

**In:** KSC-BC-2020-05  
**The Prosecutor v. Salih Mustafa**

**Before:** **Trial Panel I**  
Judge Mappie Veldt-Foglia, Presiding Judge  
Judge Roland Dekkers  
Judge Gilbert Bitti, Judge Rapporteur  
Judge Vladimir Mikula, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filed by:** Dr Anni Pues, Victims' Counsel

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**Public redacted version of Corrected Version of  
Victims' Counsel specified and consolidated reparations request**

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## I. INTRODUCTION

1. Pursuant to the decision of the Trial Panel (hereafter: the Panel) of 1 June 2022,<sup>1</sup> Victims' Counsel hereby submits the specified requests for reparations for the participating victims.
2. In the first part of the submission, Victims' Counsel discusses international case law, Kosovo legislation, the findings by the medical experts from the *Instituut voor Mensenrechten en Medisch Onderzoek* ('iMMO') as well as the calculations on economic loss by expert Lerz (hereafter: the Lerz-Report).<sup>2</sup> Building on this discussion, the present submission will specify the requests for reparations on behalf of victims V08/05, V09/05 and V10/05.
3. In the second part, Victims' Counsel will draw on international case law and Kosovo legislation to substantiate the specified individual reparations requests regarding the indirect victims in this case, namely victims [REDACTED].

## II. PROCEDURAL HISTORY

4. On 4 February 2022, the Panel held, *inter alia*, that in case of a conviction, it will issue a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law.<sup>3</sup>
5. With regard to the immaterial damages, the Panel appointed the iMMO to assess the psychiatric condition and to medically assess the physical and psychological damage and injuries suffered by Victims V08/05, V09/05, and V10/05.<sup>4</sup> [REDACTED] [REDACTED]<sup>5</sup> [REDACTED].<sup>6</sup> The expert reports

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<sup>1</sup> KSC-BC-2020-05/F00425 (TP) Public, *Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings*, par. 11, 13.

<sup>2</sup> KSC-BC-2020-05/F00440 (VC) *Victims' Counsel's Submission of report pertaining to economic loss* (public, with one confidential annex), 23 June 2022.

<sup>3</sup> KSC-BC-2020-05/F00310 (TP) Confidential, *Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information*, par. 40.

<sup>4</sup> Oral Order on the Presentation of Evidence Requested by the Victims' Counsel, 9 March 2022 p. 2; Oral Order on Regarding the appointment of iMMO, 21 March 2022, p. 1.

<sup>5</sup> KSC-BC-2020-05, F00398, VC *Victims' Counsel second report pursuant to the Oral Order of 21 March 2022 and response to the Oral Order of 11 April 2022*, 28 April 2022, confidential, par. 7-9, 11(b).

<sup>6</sup> KSC-BC-2020-05/F00415, VC, *Victims' Counsel further observations on reparations matters*, 23 May 2022.

prepared by the iMMO [REDACTED] (hereafter: the iMMO Expert Reports) were submitted on 24 May 2022,<sup>7</sup> and called into evidence by the Panel by decision of 3 June 2022.<sup>8</sup>

6. With regard to material damages, the Panel appointed Dr. Stefan Lerz as expert to calculate the material damages and economic loss suffered by the direct victims (V08/05, V09/05 and V10/05).<sup>9</sup> The Lerz-Report was submitted on 23 June 2022.<sup>10</sup> The Panel further requested Victims' Counsel to submit any observations on the report and her reparations requests for the participating victims within seven days upon submission of the report.<sup>11</sup>

### III. APPLICABLE LAW

7. In case of a conviction, a Reparations Order ought to be issued pursuant to Articles 22(8) and 44(6) of the Law.<sup>12</sup>

### IV. SUBMISSIONS

8. The victims participating in this case have a right to full and effective reparations. As part of this right, they seek acknowledgment of their suffering and an appropriate criminal sanction in this case. Additionally, the right to reparations includes individual compensation for immaterial and material harm and injury suffered. Although reparations can also take collective forms and be of a non-pecuniary character, such as the erection of commemorative statues or educational programmes, none of this seems suitable in the context

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<sup>7</sup> KSC-BC-2020-05/F00417, *Victims' Counsel's Submission of medical reports pertaining to [REDACTED]* with two strictly confidential annexes, 24 May 2022.

<sup>8</sup> KSC-BC-2020-05/F00430, TP, *Decision under Rules 132 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers on evidence called by the Panel*, 3 June 2022.

<sup>9</sup> KSC-BC-2020-05/F00425, TP, *Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings*, 1 June 2022, par. 7 and following, 13.

<sup>10</sup> KSC-BC-2020-05/F00440 (VC) *Victims' Counsel's Submission of report pertaining to economic loss* (public, with one confidential annex), 23 June 2022.

<sup>11</sup> *Ibid*, par. 11.

<sup>12</sup> KSC-BC-2020-05-F00152, Trial Panel, *Decision on victim's procedural rights during trial*, 12 July 2021, public, ('Decision on Victims' Rights'), par. 40.

of this case. For that reason, Victims' Counsel requests individual compensation as reparations in this case. In determining the level of compensation, it is submitted that the Panel must take account of: (a) the physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) and moral damage.<sup>13</sup>

#### IV.1 Reparations request for direct victims V08/05, V09/05 and V10/05

9. Victims' Counsel requests compensation on behalf of direct victims V08/05, V09/05, and V10/05 for the arbitrary detention, cruel treatment and torture they endured [REDACTED]. Any compensation will have to be proportionate to the gravity of the harm suffered and must consider the circumstances of this case.<sup>14</sup>
10. The outline and discussion of relevant international case law in the subsequent section, will aid the Panel in ensuring a proportionate response that considers international practice. It is suggested that the Panel apply a three-pronged approach to achieve an equitable assessment: (a) it should take guidance from international case law (b) consider existing legislation in Kosovo, and (c) combine this with the individual information on harm and

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<sup>13</sup> UN General Assembly Resolution A/RES/60/14760, Basic Principles and Guidelines on the Right To a Remedy and Reparation For Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, par. 19-20 (hereafter: UN Basic Principles).

See also ICC-01/04-01/06-2904, 07 August 2012, Decision establishing the principles and procedures to be applied to reparations (*Prosecutor v Lubanga*), par. 230: "Although some forms of damage are essentially unquantifiable in financial terms, compensation is a form of economic relief that is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted. Examples include: a. Physical harm, including causing an individual to lose the capacity to bear children; b. Moral and non-material damage resulting in physical, mental and emotional suffering; c. Material damage, including lost earnings and the opportunity to work; loss of, or damage to, property; unpaid wages or salaries; other forms of interference with an individual's ability to work; and the loss of savings; d. Lost opportunities, including those relating to employment, education and social benefits; loss of status; and interference with an individual's legal rights (although the Court must ensure it does not perpetuate traditional or existing discriminatory practices, for instance on the basis of gender, in attempting to address these issues); e. Costs of legal or other relevant experts, medical services, psychological and social assistance, including, where relevant, help for boys and girls with HIV and Aids."

<sup>14</sup> UN Basic Principles, par. 15.

injury as provided in the expert reports and described in individual testimonies.

(a) *International case law*

11. Torture has a broad impact on victims' further lives beyond the direct loss of earnings or the immediate sustained injuries. The Inter-American Court of Human Rights (hereafter: IACtHR) has acknowledged this in its case law. In the *Trujillo*-case, for example, it referred to "[b]oth the sufferings and affliction caused to the direct victims and their next of kin – the impairment of highly significant personal values – and also the changes of a non-pecuniary nature in the lives of the victim or his family."<sup>15</sup> In that respect the IACtHR has considered the damage caused to a victim's "life plan" or "life project", which entails the full self-actualization of the person concerned, taking account of their callings in life, particular circumstances, potentialities and ambitions.<sup>16</sup>
12. The concept of damage to victims' "life plan" has also been acknowledged by the International Criminal Court (hereafter: ICC), with reference to the IACtHR-case law.<sup>17</sup> According to the ICC, it implies "severe loss or severe

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<sup>15</sup> IACtHR, 27 February 2002, series C, no. 92 (*Trujillo Oroza v. Bolivia*), par. 77

<sup>16</sup> See IACtHR, 27 November 1998, series C, no. 42 (*Loayza Tamayo v. Peru*), par. 147-154 (re: the 'Life Plan'); the damage to Loayza Tamayo's life plan was not quantified by the court, see par. 153-154. However, in that respect see the partially dissenting opinion of judge Carlos Vicente De Roux-Rengifo, who reasoned that based on equity considerations, given the fact that "Loayza-Tamayo and her life plan were profoundly altered", the damages could have been set at 25,000 US dollars.

<sup>17</sup> ICC-01/04-01/06 A7 A8, 18 July 2019, Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable' (*Prosecutor v. Thomas Lubanga Dyilo*) par. 38: "Also, and as pointed to by the OPCV,<sup>64</sup> the Appeals Chamber stresses the need to recognise and address, as one type of harm, in the projects being implemented, the damage to a life plan/the project of life, which these children may have suffered. Again, the Appeals Chamber recalled this concept in the Lubanga Amended Reparations Order, noting that 'the concept of "damage to a life plan", adopted in the context of State responsibility at the IACtHR, may be relevant to reparations at the Court'. In identifying the harm to direct victims of, specifically, Mr Lubanga's crimes, the Appeals Chamber included '[i]nterruption and loss of schooling' and '[t]he non-development of "civilian life skills" resulting in the victim being at a disadvantage, particularly as regards employment'. The Appeals Chamber emphasises that it is crucial, in the reparations provided, that the specific situation of the children at issue in this case is recognised and that their harm is appropriately remedied through the particular reparations provided."

diminution of prospects for personal development, in a manner that is irreparable or reparable only with great difficulty.”<sup>18</sup>

13. The reparations requested in this case will have to take account of the damage done to the life plan or -project, as all three direct victims have experienced harm that has had a life-altering character.

#### The Inter-American Court of Human Rights

14. The IACtHR decided to award \$100,000 (USD)<sup>19</sup> as compensation for the non-pecuniary damage that an applicant suffered as a result of being held in preventive detention for almost thirteen years; being subjected to torture so that he would plead guilty.<sup>20</sup>
15. A victim of forced disappearance, who was illegally detained for several months and suffered severe beatings and torture during that detention, was awarded \$80,000 (USD) in non-pecuniary damages. The sum was distributed among the victim’s next of kin, since his whereabouts are still unknown.<sup>21</sup>
16. In a case in which the applicant, a former Prime Minister, was wrongly incarcerated for more than two years, inhumanely treated whilst in detention and denied a fair trial, the Court awarded \$30,000 (USD) in non-pecuniary damages.<sup>22</sup>
17. The IACtHR awarded \$20,000 (USD) for non-pecuniary damage to a victim of cruel, inhuman and degrading confinement conditions in combination with

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<sup>18</sup> See also ICC-01/04-02/06-2659, 8 March 2021, Reparation Order (*The Prosecutor v. Bosco Ntaganda*), par. 72: “Damage to the life plan or project of life, which can be manifested in relation to both adults and children, refers to the lack of self-realisation of a person who, in light of their vocations, aptitudes, circumstances, potential, and aspirations, may have reasonably expected to achieve certain things in their life. The life project is therefore expressed in the expectations of personal, professional, and familial development that are possible under normal circumstances. This damage implies loss or severe diminution of prospects for personal development, in a manner that is irreparable or reparable only with great difficulty, but that can be addressed through particular modalities of reparations.” Here, the ICC refers to inter-American court, namely IACtHR, 30 August 2019, series C, no. 380 (*Álvarez Ramos v. Venezuela*), par. 225, and the references mentioned therein.

<sup>19</sup> IACtHR, 30 October 2008, series C, no. 187 (*Bayarri v. Argentina*), par. 170.

<sup>20</sup> IACtHR, 30 October 2008, series C, no. 187 (*Bayarri v. Argentina*), par. 168.

<sup>21</sup> IACtHR, 27 November 2008, series C, no. 191 (*Ticona Estrada et al. v. Bolivia*), par. 134.

<sup>22</sup> IACtHR, 6 May 2008, series C, no. 180 (*Yvon Neptune v. Haiti*), par. 168.

arbitrary detention, which caused him intense physical pain and emotional suffering.<sup>23</sup> The victim had been imprisoned in an overcrowded confinement centre for 25 days.<sup>24</sup>

18. Similarly, the Court awarded \$20,000 (USD) in respect of non-pecuniary damages for a journalist arbitrarily sentenced to one year in prison. He suffered from anxiety, anguish and depression, his professional career was impaired as were his family life and economic stability, and he suffered the consequences of criminal prosecution.<sup>25</sup>

#### The European Court of Human Rights

19. In a case concerning the pre-trial detention of a journalist accused of membership in a terrorist organisation, the European Court of Human Rights (hereafter: ECtHR) awarded the applicant reparations for the arbitrary detention endured. According to the ECtHR, there were no plausible grounds for suspecting the applicant of committing a criminal offence that could justify his placement in detention for almost two years. For that, the applicant was awarded €12,240 (euro) in moral damages.<sup>26</sup> In another case of arbitrary detention, the ECtHR awarded €30,000 to the applicant.<sup>27</sup> In that case, the Spanish sentencing rules were found to be in violation of the prohibition on retroactive penalties. This system led to reduced remission of sentences for work done in prison.
20. The ECtHR awarded €15,000 in non-pecuniary damages to an applicant who was detained for a total of ten days in a cell measuring 7.5 square metres, with nine other inmates.<sup>28</sup> In a case where the applicant, who was in detention, was

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<sup>23</sup> IACtHR, 23 November 2010, series C, no. 218 (*Vélez Loor v. Panama*), par. 312.

<sup>24</sup> IACtHR, 23 November 2010, series C, no. 218 (*Vélez Loor v. Panama*), par. 118.

<sup>25</sup> IACtHR, 2 May 2008, series C, no. 177 (*Kimel v. Argentina*), par. 118.

<sup>26</sup> ECtHR, 8 June 2021, no. 25939/17 (*Bulac v. Turkey*), par. 120.

<sup>27</sup> ECtHR, 21 October 2013, no. 42750/09 (*Del Río Prada v. Spain*), par. 145.

<sup>28</sup> ECtHR, 5 February 2013, no. 46108/11 (*Mkhitaryan v. Russia*), par. 112.

only given one meal per day and was confined to very cramped quarters without a bed, the ECtHR awarded €17,500 for non-pecuniary damages suffered as a result of his detention in degrading conditions for fifteen days.<sup>29</sup>

21. In a case regarding Cypriot nationals who disappeared during Turkish military operations in Northern Cyprus, the ECtHR stated that it had “no doubt about the protracted feelings of helplessness, distress and anxiety” of the victims.<sup>30</sup> The ECtHR held that it was reasonable to award the Cypriot Government aggregate sums of €30,000,000 for non-pecuniary damage suffered by the surviving relatives of the 1,456 missing persons, and €60,000,000 for enclaved Greek-Cypriot residents.<sup>31</sup>
22. In a case where an applicant was detained in a remote prison (located several thousand kilometres from the city where their family lived), the ECtHR awarded €10,000 in view of i.a. a violation of the right to respect for private and family life.<sup>32</sup>

#### The International Criminal Court

23. In the ICC-case concerning Germain Katanga, an overall amount in damages of \$1,000,000 (USD) was awarded, divided into \$250 (USD) as individual symbolic compensation for 297 victims and collective awards in the form of housing assistance, education assistance, income-generating activities, and psychological rehabilitation.<sup>33</sup> The ICC also awarded all of the victims who suffered emotional harm as a result of the attack on the village of Bogoro, within the context of which at least 200 civilians were killed, reparations for their emotional harm consisting of the trauma of the attack and post-traumatic stress disorders. The psychological harm was reckoned *ex aequo et bono* at

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<sup>29</sup> ECtHR, 4 May 2006, no. 62393/00 (*Kadikis v. Latvia (No. 2)*), par. 65.

<sup>30</sup> ECtHR, 12 May 2014, no. 25781/94 (*Cyprus v. Turkey*), par. 57.

<sup>31</sup> ECtHR, 12 May 2014, no. 25781/94 (*Cyprus v. Turkey*), par. 58.

<sup>32</sup> ECtHR, 25 July 2013, nos. 11082/06 and 13772/05 (*Khodorkovskiy and Lebedev v. Russia*), par. 937.

<sup>33</sup> ICC-01/04-01/07, 24 March 2017, Reparations order (*Prosecutor v. Germain Katanga*), par. 226.

\$2,000 (USD) per applicant, irrespective of psychological harm connected to the death of a relative.<sup>34</sup>

### Discussion

24. The above review of the international case law on reparations in cases of torture, ill-treatment and/or arbitrary detention reveals the hugely diverging awards made. Most strikingly, no clear methodology has yet emerged for the determination of reparations awards. While the jurisprudence has contributed to answering the question of what kind of harm should be considered, e.g. the disruption to broader plans of life (see paras 11 and 12 *supra*), the decisions offer little in terms of an emerging methodology on *how* to assess this individual harm. Additionally, other jurisprudence, such as the ICC case law, attempts to address scenarios of large-scale collective suffering, whereas other human rights courts' decisions address individual cases.
25. The tension between individual and collective suffering also underpins this case. Within the suggested three-pronged approach to an equitable assessment, specifically the IACtHR case law reveals that very considerable awards were deemed necessary in order to appropriately address the harm suffered. However, some of the relatively low and more symbolical awards made in the European system cannot be overlooked. That being said, these individual cases also contained in some cases, such as case law against Spain, more systemic changes, which address a different dimension of reparations and therefore are only of limited comparability to the current case.
26. Overall, the chequered international case law in the interplay with a methodological assessment on the legislative context in Kosovo (which is discussed in the following), combined with the individual information on

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<sup>34</sup> ICC-01/04-01/07, 24 March 2017, Reparations order (*Prosecutor v. Germain Katanga*), par. 236.

harm and injury as detailed in the expert reports received in this case, will allow an equitable award.

(b) *Legislation in Kosovo*

27. The key legislation to address harm and injuries suffered in the context of the Kosovo War in 1998-1999 is the Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Civilian Victims of War and Their Families from December 2011; that law as implemented from 01 January 2012. It aims to provide redress for harm that different groups of society incurred during the war and was amended in 2014 to include victims of sexual violence. These developments indicate that the legislation seeks to be a comprehensive framework. However, as the existence of the harm alleged in the case before this Panel is not acknowledged within Kosovo, the harm as suffered by the participating victims in this case cannot be directly reflected. Nevertheless, this legislation provides a useful baseline for what has been found feasible and fundable within Kosovo.
28. At least from April 2014 onwards, following the introduction of an amendment for Kosovo War veterans, a monthly pension of €170 was introduced as a standard. This means that a war veteran, who was not eligible to any other pension, e.g. due to specific injuries, has to date received €16,660.<sup>35</sup>
29. Survivors of sexual abuse and rape during the war period, from 27 February 1998 to 20 June 1999, have also been included through Law No 04/IL-172 which amended and supplemented Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Sexual Violence Victims of the War, Civilian Victims of War and Their

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<sup>35</sup> This figure does not take account of any potential increase or adjustments due to inflation. It serves as a baseline only, calculated from April 2014 to June 2022 (98x170).

Families. Although civil society continues to advocate for revisions to this legislation, it nevertheless aids in providing an indication of what is deemed a proportionate level of redress through monthly support. Persons recognized as survivors of war-related sexual violence are entitled to several forms of payments and assistance including a monthly pension of €230 as well as other benefits outlined below.<sup>36</sup> Again, a simple addition of monthly payments from April 2014 to date would amount to €22,540.

30. If one applies the pension scheme applicable to invalids with bodily injury over 51% – using the language of the legislation, [REDACTED]<sup>37</sup> [REDACTED]<sup>38</sup> [REDACTED] – such person has been entitled to a monthly pension of €300 per month from 2012 onwards.<sup>39</sup> Again, a simple addition would amount to €37,800 to date.
31. Additionally and as briefly mentioned above, the groups entitled to support under this legislation have access to considerable additional benefits such as allowances for care, access to health services including payments for health services abroad relating to health conditions resulting from the war and for which treatment is not available in Kosovo, priority for employment in public and private enterprises, release from property taxes, and housing assistance.<sup>40</sup> All of these benefits are of considerable monetary value and can improve life prospects.

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<sup>36</sup> Law No. 04/L-172 on Amending and Supplementing the Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Sexual Violence Victims of the War, Civilian Victims of War and Their Families (23 April 2014), Art. 6; see also ‘Civil Society Report on Human Rights in Kosovo in 2020’, May 2021, available at [https://www.ohchr.org/sites/default/files/2021-08/2020\\_kosovo\\_cso\\_annual\\_human\\_rights\\_report\\_EN.pdf](https://www.ohchr.org/sites/default/files/2021-08/2020_kosovo_cso_annual_human_rights_report_EN.pdf).

<sup>37</sup> KSC-BC-2020-05/F00417/A02/1 of 29, Annex 2 to Victims’ Counsel’s Submission of medical reports pertaining to Victims [REDACTED], p. 11 *et seq.*

<sup>38</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 523-526, 538-541.

<sup>39</sup> Law No. 04/L-054, 8 December 2011 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Sexual Violence Victims of the War, Civilian Victims of War and Their Families with Annex (available at <http://licodu.cois.it/?p=10055&lang=en>).

<sup>40</sup> Article 6 of Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Sexual Violence Victims of the War, Civilian Victims of War and Their Families.

32. [REDACTED] The benefits that the legislation brings for those entitled under the legislation are therefore huge.
33. Lastly, it has to be emphasised that those entitled to various forms of reparations<sup>41</sup> and support through Law No.04/L-054 also receive the benefit of societal acknowledgement and recognition of their contribution to the struggle for the liberation of Kosovo. By contrast, victims participating in these proceedings have repeatedly expressed how difficult it is for them not to have their suffering acknowledged [REDACTED].

(c) *Individual harm and suffering*

34. A full individual appraisal of the impact that the crimes have had on the participating victims in this case will be provided in the victim impact statement. The present submission will predominantly consider the expert reports on injury and harm and draw on some of the testimony provided throughout this trial to provide the basis for the individualised assessment of proportionate reparations.
35. The Lerz-Report, drawing methodologically on calculations that cover the entirety of the live span of a person, provides an individualised assessment of the economic harm that the crimes have caused and continue to cause. The methodology of calculation is predominantly used in the context of private law claims in some domestic jurisdictions such as the Netherlands. Even so, it is extremely useful in uncovering the different dimensions of harm, such as loss of earnings but also the impact on possibly reduced career prospects. To some extent, it is necessarily hypothetical as life developments always are. Yet, the calculations this report allow better appreciation of the losses that the initial harm has caused.

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<sup>41</sup> The arrangements in the legislation are conceptualised as reparations by Kosovo civil society organisations, see 'Civil Society Report on Human Rights in Kosovo in 2020', May 2021, para 175.

[REDACTED]

36. [REDACTED]<sup>42</sup> [REDACTED]<sup>43</sup> [REDACTED]

37. [REDACTED]<sup>44</sup> [REDACTED]<sup>45</sup>

*Specified reparations request for [REDACTED]*

38. Considering the international case law, the relatively short period of detention and ill-treatment, the level of pensions as provided in the legislation of the Kosovo and the individual circumstances discussed above, Victims' Counsel requests the Panel to award a minimum of [REDACTED] as compensation for the injuries and harm caused as a result of the crimes the accused has to be held responsible for.

[REDACTED]

39. [REDACTED]

40. [REDACTED]<sup>46</sup> [REDACTED]<sup>47</sup> [REDACTED]<sup>48</sup> [REDACTED]

41. [REDACTED]<sup>49</sup> [REDACTED]

42. [REDACTED]<sup>50</sup>

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<sup>42</sup> KSC-BC-2020-05/F00417/A01/1 of 23, Annex 1 to Victims' Counsel's Submission of medical reports pertaining to [REDACTED] p 19.

<sup>43</sup> *Ibid*, p. 20.

<sup>44</sup> Qualified as such in the medical report, *ibid* p. 14: [REDACTED]

<sup>45</sup> KSC-BC-2020-05/F00440 (VC) *Victims' Counsel's Submission of report pertaining to economic loss* (public, with one confidential annex), 23 June 2022, Annex, p13.

<sup>46</sup> KSC-BC-2020-05/F00417/A02/1 of 29, Annex 2 to Victims' Counsel's Submission of medical reports pertaining to [REDACTED] p. 22.

<sup>47</sup> *Ibid*, p. 23.

<sup>48</sup> KSC-BC-2020-05/F00417/A02/1 of 29, Annex 2 to Victims' Counsel's Submission of medical reports pertaining to [REDACTED] pp. 20-22.

<sup>49</sup> *Ibid*, p. 24.

<sup>50</sup> KSC-BC-2020-05/F00440 (VC) *Victims' Counsel's Submission of report pertaining to economic loss* (public, with one confidential annex), 23 June 2022, Annex p. 16.

*Specified reparations request for [REDACTED]*

43. It is recognised that an award mirroring the calculations provided by Lerz would be unprecedented in international case law. Yet, the extent of individual harm needs to be recognised as each and every individual has to live with the consequences for the rest of their lives. [REDACTED] However, recognising also the large degree of hypothetical considerations that influence the level of economic loss at which the report arrives, Victims' Counsel requests that the Panel order a minimum of [REDACTED] in compensation.

[REDACTED]

44. [REDACTED]
45. [REDACTED]<sup>51</sup> [REDACTED]<sup>52</sup> [REDACTED]<sup>53</sup> [REDACTED]<sup>54</sup>  
[REDACTED]<sup>55</sup> [REDACTED]<sup>56</sup> [REDACTED]<sup>57</sup>
46. [REDACTED]<sup>58</sup> [REDACTED]<sup>59</sup> [REDACTED]<sup>60</sup>
47. [REDACTED]

*Specified reparations request for [REDACTED]*

48. [REDACTED]

**IV.2 Reparations request for indirect victims [REDACTED]**

49. [REDACTED]<sup>61</sup> [REDACTED]<sup>62</sup>

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<sup>51</sup> KSC-BC-2020-05, Confidential transcript of 20 September 2021, p. 425, lines 23-25.

<sup>52</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 541, line 6.

<sup>53</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 524, lines 2-11; p. 541, line 5.

<sup>54</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 538, lines 6-7

<sup>55</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 539, line 23 – p. 540, line 5.

<sup>56</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 541, lines 9-10.

<sup>57</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 541, lines 9-12.

<sup>58</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 542, lines 22-25.

<sup>59</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 541, lines 5-8.

<sup>60</sup> KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 523, lines 18-19.

<sup>61</sup> KSC-BC-2020-05, Confidential transcript of 22 November 2021, p. 1764, lines 4-12 and Confidential transcript of 24 November 2021, p. 1880, lines 12-18.

<sup>62</sup> KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1881, lines 6-9.

50. [REDACTED]<sup>63</sup>

(a) *International case law regarding damages suffered by relatives*

51. As set out in her submission of 23 May 2022, a range of international case law exists that will be a useful source for assessing the reparations claims of relatives.

52. The ICC<sup>64</sup> provided a useful overview over reparations for relatives as follows:

Deceased victim	France (€) <sup>303</sup>	Belgium (€) <sup>304</sup>	DRC military courts (US\$) <sup>305</sup>	UNCC (US\$) <sup>306</sup>	Inter-American Court (US\$)
Spouse	20 000/ 30 000	12 500			
Father/ mother	10 000/ 30 000	Household member: 12 500	10 000/ 20 000	2,500 per person / 10 000 per family	8,000 <sup>307</sup> / 20 000 <sup>308</sup>
		Child in household who has already lost one parent: 20 000			
		Not household member: 5,000			
Child	15 000/ 30 000	Household member: 12 500 Not household member: 5,000			
Grandchildren	7,000/ 14 000	Household member: 2,500 Not household member: 1,250			
Grandparents	7,000/ 14 000	Household member: 2,500 Not household member: 1,250			
Sibling	6,000/ 12 000	Household member: 2,500 Not household member: 1,500			
Other relatives or close, unrelated persons		1,500-5,000			

53. The ICC has adopted a “victim-centred approach” to reparations, highlighting the importance of the victims’ needs and priorities throughout proceedings, especially when calculating reparations.<sup>65</sup> In the case against Katanga, based on a review of national and international practice, the ICC concluded that

<sup>63</sup> KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1950, lines 9-12; p. 1967, lines 14-17 and Confidential transcript of 17 November 2021, p. 1602, lines 18-25.

<sup>64</sup> ICC-01/04-01/07, 24 March 2017, Reparations order (*Prosecutor v. Germain Katanga*), par. 230.

<sup>65</sup> ICC-01/04-02/06, 8 March 2021, Reparations order (*Prosecutor v. Bosco Ntaganda*), par. 45-49.

psychological harm connected to the death of a near relative is reckoned *ex aequo et bono* at \$8,000 (USD) and psychological harm connected to the death of a more distant relative is reckoned *ex aequo et bono* at \$4,000 (USD).<sup>66</sup>

54. The IACtHR has extensive practice with regards to awarding relatives compensation for non-pecuniary damage based on factors such as closeness to the victim and concern for the victim's fate.<sup>67</sup> [REDACTED]<sup>68</sup> and in a separate case awarded \$40,000 (USD) each for non-pecuniary damages to the relatives of a victim of forced disappearance due to their intense psychological suffering.<sup>69</sup>

55. Victims' Counsel considers that the suffering of the relatives as a result of the death of [REDACTED]

(b) *Legislation in Kosovo*

56. Regarding the loss of family members, Kosovo legislation provides a framework for monthly pensions. Law 04/L-054 of 8 December 2011 affords families who have lost one member as a martyr a pension of €358,50. A simple addition of this monthly amount from January 2012 to date amounts to €45,171; a figure that does not take any future entitlement into consideration.

(c) *Specified reparations request for [REDACTED]*

57. Considering the above figure, international practice as well as the impact of the loss of the family member and the degree of relationship to the deceased as described by the victims in their testimonies, the following amounts are deemed equitable [REDACTED]

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<sup>66</sup> ICC-01/04-01/07, 24 March 2017, Reparations order (*Prosecutor v. Germain Katanga*), par. 232.

<sup>67</sup> IACtHR, 27 August 1998, series C, no. 39 (*Garrido and Baigorria v. Argentina*), par. 63-65.

<sup>68</sup> [REDACTED]

<sup>69</sup> IACtHR, 12 August 2008, series C, no. 186 (*Heliodoro Portugal v. Panama*), par. 239.

### IV.3 Conclusion

58. The reparations requested on behalf of the direct victims will help to afford them justice by relieving their suffering<sup>70</sup> and recuperating the significant economic losses sustained as a result of the lasting impacts of torture and the subsequent damage to their life plan that this has caused.
59. Furthermore, the reparations requested for the indirect victims serve as an acknowledgement of their suffering and the harm done, although no monetary award can bring back [REDACTED]
60. Awarding the requested reparations would be a significant step towards achieving justice for the victims participating in this case and realising their rights.

## V. CLASSIFICATION

61. The present filing includes ample references to confidential material such as trial transcripts, testimony heard in private session, confidential expert reports, individual medical information as well as information that would allow identification of the victims participating in the proceedings. Given the nature and content of this filing and in the interest of the participating victims therefore, Victims' Counsel requests that it be classified as 'strictly confidential'.

## VI. RELIEF REQUESTED

62. Victims' Counsel requests that the Panel order the following reparations in the form of compensation:

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<sup>70</sup> UN Special Rapporteur on Torture, Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Final Report (UN Doc. E/CN.4/Sub.2/1993), page 56.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Word count: 6,409**



**Anni Pues**  
**Victims' Counsel**

30 June 2022

At The Hague, the Netherlands

**ANNEX pursuant to Article 27(2) of the Practice Direction<sup>71</sup>**

The original filing contained a typo. In paragraph 56, the date of Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Civilian Victims of War and Their Families was stated to be 8 December 2012. However, the date of the law is 8 December 2011.<sup>72</sup> This is the only correction that has been made to the filing.

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<sup>71</sup> Registry Practice Direction on: Files and Filings before the Kosovo Specialist Chambers (KSC-BD-15), version 17 May 2019.

<sup>72</sup> Other references made to Law No. 04/L-054 in the filing are correct, see par. 27 and fn 39.