

Annex 4 to
Transmission of Expert Reports

Public

Report submitted by [Redacted]

Prosecutor v. Salih Mustafa

Outlining key difficulties in whether the Kosovo Courts offer a realistic avenue for victims to claim reparations

The report has been prepared following the list of the guiding questions

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Introduction

1. This independent report has been commissioned by the Kosovo Specialist Chambers (KSC) to outline key difficulties in assisting the Trial Panel to decide ‘whether the Kosovo courts offer a realistic avenue for victims to claim reparations?’
2. The Trial Panel had indicated in its decision when appointing the experts that all three ‘should endeavour to write a joint report’. Compiling a joint report may have allowed reasonable time for a more comprehensive content as each expert would have had time to address their area of expertise in more detail. However, owing to practical difficulties to coordinate the team across different countries made it difficult to create a working relationship within the time frame of the mandate. Considering the practical experience with legal processes in Kosovo of the other experts, I have concentrated my input in other socio-legal issues that may impact decision making.
3. The experts were given guidance on the specific areas to be addressed within the report. These areas include: the prevalence of corruption and political influence among the court staff in Kosovo; accountability of judges and the efficacy of accountability measures; and other procedural matters. Considering the points to be addressed, they all require heavy reliance on empirical research. As such a caveat must be included at this stage. In my experience, a report which aspires to probe the level of corruption and

political influence among the court staff in the judicial system of a country, in this case Kosovo, requires meaningful research and extensive field work which cannot be carried out within the timeframe available. The availability of reports that discuss corruption in Kosovo, for instance, is never in short supply, some of which will be referred to in this report. However, regurgitating countless readily available 'data' that has been gathered for other purposes may not be suitable for this report. Their methodologies may be perfectly suitable for the context within which they were employed, but may not address essential questions the KSC is seeking to answer. For example, in conjunction with investigating corruption as a general phenomenon, it may be instrumental for the current purposes to obtain primary data on the impact of corruption and political influence in individual cases, and the probability of the claims of the victims to be affected by such corruption or/and political influence. In my attempt to provide a broader analysis for the court to consider, I have included, where relevant, references from research I have conducted previously in my own time. I emphasise that I will be very limited to employ data I have gathered in other capacities for ethical reasons, but also to regard the fact that they were gathered in a different context.

4. The work has mainly been conducted by using desk-based research. Dictated by a very narrow timeframe, I was unable to conduct field work to the extent required to confidently corroborate data from secondary sources.

[REDACTED]

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5. Based on the content of the submission by the victim's counsel to the trial chamber¹ (the counsel's submission herein), some key difficulties that may arise if the KSC issues an order for victims to claim reparations in Kosovo courts have already been identified. With that in mind, the report aims to provide a broader analysis on those points, especially in respect of tenability of decisions which may rely on some of the objections made by the victim's counsels. This report has been compiled within the premises that everything said and done, by any party to the court proceedings, will be scrutinised and may be challenged legally. As such, it is fundamental that objections raised in counsel's submission are dealt within the same premises. Otherwise, the danger to leave open the possibility for victims to feel betrayed yet again may become a real possibility. The report will also include and highlight other issues that transcend the legal framework but are instrumental to the different reparation orders available to the KSC. The main objective is to provide the court with a more nuanced understanding on the impact that any court decision will have, not only directly to those victims the reparations are awarded to, but to the pragmatic difficulties in enforcing any decision.

¹ KSC-BC-2020-05/F00134, dated 14/06/2021

Report Layout

6. To set the context within which the court may consider different points raised in the counsel's submission, the report begins with a brief background of difficulties the justice system experienced in Kosovo, especially as a result of competing priorities of peacebuilding and transitional justice principles. The background information should serve the Panel to create a timeline when arguing institutional obligation to comply with human rights laws, such as article 13 of the European Convention on Human Rights referred to by the victim's counsel in their submission to the Panel. The second part will address corruption, accountability, protective measures, and other related aspects as per KSC guiding questions. The report concludes with key points/recommendations that may have not been considered by the KSC so far but may still fall within the broader mandate of the Chamber. Whatever decision the KSC may take, the difficulties may converge at the implementation stage. Hence, it may be more productive for the KSC to consider compensation for the current victims within a broader framework of reparations to establish a uniformed victim centred approach that is not solely reliant on the allocation of guilt to the accused. Relying on reparations directly from the accused in war crime cases has been tried and tested, and as the Panel is aware the track record is not satisfactory.

Background

7. The establishment and subsequent issues with the development and efficacy of institutions, decision making, and policies in post-conflict Kosovo, are inextricably linked with, and heavily dependent on the presence and the role of international organisations and international institutions in Kosovo. Therefore, the failings of justice in Kosovo, the prevalence of corruption, and

the absence of institutional accountability and integrity, cannot be addressed in isolation from all contributing factors of such failings for over two decades. The value of objectifying the presence of international institutions in Kosovo, justice being at the centre, is fundamental in trying to understand and assess current arrangements, including the very existence of the KSC and the impact its decisions may have. Within the remit of transitional justice, the role of the court transcends occurrences within the court room. It sets a record for the narratives that develop within the community the court is supposed to serve. It sets a legacy for future generations.

8. On the 10th of June 1999 the United Nations Security Council² adopted Resolution 1244 providing the framework for the establishment of an international presence in the territory of Kosovo – the United Nations Interim Administration Mission in Kosovo (UNMIK). There are several essential factors to draw upon for the purposes of this report, especially with regards to considering recommendations below. Resolution 1244 empowered UNMIK to provide transitional administration in Kosovo while establishing and overseeing the development of transitional self-governing institutions.³ Thus, bestowing UNMIK with extensive powers which were further elevated through Regulations UNMIK adopted in Kosovo.

9. Before I go any further, I want to emphasise that any institutional failure of any of the international operations in Kosovo, which at times resulted from developments in international relations, above specific missions of UNMIK or EULEX, or any other mandate, do not reflect the commitment of every individual who worked for those establishments. There were/are many devoted and committed internationals who have made a great contribution to the institution building in Kosovo, and have tried everything within their power to deliver justice to victims in Kosovo. [REDACTED]

² UNSC Resolution 1244. S/RES/1244 (1999) 10 June 1999.

³ See paragraph 10 of United Nations Security Council Resolution 1244.

10. During its mandate, UNMIK 'laws' in Kosovo were promulgated in a form of Regulations. Through its first Regulation, the United Nations Special Representative, who at the same time was the head of UNMIK, became the ruler of Kosovo. Section 1 of UNMIK Regulation 1999/1⁴ empowered the head of UNMIK with legislative and executive authority, including the administration of justice. Section 2 gave him the power to appoint or dismiss any person in the civil administration, including the judiciary, thus eroding one of the main principles of the Rule of Law – the separation of governmental powers. By marginalising to the extreme the role of locals who were supposed to contribute to the decision-making process through the Kosovo Transitional Council, UNMIK in Kosovo was setting a terrible role model example in its capacity building role.

11. Having been established as the government of Kosovo with executive, legislative and judicial powers, UNMIK went further by adopting Regulation 2000/47⁵ which gave immunity against any legal proceedings to all UNMIK members, Kosovo Force (KFOR)⁶ members, and all their subcontractors and local staff. Thus, in the eyes of the locals, UNMIK became the autocratic regime against which Kosovo people had no structures to address their grievances - a déjà vu. In 2002, in one of his many reports, the international ombudsperson in Kosovo stated: *UNMIK is not structured according to democratic principles, does not function in accordance with the rule of law, and does not respect important international human rights norms. The people of Kosovo are therefore deprived of protection of their basic rights and freedoms three years after the end of the conflict by the very entity set up to guarantee them.*⁷ The entity that was set up to establish democratic institutions in Kosovo, " ...rather than exemplifying transparency, adherence to the rule of law and fairness, demonstrated a

⁴ UNMIK Regulation 1999/1, 25 July 1999 <https://unmik.unmissions.org/sites/default/files/s-1999-987.pdf>

⁵ Regulation No. 2000/47 UNMIK/REG/2000/47 18 August 2000 [UNITED NATIONS \(unmissions.org\)](https://unmissions.org)

⁶ North Atlantic Treaty Organization (NATO) led army in Kosovo.

⁷ OIK (Ombudsperson Institute Kosovo), (2002), *Second Annual Report 2001/2001*, 10 July 2002

disregard for international human rights, and as a result severely damaged the development of these principles in Kosovo”.⁸ Further, the practices employed during UNMIK to establish the new institutions legitimised the process of recruiting staff in all public institutions, including the security and justice sector, without an effective screening process, and without forgoing formal legal processes such as amnesties or truth commissions. The practices employed by UNMIK had a detrimental impact to the development of institutions, and Kosovo is still suffering as a result.

12. Justice in Kosovo began and continued with chronic inattention to local needs and pragmatic circumstances. A binary pattern emerged of ‘top down’ variants of international criminal justice between the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the hybrid courts in Kosovo itself, without clear jurisdictional authority in case allocation. Subsequently when UNMIK lost its operational power in Kosovo in 2008, The European Union Rule of Law Mission in Kosovo (EULEX) was established. The duties to be undertaken by EULEX were laid down by the Council Joint Action 2008/124/CFSP of 4 February 2008. Among other things, Article 3 (d) of that document states: *EULEX will ‘ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities.’* At present, as stated in its website, the overall mission of EULEX is to *‘support relevant rule of law institutions in Kosovo on their path towards increased effectiveness, sustainability, multi-ethnicity, and accountability, free from political interference and in full compliance with international human rights*

⁸ Marshall, D. & Inglis S. (2003), ‘The Disempowerment of Human Rights-Based Justice in the United Nations Mission in Kosovo’. *Harvard Human Rights Journal*, 16, 95-146

standards and best European practices'.⁹ Currently, its mandate has been extended until 2023.

13. The existence of multiple agencies operating in the same field without a clear hierarchy, collaboration, follow up of cases, or institutional continuity, further exacerbated problems with consistency. Referring to my previous research, a member of staff from the criminal justice system in Kosovo explained the problems during the UNMIK era in the following terms: *"A case would have been started by one UNMIK staff, who then went home, and a new person from another country, with different standards arrived. The new arrival needed time to familiarise with the case and often decided to re-interview some of the people involved. This created unnecessary hindrance and did not read well with victims and witnesses"*. Reiterating the systematic failures to adjudicate war crime cases, the Organisation for Security and Cooperation in Europe (OSCE) highlighted the problems with obtaining reliable statistics on war crimes due to the number of authorities and institutions engaged in this area and the lack of coordination between them.¹⁰ The absence of any accountability requirements of international staff towards the local population they were supposed to serve, and the frequent staff turnover, resulted in the lack of any notion of ownership over any proceedings, and poor performance in many instances.
14. The recurring inability of international institutions to establish a process to explore the complexities of the past, left open the opportunity for truths, rumours, and myths to develop without any opportunity to question their credibility. The inability of international institutions in Kosovo and further afield to oblige Serbia to cooperate to address orchestrated widespread

⁹ [About EULEX - EULEX - European Union Rule of Law Mission in Kosovo \(eulex-kosovo.eu\)](https://eulex-kosovo.eu)

¹⁰ A) OSCE Report 2006: *Review of the Criminal Justice System in Kosovo*.

<https://www.osce.org/kosovo/23307?download=true> . B) OSCE Report 2006: *Review of the Criminal Justice System in Kosovo 1995-2005*. <https://www.osce.org/kosovo/18659?download=true> C) OSCE Report 2012:

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<https://www.osce.org/kosovo/87138?download=true>

violence and share information, such as the whereabouts of thousands of disappeared who are still missing, further enforced the culture of impunity that people in Kosovo had experienced throughout their lives. Within this context, a discretionary form of justice was applied in Kosovo. In those limited cases when international prosecutions were pursued for alleged perpetrators, the exclusively retributive focus of such efforts on individual guilt and culpability arguably narrowed the possibilities for more grassroots efforts to explore the broader social, political, and cultural origins of the violence. The exclusive retributive approach also missed the opportunity to consider meaningful reparations, and create other transitional justice institutions which could have complemented the overall approach to dealing with the violent past and develop policies that may have validated guarantees of non-recurrence. For instance, one such standard institution when addressing human rights violation could have been the establishment of a truth commission. It has been suggested that the establishment of a truth commission can have psychological benefits in facilitating catharsis and helping the nation to work through a violent past.¹¹

15. Against a backdrop of this reality in Kosovo, the international community has been idealising overly ambitious projects in Kosovo, without a realistic consideration of pragmatic difficulties to enforce such projects. Thus, creating a space for expectations among the local population to a level of justice that is arguably inconceivable in a post-conflict setting, especially considering the extent of past violations in Kosovo and other competing priorities in post-conflict peacebuilding. Setting the bar unachievably high and promoting a theory of 'international' justice that cannot be delivered in practice even in established democracies, has created a feeling of broken promises, distrust, and devastation to all those who suffered despicable atrocities. A way

¹¹ Hamber, B. (2002), 'Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland'. *26 Fordham Int'l L.J.* 1074 (2002-2003)

forward may not change the outcome if the same trend continues. The victims must not be treated as a subject that provide the opportunity for outstanding theatrical speeches by officials who represent them, but rather as an objective for justice institutions to provide a real possibility to recognise their suffering and aim to re-establish trust in the institutions of justice.

16. I am fully alive to the difficulties that the KSC faces, especially considering the premises within which it was established. As a critic of some practices of international justice, I refer to the dangers of flattening difference between different conflicts and judicial capacities in different societies, thus suggesting that there is a universal 'toolkit' that can serve as a panacea for the post-conflict societies to deal with its past. Experience has shown that what may be deemed successful in one country, may well have the opposite effect in another. For this reason, it is important to be very sensitive when drawing parallels between different cases from other jurisdiction and attempt to employ their strategy in current proceedings, even if such approach is within the mandate of the KSC. The ultimate consideration for any court decision will have to be based on their tenability.

17. With the benefit of hindsight, it may be safe to say that the victims of war crimes in Kosovo have been neglected by consecutive authorities since June 1999. The counsel's submission in paragraph 15 refers to investigations being either absent or hugely ineffective. Based on my experience, I am inclined to agree. However, I will discuss this area in more detail further down in this report under the 'key points/recommendations' as to the manner that point was raised and the difficulties that may arise as a result. To date, there has not been a uniformed victim centred approach, nor has there been a uniformed, codified, or even a half descent attempt to address war crimes in post-conflict Kosovo. Recently [REDACTED] the United Nations Special Rapporteur on the 'Promotion of Truth, Justice, Reparation and Guarantees of

Non-recurrence' addressed the participants. Among other things, it was said during the seminars that: truth, justice, and the rule of law are not a choice, they are an obligation. That obligation was failed in Kosovo by none other than the United Nations for almost a decade, and the European Union thereafter. The people of Kosovo did not even have the option to choose from any of those principles.

The prevalence of corruption

18. While conducting field work for a different project within the transitional justice remit, one of the highest-ranking international officials in Kosovo stated: 'There are no institutions in the world which are entirely free from corruption or political influence'¹². Whereas it is difficult, or indeed impossible, to prove or disprove that statement, it encompasses the important framework within which to develop a comprehensive understanding of corruption as a phenomenon more generally.

19. There are different elements, practical and theoretical, to consider when assessing the prevalence of corruption among court staff in Kosovo: types of corruption, which type is more widespread, is it more prevalent in higher or lower courts, in criminal or civil courts, is everybody involved in corruptive behaviour or can patterns of corruption be identified between different positions of authority and different areas in Kosovo. It is fundamental to differentiate between complexities that may contribute to the outcome of any given case and to consider different elements when evaluating variables with direct impact to possible civil claims from victims. A mere affirmation that corruption is prevalent among court staff in Kosovo by relying on secondary

¹² Please note this reference was made while researching police accountability and corruption within different police services around the world.

sources,¹³ without substantiating it with clear and direct evidence, while it may make it a probability, may not in itself prove whether corruption will have a detrimental impact in individual civil claim's cases. More importantly, it may not portray the true scale of other problems the victims may face without even reaching the courts.

20. As it has been stated many times before, corruption is a clandestine activity making it hard to measure. With growing awareness of the impact corruption has in social and economic development, different methodologies have developed, especially in the past three decades, to measure corruption and its possible impacts. In broad terms, one way to measure corruption and its impact is by dividing it in different categories. For instance, some academics have divided corruption in 'petty' corruption, and 'grand' corruption. Petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions. Whereas grand corruption pervades the highest level of national government, leading to a broad erosion of confidence in good governance, the rule of law, and economic stability.¹⁴

21. A study titled 'Corruption in Kosovo'¹⁵ conducted in 2011 by the United Nations Office on Drugs and Crime in Vienna, is a good example to explain the issues with relying on data from secondary sources and the possibility of different outcomes depending on how data gathered is interpreted. The study addressed bribery (or petty corruption) as experienced by Kosovo people. Under the 'Key Findings' the report states that 9 (nine) percent of the population in Kosovo were directly or indirectly exposed to bribery, but later in the report it states that only 7.7 percent actually paid a bribe for public services. Of those 7.7 percent who paid bribes, only a small percentage were

¹³ In paragraph 20 I will use a report as an example to illustrate this point further.

¹⁴ Shacklock, et al (ed) (2006), Measuring Corruption. Ashgate.

¹⁵ [CORRUPTION REPORT KOSOVO FINAL READY FOR PDF2.doc \(unodc.org\)](#)

paid to judges and prosecutors, around 16 percent. With that in mind, I decided to see how the payment of bribes in Kosovo compares to the European Union. Transparency International, on its 2021 survey on corruption¹⁶, found that 3 out of 10 people in the European Union pay a bribe or use personal connection to access public services, making it at over 33 percent – over four times higher than Kosovo.

22. In terms of grand corruption, in the absence of direct empirical data, it is difficult to conclude how individual cases will be impacted. The extent to which accusations of corruption take place daily from the highest levels in Kosovo's politics, even during plenary session in the parliament, has greatly contributed to the erosion of public confidence in good governance and the rule of law. Especially when such claims are not followed with criminal proceedings. In many instances, the reason why such claims may not warrant a prosecution, does not necessarily mean that the criminal justice system is failing to act, either as a result of corruption or political influence. It may well be due to the higher evidential threshold required to take a case to court compared to party politics and political speeches relying on parliamentary immunity.

23. From my experience during previous studies and observations, I can confidently say that the difference between factual evidence and rhetoric appears to have no meaning in public perception in Kosovo. Referring to the study above, although only a small percentage of people in Kosovo paid bribes to the judges and prosecutors, in the same study 60 percent 'believed' that corrupt practices occur in court. The role of the courts to this effect has been devalued to the point where not expecting a proper judicial process appears normal.

¹⁶ [TI GCB EU 2021 web 2021-06-14-151758.pdf \(transparencycdn.org\)](https://www.transparencycdn.org/2021-06-14-151758.pdf)

24. The rhetoric of corruption and political influence by politicians may have influenced the perception of people towards corruption, even if they personally were not exposed to it. It has been argued that perception can influence behaviour in significant ways. 'For instance, if we believe that all around us people are engaging in corrupt behaviour, that may make us more likely to adopt such practices ourselves'.¹⁷
25. It is not only the perception of the Kosovo citizens, or their politicians who consider corruption as one of the biggest issues in their country. Similar conclusions have been reached by organisations and other institutions who oversee the overall performance and progress of Kosovo's institutions. As already identified by the counsel's submission from previous reports, The European Commission Report published in 2021,¹⁸ (Progression Report herein) reflecting on yearly progress in Kosovo, states that corruption in Kosovo remains widespread and limited progress is made to combat corruption. Important to note here is the need to differentiate between high profile cases which involve corruption during the privatisation of state-owned property, for instance, and other cases of corruption. To reiterate again, political corruption does not directly reflect the work of ordinary judges, although it may have an impact on individual cases.
26. Instead of going through different reports to make the same point, I will refer to their collective importance. The recurring theme is the limited progress made in Kosovo when addressing corruption in high profile cases. Interestingly (and perhaps ironic at the same time), EULEX, in its monitoring report 2019/2020,¹⁹ when referring to limited progress in high profile cases, inserts in brackets that some of those cases are former EULEX cases – in other

¹⁷ Andersson S, Heywood, The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption. *Political Studies*. 2009;57(4):746-767.

¹⁸ [Kosovo 2021 report \(3\).PDF](#)

¹⁹ https://www.eulexkosovo.eu/eul/repository/docs/19102020_EU%20Rule%20of%20Law%20Mission%20Justice%20_EN.pdf

words, cases EULEX was mandated to investigate and try. As a reminder, EULEX, during its mandate to investigate and try high profile cases in Kosovo, was repeatedly marred by allegations of corruption within its ranks. Some of the most damning allegations came from one of the EULEX's own prosecutors, Maria Bamieh, herself being dismissed for misconduct.²⁰ Andrea Cappusela, himself a former EU official in Kosovo, has also detailed extensive corruption linked to the EULEX in Kosovo. Former EULEX head judge Malcolm Simmons gave evidence to Kosovo Parliament in July 2021 about corruption, interference with investigations and serious misconduct involving senior EULEX staff. The EULEX has denied these allegations. However, the poor record of EULEX's performance in Kosovo should not be taken lightly. More importantly, the impact these allegations have had in public perception regarding the legitimacy of international institutions in Kosovo should not be underestimated.

27. Apart from the limited progress in high profile cases, the Kosovo Law Institute (KLI), one of the non-governmental organisations that monitors court performance in Kosovo,²¹ identifies a crucial importance when it comes to fighting corruption at all levels - the lenient fines or sentences that are imposed in corruption cases. According to the KLI, the lenient punitive measures are sending the wrong message. It goes without saying the low impact lenient punitive measures may have as a preventive mechanism.

28. Political, or other types of influence and corruption result in different consequences which may have a greater long-term impact. While short term consequences may have a direct impact on individual cases, long term consequences contribute directly to the overall institutional culture. Influence in staff appointments, or staff promotion, and employment of sketchy

²⁰ The Guardian was among many newspapers who reported on the matter. One such article can be accessed on this link <https://www.theguardian.com/world/2014/nov/05/eu-facing-questions-dismissal-prosecutor-alleged-corruption>

²¹ [IKD-Dënimi-i-korrupsionit-si-kundërvajtje \(1\).pdf](#)

procedures during recruitment, results in incompetence. With the passage of time, incompetence becomes embedded within the working environment, and arguably is one of the biggest inherited problems in Kosovo at present. As stated in the Progression Report: ...'overall, the level of professionalism and competence, especially of prosecutors, remains a matter of concern, despite efforts to increase the available training'.

Accountability of the judiciary

29. The prevalence of corruption, poor performance and other inefficiencies within the Judicial system are inextricably linked to the lack of efficient accountability structures. Kosovo's Constitution and other legal frameworks articulate clearly provisions of safeguards to ensure the independence and impartiality of the judiciary in Kosovo. As a way of illustrating, I refer to two different pieces of legislation: Law nr 06/L-055 on Kosovo Judicial Council; and Law nr 06/L-057 on Disciplinary Liability of Judges and Prosecutors. The Judicial Council is an independent body responsible for ensuring the independence and impartiality of the judiciary as well as managing the judicial system and careers of judges and prosecutors. Their composition and appointment procedures are broadly in line with European standards. However, the availability of legal frameworks and safeguards does not always reflect their level of implementation in practice.
30. As indicated in the background section above, Kosovo has experienced a prolonged deficit of accountability measures. While it may be easier for other institutions to recover from an accountability deficit, the security sector, and the judiciary, as two branches of government who are mandated to uphold the law, are prone to higher risks of power abuse due to the powers they possess. Yet due to that precise reason, established democracies around the globe are ambivalent as to what form of mechanisms are best devised to hold

public officials to account. For instance, striking a balance between operational power upon which the police rely to perform their duties, and curtailing that power to prevent institutional abuse has been very difficult. Judicial independence on the other hand is very important to eradicate, or minimise political influence among other things. High integrity and professionalism of the criminal justice system may also have a positive direct impact on the proper functioning of the other institutions in the public administration of a country.

31. Same as with corruption, providing a clear mirror on the efficacy of accountability measures within the Kosovo judiciary requires a comprehensive research based on field work. As a result, I had to rely on secondary sources. However, neither of the sources provide specific data for the Panel to consider the impact the accountability deficiency may have on reparation orders. A common thread through different evaluations is the dire need to implement current rules and regulations, rather than devising new ones. The Progression Report for instance, gives an overall overview of different institutions in Kosovo, including the judiciary. The report almost repeats the same text from previous years, such as: 'Kosovo is still at an early stage in developing a well-functioning judicial system. The overall administration of justice continues to be slow, inefficient, and vulnerable to undue political influence. Some progress was achieved during the reporting period. As regards last year's recommendations, advances were made, as the Functional Review of the Rule of Law Sector resulted in the adoption of a Rule of Law Strategy and Action Plan, which outlines the main challenges in the rule of law system. Kosovo rolled-out an electronic case-management system and offset-up a central criminal records system, however challenges remain.'

32. It then recommends that Kosovo should: 'improve the effectiveness and

implementation of the existing tools to ensure integrity in the judiciary (asset-declaration system, disciplinary proceedings, and evaluations), including through legislative changes as needed. Ensure that any new accountability mechanism is set up only as a measure of last resort and is in line with European and international standards, in particular Venice Commission opinions.'

33. In order to implement its electoral campaign pledge to reform the Kosovo judiciary, the current Kosovo government has been pressing with the Vetting Process. The Kosovo Judicial Council has boycotted the consultation process due to its disagreements with the draft plan. The current concept has also been met with stark opposition from the European Union. As there are many hurdles to the law being adopted in parliament, and the marginal possibility of it being adopted in the current form, adding the difficulties its implementation will face if the Judicial Council is not part of the process, any detailed discussion at this stage may not be of any use to the Panel.
34. What may be useful to the Panel, is the role model the KSC will set, not only to other Kosovo courts, but to the victims and all those directly involved in its judicial processes. It has been argued many times before that when accountability is in question international tribunals tend to focus on international audiences rather than the domestic contexts directly affected by the tribunal. The ICTY and other ad-hoc tribunals have been used as an example to illustrate. For instance, May and Fyfe²² have focused on the legitimacy deficit of international tribunals. They argue that the fact international tribunals are part of a 'system' with no direct lines of accountability, means they may morph into a 'free-floating institution' with only a vague sense of accountability to abstract international-facing notions

²² May, L. & Fyfe, S. (2017), *International Criminal Tribunals: A Normative Defense*. Cambridge University Press

such as 'the rule of law' or 'the international community'. Others²³ have argued with regard to the ICTY that "*when international and local interests conflict, the ICTY tends to accord primacy to the interests of its international stakeholders over the local ones*".

35. Taking on board the manifest failings in relation to war crimes investigations and trials to address the widespread violence against the civilian population in Kosovo, may serve as a testimony to the KSC to give primacy to the people of Kosovo.

Civil litigation in Kosovo

36. Issues discussed above will inevitably impact the proper functioning of any justice system, including Kosovo. To that effect, the length of proceedings, access to legal aid, and other procedural matter may be negatively affected if an order to proceed with civil claims in Kosovo is issued by the KSC. The █████ appointed experts have direct experience with judicial proceedings in Kosovo, and as such may be able to provide clear guidance with regards to civil litigations and related procedures.

37. Considering other procedural issues, the KSC, as a Kosovo court, is better placed to officially request up to date information from the Ministry of Justice in Kosovo regarding international cooperation, bilateral or multilateral agreement, and other procedural matters. The Ministry of Justice has a list of its international legal agreements on its website. They are mainly within the remit of criminal procedures. Discussing those arrangements here, apart from

²³ Swart, B., Zahar, A. & Sluiter, G. (2011), *The Legacy of the International Criminal Tribunal for the Former Yugoslavia*. Oxford University Press

a heavy reading, it may not be of much use to the Panel to decide on civil matters.

38. Instead, I will consider some pressing issues that the court may have to consider during their deliberation, especially possible risk factors.

Anonymity

39. Anonymity is chief among the issues the Panel may have to consider when deliberating on the most appropriate reparation orders. At present, legislation in Kosovo does not provide measures for anonymous civil claims. The same was confirmed during the interview [REDACTED]. The [REDACTED]. The counsel's submission has already touched upon that point and as referred to other jurisdictions, legal arguments have been made as to the rationale to abstain from providing a legal norm to allow anonymous civil claims - article 6 of the ECHR refers. Instead, anonymous claims are considered as cases of exceptional circumstances.

40. Kosovo's institutions have always shown a readiness to cooperate and may be willing to consider cases on individual basis. However, the possibility of making anonyms claims must depend on the careful consideration of other risk factors, such as maintaining protective measures and the possible resulting harm if such measures fail. In any case, if victims are not willing and ready to proceed with civil claims in Kosovo with their identity revealed, every other discussion regarding the judicial system in Kosovo may not be of any use in practical terms.

Protective measures

41. Maintaining protective measures for victims in Kosovo has proven to be an overwhelming challenge, for local and international institutions alike. Academics and practitioners have long been discussing well documented judicial and other security difficulties faced during judicial processes in post-conflict environments. Such difficulties are multidimensional and often stem from those institutions which are at the forefront of the justice system.
42. In Kosovo, witness protection is regulated in Law No. 04/L-015²⁴. Article 4 (1) specifically refers to protection of witnesses during criminal proceedings. Meaning that witness protection in civil matters is not regulated by current law. A Civil Code has been in the drafting process for a prolonged period. People ██████████ advised that it is nearing its completion. It remains to be seen what the final legislation will include when it becomes enforceable, and whether similar protective measures to those in criminal procedures will be available in civil cases. At present civil matters are mainly dealt with under provisions of Kosovo Law on Contested Procedure.²⁵ Most of those procedures, it is highly unlikely will apply to current victims. Regardless of legal measures in place (on paper), the ability to enforce those measures and maintain a satisfactory standard of protectiveness in practice is a different matter.
43. When protective measures are in question, technical equipment, such as those providing for voice and face distortion, are fundamental during court proceedings. Kosovo is lagging in this aspect and in those instances where it aims to provide such measures, they are mostly (entirely) done in criminal processes. However, as the ICTY in the past, and KSC has proven in its short

²⁴ Law No. 04/L-015 On Witness Protection (2011)

²⁵ Law No. 03/L-006 On Contested Procedure (2008)

history, technical superiority does not guarantee witness/victim protection. The possibility of the protective measures being breached through other means is always a possibility. The KSC itself will be a future case study for those interested in protective measures (including myself) on whether such measures failed when alleged sensitive material containing information of protected witnesses/victims was leaked out. The uneasy example the KSC has set, publicly at least, is the aftermath of the alleged leak and the practical choices made to address resulting consequences. The KSC, apart from arrests of two individuals in Kosovo, may have taken internal measures to address security issues. However, the public in Kosovo is yet to receive any official reassurance that an internal investigation has taken place, and steps have been taken to minimise the possibility of such problems occurring in the future. It may well be that individual protected witnesses have been briefed and reassured of their safety by the KSC staff in charge of security. Unfortunately, the damage in the public perception has already been done.

44. The main aim of referring to the alleged document leak and its handling, is not to criticise the KSC. However, its importance for the purposes of this report is crucial for at least two vital reasons: for the KSC to self-assess its work and set an example of professionalism and accountability to Kosovo courts; and as a reminder when addressing and evaluating the difficulties faced by those in charge of maintaining protective measures in Kosovo.

Evidentiary Requirement for civil claims and statute of limitations

45. There are at least two different approaches that many of the requirements for civil proceedings can be looked at. The first approach is to consider the current legislation in Kosovo and attempt to apply those measures hypothetically to the current victims and their possible civil claims in Kosovo, considering the unique arrangements. The second approach is to understand

that as the name suggest, the Kosovo Specialist Chambers are the exception not the norm, and the same may apply to the proceedings that will result from these chambers.

46. The statute of limitation in criminal proceedings is regulated by the Kosovo Penal Code.²⁶ And in the cases of war crimes, [REDACTED] [REDACTED] [REDACTED], no statute of limitation applies. However, the civil proceedings are a different issue. It has already been pointed out to the Panel that Article 125.1 of the Kosovo Law on Contested Procedure gives discretion to the court to decide on the time limit based on the individual circumstances of the case. While it may be highly unlikely that a statute of limitation on its own will be a reason for a judge in Kosovo to bar any civil procedures that arise from a judgment in the KSC to go ahead, any court or judge will need a legal framework to rely on and strict guidelines to ensure uniformity. Therefore, this may be a matter that warrants a direct discussion between judicial authorities in Kosovo and the KSC to find a way forward.

47. In their attempt to regulate the law in compensation resulting from violent crimes, Kosovo parliament adopted Law No. 05/L-036 on 'Crime Victim Compensation'. The law '*regulates the right to financial compensation for victims of violent crimes and their dependants, the decision-making authorities, and the procedures on the right to compensation in national and cross-border situations*'. It lists the evidentiary requirements²⁷, the statute of limitations and crimes to which these regulations apply to. It does not apply retrospectively, hence all people [REDACTED] stated that this law does not apply to war crime victims due to jurisdictional authority. However, it may serve as a basis for the court

²⁶ Code No. 06/L-074 Criminal Code Of The Republic Of Kosovo (2018)

²⁷ By way of an example, Article 7 of the Law lists formal conditions. 1. Formal conditions for the right to compensation are fulfilled if the applicant: 1.1. is a citizen or permanent resident of the Republic of Kosovo; 1.2. is a citizen of any country Article 7 Formal conditions 1. Formal conditions for the right to compensation are fulfilled if the applicant: 1.1. is a citizen or permanent resident of the Republic of Kosovo; 1.2. is a citizen of any country with which the Republic of Kosovo has reciprocity; or 1.3. is a citizen of a Member State of the European Union.

to understand the evidential, and all other rules and requirements for current victims if compensation claims are sought through Kosovo Courts.

Length of Civil Proceedings

48. One of the references made in the counsel's submission is the length of civil proceedings in Kosovo. It is beyond dispute that there are big challenges in Kosovo's judicial system. It is also probable that because of the overload of cases within the system, civil proceedings for current victims may be negatively impacted. However, it is fundamental that references made by victims' representatives in the KSC are valid within the context they are ought to be used. One such reference is the insert from a Crisis Group report 2010 in the counsel's submission. As already stated above, Kosovo declared independence in 2008. In 2015, [REDACTED], the transition from UNMIK to Kosovo's institutions was put under the following terms by one of the state prosecutors within the Special Prosecutor's Office in Kosovo: *"The sheer volume of cases left behind by UNMIK made it very difficult for us to address them all for two reasons: we did not have the extra staff required to deal with that amount of back log, but more importantly a lot of those cases had passed the legal limits within which a prosecution can be brought forward"*. While it was admitted that the cases themselves may have not been considered of a very grave nature, among other things they included property disputes and thefts, the negligence of UNMIK staff resulted in far reaching consequences. It reinforced the views of the locals that variants forms of vigilante justice were the only option left to them. Thus, a petty crime not dealt with in a timely manner by the authorities escalated in more serious offences.

49. In the line of reports that I consulted for my work here and to further illustrate the dangerous associated with employing data from secondary

sources, I refer to a report published by Kosovo Law Institute which monitors civil cases in Kosovo. The report was published in 2019.²⁸ It concludes that, paraphrasing, Kosovo judicial system has failed to offer efficient judicial mechanisms to deal with civil cases. It continues in the next paragraph, the system employs a selective approach because some cases have not been resolved even after 20 years, but some have been resolved after 35 days. Both those statement will have to be considered very carefully, as I am not sure by what standards those conclusions were reached; whether the reasons for reaching those conclusions are unique to Kosovo; and whether the monitors have considered all the variables that have resulted in different cases being completed in different times, and whether such variables are comparable. To illustrate further, I will use a report published by the Council of Europe in 2021. It was prepared under the Project on Improving the Protection of the European Human Rights standards by the Constitutional Court of Kosovo.²⁹ The report states that the length of proceedings is measured by a standard of 'reasonableness', and the term reasonable is determined by the circumstances of the individual case. Therefore, the efficacy of the judiciary may not only be determined by the longevity of one case and the speedy completion of another, as the circumstances of every case are different. That is not to say that a selective approach is not present in the courts in Kosovo, I am merely stating the vital issues that must be considered to arrive to a conclusion.

Access to Justice

50. In its attempt to make justice available to all its citizens, in 2012 Kosovo adopted Law Nr. 04/L-017 On Free Legal Aid. The law sets the framework for legal aid, the procedural requirements, qualifying criteria, and the

²⁸ [IKD-Drejtësia-Civile-Ligji-vs.-Praktika-03.11.2019-2.pdf](#)

²⁹ <https://rm.coe.int/echr-reasonable-time-of-proceedings-compilation-of-case-law-of-the-eur/native/1680a20c21>

establishment of mechanism to implement the law. Legal aid is available in both criminal and civil proceedings and its available to all those who qualify under the criteria as stated in the legislation. Apart from governmental help, other sources have been created to provide help with legal advice related costs. One such establishment is the Centre for Legal Aid (CLA). It is a Project supported and funded by the UN Mission in Kosovo (UNMIK) as part of the Program Access to Justice. CLA's activity and function has started on March 2019. [REDACTED]

[REDACTED]

[REDACTED]

Key Points/Recommendations

51. Some of the key points I will address in this section derive from the issues raised in the counsel's submission. I am not sure who compiled that submission, but, in my view, the manner how some points are made in a submission classified as a public document, warrants some consideration by the Panel.
52. In paragraph 15, a violation of human rights under Article 13 of ECHR is argued on the grounds of international and local institutions failing to provide access to any effective remedies. It continues: 'investigations were either absent or hugely ineffective'. Issues to consider from that paragraph:
53. Is the counsel's submission referring to the investigations conducted during UNMIK and EULEX? More importantly, are those the investigations upon which the SPO has relied to build its case to secure a conviction for individuals against whom a reparation order will be made? The Panel may want to clarify these points for obvious reasons. As a way of a reminder,

referring to the 'background' section of this report is important to identify who was in charge of investigations in Kosovo. [REDACTED] [REDACTED] during the initial years when United Nations Civilian Police had executive duties. I could not agree more as to the poor quality of some investigations. It was the crucial time to amass the evidence required to secure future convictions. However, the quality of some of the 'investigators' the UN provided for Kosovo left a lot to be desired. The vast majority of 'investigators' had inadequate skills commensurate with mission requirements. I will illustrate this point with an extract from an interview [REDACTED] with a UN official in Kosovo: *When we went to Kosovo, we found many D³⁰... and S..., some G... too, that they were known as mission 'junkies'. They went from one UN mission to another and had not done police work in their countries for many, many years. That did not matter much in other missions, such as the one in Bosnia, because they were traditional UN missions – monitoring/advising. In Kosovo you had to deal with people, and it was mostly done through a young local person who had learned English by watching American movies and had no prior training on police work".* Important to reiterate that as the UN official highlighted, there were many exceptions to this rule, and there were members of UNMIK staff who deserve every commendation.

54. Problems with inadequate skills of international staff commensurate with the duties in post-conflict environment, including international justice, were also emphasised by Kofi Annan (the former UN Secretary General). In his report titled 'The rule of law and transitional justice in conflict and post-conflict societies', he stated: 'the UN suffers from a lack of experts who combine the complementary skills required to do the work on behalf of the UN. They may well be experts in their own countries, in their own legal systems, their own

³⁰ I have removed the nationalities referred to [REDACTED] for ethical reasons, and to prevent any prejudice against the police services from those countries.

legislation, but such expertise is of limited value to post-conflict requirements.³¹

55. The other aspect of paragraph 15 is referring to the failure to provide any effective remedies. I do not know who the identified victims are that may be eligible for reparations in the current proceedings. However, it must be noted, as a matter of fact, that the families of the victims, some if not all, murdered during the first years of international administration have had different forms of financial help, and continue to receive that help. They have also availed from other privileges. It is also a fact that boundaries of a victim, a traitor, a hero, a martyr, and many other kinds of entitlements, have been blurred with the passage of time and allegiances have shifted. Resulting in claims being awarded to all types of recipients under Law No 04/L-054³². I am not sure about the exact figures, and in what capacity. For example, there has been a huge inflation of the numbers of 'war veterans' in Kosovo who have access to a monthly pension. But I consider it fundamental for the court to make those distinctions. Otherwise, if a blanket statement is made by the victim's representatives without any caveats, it may result in problems down the line. It may put into question the sincerity of some victims' anonymity requests.

56. The KSC, to protect the identity of the victims who have been successful in securing anonymity, cannot ask authorities in Kosovo to check whether any of the victims are currently beneficiaries of a compensation schemes in Kosovo. However, within legal rules, the Panel may consider a request to relevant authorities in Kosovo to see the lists of beneficiaries of different compensations schemes and compare it against the victims that have been confirmed by the KSC. Due to the huge volume of beneficiaries, a division at a council level may have to be used to narrow the lists.

³¹ UNSG Report 2004. *The rule of law and transitional justice in conflict and post-conflict societies*. S/2004/616* <http://archive.ipu.org/splz-e/unga07/law.pdf>

³² Law no. 04/L-054 on the 'Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families.

57. Paragraph 17 in the counsel's submission is the other point I want to make. It states that a referral may not reconcile with victim's right to an effective remedy and reparations, 'no matter how swiftly the Kosovo judicial system might address such claims'. This statement may be interpreted in many ways. Prejudice against Kosovo's institutions may be one of them. If not questioned by the Panel, it has the potential to devalue interinstitutional cooperation. As already stated, the delay, the inadequate investigations, and many other problems with war crime cases in Kosovo are a result of poor performance from international institutions. Hence the often-used rhetoric of 'delivering justice to victims' will continue to remain a phrase with little practical results if these types of approaches towards Kosovo's institutions continues to be pursued.

58. People in Kosovo have experienced a long history of institutional abuse of power and inexperience of due process. With the benefit of hindsight, the experience during the UNMIK administration, and EULEX for that matter, is not one to be applauded. Thus, resulting in misconceptions of the importance of fair trials, and the rights of the accused in line with human rights principles in established democracies. Victims have already experienced countless hours of interviews, round tables which discuss best practices around the world, workshops that conclude with meaningless reports, and promises with no realistic chance of delivery. To change the status quo, it is paramount that all involved take considerable steps to delineate procedural justice for victims. In line with that, the KSC must remain vigilant to the danger of 'secondary victimisation' by the way victims are treated by institutions and individuals within these institutions. The victims should receive deconstructed and plain advice. They ought to be consulted at every step of the way and make informed decisions as to how they want to proceed further in terms of reparations. The reading of the rules and regulations to the witnesses and

victims to satisfy procedural requirements, may not be sufficient for them to understand. The rules and procedures are very technical, overcome with legal jargons which are difficult to be translated into another language through simultaneous interpreting, and even harder to be digested by the person they are intended to. [REDACTED]

[REDACTED]. The court must understand that the main reason to use a language assistant is not to translate words from one language to another. But as the name suggests, it is to assist the end user to understand every point made. I have not had time to follow court proceedings within the KSC at any length, but in those short instances I have done so, there is a lot left to be desired in the language department, and an issue that the court must address as soon as possible.

59. The law states that the KSC may consult and use a wide range of other practices, such as the ICC, to award reparations. Important, however, is for the court to consider the proportionality and more importantly be realistic in enforceability of any reparations it awards to victims. Transitional justice, cannot, and must not be reduced to criminal trials alone. I welcome the fact that in terms of reparations, the law that established the KSC is showing signs of change of direction from its international predecessors in Kosovo, in theory at least. There will be challenges which will inevitably be faced by all involved during the implementation stage of reparation orders made by any court. However, overcoming these challenges will very much depend in the careful consideration of the nature of remedies awarded, and the legal reasoning of such decisions.

60. Difficulties in maintaining protective measures, and the high risks involved, will have to be incorporated in balancing any decision to refer claims to civil

courts. The experience of the KSC itself manifests the real difficulties faced with maintaining such measures.

61. Ordering reparations against the accused, while available to the KSC based on the legislation that established it, presents an abundance of its own difficulties. If an order is made directly against the accused after a guilty verdict, that is the easy step. How will that order be enforced? What will happen with the reparation orders if a guilty verdict is overturned during the appeals process, or the convicted person is found to be indigent? These points have been raised in other cases that have gone through the International Criminal Court and issues in those instances may become a reality with reparation orders issued by the KSC. That is why it may be important to consider solutions outside the box.

62. I am aware the court may be familiar with the above questions, and already knowledgeable regarding the manifest problems that have resulted from previous reparations orders issued against the accused by the ICC. However, as a way of reminder I will briefly mention one of those instances here.

63. For many years, the public opinion in Kosovo has been fed with this 'indisputable' knowledge of the wealth public figures in Kosovo possess. Their lavish life contributed greatly to that end. I am not sure if this report is going to be used in other cases before the KSC, or only in the current case. But what is important to consider when awarding reparations by making an order against the accused/convicted, is the court's knowledge on the size, or the value of wealth that can be legally confiscated. That is fundamental. What we think we know, and what can be legally proven in court will be the difference between reparations and disillusion.

64. Another question to be asked is whether the confiscation of assets is going to proceed through the Kosovo Courts? In which case every argument made

against civil claims in Kosovo will defy logic. Hence the need for careful preservation of interinstitutional cooperation.

65. Due to legitimate reasons, highlighted above, trust of Kosovo people in the international institutions has declined continuously over the years. The manifest failings of the ICTY approach towards witnesses, the lack of tangible results from Hybrid Courts, and allegations of corruption within EULEX by its own staff, has had a profound impact on the trust building exercise. Therefore, one of the pressing issues that must be considered by the court when an order for reparations is made is a meaningful consultation with the victims as to the possibilities, and the routes they are willing to take. Above all, all involved should be reflect the pragmatic circumstances when providing the victims with different option, being mindful of the high risk of any reparation orders to materialise fully.

66. With that in mind, the KSC will benefit from clearly outlining its vision on reparations. I would have cherished the opportunity to expand the discussion on contextually based reparation in Kosovo had the KSC required such a report. While theoretically the KSC has been empowered with a range of options to issue reparation orders, practical possibilities are scant and very limited. The Panel, therefore, may want to explore other options of redress from other sources.

Considering other possibilities as a financial compensation

67. Due to the time when alleged crimes were committed state liability may not be incurred against Kosovo. Also, compensations under other legal frameworks in Kosovo, such as Law no. 05/1-036 on Crime Victim Compensation do not offer a realistic avenue in their current from due to their specific requirements. [REDACTED].

68. A timely compensation for victims may require some adaptations to current legal frameworks in Kosovo to avoid prolonged civil claim procedures, including if an order is made against the accused. For example, one avenue that may be pursued is the modification of the Law no. 04/L-054³³. If the modification is drafted carefully, it may be a workable solution to provide the victims with some compensation. However, the problem with any modification to current legal frameworks in Kosovo may require the lifting of some special protective measures, such as anonymity. In the contrary it may open a floodgate for industrial abuse of state funds. There have already been allegations of abuse with awarding compensations for different categories, most notably the war veteran lists. Criminal proceedings have already been confirmed against individuals who either were involved in assisting others to apply by securing a fraudulent certificate, or those who have benefited financially as a result of a fraudulent claim.

69. Another option the KSC may want to push forward is reviving the discussion of creating an International Reparation Fund for War Crimes Victims. Despite sounding very ambitious, all avenues considered, an International Fund may not be the least practical option.

Other points

70. Kosovo's judicial system, through many challenges faced in the extreme difficult road of transition, has made progress from the, at times overbearing, and other times dysfunctional, system inherited from UNMIK. It is crucially important to affirm the tremendous work carried out by many women and

³³ Law No. 04/L-054 On The Status And The Rights Of The Martyrs, Invalids, Veterans, Members Of Kosova Liberation Army, Civilian Victims Of War And Their Families.

men within these institutions, including members of international staff who worked for UNMIK, and NGO's, in the face of hardship, fear, and intimidation. In terms of dealing with the past, since 2008 when Kosovo declared independence, new legislation was introduced, and subsequently developed further to provide some sort of financial help to hundreds and thousands of war victims in Kosovo. It is important to recognise that legislation in Kosovo, and mechanisms that have been established to implement war related compensations for war victims are far from perfect. The KSC should seize the opportunity to provide help and guidance in this aspect. However, I feel compelled to emphasise that many victims and witnesses that may be finding solace within the KSC, have been failed by previous international institutions in Kosovo.

71. There appears to be confusion, whether intentional, or resulting from a lack of knowledge and expertise to the crucial role international justice and security institutions had in Kosovo between June 1999 and February 2008, when the Kosovo Parliament declared independence. A pretentious vital role of international justice in Kosovo did not end there. It continued with the establishment of EULEX - still present in Kosovo. The benefit of hindsight, combined with an abundance of documented failures of international justice in Kosovo, should serve as evidence to the KSC to reflect and recognise the suffering of victims in Kosovo, regardless of the ethnicity of the perpetrators. Those who are not familiar with the experience of victims of war crimes in Kosovo, must be reminded that even a small hint that some victims in Kosovo have received a 'favourable' treatment, even used as an undertone, does not reflect the true nature of suffering in Kosovo. There is a moral duty to differentiate between public statements that are made for political gains, and actions to provide justice for the victims of war crimes in Kosovo.

72. The KSC cannot allow a myopic narrative of violence in Kosovo to develop within its courtrooms. Attempts to portray a selective narrative, while it may

have a very different intention, dismisses the suffering, the stigma, and the everyday hurt of thousands of victims, especially of those who were raped and sexually abused by the Serbian regime, but also to the families of the disappeared who feel abandoned by consecutive governments in Kosovo. Many thousands of victims are still suffering in silence in Kosovo and have never been given the opportunity to have their voices heard.