

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 statement on the
impact of the crimes on the participating victims**

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I. INTRODUCTION

1. Pursuant to Rule 134(c) of the Rules of Procedure and Evidence, Victims' Counsel hereby submits the statement on the impact of the crimes on victims participating in the proceedings.
2. In Chapter IV of these submissions, Victims' Counsel will recount the experiences of the participating victims as a result of the crimes alleged in the indictment and explain in detail the impact that those crimes had on them at the time and to this day. In doing so, it will draw on the in-court testimonies of the participating victims, the expert reports¹⁻², and the views and concerns presented. It will also place the individual experiences in a broader context. Following on from the discussion of the impact, Chapter V will provide observations on sentencing.

II. PROCEDURAL HISTORY

3. In its decision of 20 June 2022, the Trial Panel (hereafter: Panel) rendered its *Decision on the closing of the evidentiary proceedings and related matters*,³ by which the Panel *inter alia* closed the evidentiary proceedings in Case 05.⁴ Having done this, and in accordance with Rule 134(b) and (c) of the Rules, the Panel invited Parties and Victims' Counsel to file their respective Final Trial Briefs and Victim Impact Statement by Thursday, 21 July 2022.⁵

¹ Medical reports compiled by iMMO in respect of two direct victims submitted before Trial Panel I as annexes to filing KSC-BC-2020-05/F00417 (VC) Victims' Counsel's Submission of medical reports [REDACTED] 24 May 2022.

² Economic report and calculation of material damage and economic loss in respect of three indirect victims was submitted before Trial Panel I as annex to filing KSC-BC-2020-05/F00440 (VC) Victims' Counsel's Submission of report pertaining to economic loss (public, with one confidential annex), 23 June 2022.

³ KSC-BC-2020-05/F00439 (TP) Decision on the closing of the evidentiary proceedings and related matters of 20 June 2022 (public).

⁴ KSC-BC-2020-05/F00439 (TP) Decision on the closing of the evidentiary proceedings and related matters of 20 June 2022 (public), par. 12.

⁵ KSC-BC-2020-05/F00439 (TP) Decision on the closing of the evidentiary proceedings and related matters of 20 June 2022 (public), par. 18.

4. Victims' Counsel notes her *Further observations on reparations* of 23 May 2022. Therein, she made submissions on how the damage suffered by [REDACTED] might be assessed. She also made submissions on the assessment of financial compensation for the indirect victims.⁶
5. On 30 June 2022 she submitted her *Consolidated and specified request for reparations* to the Panel,⁷ a corrected version of which was subsequently submitted on 4 July 2022.⁸ In that filing, she specified the request for damages and discussed both the expert reports prepared by the iMMO on immaterial damages⁹⁻¹⁰ and the Lerz-report on material damages.¹¹⁻¹²

III. APPLICABLE LAW

6. Pursuant to Rule 134(c) of the Rules of Procedure and Evidence, the participating victims may submit a statement on the impact that the crimes alleged in the indictment have had on their lives.

IV. VICTIM IMPACT STATEMENTS

IV.1 Direct Victims

7. Victims 08/05, 09/05 and 10/05 are direct victims of arbitrary detention, cruel treatment and torture committed at the Zllash detention compound between 1

⁶ KSC-BC-2020-05/F00415 (VC) Victims' Counsel further observations on reparations matters (confidential), 23 May 2022.

⁷ KSC-BC-2020-05/F00444 (VC) Victims' Counsel specified and consolidated reparations request of 30 June 2022 (strictly confidential).

⁸ KSC-BC-2020-05/F00444COR (VC) Corrected version of Victims' Counsel specified and consolidated reparations request of 30 June 2022 (strictly confidential), filed 4 July 2022. The correction was a single typo.

⁹ KSC-BC-2020-05/F00417 (VC) Victims' Counsel's Submission of medical reports pertaining to [REDACTED] with two strictly confidential annexes, 24 May 2022.

¹⁰ 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.

¹¹ 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.

¹² KSC-BC-2020-05/F00440 (VC) Victims' Counsel's Submission of report pertaining to economic loss (public, with one confidential annex), 23 June 2022.

April 1999 and 18 April 1999, as alleged in the confirmed indictment.¹³ The crimes have changed the lives of all of the direct victims. [REDACTED]

(a) [REDACTED]

8. [REDACTED]

9. [REDACTED]¹⁴ [REDACTED]¹⁵ [REDACTED]¹⁶

10. [REDACTED]¹⁷ [REDACTED]¹⁸ [REDACTED]¹⁹

11. [REDACTED]²⁰ [REDACTED]²¹ [REDACTED]²² [REDACTED]²³, [REDACTED]²⁴
[REDACTED]²⁵ [REDACTED]²⁶ [REDACTED]

12. [REDACTED]²⁷ [REDACTED]²⁸ [REDACTED]²⁹ [REDACTED]³⁰ [REDACTED]

¹³ KSC-BC-2020-05, F00011/A01, Indictment, 19 June 2020.

¹⁴ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1391, lines 14-17; KSC-BC-2020-05-082023-TR-ET Part 1 RED1, ERN 082023, p. 17, lines 10-14; KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1395, lines 3-19.

¹⁵ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1397, line 24 to p. 1398, line 1.

¹⁶ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1448, lines 8-16; KSC-BC-2020-05-082023-TR-ET Part 2 RED1, ERN 082023, p. 12, lines 20-22.

¹⁷ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1411, lines 4-16.

¹⁸ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1411, lines 16-25.

¹⁹ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1505, lines 7-10

²⁰ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1543, lines 20-23; Confidential transcript of 11 November 2021, p. 1544, lines 2-5; KSC-BC-2020-05-082023-TR-ET Part 3 RED1, ERN 082023, p. 5, lines 21-22.

²¹ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1442, lines 21-24; KSC-BC-2020-05-082023-TR-ET Part 2 RED1, ERN 082023, p. 17, lines 1-3; KSC-BC-2020-05-082023-TR-ET Part 3 RED1, ERN 082023, p. 6, lines 4-6.

²² KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1544, lines 16-24; KSC-BC-2020-05-082023-TR-ET Part 3 RED1, ERN 082023, p. 6, line 19 to p. 7, line 8; KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 6.

²³ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1545, lines 13-21.

²⁴ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 6.

²⁵ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 6.

²⁶ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1545, lines 5-19.

²⁷ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1444, lines 8-14; KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7. See also *idem* p. 11: [REDACTED]

²⁸ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 11: [REDACTED]

²⁹ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 18: [REDACTED]

³⁰ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7.

13. [REDACTED]³¹ [REDACTED]³² [REDACTED]³³ [REDACTED]³⁴

14. [REDACTED]³⁵ [REDACTED]³⁶ [REDACTED]³⁷ [REDACTED]³⁸

15. [REDACTED]³⁹ [REDACTED]⁴⁰ [REDACTED]

16. [REDACTED]⁴¹ [REDACTED]⁴² [REDACTED]⁴³ [REDACTED]

17. [REDACTED]⁴⁴, [REDACTED]

(b) [REDACTED]

18. [REDACTED]⁴⁵

19. [REDACTED]⁴⁶ [REDACTED]⁴⁷, [REDACTED]⁴⁸ [REDACTED]⁴⁹

20. [REDACTED]⁵⁰ [REDACTED]⁵¹ [REDACTED]⁵² [REDACTED]⁵³ [REDACTED]⁵⁴
[REDACTED]

³¹ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7; KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1435, lines 6-11.

³² KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1434, lines 5-7.

³³ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1441, lines 3-5; KSC-BC-2020-05-082023-TR-ET Part 2 RED1, ERN 082023, p. 11, lines 13-19. See also KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7.

³⁴ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1505, lines 11-19.

³⁵ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1507, lines 6-13.

³⁶ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 11.

³⁷ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 12.

³⁸ KSC-BC-2020-05/F00417/A01 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 14.

³⁹ KSC-BC-2020-05/F00444COR (VC) *Corrected Version of Victims' Counsel's Specified and consolidated reparations request* of 30 June 2022 (strictly confidential), filed on 4 July 2022, para 37.

⁴⁰ KSC-BC-2020-05, Confidential transcript of 10 November 2021, p. 1490, line 18 to p. 1496, line 11.

⁴¹ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p. 1509, lines 19-23.

⁴² KSC-BC-2020-05, Confidential transcript of 11 November 2021, p.1510, lines 14-17.

⁴³ KSC-BC-2020-05, Confidential transcript of 11 November 2021, p.1509, lines 19-23.

⁴⁴ See for economic harm KSC-BC-2020-05/F00444/COR (VC) *Corrected Version of Victims' Counsel's Specified and consolidated reparations request* of 30 June 2022 (strictly confidential), filed on 4 July 2022, para 37.

⁴⁵ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 983, line 4.

⁴⁶ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 862, lines 19-22; p. 863, lines 15-25 to p. 864, lines 1-10; KSC-BC-2020-05-7000687-7000691 RED3, ERN 7000687, p. 1.

⁴⁷ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 867, line 7-9.

⁴⁸ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 865, line 12 to p. 867, line 16; p. 869, line 20; Transcript of 5 October 2021, p. 980, lines 1-4.

⁴⁹ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 868, line 25 to p. 869, line 4.

⁵⁰ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 883, lines 10-11.

⁵¹ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 897, lines 13-14.

⁵² KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 903, lines 2-8.

⁵³ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7.

⁵⁴ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 902, lines 12-15; p. 902, line 25 to p. 903, line 1.

21. [REDACTED]⁵⁵ [REDACTED]⁵⁶ [REDACTED]⁵⁷ [REDACTED]⁵⁸ [REDACTED]⁵⁹
[REDACTED]⁶⁰ [REDACTED]⁶¹ [REDACTED]⁶² [REDACTED]⁶³
22. [REDACTED]⁶⁴ [REDACTED]⁶⁵ [REDACTED]⁶⁶ [REDACTED]⁶⁷ [REDACTED]⁶⁸
[REDACTED]⁶⁹ [REDACTED]⁷⁰ [REDACTED]
23. [REDACTED]⁷¹ [REDACTED]⁷² [REDACTED]⁷³ [REDACTED]⁷⁴ [REDACTED]⁷⁵
[REDACTED]⁷⁶ [REDACTED]⁷⁷ [REDACTED]⁷⁸ [REDACTED]⁷⁹ [REDACTED]⁸⁰
[REDACTED]⁸¹

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- ⁵⁵ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 885, lines 15-17; Transcript of 5 October 2021, p. 983, lines -7-10;
- ⁵⁶ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 883, lines 17-20 and p. 884, lines 2-5.
- ⁵⁷ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 985, lines 17-23; see also KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 20.
- ⁵⁸ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 2.
- ⁵⁹ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 886, lines 3-4.
- ⁶⁰ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 896, lines 16-19.
- ⁶¹ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 9.
- ⁶² KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 890, lines 23-25. See also KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7.
- ⁶³ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 903, lines 22-24: [REDACTED]
- ⁶⁴ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 946, lines 11-14.
- ⁶⁵ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 929, lines 14-15.
- ⁶⁶ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 929, lines 14-19; KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 948, lines 5-10.
- ⁶⁷ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, pp. 10, 22-23 and 25; KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 943, lines 4-23, p. 944, lines 11-15; see also KSC-BC-2020-05/F00444COR (VC) *Corrected Version of Victims' Counsel's Specified and consolidated reparations request* of 30 June 2022 (strictly confidential), filed on 4 July 2022, para 40.
- ⁶⁸ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 944, line 22 to p. 945, line 10.
- ⁶⁹ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 946, lines 4-5.
- ⁷⁰ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 946, lines 18-22 and p. 947, lines 3-6.
- ⁷¹ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 960, lines 8-9.
- ⁷² KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 939, line 25 to p. 940, line 2.
- ⁷³ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 940, lines 13-14.
- ⁷⁴ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 940, line 11.
- ⁷⁵ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 5. See also *idem*, p. 6.
- ⁷⁶ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 7.
- ⁷⁷ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 15.
- ⁷⁸ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 15: [REDACTED]
- ⁷⁹ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 15.
- ⁸⁰ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 17-18.
- ⁸¹ KSC-BC-2020-05/F00417/A02 (VC) (iMMO report for [REDACTED]), submitted on 24 May 2022, p. 2, *idem* p. 23-24 ('6.2').

24. [REDACTED]⁸² [REDACTED]⁸³ [REDACTED]⁸⁴ [REDACTED]⁸⁵ [REDACTED]

25. [REDACTED]⁸⁶ [REDACTED]⁸⁷ [REDACTED]

26. [REDACTED]⁸⁸ [REDACTED]⁸⁹

27. [REDACTED]⁹⁰ [REDACTED]⁹¹ [REDACTED]

28. [REDACTED]⁹² [REDACTED]

(c) [REDACTED]

29. [REDACTED]

30. I[REDACTED]⁹³ [REDACTED]⁹⁴ [REDACTED]⁹⁵ [REDACTED]⁹⁶

[REDACTED]⁹⁷ [REDACTED]⁹⁸ [REDACTED]⁹⁹ [REDACTED]¹⁰⁰

⁸² KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 941, line 22-23.

⁸³ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 941, lines 22-23.

⁸⁴ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 941, lines 21-23.

⁸⁵ Office of the United Nations High Commissioner for Human Rights, "Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" Professional Training Series No.8/Rev.1 (New York and Geneva, 2004), pp. 47 and 49.

⁸⁶ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 912. Lines 5-9, page 913, lines 11-25 to page 914 lines 1-17, lines 914, lines 12-14; KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 942, lines 1-15.

⁸⁷ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 942, lines 11 and 16.

⁸⁸ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 945, lines 15-25.

⁸⁹ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 945, lines 15-25.

⁹⁰ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 942, lines 16-21.

⁹¹ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 942, line 20.

⁹² 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 pp. 15-16; KSC-BC-2020-05/F00444COR (VC) *Corrected Version of Victims' Counsel's Specified and consolidated reparations request* of 30 June 2022 (strictly confidential), filed on 4 July 2022, para 42.

⁹³ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 397, p. 6.

⁹⁴ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 395, lines 8-10, p. 396, lines 12-16 and p. 397, lines 9-12; Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 1; KSC-BC-2020-05-061015-TR-ET Part 1 Revised RED3, p. 4, line 18 to p. 5, line 20 and p. 6, lines 12-16.

⁹⁵ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 397, p. 12-22, p. 400, lines 18-19.

⁹⁶ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 395, lines 8-19, p. 399, lines 20-24, p. 400, lines 22-25; KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 558, lines 16-17; KSC-BC-2020-05-061015-TR-ET Part 1 Revised RED3, p. 8, lines 20-21.

⁹⁷ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 395, p. 13-18, p. 399, lines 20-24, p. 400, lines 23-25, p. 401, lines 11-14; KSC-BC-2020-05-061015-TR-ET Part 1 Revised RED3, p. 8, line 15-16 and p. 10, lines 1-7.

⁹⁸ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 409, lines 8-11, p. 429, line 24 and p. 431, lines 9-10.

⁹⁹ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 408, line 25, p. 409, lines 1-23; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 3, lines 20-23.

¹⁰⁰ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 411, line 11.

[REDACTED]¹⁰¹ [REDACTED]¹⁰² [REDACTED]¹⁰³ [REDACTED]¹⁰⁴

[REDACTED]¹⁰⁵ [REDACTED]

31. [REDACTED]¹⁰⁶ [REDACTED]¹⁰⁷ [REDACTED]¹⁰⁸ [REDACTED]¹⁰⁹

32. [REDACTED]¹¹⁰ [REDACTED]¹¹¹ [REDACTED]¹¹²

¹⁰¹ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 409, lines 2-3 and p. 411, line 11, p. 414, lines 19-20, p. 431, line 16. See also KSC-BC-2020-05-SPOE00127751-00127769 RED4, p. 3, para. 5 and 8; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 3, line 21; Confidential transcript, 22 September 2021, p. 580, lines 15-18; Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 3; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 3, line 21.

¹⁰² KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 431, line 10.

¹⁰³ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 411, lines 20 to page 412, line 23; Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 2; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 8, lines 1-2 and line 18 to p. 9, line 1.

¹⁰⁴ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 411, lines 23-24 and p. 412, line 15-19; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 8, lines 1-2.

¹⁰⁵ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 412, lines 18-19.

¹⁰⁶ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 409, lines 5-6; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 4, lines 22-23; Confidential transcript, 21 September 2021, p. 523, lines 13-17 and p. 524, lines 17-24; Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 2 and 4; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 14, lines 3-7.

¹⁰⁷ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 420, lines 2-3 and p. 425, line 25; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 27, lines 3-6.

¹⁰⁸ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 480, lines 13-19.

¹⁰⁹ Confidential transcript, 20 September 2021, p. 480, lines 13-21; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 4, line 16 to p.4, line 4.

¹¹⁰ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 441, lines 10-15; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 16, line 12 to page 17, line 5 and lines 16-18.

¹¹¹ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 476, lines 5-20; p. 477, lines 17-18.

¹¹² Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 5.

33. [REDACTED]¹¹³ [REDACTED]¹¹⁴ [REDACTED]¹¹⁵ [REDACTED]¹¹⁶
 [REDACTED]¹¹⁷ [REDACTED]¹¹⁸ [REDACTED]¹¹⁹ [REDACTED]¹²⁰
 [REDACTED]¹²¹ [REDACTED]¹²² [REDACTED]¹²³ [REDACTED]¹²⁴
 34. [REDACTED]¹²⁵ [REDACTED]¹²⁶ [REDACTED]¹²⁷ [REDACTED]¹²⁸
 [REDACTED]¹²⁹ [REDACTED]¹³⁰
 35. [REDACTED]¹³¹ [REDACTED]

¹¹³ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 402, p. 7-8, p. 478, line 20 and Confidential transcript, 21 September 2021, p. 564, line 6; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 2, line 24 to p. 3, lines 2-9.

¹¹⁴ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 417, lines 10-11; Redacted version of [REDACTED] ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 4 and 5; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 12, lines 11-12; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 3, lines 8-9.

¹¹⁵ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 478, line 24 to p. 479, line 23; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 3, lines 16-22.

¹¹⁶ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 479, lines 24 to p. 480, line 2; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 4, line 7-15.

¹¹⁷ Redacted version of [REDACTED] ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 5.

¹¹⁸ KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 12, line 14; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 1, line 19 and p. 2, line 6 and Confidential transcript, 20 September 2021, p. 477, lines 22-25 and p. 478, lines 1-9.

¹¹⁹ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 563, lines 22-23; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 1, lines 19-22.

¹²⁰ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 478, lines 12-18; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 2, lines 10-23.

¹²¹ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 539, lines 21-22.

¹²² KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 480, lines 22-24; KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 5, lines 10-12.

¹²³ KSC-BC-2020-05, Confidential transcript, 20 September 2021, p. 481, lines 4-5.

¹²⁴ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 523, lines 12-13 and p. 524, lines 6-7.

¹²⁵ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 523, line 18 and p. 524, lines 12-16; Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 1; KSC-BC-2020-05-061015-TR-ET Part 2 Revised RED3, p. 3, line 22. KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 13, line 23 to p. 14, line 1.

¹²⁶ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 541, line 5.

¹²⁷ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 538, line 23 to p. 539, line 1; Redacted version of [REDACTED], ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 4 and 8.

¹²⁸ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 529, lines 22-24.

¹²⁹ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 540, lines 3-5.

¹³⁰ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 526, lines 5-11; Redacted version of [REDACTED] ERN KSC-BC-2020-05-SPOE00127751-00127769 RED4, 4 April 2006, p. 2.

¹³¹ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 541, lines 9-12.

36. [REDACTED]¹³² [REDACTED]¹³³ [REDACTED]¹³⁴ [REDACTED]¹³⁵
[REDACTED]¹³⁶
37. [REDACTED]¹³⁷ [REDACTED]¹³⁸ [REDACTED]¹³⁹ [REDACTED]
38. [REDACTED]¹⁴⁰ [REDACTED]¹⁴¹ [REDACTED]¹⁴² [REDACTED]¹⁴³
[REDACTED]¹⁴⁴ [REDACTED]¹⁴⁵

IV.2 Indirect Victims

39. [REDACTED]

(a) [REDACTED]

40. [REDACTED]
41. [REDACTED]¹⁴⁶ [REDACTED]
42. [REDACTED]¹⁴⁷ [REDACTED]¹⁴⁸

(b) [REDACTED]

43. [REDACTED]

¹³² KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 524, lines 9-10. See also KSC-BC-2020-05-SITF00296103-SITF00296121-ET RED3, p. 14.

¹³³ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 537, lines 24-25.

¹³⁴ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 538, lines 1-6.

¹³⁵ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 543, lines 14-17.

¹³⁶ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 537, 15-16.

¹³⁷ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 542, lines 22-25.

¹³⁸ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 542, lines 17-19.

¹³⁹ See for an outline of relevant case law pertaining to damages to the “life plan” of a victim, KSC-BC-2020-05/F00444COR (VC) *Corrected Version of Victims’ Counsel’s Specified and consolidated reparations request* of 30 June 2022 (strictly confidential), filed on 4 July 2022, pp. 5-6.

¹⁴⁰ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 541, lines 5-8.

¹⁴¹ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 541, lines 5-8.

¹⁴² KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 541, line 8.

¹⁴³ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 523, lines 18-19.

¹⁴⁴ KSC-BC-2020-05, Confidential transcript, 21 September 2021, p. 543, line 7.

¹⁴⁵ KSC-BC-2020-05-061015-TR-ET Part 3 Revised RED3, p. 22, lines 10-11; KSC-BC-2020-05-061015-TR-ET Part 4 Revised RED3, p. 6, lines 18-19.

¹⁴⁶ KSC-BC-2020-05-077816-TR-ET Part 1 RED1 (SPO), [REDACTED] (submitted 08 October 2021), p. 20, lines 5-7.

¹⁴⁷ KSC-BC-2020-05, Confidential transcript, 21 March 2022, p. 2547, line 19.

¹⁴⁸ KSC-BC-2020-05, Confidential transcript, 21 March 2022, p. 2547, lines 15-20.

44. [REDACTED]¹⁴⁹ [REDACTED]¹⁵⁰ [REDACTED]

45. [REDACTED]¹⁵¹ [REDACTED]¹⁵² [REDACTED]¹⁵³ [REDACTED]¹⁵⁴

[REDACTED]¹⁵⁵ [REDACTED]¹⁵⁶ [REDACTED]¹⁵⁷

46. [REDACTED]¹⁵⁸ [REDACTED]¹⁵⁹ [REDACTED]¹⁶⁰

47. [REDACTED]¹⁶¹ [REDACTED]

48. [REDACTED]¹⁶² [REDACTED]¹⁶³ [REDACTED]¹⁶⁴

49. [REDACTED]¹⁶⁵

(c) [REDACTED]

50. [REDACTED]

51. [REDACTED]¹⁶⁶ [REDACTED]¹⁶⁷ [REDACTED]¹⁶⁸ [REDACTED]¹⁶⁹

[REDACTED]¹⁷⁰ [REDACTED]¹⁷¹

52. [REDACTED]¹⁷²

¹⁴⁹ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1882, lines 18-25.

¹⁵⁰ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1867, lines 4-13.

¹⁵¹ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1879, lines 15-18.

¹⁵² KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1878, line 23 to p. 1879, line 1.

¹⁵³ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1879, lines 5-6.

¹⁵⁴ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1879, lines 6-7.

¹⁵⁵ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1880, lines 22 to p. 1881, line 1.

¹⁵⁶ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1881, lines 1-3.

¹⁵⁷ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1881, lines 6-9.

¹⁵⁸ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1894, lines 7-8.

¹⁵⁹ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1881, lines 17-21.

¹⁶⁰ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1880, lines 12-18.

¹⁶¹ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1893, lines 21-22.

¹⁶² KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1882, lines 9-15.

¹⁶³ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1879, lines 15-18.

¹⁶⁴ KSC-BC-2020-05, Confidential transcript of 24 November 2021, p. 1879, lines 7-8.

¹⁶⁵ Office of the United Nations High Commissioner for Human Rights, "Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" Professional Training Series No.8/Rev.1 (New York and Geneva, 2004), p. 49.

¹⁶⁶ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1957, lines 22-24; p. 1958, lines 13-15; p. 1950, lines 9-12; p. 1967, lines 14-17.

¹⁶⁷ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1966, lines 13-17.

¹⁶⁸ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1967, lines 15-19.

¹⁶⁹ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1968, lines 1-8; p. 1997, lines 22-25.

¹⁷⁰ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1968, line 8.

¹⁷¹ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1968, line 25 to p. 1969, line 4.

¹⁷² KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1967, line 8.

53. [REDACTED]¹⁷³ [REDACTED]¹⁷⁴ [REDACTED]

(d) [REDACTED]

54. [REDACTED]¹⁷⁵

55. [REDACTED]¹⁷⁶ [REDACTED]¹⁷⁷ [REDACTED]¹⁷⁸ [REDACTED]¹⁷⁹
 [REDACTED]¹⁸⁰ [REDACTED]¹⁸¹ [REDACTED]¹⁸² [REDACTED]¹⁸³
 [REDACTED]

56. [REDACTED]¹⁸⁴ [REDACTED]¹⁸⁵

57. [REDACTED]¹⁸⁶ [REDACTED]¹⁸⁷ [REDACTED]¹⁸⁸ [REDACTED]¹⁸⁹
 [REDACTED]¹⁹⁰ [REDACTED]

58. [REDACTED]

(e) [REDACTED]

59. [REDACTED]

¹⁷³ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1969, line 1.

¹⁷⁴ KSC-BC-2020-05, Confidential transcript of 13 December 2021, p. 1968, lines 13-17.

¹⁷⁵ KSC-BC-2020-05, Confidential transcript of 22 November 2021, p. 1757, lines 22-25.

¹⁷⁶ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1764, line 8.

¹⁷⁷ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1764, line 11.

¹⁷⁸ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1785, lines 1-9.

¹⁷⁹ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1764, line 4.

¹⁸⁰ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1784, lines 16-20.

¹⁸¹ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1784, line 11.

¹⁸² KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1785, lines 8-13.

¹⁸³ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1784, lines 24-25.

¹⁸⁴ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1786, lines 3-5.

¹⁸⁵ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1786, lines 5-7.

¹⁸⁶ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1786, line 21.

¹⁸⁷ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1764, lines 4-5 and p. 1764, lines 11-12.

¹⁸⁸ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1764, lines 8-9.

¹⁸⁹ KSC-BC-2020-05, Confidential transcript, 23 November 2021, p. 1844, line 25 to p. 1845, line 1-16.

¹⁹⁰ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1786, line 21 to p. 1787, line 15.

60. [REDACTED]¹⁹¹ [REDACTED]¹⁹² [REDACTED]¹⁹³ [REDACTED]¹⁹⁴
 [REDACTED]¹⁹⁵
61. [REDACTED]¹⁹⁶
62. [REDACTED]¹⁹⁷ [REDACTED]¹⁹⁸ [REDACTED]

IV.3 The Individual Experiences in the Collective and Wider Context

63. The victims in this case suffered traumatic experiences. Memories of such traumatic experiences “come in flashbacks and nightmares. They come in the memories of the body and its somatic enactments... and disrupt relationality.”¹⁹⁹ Because of these disruptive and continuing effects, violent acts such as torture have also been described as causing soul murder and social death, because time cannot heal the victims’ suffering in the same way it heals other wounds.²⁰⁰
 [REDACTED]
64. [REDACTED]²⁰¹ [REDACTED]²⁰² [REDACTED]²⁰³ [REDACTED]
65. [REDACTED]²⁰⁴ [REDACTED]

¹⁹¹ KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1600, lines 1-8.

¹⁹² KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1639, lines 19-23 and Confidential transcript, 17 November 2021, p. 1602, lines 19-20.

¹⁹³ KSC-BC-2020-05, Confidential transcript of 17 November 2021, p. 1602, lines 18-25.

¹⁹⁴ KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1624, lines 8-10; KSC-BC-2020-05-076539-TR-ET Part 2 RED1, p. 7, lines 15-16.

¹⁹⁵ KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1633, lines 8-9.

¹⁹⁶ KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1634, lines 19-23.

¹⁹⁷ KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1633, lines 12-16.

¹⁹⁸ KSC-BC-2020-05, Confidential transcript, 17 November 2021, p. 1633, lines 23-24 and p. 1634, lines 5-12: [REDACTED]

¹⁹⁹ G Schwab, *Haunting Legacies: Violent Histories and Transgenerational Trauma* (Columbia University Press 2010), 2-3.

²⁰⁰ Ibid.

²⁰¹ Office of the United Nations High Commissioner for Human Rights, “Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” Professional Training Series No.8/Rev.1 (New York and Geneva, 2004), pp. 46-49.

²⁰² Office of the United Nations High Commissioner for Human Rights, “Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” Professional Training Series No.8/Rev.1 (New York and Geneva, 2004), p. 45.

²⁰³ A.C. de C. Williams and J. van der Merwe, *The psychological impact of torture*, (British Pain Society, 2013), 103.

²⁰⁴ KSC-BC-2020-05, Confidential transcript, 21 March 2022, p. 2548, lines 2-11.

66. [REDACTED]²⁰⁵ [REDACTED]²⁰⁶ [REDACTED]

67. [REDACTED]²⁰⁷ [REDACTED]²⁰⁸ [REDACTED]²⁰⁹ [REDACTED]

“[REDACTED]”²¹⁰

68. [REDACTED]

69. [REDACTED]The underlying cause is in part the hostile climate that prevails in Kosovo towards any victim of crimes committed by KLA members, and the corresponding impunity of those responsible. Any path to closure has constantly been kept at a great distance. [REDACTED]²¹¹

V. OBSERVATIONS ON SENTENCING

70. In accordance with Trial Panel’s Decision on the closing of the evidentiary proceedings and related matters²¹², Victims’ Counsel will now discuss the aggravating factors that, in her view, should be reflected in the sentence imposed on the Accused in the event of a conviction.

Nature of crimes at issue

71. Victims’ Counsel notes that the crimes in the indictment are of a most serious nature. Any sentence imposed in case of a conviction, must reflect the inherent gravity of those crimes. She notes that torture itself is of a particularly heinous nature, with a destructive and long-lasting impact that goes well beyond the immediate damage that was inflicted in Zllash. [REDACTED]

²⁰⁵ KSC-BC-2020-05, Confidential transcript, 22 November 2021, p. 1786, lines 5-7; Confidential transcript, 17 November 2021, p. 1634, lines 19-23; Confidential transcript, 21 March 2022, p. 2547, lines 14-20.

²⁰⁶ KSC-BC-2020-05, Confidential transcript, 21 March 2022, p. 2548, lines 15-18.

²⁰⁷ KSC-BC-2020-05, Confidential transcript, 21 March 2022, p. 2548, line 23 to p. 2549, line 2.

²⁰⁸ [REDACTED]

²⁰⁹ [REDACTED]

²¹⁰ [REDACTED]

²¹¹ KSC-BC-2020-05, Confidential transcript, 21 March 2022, p. 2549, lines 3-8.

²¹² KSC-BC-2020-05/F00439 (TP) Decision on the closing of the evidentiary proceedings and related matters, filed on 20 June 2022, para 17.

72. The testimonies given during trial reveal the harsh and sadistic nature of the acts the victims were subjected to, the degree of terror that treatment instilled, and the damage it inflicted. These factors are exacerbated by the fact that the crimes were committed against individuals who were arbitrarily detained in subhuman conditions, isolated from the outside world. The victims were vulnerable, defenceless, and at the mercy of their tormentors.²¹³

Responsibility of Accused as a direct perpetrator in a position of authority

73. The degree of involvement of the Accused in the crimes are relevant for sentencing. In that respect, Victims' Counsel notes that [REDACTED] identify the Accused as direct perpetrator of the crimes committed against them.

74. [REDACTED] Throughout the trial, Defence and Prosecution witnesses have amply confirmed that "Cali" is the Accused's nickname and that he was commander of the BIA-guerrilla unit. [REDACTED]²¹⁴ [REDACTED]²¹⁵ [REDACTED]²¹⁶ [REDACTED]²¹⁷

²¹³ See in that respect, Rule 163(1)(b)(iii) and (iv) RPE.

²¹⁴ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 867, lines 24-25; p. 873, lines 16-18, p. 876, lines 9-13 [REDACTED]; KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 984, lines 3-8 [REDACTED]; p. 1004, line 19 to p. 1005, line 6.

²¹⁵ KSC-BC-2020-05, Confidential transcript of 4 October 2021, p. 869, line 11 to p. 870, line 4; p. 877, lines 18-21; p. 882, lines 6-16; KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 981, 3-11.

²¹⁶ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 1005, lines 14-15 (SPOE00222559) and lines 24 (SPOE00222547).

²¹⁷ KSC-BC-2020-05, Confidential transcript of 5 October 2021, p. 980 lines 24-25.

75. [REDACTED] The case file shows that it is the Accused who was known for wearing a red beret.²¹⁸ [REDACTED]²¹⁹ [REDACTED]²²⁰ [REDACTED]²²¹ [REDACTED]²²²

76. The Accused was commander of BIA and as such, in a position of responsibility. Ample evidence has been heard throughout the trial against the Accused confirming this, and it is something that has also been consistently confirmed by defence witnesses. Direct participation in the crimes which he was tasked with preventing as a Commander of a military unit must be taken into account as an aggravating factor in the sentencing decision.

77. Furthermore, case law shows that “a sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender.”²²³ The superior (command) position of the Accused may justify a harsher sentence.²²⁴ This was held *inter alia* by the Trial Chamber in the *Blaškić*-case:

“[788] In the case-law of the two Tribunals, there can be no doubt that command position may justify a harsher sentence, which must be that much harsher because the accused held a high position within the civilian or military command structure. [...]

²¹⁸ See in that respect, e.g. [REDACTED] (SPOE00222559 and SPOE00222547).

²¹⁹ KSC-BC-2020-05, Confidential transcript of 20 September 2021, p. 412, lines 20-25 to 413, lines 1-11 [REDACTED]; Confidential transcript of 22 September 2021, pp. 583, lines 19-25 to 584, lines 1-23 [REDACTED]; p. 585, lines 16-24; p. 586, lines 15-21; p. 589, lines 2-3; p. 598, lines 21-24.

²²⁰ KSC-BC-2020-05, Confidential transcript of 20 September 2021, p. 399, lines 1-9; pp. 411, lines 21-25 to 412, lines 1-18 [REDACTED] and pp. 412, lines 20-25 to 413, lines 1-19 [REDACTED]; pp. 429, lines 9-25 to 430 lines 1-13; p. 432, lines 3-10; pp. 437, lines 22-25 to 438, lines 1-2; KSC-BC-2020-05, Confidential transcript of 21 September 2021, p. 559, lines 12-24 [REDACTED];

²²¹ KSC-BC-2020-05, Confidential transcript of 20 September 2021, p. 419, line 22 to p. 421, line 16.

²²² KSC-BC-2020-05, Confidential transcript of 20 September 2021, pp. 425, lines 13-25 to 426, lines 1-17; Confidential transcript of 22 September 2021, pp. 652, lines 14-25 to 653, lines 1-20; pp. 656 lines 13-25 to 657, lines 1-9.

²²³ ICTR-96-04-A, *Prosecutor v. Akayesu* (Appeal Judgment), 1 June 2001 par. 414.

²²⁴ IT-95-14-A, *Prosecutor v. Tihomir Blaškić* (Appeal Judgment), 29 July 2004, par. 90, in that respect citing IT-95-14/1-A, *Prosecutor v. Zlatko Aleksovski* (Appeal Judgment) 24 March 2000: “The Appeals Chamber recalls that in the *Aleksovski* Appeal Judgement, the Appeals Chamber observed that the accused’s ‘superior responsibility as a warden seriously aggravated [his] offences’ in relation to those offenses of which he was convicted for his direct participation”; ICTR-97-23-A, *Prosecutor v. Jean Kambanda* (Appeal Judgment), 19 October 2000, par. 120-126.

The [ICTR] Trial Chambers observed that the case-law of the Tribunal classifies command position as an aggravating circumstance [...] [T]he Trial Chamber stated that ‘it would constitute a travesty of justice, and an abuse of the concept of command authority, to allow the calculated dereliction of an essential duty to operate as a factor in mitigation of criminal responsibility.

[789] Therefore, when a commander fails in his duty to prevent the crime or to punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of crimes by his subordinates and thus contributes to encouraging the commission of new crimes. It would not in fact be consistent to punish a simple perpetrator with a sentence equal or greater to that of the commander.”²²⁵

78. On the basis of an affirmative duty which burdens military superiors to ensure compliance with standards of international criminal law, harsher sentences are often imposed upon those with authority than a subordinate would face for the same conduct.²²⁶ The intention of this harsher sentencing is to avoid the tacit encouragement of the commission of further crimes by subordinates within the organisational structure of the superior (in command).²²⁷ For this reason, the existence of a position of authority itself should be considered an aggravating factor in the context of sentencing.²²⁸ This is even more pronounced, if a

²²⁵ IT-95-14-T, *Prosecutor v. Tihomir Blaškić* (Judgment), 3 March 2000, par. 788-789; See also *Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-S, Judgement and Sentence, 4 September 1998; *Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-T, Sentence, 2 October 1998.

²²⁶ See for example *Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-S, Judgement and Sentence

²²⁷ IT-95-14-T, *Prosecutor v. Tihomir Blaškić* (Judgment), 3 March 2000, par. 789.

²²⁸ *Prosecutor v Clément Kayishema & Obed Ruzindana*, Sentence, Case No. ICTR-95-1-T, 21 May 1999, par. 15.

commander not only tacitly approves but actively encourages or even directly participates in abuse and torture.

Conduct of Accused during trial

79. Victims' Counsel notes in general that the Accused's right to remain silent is part of exercising his right to a fair trial. However, on numerous occasions the Defence has sought to actively portray the victims in this case as liars, which goes well beyond the right to test and challenge evidence presented by the Prosecution. Examples of this are in confidential Annex 1 of the Defence's Pre-Trial brief filed on 30 April 2021. In that brief, the Defence asserts [REDACTED]²²⁹ [REDACTED]²³⁰ This form of Defence behaviour, which is attributable to the Accused, adds to the grievances of the victims and should be reflected in the sentence.

VI. CLASSIFICATION

80. 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'.

Word count: 11,999

²²⁹ KSC-BC-2020-05/F00106/A01 (Defence), *Submission of the Pre-Trial Brief, Witness List, and Exhibits List with annexes 1-3*, 30 April 2021, Annex 1 (confidential), par. 10-11.

²³⁰ KSC-BC-2020-05/F00320 (Defence), *Defence Rule 130(1) Motion to dismiss any or all charges of the Indictment*, 15 February 2022 (confidential), par. 67-68.

A handwritten signature in black ink, appearing to read 'Anni Poes', with a large, stylized loop at the end.

Anni Poes
Victims' Counsel

26 January 2023

At The Hague, the Netherlands

ANNEX pursuant to Article 27(2) of the Practice Direction²³¹

The original filing contained a typo. In paragraph 7, V10/05 was incorrectly referred to as “09/10”.

²³¹ Registry Practice Direction on: Files and Filings before the Kosovo Specialist Chambers (KSC-BD-15), version 17 May 2019.