and concisely state the objection. All objections, comments or other statements made in the courtroom shall be directed to the Panel and not to opposing Counsel. Where necessary, the Party making the objection shall indicate whether there is a need to go into private or closed session and/or whether the objection can be made in the presence of the witness.

82. Unless otherwise decided, the Trial Panel shall rule on the objection orally and immediately.

83. Where a Party expects to challenge a witness's testimony or a proposed exhibit on the basis of a particularly complex factual or legal objection, it shall submit to the other Party and to the Trial Panel, at least one day prior to the date of the testimony or tendering of a proposed exhibit, a notice outlining its objection. The Panel will rule on the objection having heard the Parties.

J. USE OF PRIOR STATEMENTS

84. In accordance with Rule 143(1), where a witness does not have a clear recollection of relevant circumstances or testifies contrary to his or her prior statements, a prior witness statement or transcript may be used to refresh the memory of a witness whether or not it has been admitted in evidence. When presenting a witness with information that he or she has previously stated during testimony, or in a prior written statement, the Parties shall avoid paraphrasing what the witness said and shall quote directly from the transcript or the prior statement, giving the relevant page and line numbers.

85. Parties are reminded that any prior statement or transcript they wish to show to a witness must be available and released in Legal Workflow or, where permitted, in hard copy.

K. EXPERT WITNESSES

86. The Party calling an expert is required to produce and disclose a final version of the expert's report before its case commences at a date ordered by the Panel. Applications to amend or supplement a report or to provide an annex to it will only

be authorised in exceptional circumstances. Parties are therefore instructed to ensure that the report of an expert witness is finalised and ready to be tendered in evidence by the set deadline.

87. Pursuant to Rule 149(1) of the Rules, the calling Party shall file with the expert report a concise summary of the instructions provided to the expert before he or she produced its first draft of the report, and of any further instructions provided to the expert after receipt of the first and any subsequent drafts of the report.

88. The report of an expert witness may be admitted in evidence, subject to Rule 149(2)-(4) and the requirements of relevance and probative value. Source material will be admitted upon request when justified.

89. Proposed expert witnesses shall strictly meet the requirement of expertise and impartiality. The Trial Panel shall not hear as expert witnesses individuals who possess no expertise which the Trial Panel does not possess, nor will it regard as experts individuals who have been employed as a staff member or as a team member by a Party.

90. Individuals who do not meet the above requirements can still be called as witnesses to give evidence about relevant facts and circumstances pertaining to the investigation of the case or to offer evidence in respect of documents tendered in evidence. The Trial Panel will not authorise such a witness to transgress on its fact-finding responsibilities.

91. The Trial Panel may direct the Defence teams to call any expert witnesses on their list of witnesses at an early stage of the presentation of the Defence case for each Accused.

92. Having heard the expert witnesses called by the Parties, the Trial Panel may *proprio motu* instruct and call additional expert witnesses in accordance with Rule 132, or direct the Parties to jointly instruct additional expert witnesses.

L. WRITTEN STATEMENTS OR TRANSCRIPTS

93. Under Rules 153-155, a Party tendering a witness statement into evidence shall read a concise summary of the witness's statement into the court record in open session. The summary shall be disclosed to the opposing Party and the Trial Panel at least three days before it is to be read out. The opposing Party shall raise any issue with the proposed summary as soon as practicable in advance of it being read in court.

M. SELF-INCRIMINATION OF WITNESSES AND INCRIMINATION BY FAMILY MEMBERS

94. The calling Party, where applicable, shall notify a witness about the possibility of self-incrimination and the relevant rights and procedure under Rule 151. The calling Party shall also give due notice to the Panel about potential requests for assurances pursuant to Rule 151(3) of the Rules.

95. The calling Party shall also inform any witness who is the spouse or first-degree lineal relative of the Accused that, in accordance with Rule 152(1), he or she shall not be compelled to make any statement that might tend to incriminate that Accused, although the witness may choose to make such a statement. The calling Party shall give due notice to the Panel about any witness falling under Rule 152 of the Rules.

VII. STATUS CONFERENCES ON PROCEDURAL MATTERS

96. The Trial Panel wishes to ensure that trial proceedings focus primarily on the legal and factual issues relevant to the case against the Accused. While certain procedural issues may arise in the course of the proceedings (e.g. issues of disclosure, redaction or protective measures), the Trial Panel wishes to ensure that these do not

unnecessarily prolong or delay the course of the trial. For that reason, the Trial Panel instructs the Parties to seek to resolve any such dispute before bringing it to the attention of the Trial Panel.

97. The Trial Panel may also hold, as necessary and pursuant to Rule 116(5), status conferences on procedural matters to resolve any such issue that cannot be resolved by the Parties themselves. Where such an issue arises, the Parties shall immediately inform the Panel of its existence, general nature, and manner in which it is proposed to resolve it.

VIII.RECORDING OF USE OF TIME

98. The Registry shall be responsible for recording time used during the evidence of each witness:

- i. by the calling Party for its direct examination, noting in each case whether part of the witness's evidence was given in the form of a statement under Rule 153 or Rule 154, and the length of their statement;
- ii. by each Party that conducts cross-examination;
- iii. by the relevant Party for redirect examination;
- iv. by the Judges as a result of putting questions to the witness; and
- v. for all other matters, including procedural and administrative matters.

99. Time spent dealing with an objection shall not be computed into the time spent by either Party.

100. Regular reports on the use of time shall be compiled by the Registry in conjunction with the Trial Panel, which shall be provided periodically to the Parties.

101. The Panel shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning the time used by the SPO or the Accused.

IX. FINAL TRIAL BRIEFS

102. Final Trial Briefs shall be filed in accordance with Rule 134(b) at a date set by the Trial Panel. All Parties' Final Trial Briefs shall be filed on the same date.

103. Each Party shall specifically identify exhibits and sections of the transcript of the proceedings that it seeks to rely upon. No Party shall tactically withhold from its Final Trial Brief an argument in relation to an exhibit or section of the transcript in order to raise such argument in subsequent proceedings. Copies of references and authorities not readily available shall be filed as an annex together with the brief.

X. LEGAL WORKFLOW

104. This trial shall be conducted using Legal Workflow. The general principle is that all documents shall be handled through this system. Hard copies of a document may be used by a Party only where the Party has been unable, due to unforeseen circumstances, to upload a document into Legal Workflow or where its physical use in court is necessary.

105. When the use of hard copies of a document is permitted, the tendering Party is responsible for producing copies for the Trial Panel, witness, other Party, Registry, and the interpreters.