

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: **Trial Panel II**
Judge Charles L. Smith III, Presiding Judge
Judge Christophe Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
Counsel for Jakup Krasniqi

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**Joint Defence Written Observations on the Draft Order on the Conduct of
Proceedings (F01178/A01)**

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I. INTRODUCTION

1. Pursuant to the invitation of the Trial Panel,¹ the Defence jointly submits its written observations on the Draft Order on the Conduct of Proceedings (“Draft Order”).
2. The observations below are submitted with reference to the headings under which the relevant paragraphs lie and in the order of their appearance in the Draft Order.

II. SUBMISSIONS

A. Contacts with the Media

3. Relevant paragraph: 18, “Counsel are not to comment publicly upon any application pending before the Trial Panel until it has been decided by the Trial Panel. The Trial Panel expects the Parties and participants to litigate exclusively before the Trial Panel any issue that is relevant to the case and that is placed before it to decide”.
4. *Proposal*: Allowance to be made for Counsel to factually state that a publicly-filed application has been submitted to the Trial Panel and/or generally summarises the nature, content and purpose of such an application with full respect for any confidentiality measures in force.
5. *Justification*: This addition would allow the parties to provide basic updates, where necessary, on their litigation activity, in order to properly and accurately inform the Kosovo public of the specifics of ongoing proceedings while fully respecting the fact that litigation will occur exclusively before the Trial Panel. Given the complexity of certain filings, the ability of the filing party to

¹ KSC-BC-2020-06/F01178, Order for Submissions on the Draft Order on the Conduct of Proceedings, para. 4, 22 December 2022.

summarise and explain in simple terms their nature and content will contribute to the accurate reporting and monitoring of trial proceedings by the general public and civil society. In particular, if an application makes a public allegation against Counsel, Counsel should be allowed to comment in public if they have been attacked in such a filing. The purpose of the relevant paragraph would not be disturbed by the proposed addition which would also be consistent with Article 13 of the KSC Code of Conduct.

6. Relevant paragraph: 20, "Counsel are responsible for the acts and statements of those that act under their guidance and authority, including statements made to the media."
7. *Proposal*: Removal of the expression "under their guidance".
8. *Justification*: Pursuant to Article 34 of the Code of Professional Conduct, Counsel are responsible for the actions of those over whom they have "direct supervisory authority". To make Counsel liable for those that merely "act under their guidance" is inconsistent with the regime set by Article 34 and exceeds its scope; this expression is further insufficiently precise and may give rise to uncertainty.

B. Participation of Victims

9. Relevant paragraph: 33, "Upon receiving the schedule of witnesses to be called by the SPO or the Defence, Victims' Counsel shall notify the Trial Panel and the other Parties and participants of those witnesses which he wishes to cross-examine with a general description of the issues or areas of evidence in relation to which he wishes to cross-examine each witness."
10. *Proposal*: Amendment of this paragraph as follow: "33. Upon receiving the schedule of witnesses to be called by the SPO or the Defence, VPP(s) shall notify *through Victims' Counsel* the Trial Panel and the other Parties and participants of those witnesses which they wish to cross-examine with a general description of

the issues or areas of evidence in relation to which *they wish* to cross-examine each witness, *including a brief explanation as to how the anticipated testimony affects their personal interests. Victims' Counsel shall endeavor to make such notification as early as possible in respect of VPPs who have been granted non-disclosure of their identities vis-à-vis the Parties, to allow for any eventual variation of protective measures."*

11. *Justification:* Pursuant to Article 22(6) of the KSC Law, victims are permitted to make representations via the Victims' Counsel 'when the Victims' personal interests are impacted and only when it is not prejudicial to or inconsistent with the rights of the accused'.²
12. At present, all victims participating in the proceedings (VPPs) are granted full anonymity, *i.e.* anonymity *vis-à-vis* the public as well the parties in the proceedings. The Court of Appeals has acknowledged that the participation of anonymous victims may, in certain circumstances, infringe the accused's right to a fair trial. Protective measures will need to be reassessed (i) where a VPP may be called as a witness; (ii) when a VPP will ask questions, through the Victims' Counsel, to witnesses called by the parties; (iii) when submitting evidence and calling witnesses to testify; or (iv) when making submissions on facts related to the Prosecution's case against the Accused.³
13. It is recalled that Victims' Counsel has indicated that if the VPPs choose to take a more active role, "the issue of their anonymity will be reviewed".⁴ The Defence

² See also, KSC-BC-2020-06/IA023/F00006/COR, Decision on Veseli's Appeal Against "Third Decision on Victims' Participation", 15 September 2022, para. 45.

³ KSC-BC-2020-06/IA023/F00006/COR, Decision on Veseli's Appeal Against "Third Decision on Victims' Participation", 15 September 2022, para. 49, fn. 117.

⁴ A023/F00004, Victims' Counsel Response to Veseli Defence Interlocutory Appeal Against Third Decision on Victims' Participation, 25 July 2022, paras 51, 55-57, 66.

further notes that Victims' Counsel represents VPPs in their individual capacity and not as a generic category.

14. The proposed amendments aim to give effect to the above Victims' Counsels' assurances and the Court of Appeals Decision. While the Draft Order generally takes into consideration the Court of Appeals findings in Section VIII, it does not require Victims' Counsel to indicate, whenever he will request leave to question witnesses (paras 33-35) or introduce evidence (para. 36), the names of the VPP(s) on behalf of whom he wishes to cross-examine witnesses. This creates the risk for anonymous VPPs to take an active role in the proceedings and thus infringing core rights of the accused. The proposed amendments are necessary to distinguish between those VPPs who wish to take an active role in the proceedings as opposed to those who choose to remain "passive".

C. Bar Table Motions

15. Relevant paragraph: 62, "In a request for the admission of evidence from the bar table, the requesting Party shall:
 - (i) provide a short description of the proposed exhibit of which it seeks admission;
 - (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 of authenticity".
16. *Proposal*: Inclusion of a provision requiring the requesting Party to explain in its request for the admission of evidence from the bar table why the evidence could not have been sought for admission through the examination of a witness.

17. *Justification:* The bar table process is a well-established procedure in international law⁵ that may assist the expeditiousness of proceedings, and one which is not opposed in principle. However, while this process may be in the interest of judicial economy in certain circumstances, the Defence is concerned that it may undermine the prevailing principle of orality underlying the proceedings,⁶ and/or be viewed by the SPO as another means to introduce evidence wholesale into the court record.⁷ This concern is heightened in the present case, where both the exhibit and witness lists in *Thaçi et. al* dwarf those of *Gucati and Haradinaj*.
18. Specifically, with such a substantially populated exhibit list and wide breadth of charges in this case, the Defence is concerned that the bar table process may be regarded by the SPO as the first port of call for the admission of documents, rather than a supplementary method of introducing relevant evidence⁸ which cannot be tendered through a witness. In the Defence's view, considering the amount of witnesses the SPO proposes to call at trial, there is an abundance of opportunity to clearly contextualise the items in evidence⁹ by presenting the most important exhibits through witnesses who are in a position to speak to them and to be cross-examined about them.¹⁰ With this being the case, the SPO should show in its applications for admission of evidence from the bar table that it is committed to ensuring that this occurs.

⁵ KSC-BC-2020-07/F00334, Decision on the Prosecution Request for Admission of Items Through the Bar Table ("*Gucati and Haradinaj* Bar Table Decision"), 29 September 2021, paras 20, 21.

⁶ *Gucati and Haradinaj* Bar Table Decision, para. 22.

⁷ ICTY, *Prosecutor v. Karadžić*, Trial Chamber, Decision on the Prosecution's First Bar Table Motion, 13 April 2010, para. 15.

⁸ ICTY, *Prosecutor v. Karadžić*, Trial Chamber, Decision on the Prosecution's First Bar Table Motion, 13 April 2010, para. 9.

⁹ ICTY, *Prosecutor v. Karadžić*, Trial Chamber, Decision on the Prosecution's First Bar Table Motion, 13 April 2010, para. 15; ICTY, *Prosecutor v. Mladić*, Trial Judgement, 22 November 2017, Vol. IV of IV, para. 5260.

¹⁰ *Gucati and Haradinaj* Bar Table Decision, para. 22

D. Interview of Witnesses by Opposing Party

19. Relevant paragraph: 71, “With respect to the procedure and safeguards applicable to contacts with the opposite Party’s or participant’s witnesses, Parties and participants will abide by the standard to be set out by the Court of Appeals Panel in its upcoming Decision on the *Veseli* Appeal of 8 September 2022. If, after that Decision is rendered, further guidance is thought necessary, a Party and/or participant can seize the Trial Panel to obtain such guidance”.
20. *Proposal*: Inclusion of a provision allowing for the discretionary power of the Trial Panel to vary the provisions of the Framework, as set out in the Decision on the Framework¹¹ where necessary, upon showing of good cause.
21. *Justification*: The inclusion of such a provision would reflect Article 40(6).b of the Law (as it relates to Article 39(11)) and the exercise by the Panel of the same discretionary powers used by the Pre-Trial Judge in issuing the Framework.¹² This would allow the Trial Panel to vary the Framework upon request from a Party,¹³ where, in its view, the conditions requiring the application of the Framework are not present,¹⁴ either for an individual witness or group of witnesses, and/or a witness has explicitly stated that they do not wish the provisions of the Framework to apply to their contact with the non-calling Party,¹⁵ a possibility that could be notified to the specific witness by the SPO when informed by the SPO that the Defence wishes to interview them. Facilitating Defence interviews for these witnesses, without the presence of the

¹¹ KSC-BC-2020-06/F00854, Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant (“Decision on the Framework”), 24 June 2022, para. 212

¹² Decision on the Framework, para. 117.

¹³ KSC-BC-2020-06/IA024/F00019, Decision on Defence Appeals against “Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant”, paras 48, 78.

¹⁴ Decision on the Framework, para. 118.

¹⁵ Decision on the Framework, para. 120.

SPO or a recording of the interview, could ultimately reduce the amount of time that would be necessary for cross-examination by allowing such issues to be freely explored in advance.

E. Scheduling of Witnesses and Material to be used in Examination

22. Relevant paragraphs: 73, "... The Trial Panel further requires that, one month prior to the completion of the testimony of these witnesses, the SPO shall provide to the Panel and the other Parties and participants a list of the witnesses it intends to call in the ensuing three-month period and to continue this practice every three months thereafter or until a further order from the Trial Panel..."; and
23. 76.ii, "The Defence and Victims' Counsel shall: [...] Within 5 days of receiving the list, provide an indication of:
 - a. Which witnesses it intends to cross-examine and, a time estimate for cross-examination of each witness;
 - b. Any objection to the admission of witness statements/transcripts of interview and/or exhibits, which the SPO proposes to tender through the witnesses".
24. *Proposal*: An amendment of the time limit from one month, as currently provided (paragraph 73), to two months for the notification of the witnesses to be called in the subsequent three-month period and an amendment of the time limit from 5 days, as currently provided (paragraph 76.ii), to two weeks for the Defence and Victims' Counsel to provide objections to the admission of witness statements/transcripts of interview and/or exhibits, which the SPO proposes to tender through the witnesses.
25. *Justification*: These provisions relate to a list of witnesses to be called during an extensive period of court-time, as well as objections to the admission of witness statements/transcripts of interview and/or exhibits relating to a list of three-

months' worth of witnesses. Given the relatively limited resources at the Defence's disposal, and recalling the other competing obligations that necessarily arise during trial, a reasonable extension of both time limits would allow the Defence to effectively prepare both its examination of the witnesses and its objections to the proposed admission of the witness statements/transcripts of interview and/or exhibits. This amendment would not delay the judicial process, thus ensuring both the fair and expeditious nature of proceedings.

26. Relevant paragraph: 72, "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. When more than one Defence team intends 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."
27. *Proposal*: New sentence between the first and second sentence which reads: "SPO shall make every effort to group together witnesses who are to testify about the same incidents or locations."
28. *Justification*: This will allow the Parties and participants to organise their preparation in an efficient manner. It will also help to ensure that all de-redacted materials relevant to a particular witness are received in advance of their testimony, thereby avoiding the need to re-call witnesses whose testimony has already been completed.
29. Relevant paragraphs: 77, "At the end of any three-week block of hearings, the Party calling witnesses shall notify the Trial Panel and the other Parties and participants of the witnesses which it intends to call during the following three-week block of hearings"; and

30. 80, “It is the presenting Party’s responsibility to 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”.
31. *Proposal*: The inclusion of a requirement that only those witnesses notified pursuant to paragraph 77 may be called as alternative witnesses in the event that the circumstances described in paragraph 80 arise.
32. *Alternative Proposal*: The inclusion of a requirement that the calling Party shall also notify the Trial Panel and the other Parties and participants of any alternative witnesses that may be called *in lieu* of the witnesses which it actually intends to call pursuant to paragraph 77, in the event that the circumstances described in paragraph 80 arise. The provision should also require that these alternative witnesses are clearly identified as such.
33. *Justification*: This updated provision is to allow for a situation where, in the interests of efficiency, the calling Party may seek to substitute witnesses not on the paragraph 77 notice in order to fill a gap in court time. While this scenario is hopefully a remote possibility, the first proposal would ensure that the other Party and participants are not placed at a disadvantage by the late stage appearance of witnesses for whom it was not notified pursuant to paragraph 77.
34. The alternative proposal would ensure that the other Party and participants have been given adequate notice of the alternate witnesses on equal terms as the notified witnesses. If this proposal is adopted, requiring that these witnesses are clearly identified to the non-calling Party and participants as alternate witnesses would ensure that the paragraph 77 “intended witness list” is not inadvertently

populated with witnesses that the calling Party does not intend to call unless required to.

35. Relevant paragraph: 81, "...If 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 filed pursuant to Rule 102(1)(b)(iii) or Rule 104(5)(c), the Party shall apply to the Trial Panel to amend its exhibit list".
36. *Proposal*: Allowance for the cross-examining Party to request an adjournment in order to examine any additional material that the presenting Party wishes to use during the direct examination of the witness not included on its exhibit list filed pursuant to Rule 102(1)(b)(iii) or Rule 104(5)(c).
37. *Justification*: If the presenting Party intends to use additional material not notified to the cross-examining Party pursuant to Rules 102(1)(b)(iii) or 104(5)(c), it may raise issues as to the adequacy of notice provided to the cross-examining party of the exhibits the presenting Party will present at trial. While this will depend on the timing of such an application for amendment, and the nature of the additional material, the paragraph should reflect the fact that the cross-examining party may request an adjournment in the event such documents are included at a late-stage prior to the witness' scheduled appearance.

F. Witness Preparation

38. Relevant paragraph: 98, "...Where an individual was interviewed during the investigation without being given such notification, but the SPO 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 SPO shall provide a Rule 43 notification to the person."
39. *Proposal*: Additional sentence at the end of this paragraph to read: "Where an individual interviewed during the investigation was previously given a

notification in accordance with Rule 43 but there is no longer a reasonable suspicion that the person committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers, the SPO shall inform the individual of this without delay.”

40. *Justification:* Having the status of a suspect may have a chilling effect on an individual’s willingness to participate in the proceedings. Withdrawal of Rule 43 notification may assist in securing important evidence.
41. Mr. Krasniqi will file additional separate observations on these provisions.

G. Questioning of Witnesses

42. Relevant paragraph: 103, “...Similarly, questions regarding the justness or legitimacy of the war are not matters relevant to these proceedings and will not be permitted. ...”
43. *Proposal:* Removal of this sentence or, in the alternative, amendment to “...Similarly, questions regarding the justness or legitimacy of the war will not be permitted unless relevant to the alleged common criminal purpose, the motivation of the alleged direct perpetrators, witnesses or the accused or another issue relevant to the case”.
44. *Justification:* The Defence is concerned that the current wording of this paragraph may prevent questions potentially relevant to the motivation of KLA members, direct perpetrators, or even the Accused. The reasons for certain political and/or military activities, plans, operations, incidents and events occurring at certain locations are relevant as they tend to disprove the allegation pleaded by the SPO in the Amended Indictment that they were launched to further, or formed part of, an alleged common criminal purpose.¹⁶ The current wording could also

¹⁶ ICTY, *Kupreškić et al.*, IT-95-16-T, Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque, 17 February 1999.

preclude the Defence from raising valid defences, such as the lack of effective control or self-defence. Self-defence (whether of the Accused personally or in defence of others) is a ground for excluding criminal responsibility under customary international law, enshrined in Article 31(c) and (d) of the ICC Rome Statute.

H. Use of Prior Statements

45. Relevant paragraph: 119, "...Pursuant to Rule 143(2)(c), the Parties and participants may seek admission of any prior inconsistent statement for the purpose of assessing the credibility of the witness, as well as for the truth of its contents or for other purposes within the discretion of the Trial Panel".
46. *Proposal*: The inclusion of a requirement that any statement sought to be admitted into evidence pursuant to Rule 143(2)(c) for the truth of its contents shall conform to the formal requirements of Rules 153.
47. *Justification*: This would ensure that recourse to Rule 143(2)(c) would not inadvertently circumvent the formal requirements of Rules 153. Since this scenario is in effect an application to submit a statement *in lieu* of oral testimony, the statement should satisfy the formal requirements of Rule 153.¹⁷

I. Presence in Court and Representation by Counsel

48. Relevant paragraph: 128, "Attendance in court shall in principle be limited to Counsel and case managers. Where a Party wishes to bring in the courtroom another team member, it shall give 24-hour advance notice to all Parties and participants, to the Registry and to the Trial Panel".

¹⁷ Similarly, ICTY *Prosecutor v Hadzihasanovic & Kubura*, Decision on Interlocutory Appeal Relating to the Refreshment of the Memory of a Witness, 2 April 2004, regarding the Appeals Chamber's consideration that because the Prosecution did not seek to admit the prior statement *in lieu* of oral testimony, the statement shown to the witness did not need to satisfy the requirements of Rule 92*bis* of the Rules.

49. *Proposal:* Provision for the allowance of one other team member besides Counsel and case managers.
50. *Justification:* The Defence relies on the support of an evidence reviewer in the preparation and analysis of evidence to be used in the examination of witnesses and their assistance in court will be vital in trial. Mr. Krasniqi requires an Albanian language speaker to communicate directly with his Counsel. It is likely that Counsel will require their assistance on an ongoing basis and thus, the daily provision of notice to all Parties and participants, the Registry and Trial Panel for extended periods of time may be onerous and needlessly repetitious. To this end, provision to allow the Defence to use all six seats allocated to them by the Registry would greatly allow for a smoother functioning of the Defence teams. In the alternative, provision could be included to allow for the notification to all Parties and participants, the Registry and Trial Panel of the extra team members present in court for blocks of the court calendar.
51. Relevant paragraph: 130, “The Panel may order that attendance in court and/or access to the transcript of proceedings be limited to Counsel and identified members of the Parties and participants”.
52. *Proposal:* Removal of the provision to limit access to the transcript of proceedings.
53. *Justification:* The transcript of the proceedings is essential to the Defence teams as a whole and its assessment/review of the evidence elicited in court. Counsel are already bound by the Code of Conduct as it relates to confidential material and the actions of those team members employed on their respective Defence teams. Each of these team members have, in turn, signed their own undertakings to maintain confidentiality and to abide by the provisions of the Code of Conduct. Limiting access to the transcript of proceedings in the manner currently presented would interfere with the Accused’s right to effectively prepare their case.

J. Recording of Use of Time

54. Relevant paragraph: 131, “A system for monitoring the use of time shall be established by the Registry, which will be responsible for recording time used during the evidence of each witness:
- (i) by the calling Party or participant 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 154;
 - (ii) by each Party or participant that conducts cross-examination;
 - (iii) by the relevant Party or participant for re-direct examination;
 - (iv) by the Judges as result of putting questions to the witnesses; and
 - (v) for all other matters, including procedural and administrative matters.
55. *Proposal*: Update the provision to include that time spent making, responding and adjudicating upon an objection is not computed into the time spent by either Party.
56. *Justification*: This would ensure that the use of time by the Parties and participants, either for the presentation or cross-examination of witnesses, remains within the discretion of that Party or participant, and is not encroached upon by objections of the other Party or participant.¹⁸ Given the complexity of certain objections and the obligation of an objecting party to ask the Trial Panel to excuse a witness for objections that may be likely to provide guidance or information to the witness,¹⁹ this time can be extensive. Separating it from the

¹⁸ Similarly, KSC-BC-2020-07/F00314, Order on the Conduct of Proceedings, 17 September 2021, Annex 1, para. 99

¹⁹ Draft Order, para 115.

overall time allotted to a party allows such objections to be properly addressed without causing any prejudice to the examining or cross-examining party.

K. Final Trial Briefs

57. Relevant paragraph: 134, “Final Trial Briefs shall be filed in accordance with Rule 134(b) at a date set by the Trial Panel. All Parties and participants’ Final Trial Briefs will be filed on the same date”.
58. *Proposal*: Final Trial Briefs to be submitted consecutively, with the SPO as the Party bearing the burden of proof to file its Final Trial Brief first and the Accused having the right to submit theirs last. The Accused to be provided at least thirty days to respond to the SPO brief.
59. *Justification*: This provision would accurately reflect the proceedings at the KSC being adversarial in nature.²⁰ In the course of an entire case, the Rules provide for a system whereby the SPO, as the Party bearing the burden of proof, makes its submissions, and the Defence responds. This is reflected not only in the presentation of evidence, but indeed in both procedure for opening²¹ and closing statements,²² with the latter explicitly stating that “the Accused shall have the right to speak last”.²³ This same sequence is continued into the appellate phase of proceedings, should it come to pass. This is the same process in all adversarial systems.
60. The filing of simultaneous briefs is contradictory to the spirit of the adversarial system, leaving the Defence in a position where it must make arguments, at least to a certain degree, in the dark, having not read the Prosecution’s final written

²⁰ Similarly, KSC-BC-2020-06, Transcript, 14 September 2021, pg. 611: the Pre-Trial Judge noting in relation to deadlines set for the Pre-Trial Briefs; “it’s important for that every party around here is able to do its job so that we have robust, adversarial proceedings”.

²¹ Rule 126

²² Rule 135

²³ Rule 135(4)

word on their case against the Accused. While the *ad hoc* Tribunals may have adopted the practice throughout their lifetimes,²⁴ it does not alter the fact that the simultaneous filing of these incredibly important documents violate the ingrained system of call and response inherent to an adversarial system. Indeed, the ICC specifically rejected the practice in relation to the trial of crimes under its jurisdiction, despite the Prosecution's reliance, in arguing for its imposition, on jurisprudence from the ICTY, ICTR and SCSL.²⁵

61. Finally, in the interests of judicial economy, the filing of consecutive final briefs would result in far more focused and streamlined final briefs from the Defence, which further would provide for focused and concise closing statements and thus, potentially less clarification required by the Panel during these statements pursuant to Rule 135(3). Such streamlining of this process would logically assist the Panel during its deliberations.
62. The Defence notes that Rule 134(b) provides that the SPO and the Defence shall be invited "to file Final Trial Briefs within thirty (30) days", but this provision does not explicitly require the simultaneous filing of those briefs and moreover, given the streamlining effect of the consecutive filing process, the rights of the Accused in an adversarial process and thus its support of a more fair and

²⁴ With the exception of the Special Tribunal for Lebanon, STL-11-01/T/TC, Order Rescheduling Final Trial Briefs and Closing Arguments, para. 13.

²⁵ ICC, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Transcript of 5 December 2017, ICC-01104-02/06-T-258-ENG ET WT, pp. 10-11 and the subsequent Order of that Trial Chamber related to the consecutive filing of closing briefs and statements, 28 December 2017, para. 13. Similarly, ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Trial Chamber I, Order on the timetable for closing submissions, 12 April 2011, para 2: "The accused is entitled to know, once the evidence has closed, the legal and factual basis on which the Prosecutor maintains he is guilty. In this particular case, the lack of clearly identified bases could, potentially, result in the defence responding to evidence that is no longer relied on. In the circumstances, the logic underlying Rule 141(2) of the Rules that establishes the right of the defence to examine witnesses last also applies to these final written submissions. The defence is therefore entitled to file its closing submissions once the arguments of the prosecution and the legal representatives have been submitted"; ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Trial Chamber III, Decision on the timeline for the completion of the defence's presentation evidence and issues related to the closing of the case, 16 July 2013, para. 32.

expeditious trial, the Trial Panel has the discretionary power to order the variance of this time limit pursuant to Article 40(2) and Rule 9(5)(a).

III. MATTERS FOR CLARIFICATION

63. The Defence respectfully requests to be heard in oral submissions at the Trial Preparation Conference regarding clarification in relation to paragraph 8, on the matter of the Judge Rapporteur and paragraph 45, on the matter of defences not expressly provided for in Rule 95(5) where that defence has not already been outlined in the Defence's Pre-Trial Brief.

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Respectfully submitted on 13 January 2023,



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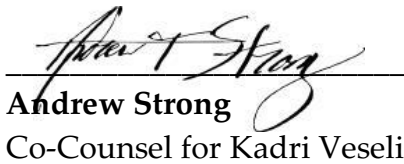
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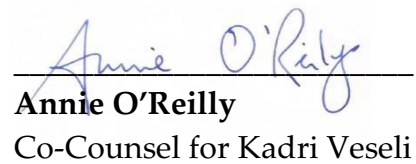
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