

**Annex 1 to**

**Public Redacted Version of Annex 1 to “Corrected version of ‘Prosecution Final  
Trial Brief pursuant to Rule 134(b) with Confidential Annex 1 and Public Annex  
2’”, filing F00459/COR/A01, dated 22 July 2022**

*Public*

KSC-BC-2020-05, *Specialist Prosecutor v. Salih MUSTAFA*

Prosecution Final Trial Brief

# FINAL TRIAL BRIEF

## Outline

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## I. INTRODUCTION

1. In April 1999, during the war in Kosovo, Salih MUSTAFA, the Accused in this case, along with his associates and subordinates, all members of the *Ushtria Çlirimtare e Kosovës*, known in English as the Kosovo Liberation Army ('KLA'), unlawfully detained and severely mistreated a number of Kosovo-Albanian civilians, and murdered one of them. Those civilians were unlawfully held in a makeshift detention center in harsh, deplorable conditions, unfit for humans, where they were repeatedly mistreated, abused, threatened, and severely beaten by their captors. Salih MUSTAFA actively participated in those mistreatments and abuses, and was in charge of the location where those crimes happened. The crimes were perpetrated between approximately 1 and 19 April 1999 in a compound controlled and staffed by BIA, the KLA unit commanded by Salih MUSTAFA. The compound was located in the small and remote village of Zllash/Zlaš, in the mountainous region of Gollak/Goljak, not far from Prishtinë/Priština.

2. As demonstrated throughout this brief, the evidence proves beyond a reasonable doubt that Salih MUSTAFA is guilty of all the crimes charged in the Indictment.<sup>1</sup> The evidence adduced at trial, including Prosecution witnesses, certain Defence witnesses, documentary evidence, and statements of the Accused himself, is compelling and persuasive in supporting the Accused's guilt beyond all reasonable doubt. The sentence advocated by the Specialist Prosecutor's Office ('SPO') is appropriate to provide victims with the justice that they deserve, given the gravity of the offences.

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<sup>1</sup> Indictment, KSC-BC-2020-05/F00011/A01, 19 June 2020, and Public Redacted Version: KSC-BC-2020-05-F00004 dated 18 March 2020 with public redacted Annex 1 and public Annex 2, 2 October 2020.

3. The Victims<sup>2</sup> and their personal tragedies are at the heart of this case. For the first time, after more than 22 years, this case has given them voice, has given them an opportunity to explain the pain and suffering they had to endure in April 1999, but also how the long shadow of those traumatic events still haunts them. In the words of W01679:

I feel like I'm just watching a movie. When I go to bed at night, I wake up during the night, I scream, I say things in my sleep, and my family tell me that. So, I wake up and scream and I get sweaty. [...] I remember the voices of the people. I have all those flashbacks. [...] The voices of the victims and the voices of the people who tortured us. So, at a certain moment I hear these voices, the shouts, the screams, the swearing.<sup>3</sup>

4. This case is also about the social stigma that the Victims, all Kosovo-Albanians, had to endure for years after those traumatic events. A stigma that was caused by the Accused's actions, and by those acting upon his orders, who labelled the Victims as "spies" or "collaborators" of the enemy during the war. A label unjustly attributed to them because they were either perceived as not sufficiently supportive of the KLA and its cause, or accused of displaying the 'wrong' political affiliations.

5. This case is also about accountability, affirming the rule of law, and the future. A future built on the justice that the Victims and their families have sought for so long, and on their freedom to live their lives as equal members of the Kosovan community. In the words of Victim 05:

[...] I hope one day we will all be free to speak out about what we've lived through. I hope for a future free from crime, murder, and fear. All I'm asking for is freedom. We love our country, Kosovo, and it has never been our intention to say anything bad about it. All I'm asking is to be free to speak out about what we went through without any fear. I hope that one day we will be able to.<sup>4</sup>

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<sup>2</sup> The Victims in this brief are defined broadly, as those who suffered the consequences of the Accused's actions directly (all detainees held at the ZDC including testifying Prosecution witnesses W01679, W03593, W03594, and W04669), and indirectly [REDACTED].

<sup>3</sup> W01679, 5 October 2021, T.940.

<sup>4</sup> Victim 05, 21 March 2022, T.2551-2552.

6. In the following sections of this Final Trial Brief,<sup>5</sup> the SPO sets out its position on general evidentiary considerations,<sup>6</sup> demonstrates how the facts proven at trial<sup>7</sup> fulfil all elements of the criminal offences under Counts 1 to 4,<sup>8</sup> and provides its submissions on the appropriate sentencing.<sup>9</sup>

## II. GENERAL EVIDENTIARY CONSIDERATIONS

7. The Law and Rules, in particular Article 21(3) and Rules 139 and 140, explicitly regulate the standard of proof the Panel is to apply, as well as a number of considerations in relation to the assessment of evidence for the purposes of the judgment. These provisions broadly reflect the jurisprudence of other courts or tribunals which, as appropriate, constitute a relevant source for the interpretation and application thereof.

### A. STANDARD OF PROOF

8. The guilt of the Accused must be proven beyond reasonable doubt.<sup>10</sup> When applicable, the existence of a reasonable doubt must be grounded in reason.<sup>11</sup> Accordingly:

The reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice. It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence, or inconsistencies in

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<sup>5</sup> Filed in accordance with Rule 134(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'); Article 45 of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019; Decision on the closing of evidentiary proceedings and related matters, KSC-BC-2020-05/F00439, 20 June 2022, Public, para.25(c). Unless otherwise indicated, any subsequent reference to 'Rule' or 'Rules' is in reference to the Rules. For 'Article' or 'Articles', unless otherwise indicated these are articles of Law No.05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>6</sup> Section II.

<sup>7</sup> Sections III and IV.

<sup>8</sup> Sections IV and V.

<sup>9</sup> Section VI.

<sup>10</sup> See Article 21(3); and Rules 140(1) and 158(3).

<sup>11</sup> *Ongwen* TJ, ICC-02/04-01/15-1762-Red, para.228; Rule 140(2).

the evidence.<sup>12</sup>

9. The beyond reasonable doubt standard must be applied to the facts as a whole constituting the elements of the crime and the mode of liability of the Accused as charged as well as to other facts on which the conviction depends.<sup>13</sup> The beyond reasonable doubt requirement shall not be applied to individual pieces of evidence.<sup>14</sup>

10. Circumstantial evidence can satisfy the standard of proof beyond a reasonable doubt when the inference is the only reasonable one that could be drawn from the evidence presented.<sup>15</sup> Where a panel bases a conviction solely or to a decisive extent on circumstantial evidence, it shall be assessed with caution and reasoned findings shall be provided, in particular regarding the consistency and intrinsic coherence of such evidence.<sup>16</sup>

11. A conviction may not be based solely or to a decisive extent on: (a) the statement of a witness whom the Defence had no opportunity to examine; (b) the evidence of witnesses whose identity was not disclosed to the Defence; or (c) the evidence of a person under the age of 18 or a person whose judgment has been impaired who, in the opinion of a Panel, does not understand the meaning of the duty to speak the truth.<sup>17</sup> However, subject to these three instances, a Panel shall not impose a legal requirement that corroboration is required in order to prove any crime or criminal conduct within the jurisdiction of the Kosovo Specialist Chambers ('KSC').<sup>18</sup>

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<sup>12</sup> *Rutaganda* AJ, ICTR-96-3-A, para.488; see also *Ongwen* TJ, ICC-02/04-01/15-1762-Red, para.228; Rule 140(2).

<sup>13</sup> Rule 140(2); *Ongwen* TJ, ICC-02/04-01/15-1762-Red, para.227; *Ntaganda* AJ, ICC-01/04-02/06-2666-Red, para.37.

<sup>14</sup> Rule 140(2).

<sup>15</sup> Rule 140(3); *Ngirabatware* TJ, ICTR-99-54-T, para.60.

<sup>16</sup> Rule 139(5).

<sup>17</sup> Rule 140(4).

<sup>18</sup> Rule 139(3); *Taylor* AJ, SCSL-03-01-A, para.78.

B. ASSESSMENT OF EVIDENCE

12. For the purposes of the trial judgment, the Panel cannot consider evidence declared inadmissible.<sup>19</sup> It must assess each piece of evidence in light of the entire body of evidence admitted before it at trial and carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established.<sup>20</sup>

13. The means by which credibility is assessed differs according to the form and nature of the evidence before the trier of fact.<sup>21</sup> In assessing the credibility of documentary evidence, the Panel may consider, *inter alia*, the source of the document, its authenticity, content, and purported use.<sup>22</sup>

14. In determining the weight to be given to the testimony of a witness, a panel shall assess the credibility of the witness and the reliability of his or her testimony.<sup>23</sup> The assessment of the appropriate weight and credibility to be accorded to the testimony of a witness should be made on a case-by-case basis.<sup>24</sup> In undertaking such assessment, the Panel may consider, *inter alia*: (i) the plausibility, coherence, detail, and clarity of the witnesses' testimony; (ii) whether and to what extent the witness is, or is not, in a position to provide certain information as well as the basis of knowledge on which a particular statement is made; (iii) the individual circumstances of the witness, including his or her role in the events in question and any motivation to lie;

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<sup>19</sup> Rule 139(1).

<sup>20</sup> Rule 139(2). *See also* Ongwen TJ, ICC-02/04-01/15-1762-Red, para.227; *Al Jadeed* AJ, STL-14-05/A/AP, para.56; *Ngirabatware* TJ, ICTR-99-54-T, para.50.

<sup>21</sup> *See Al Jadeed* AJ, STL-14-05/A/AP, fn.201; *Musema* TJ, ICTR-96-13-T, para.60.

<sup>22</sup> *See Musema* TJ, ICTR-96-13-T, paras.59-60, 63-67, 70-72.

<sup>23</sup> Rule 139(4).

<sup>24</sup> *Nyiramasuhuko et al.* AJ, ICTR-98-42-A, para.2971.



and (iv) the witness's demeanour when testifying in court, willingness to respond to questions, spontaneity when responding, and responses during cross-examination.<sup>25</sup>

15. Inconsistencies in a piece of evidence do not *per se* require a panel to reject it as unreliable; a panel may accept parts of a piece of evidence and reject others.<sup>26</sup> In accordance with Rule 139(6), minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and his or her prior statement, should not be regarded as discrediting such evidence.<sup>27</sup> It is within the Panel's discretion to evaluate any such inconsistencies, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence.<sup>28</sup>

16. The credibility, reliability, and weight of evidence presented by an accused is to be assessed in the same manner as the evidence presented by the SPO.<sup>29</sup>

17. Just as for any other evidence presented, it is for the Panel to assess the reliability and probative value of expert reports and testimony.<sup>30</sup>

18. The Panel may rely on evidence that falls outside of the temporal scope of the charges in certain circumstances, including: (i) to clarify a given context; (ii) to establish by inference the elements, in particular the *mens rea*, of criminal conduct occurring during the material period; or (iii) to demonstrate a deliberate pattern of conduct.<sup>31</sup>

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<sup>25</sup> See *Ongwen* TJ, ICC-02/04-01/15-1762-Red, paras.255-260; *Ngirabatware* TJ, ICTR-99-54-T, para.52; *Nyiramasuhuko et al.* AJ, ICTR-98-42-A, para.692; *Stanišić and Simatović* TJ, MICT-15-96-T, para.13.

<sup>26</sup> Rule 139(6); See also *Ngirabatware* TJ, ICTR-99-54-T, para.53; *Popovic et al* AJ, IT-05-88-A, paras.136-137.

<sup>27</sup> *Gucati and Haradinaj* TJ, KSC-BC-2020-07/F00611/RED, para.38.

<sup>28</sup> *Ngirabatware* TJ, ICTR-99-54-T, para.53.

<sup>29</sup> *Ntaganda* AJ, ICC-01/04-02/06-2666-Red, paras.13, 587.

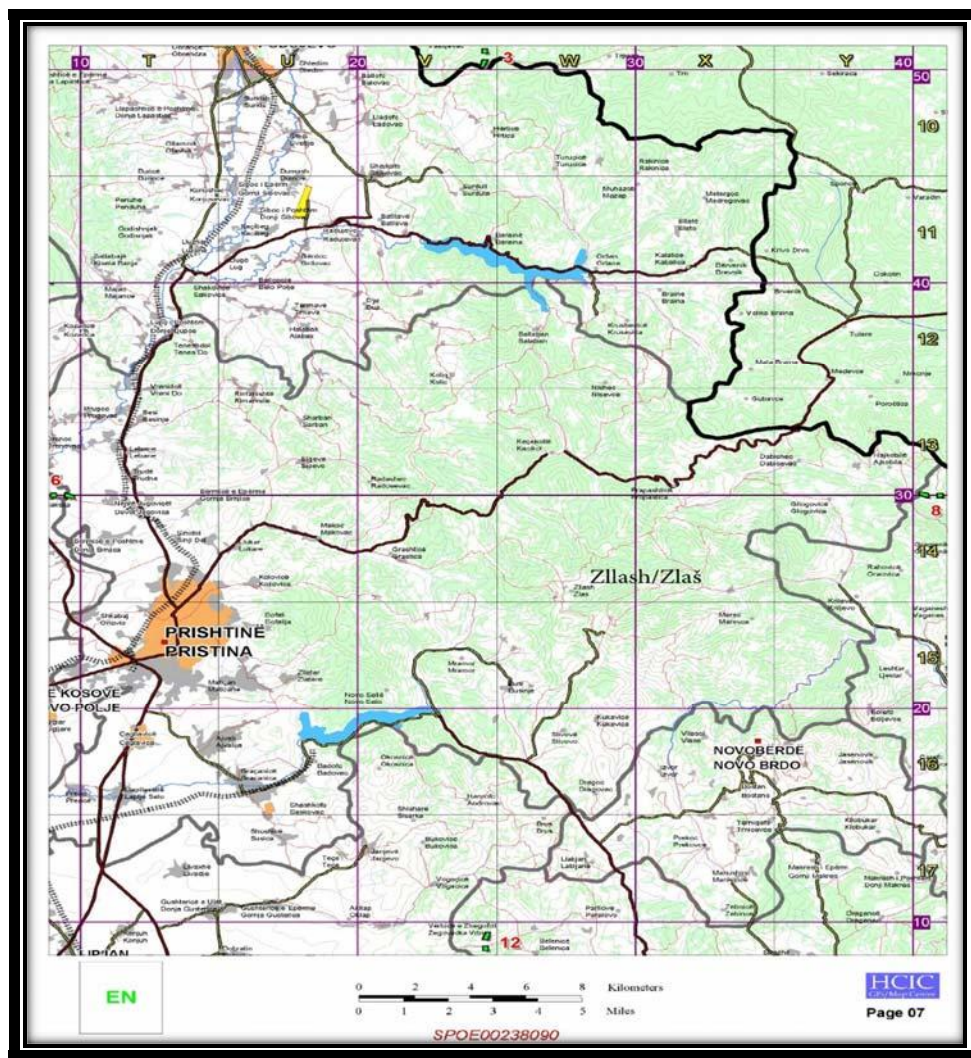
<sup>30</sup> *Nahimana et al.* AJ, ICTR-99-52-A, para.199.

<sup>31</sup> *Khieu Samphan and Nuon Chea* TJ, 002/19-09-2007/ECCC/TC, para.60; *Taylor* TJ, SCSL-03-01-T-1271, para.101.

### III. THE CHARGES ARE PROVEN BEYOND A REASONABLE DOUBT

#### A. TESTIFYING VICTIMS: ABDUCTION, DETENTION, MISTREATMENT, AND IDENTIFICATION OF SALIH MUSTAFA AND OTHER BIA MEMBERS

19. The crimes charged in this case occurred in Zllash/Zlaš, a small, remote village, located in the mountainous region of Gollak/Goljak, around 20 kilometers by road, east of Prishtinë/Priština, the capital of Kosovo.



SPOE00238090-00238090, Map depicting the location of Zllash/Zlaš relative to Prishtinë/Priština

20. In 1999, Zllash/Zlaš consisted of a few clusters of houses scattered over a wider hilly area,<sup>32</sup> being connected to the main roads only via a small winding road.<sup>33</sup>



SPOE00213476, Photo depicting part of the village of Zllash/Zlaš

21. The 'BIA' Unit of the KLA,<sup>34</sup> created on 20 May 1998,<sup>35</sup> had a base in Zllash/Zlaš from July/August 1998 until June 1999.<sup>36</sup> BIA soldiers who came to, and stayed in, Zllash/Zlaš, used a specific compound<sup>37</sup> owned by a local villager, Adem

<sup>32</sup> 069404-TR-ET Part 3, pp.12, 20-21 (Salih MUSTAFA); Sejdi VESELI, 25 January 2022, T.2267-2268; Fatmir SOPI, 19 January 2022, T.2173.

<sup>33</sup> SPOE00213459-00213487, pp.SPOE00213476, SPOE00213479 (Aerial photos depicting Zllash/Zlaš).

<sup>34</sup> The acronym BIA stood for the names of KLA members who had died in the war: **B**ahri FAZLIU, **I**lir **K**ONUSHEFCI, and **A**gron RRAHMANI. See 069404-TR-ET Part 1, p.24 (Salih MUSTAFA); 7000650-7000660, p.4 (Records of Witness Hearing with Salih MUSTAFA, 12 March 2003); Fatmir SOPI, 18 January 2022, T.2045; Sejdi VESELI, 25 January 2022, T.2195.

<sup>35</sup> 069404-TR-ET Part 1, pp.26-27, and Part 3, p.25 (Salih MUSTAFA). See also Section III.E.1.(d) below.

<sup>36</sup> 069404-TR-ET Part 3, pp.17-18 (Salih MUSTAFA).

<sup>37</sup> 069404-TR-ET Part 3, p.18, Part 7, p.5, and Part 8, pp.2-4 (Salih MUSTAFA); 7000650-7000660, p.8 (Records of Witness Hearing with Salih MUSTAFA, 12 March 2003); Brahim MEHMETAJ, 23 March



KRASNIQI, who let the KLA use it as a contribution to the war effort.<sup>38</sup> Adem KRASNIQI's nephew, Selatin KRASNIQI, was himself a BIA member.<sup>39</sup> The location was known as "the Skifterat base or compound".<sup>40</sup> BIA was in fact also known as 'Skifterat'.<sup>41</sup> BIA controlled the whole compound,<sup>42</sup> using that location as its base,<sup>43</sup> and Salih MUSTAFA was in charge and in control of the compound.<sup>44</sup>

22. It was in this location that, between approximately 1 and 19 April 1999, Salih MUSTAFA and other BIA members detained and mistreated at least seven local Kosovo-Albanian civilians, and murdered one of them. For ease of reference, this location will be referred to as the Zllash/Zlaš Detention Compound ('ZDC').

23. At least two buildings within the ZDC were used by Salih MUSTAFA and his BIA subordinates to detain, interrogate, and torture Kosovo-Albanian civilians. Victims described being held in a "cowshed", "stable", or a place used to keep animals, as well as in the basement of the building where they were taken for

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2022, T.2641-2643, 2650-2651; Fatmir SOPI, 18 January 2022, T.2045, 2048-2049; Selatin KRASNIQI, 21 April 2022, T.3874, 3961-3962; W04600, 23 September 2021, T.719-720.

<sup>38</sup> 069404-TR-ET Part 3, p.20 (Salih MUSTAFA); Fatmir SOPI, 18 January 2022, T.2048, 2088-2089; Selatin KRASNIQI, 21 April 2022, T.3877, 3952. *See also* Sejdi VESELI, 25 January 2022, T.2197.

<sup>39</sup> 069404-TR-ET Part 3, p.20 (Salih MUSTAFA); Selatin KRASNIQI, 21 April 2022, T.3953-3954.

<sup>40</sup> W04600, 23 September 2021, T.724, 727, and 27 September 2021, T.846-847.

<sup>41</sup> *See e.g.* 069404-TR-ET Part 4, p.45 (Salih MUSTAFA); Fatmir SOPI, 18 January 2022, T.2045.

<sup>42</sup> Fatmir SOPI, 18 January 2022, T.2045, 2049, 2054, 2089; W04600, 23 September 2021, T.722, and 24 September 2021, T.814.

<sup>43</sup> Fatmir SOPI, 18 January 2022, T.2054, and 19 January 2022, T.2172; Sejdi VESELI, 25 January 2022, T.2197; W04600, 24 September 2021, T.811-812. Sejdi VESELI and W04600 testified that Brigade 153 soldiers were not stationed at that base. *See* Sejdi VESELI, 25 January 2022, T.2198; W04600, 23 September 2021, T.722. Even Defence witnesses who claimed that other KLA soldiers, outside of BIA, also used that location, did not deny however that BIA used it as their base. *See e.g.* Selatin KRASNIQI, 21 April 2022, T.3886, 3959-3960, and 22 April 2022, T.4018, 4039; Muhamet AJETI, 22 April 2022, T.4164. *See also* Section III.F.2 below for an assessment of the credibility of these Defence witnesses.

<sup>44</sup> Sejdi VESELI, 25 January 2022, T.2198-2199; W04600, 27 September 2021, T.845-846.

interrogation and beatings in the upper floor.<sup>45</sup> They identified the buildings where they were detained, interrogated, and tortured in pictures shown to them at trial.<sup>46</sup>

24. Victims were taken to the building next to the cowshed, located uphill from the cowshed and accessible from the ZDC's courtyard, for interrogation and beatings.<sup>47</sup> The internal layout of this building as described by W01679 matches exactly that provided by Selatin KRASNIQI when describing the building next to the cowshed: two rooms separated by a corridor.<sup>48</sup>

25. The buildings identified by the Victims are the same as those showed to and marked by defence witness Selatin KRASNIQI, during his testimony, in the picture below.<sup>49</sup>

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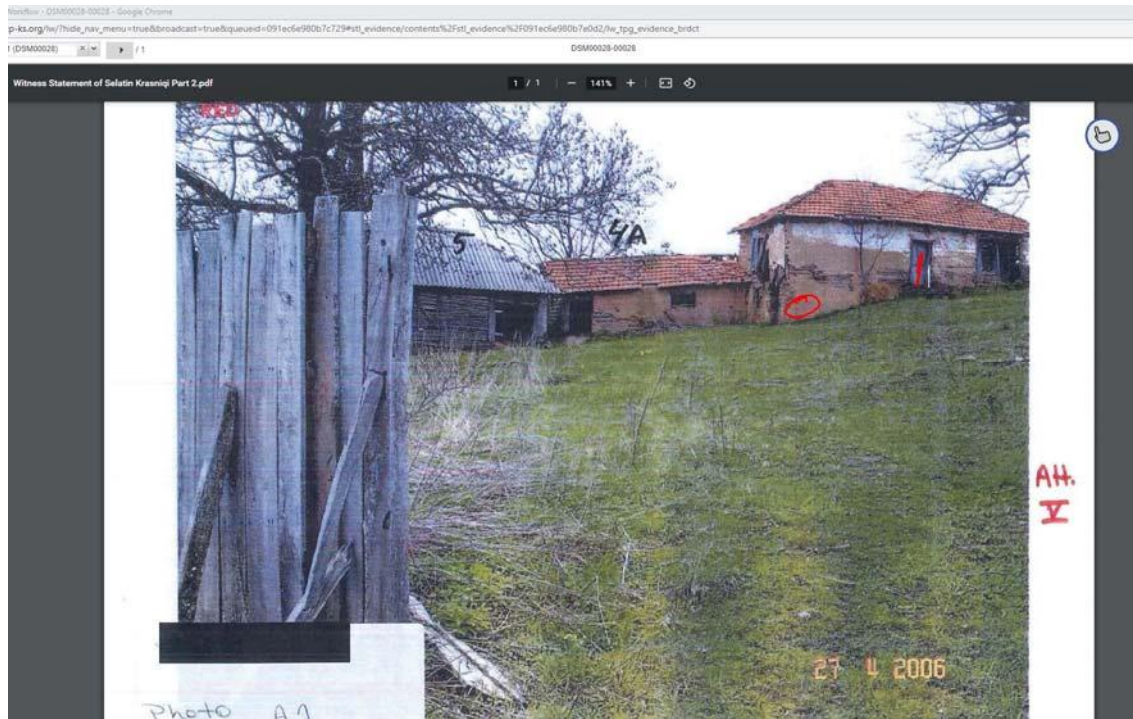
<sup>45</sup> W01679, 4 October 2021, T.870, 903, 915-916, 919; W03593, 21 September 2021, T.512-517; W04669, 10 November 2021, T.1430, 1470-1472.

<sup>46</sup> W01679, 4 October 2021, T.919-925; SPOE00128386-00128420, p.3 (UNMIK Photobook), p.3 (SPOE00128388), p.7 (SPOE00128392); 100801-100806 RED1, p.3 (100803), p.5 (100805), p.6 (10806); W03593, 21 September 2021, T.512-513.

<sup>47</sup> W01679, 4 October 2021, T.915-916; W03593, 21 September 2021, T.514-515.

<sup>48</sup> W01679, 4 October 2021, T.918; Selatin KRASNIQI, 21 April 2022, T.3896-3899; REG00-015 (Photograph marked in court by Selatin KRASNIQI).

<sup>49</sup> Selatin KRASNIQI, 21 April 2022, T.3894-3898; REG00-015 (Photograph marked in court by Selatin KRASNIQI); DSM00031-DSM00031 RED (Photo attachment 8 to Defence Witness Statement).



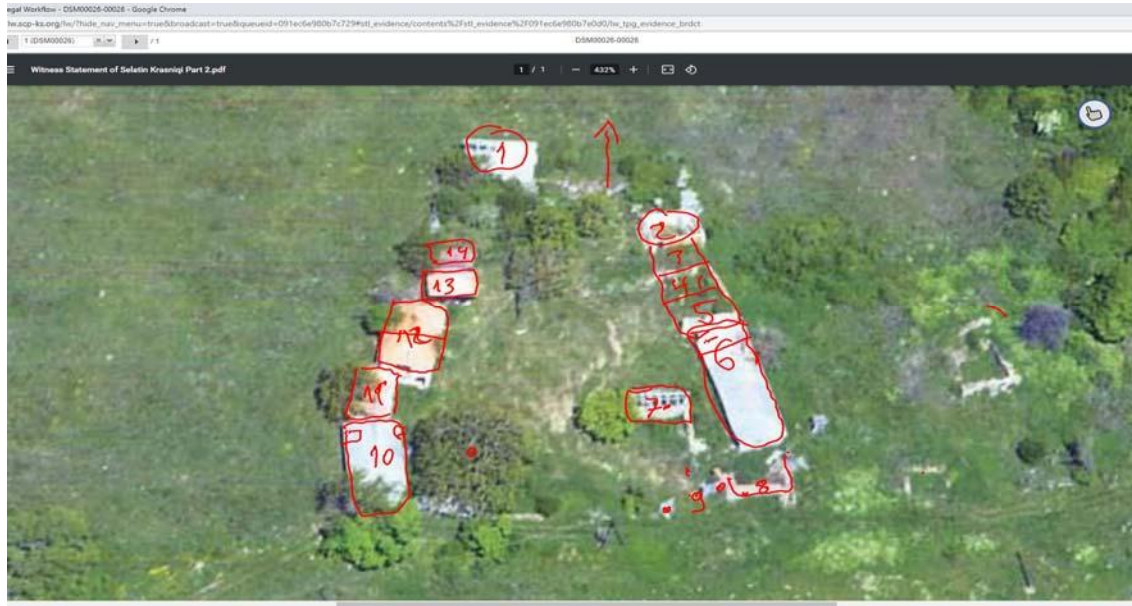
REG00-015 – Victims were detained in building 4A and in the basement of the building next to it, marked with a red circle. On the upper floor of that building, the entrance to which is also marked in red, detainees were interrogated and tortured. *See* 100801-100806 RED1, at p.100803 (showing the same building identified as the detention location by W01679) and 100966-100969, at p.100968 (identified by W03593).

26. Selatin KRASNIQI stated that the building with red markings showed above in REG00-015 was used to treat the wounded, but specified that this was only from 20 April 1999.<sup>50</sup> This is consistent with the testimony of the Victims in this case, who stated they were detained in building 4A and in the building with red markings next to it until 19 April 1999.<sup>51</sup>

<sup>50</sup> Selatin KRASNIQI, 21 April 2022, T.3898-3899.

<sup>51</sup> Section III.E.2.(c) below discusses the evidence of the Victims who identified the buildings in REG00-015 as the place where they were detained and mistreated. *See e.g.* 100801-100806 RED, at 100803, and W01679, 4 October 2021, T.921-922.

27. With regard to the position of these buildings within the ZDC, they correspond to buildings 11 and 12 in the aerial picture of the compound marked by Selatin KRASNIQI.<sup>52</sup>



REG00-013 – The buildings used for detention, interrogation and mistreatments are marked with numbers 11 and 12 on the left side of the picture.

28. The ZDC was located at the highest point of the village and, due to its elevation, constituted a safe location, as well as a convenient vantage point, overlooking the area.<sup>53</sup> That location suited the BIA soldiers who would stay there recuperating after their missions, and could observe the area.<sup>54</sup>

<sup>52</sup> Selatin KRASNIQI, 21 April 2022, T.3874, 3882-3883; REG00-013. Buildings marked in REF00-13 with numbers 11 and 12 correspond to the buildings marked with 3, 4, and 4A in the sketch drawn by Selatin KRASNIQI during his 2nd interview, in evidence as REG00-016.

<sup>53</sup> 069404-TR-ET Part 3, p.16 (Salih MUSTAFA); Brahim MEHMETAJ, 23 March 2022, T.2642; Fatmir SOPI, 18 January 2022, T.2045, and 19 January 2022, T.2172-2175; 069474-TR-ET, Part 2, p.20 (SPO statement of Fatmir SOPI); Sejdi VESELI, 25 January 2022, T.2197; W04600, 23 September 2021, T.719.

<sup>54</sup> 069404-TR-ET Part 3, p.16 (Salih MUSTAFA); Fatmir SOPI, 19 January 2022, T.2172.

29. Around 1-2 kilometers downhill from the ZDC<sup>55</sup> was the primary school 'Avni Rrustemi', the most prominent building in Zllash/Zlaš ('Zllash/Zlaš school').<sup>56</sup> Starting from the beginning of March 1999, the KLA used that school as a training facility for their new recruits.<sup>57</sup>

30. Other KLA units were located in Zllash/Zlaš but at some distance from the ZDC. From February 1999, Zllash/Zlaš harboured the headquarters of the newly formed KLA Brigade 153,<sup>58</sup> which was distinct from BIA and whose command comprised of Adem SHEHU,<sup>59</sup> Sejdi VESELI,<sup>60</sup> and Fatmir SOPI.<sup>61</sup> The headquarters of Brigade 153 changed location several times, and was always at some distance from the

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<sup>55</sup> Sejdi VESELI, 25 January 2022, T.2197; Fatmir SOPI, 18 January, T.2047; W04600, 23 September 2021, T.719.

<sup>56</sup> SPOE00128386-00128420, p.SPOE00128412 (Photo depicting the building of the school in in Zllash/Zlaš); Fatmir SOPI, 18 January, T.2047, 2053; Sejdi VESELI, 25 January 2022, T.2197; W04600, 23 September 2021, T.719.

<sup>57</sup> 069404-TR-ET Part 3, p.14, Part 7, p.4, and Part 8, p.6 (Salih MUSTAFA); Fatmir SOPI, 18 January 2022, T.2044, 2053, 2067-2068; Sejdi VESELI, 25 January 2022, T.2195; Musli HALIMI, 20 April 2022, T.3721; W01679, 4 October 2021, T.863-865; W04669, 10 November 2021, T.1402.

<sup>58</sup> The Brigade operated in the area of Gollak region, encompassing the villages of Rimanishte, Sharban, Bardosh, Radashec, Koliq, Nishec, Prapashtice, Koliq, Grashtice, Dabishec, Mramor, Makovc, Viti e Marecit, Keqekolle, Ballaban, and Marec. *See* 069404-TR-ET Part 3, p.13, and Part 7, p.3 (Salih MUSTAFA); Fatmir SOPI, 18 January 2022, T.2035-2036, 2044; Sejdi VESELI, 25 January 2022, T.2192, 2247-2248.

<sup>59</sup> Fatmir SOPI, 18 January 2022, T.2037-2038.

<sup>60</sup> Fatmir SOPI, 18 January 2022, T.2036; Sejdi VESELI, 25 January 2022, T.2191.

<sup>61</sup> Adem SHEHU, an Albanian army officer, was formally appointed as Brigade Commander in February 1999 and assumed this position later in March 1999. Sejdi VESELI was his deputy, whereas Fatmir SOPI was initially the Brigade's Assistant Commander for Civilian Protection and, from late April 1999, became the deputy of Adem SHEHU, replacing Sejdi VESELI. *See* 069404-TR-ET Part 3, pp.26-27 (Salih MUSTAFA); Fatmir SOPI, 18 January 2022, T.2036-2037; Sejdi VESELI, 25 January 2022, T.2191.



ZDC.<sup>62</sup> Both Brigade 153 and BIA formed part of the KLA's Llap Operational Zone ('Llap OZ').<sup>63</sup>

31. As the Zllash/Zlaš school was the main training centre of the area,<sup>64</sup> those wanting to join the KLA were told to report there for enlistment and training.<sup>65</sup>

# **1. W01679 was abducted, detained, mistreated, and tortured at the ZDC**

32. One person detained and mistreated at the ZDC was W01679, [REDACTED]<sup>66</sup> and [REDACTED].<sup>67</sup> Towards the end of March 1999, after the beginning of the NATO bombing,<sup>68</sup> W01679 "wanted to contribute to [his] country's liberation"<sup>69</sup> and went to Mramor to ask about how and where to join the KLA.<sup>70</sup> He was told to go to the village of Zllash/Zlaš.<sup>71</sup> He reported to Brigade 153 Commanders Fatmir SOPI and Adem SHEHU at the Zllash/Zlaš school.<sup>72</sup> For a period of about four to five days, together

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<sup>62</sup> Initially, the HQ of Brigade 153 was located in the house of Fatmir SOPI (2-3 kilometres from the ZDC), then it was moved to the house of Fatmir SOPI's uncle, located next to the Zllash/Zlaš school (1-2 kilometres from the ZDC), and finally, after the offensive of 18 April 1999, it was moved to the house of Shaban GASHI. *See* Fatmir SOPI, 18 January 2022, T.2043-2045, 2047, 2118; Sejdi VESELI, 25 January 2022, T.2192, 2195, 2226.

<sup>63</sup> The Llap OZ covered the geographical area that encompassed Prishtinë/Priština and Podujevo in the northeast of Kosovo, including the village of Zllash/Zlaš. Throughout the Indictment period, Rustem MUSTAFA (aka 'Remi') was the Commander of the Llap OZ, Kadri KASTRATI (aka 'Daja') was the Deputy Commander of the Llap OZ, Nuredin IBISHI (aka 'Leka') was the Chief of Staff of the Llap OZ, and Latif GASHI (aka 'Lata') was the head of intelligence within the Llap OZ Command Staff. Fatmir SOPI, 18 January 2022, T.2036, 2059, 2074; Sejdi VESELI, 25 January 2022, T.2192. *See also* Section III.G.1(a) *below*.

<sup>64</sup> Sejdi VESELI, 25 January 2022, T.2195; Fatmir SOPI, 18 January 2022, T.2044; Musli HALIMI, 20 April 2022, T.3721.

<sup>65</sup> Fatmir SOPI, 18 January 2022, T.2068; W01679, 4 October 2021, T.863-864; W04669, 10 November 2021, T.1394.

<sup>66</sup> W01679, 4 October 2021, T.861.

<sup>67</sup> W01679, 4 October 2021, T.862; *see also* 7000687-7000691 RED3, p.7000687 [REDACTED].

<sup>68</sup> W01679, 4 October 2021, T.863.

<sup>69</sup> W01679, 4 October 2021, T.862.

<sup>70</sup> W01679, 4 October 2021, T.863.

<sup>71</sup> W01679, 4 October 2021, T.863; *see also* 7000687-7000691 RED3, p.7000687 [REDACTED].

<sup>72</sup> W01679, 4 October 2021, T.864, 926; *see also* SPOE00128386-00128420 (UNMIK Photobook), p.SPOE00128412; SPOE00287803-00287803 (recent photo of the Zllash/Zlaš school).

with other new recruits,<sup>73</sup> W01679 underwent some basic military training, led by Adem SHEHU and 'Triumf'.<sup>74</sup> The training included physical and military exercises and guard duties.<sup>75</sup>

33. On the fifth day of his training at the school, four armed soldiers dressed in black uniforms and wearing caps came to the school and took W01679 away.<sup>76</sup> W01679 was not shown any documents that justified his arrest, but was told he had to go with the soldiers.<sup>77</sup> "We are the special unit, Skifterat, and you have to come with us", "The commander needs to ask you something", they told W01679.<sup>78</sup>

34. W01679 felt he had no choice but to go with them and was told only that he was being taken to the headquarters and to their commander.<sup>79</sup> These soldiers were Afrim, 'Dardan', 'Bimi', and Fatmir.<sup>80</sup> They belonged to BIA,<sup>81</sup> the unit commanded by Salih MUSTAFA and also known as 'Skifterat'.<sup>82</sup>

35. Escorted by the soldiers, W01679 walked along the road until arriving at some buildings that he had never seen before,<sup>83</sup> about a 20 minute walk from the Zllash/Zlaš school.<sup>84</sup> As they were arriving, they told W01679 to lower his head.<sup>85</sup> When they got

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<sup>73</sup> W01679 remembers that there were a lot of other people training, "[p]erhaps 40, 50 people. Young men" participating in the training with him (W01679, 4 October 2021, T.865), and that they would go out and train in groups of 17-18 people (W01679, 5 October 2021, T.969).

<sup>74</sup> W01679, 4 October 2021, T.864-865, and 5 October 2021, T.972.

<sup>75</sup> W01679, 5 October 2021, T.969, 974-975. On training, *see also* Section III.A.3. *below*.

<sup>76</sup> W01679, 4 October 2021, T.865, and 5 October 2021, T.976, 978; *see also* 7000687-7000691 RED3, p.7000687 [REDACTED].

<sup>77</sup> W01679, 4 October 2021, T.866.

<sup>78</sup> W01679, 4 October 2021, T.866, and 5 October 2021, T.980.

<sup>79</sup> W01679, 4 October 2021, T.866.

<sup>80</sup> W01679, 5 October 2021, T.977, 978, 1012, and 1 June 2022, T.4445, 4465, 4475.

<sup>81</sup> W01679, 4 October 2021, T.865; *see also* 7000687-7000691 RED3, p.7000687 [REDACTED]; W04600, 24 September 2021, T.763-764; Brahim MEHMETAJ, 23 March 2022, T.2662, 2705-2706, 2712, 2714-2715; Ahmet ADEMI, 28 March 2022, T.2815; 069404-TR-ET Part 8, p.9 (Salih MUSTAFA).

<sup>82</sup> 069404-TR-ET Part 4, p.45. *See e.g.* Fatmir SOPI, 18 January 2022, T.2045.

<sup>83</sup> W01679, 4 October 2021, T.867.

<sup>84</sup> W01679, 5 October 2021, T.980.

<sup>85</sup> W01679, 4 October 2021, T.867, and 5 October 2021, T.980.

closer to the buildings, they put a black sack on his head and took him into one of the buildings.<sup>86</sup> Once inside the building, they removed the sack from his head<sup>87</sup> and W01679 saw a person who introduced himself as “Commander Cali”.<sup>88</sup> This person, who was also called ‘Cali’ by the other soldiers,<sup>89</sup> was Salih MUSTAFA, the Accused in this case.<sup>90</sup> W01679 also recognised ‘Cali’ in two photographs shown to him by the Trial Panel.<sup>91</sup>

36. The Accused started questioning W01679 about who he was and why he was there, while the other soldiers remained in the room.<sup>92</sup> W01679 understood that the Accused was the commander also because the soldiers had told W01679 that “the commander” needed to ask him something, and – once in the room – the soldiers told the Accused: “Here you are, here’s the person”.<sup>93</sup>

37. To the Accused’s questions, W01679 replied that he came to join the army to make his contribution.<sup>94</sup> The Accused then asked, “[w]hy are you lying?”,<sup>95</sup> “You’re here for other purposes”,<sup>96</sup> and started to shout and curse, and then slapped and beat W01679.<sup>97</sup> After he began beating him, the other soldiers all joined in and started beating W01679 too.<sup>98</sup> The Accused then ordered the other soldiers to “finish him”.<sup>99</sup>

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<sup>86</sup> W01679, 4 October 2021, T.867, and 5 October 2021, T.980.

<sup>87</sup> W01679, 4 October 2021, T.868, and 5 October 2021, T.980.

<sup>88</sup> W01679, 4 October 2021, T.872-873, 875-876; 060698-TR-ET Part 2 Revised RED3, pp.11-12 (W01679 SPO interview), and 7000687-7000691 RED3, p.7000687 [REDACTED], where W01679 refers to ‘Cali’ (wrongly recorded as ‘Cala’).

<sup>89</sup> W01679, 4 October 2021, T.873, 877.

<sup>90</sup> W01679, 5 October 2021, T.980.

<sup>91</sup> W01679, 5 October 2021, T.1005; SPOE00222559-00222559 and REG00-008; SPOE00222547-00222547 and REG00-009.

<sup>92</sup> W01679, 4 October 2021, T.867, and 5 October 2021, T.981.

<sup>93</sup> W01679, 5 October 2021, T.980-981.

<sup>94</sup> W01679, 4 October 2021, T.867, and 5 October 2021, T.981.

<sup>95</sup> W01679, 4 October 2021, T.867, and 5 October 2021, T.981.

<sup>96</sup> W01679, 4 October 2021, T.868.

<sup>97</sup> W01679, 4 October 2021, T.867, 869, and 5 October 2021, T.981.

<sup>98</sup> W01679, 4 October 2021, T.867, 869, and 5 October 2021, T.981.

<sup>99</sup> W01679, 4 October 2021, T.869, and 5 October 2021, T.981.

The soldiers obeyed, and continued to punch, kick, and beat W01679, including with a baseball stick and the handle of a hatchet, until he lost consciousness.<sup>100</sup>

38. The beating stopped only after W01679 fainted.<sup>101</sup> The soldiers dragged him outside, covered in blood, and then brought him to a barn, a cowshed,<sup>102</sup> where there were also other people.<sup>103</sup> W01679 was held in that barn for 18 days.<sup>104</sup>

39. During his detention, W01679 was beaten almost every day.<sup>105</sup> The beatings occurred both downstairs in the stable and upstairs in the other building,<sup>106</sup> whenever the soldiers felt like it, day or night.<sup>107</sup> W01679 testified that: “whoever opened that door would kick you or slap you. They wouldn’t leave without doing something to you.”<sup>108</sup> Every day he felt like he was waiting for death – waiting to be killed.<sup>109</sup>

40. The upstairs beatings were particularly brutal.<sup>110</sup> When W01679 was taken upstairs, the perpetrators would kick and beat him with handles of hatchets and police batons made of iron.<sup>111</sup> They would sit him on a chair, light a candle, and put it near his back so that the drops would fall on his skin and burn him.<sup>112</sup> They also used an electricity box to torture him.<sup>113</sup> They would fold his trousers up, attach wires to the flesh on both his legs and feet, and turn the box on.<sup>114</sup> The electric shock would make

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<sup>100</sup> W01679, 4 October 2021, T.870, 875; 7000687-7000691 RED3, p.7000687 [REDACTED].

<sup>101</sup> W01679, 4 October 2021, T.870, 882.

<sup>102</sup> W01679, 4 October 2021, T.870, 882, and 5 October 2021, T.982.

<sup>103</sup> W01679, 4 October 2021, T.883.

<sup>104</sup> W01679, 4 October 2021, T.883.

<sup>105</sup> W01679, 4 October 2021, T.883, 885, and 5 October 2021, T.983.

<sup>106</sup> W01679, 4 October 2021, T.883-884, 886.

<sup>107</sup> W01679, 4 October 2021, T.891.

<sup>108</sup> W01679, 4 October 2021, T.885.

<sup>109</sup> W01679, 4 October 2021, T.903.

<sup>110</sup> W01679, 4 October 2021, T.886.

<sup>111</sup> W01679, 4 October 2021, T.884.

<sup>112</sup> W01679, 4 October 2021, T.884, 886.

<sup>113</sup> W01679, 4 October 2021, T.884, 886.

<sup>114</sup> W01679, 4 October 2021, T.884, and 5 October 2021, T.986-987.

W01679 shake.<sup>115</sup> In this regard, it is worth recalling that the BIA unit had access to electricity at the ZDC: defence witness Ibadete CANOLLI-KACIU confirmed that car batteries were used at the ZDC when she was there in April 1999 to provide lighting inside the buildings.<sup>116</sup> Defence witness Teuta HADRI said that a functioning TV set was available at the ZDC.<sup>117</sup>

41. W01679 named 'Tabuti', Ilmi VELA, Afrim, 'Dardan', 'Fatmir', and 'Bimi' as those who tortured him.<sup>118</sup> The torture with the electricity box was usually done by 'Dardan' and Afrim.<sup>119</sup> They were all subordinates of Salih MUSTAFA.<sup>120</sup> As a confirmation of the witness's ability to identify his perpetrators, [REDACTED].<sup>121</sup>

42. W01679 was also subjected to degrading treatment during his detention. One time, while he was in the basement and asked for water, two soldiers arrived, beat him, and urinated on him, saying: "Here's water for you."<sup>122</sup> W01679 remembered this happened twice.<sup>123</sup>

43. In the barn, W01679 met W03594, W03593, [REDACTED], and [REDACTED].<sup>124</sup> He also recognized W04669, who was brought to the ZDC after W01679's arrival and whom W01679 knew from before.<sup>125</sup>

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<sup>115</sup> W01679, 4 October 2021, T.884, and 5 October 2021, T.986.

<sup>116</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4334, 4394.

<sup>117</sup> Teuta HADRI, 11 May 2022, T.4269-4271, and 12 May 2022, T.4292; DSM00242-DSM00246-ET, p.DSM00245.

<sup>118</sup> W01679, 4 October 2021, T.887, and 1 June 2022, T.4445, 4465, 4466.

<sup>119</sup> W01679, 5 October 2021, T.987.

<sup>120</sup> 069404-TR-ET Part 4, pp.3, 26, and Part 8, pp.9-13 (Salih MUSTAFA); Brahim MEHMETAJ, 23 March 2022, T.2665-2666, 2706, 2712-2713; Muhamet AJETI, 22 April 2022, T.4103-4104.

<sup>121</sup> See Section III.E.2(e) below. [REDACTED]. See 105373-105375 RED, pp.2-3.

<sup>122</sup> W01679, 4 October 2021, T.884-885.

<sup>123</sup> W01679, 4 October 2021, T.885.

<sup>124</sup> W01679, 4 October 2021, T.889. See also Section III.E.2.(b) below.

<sup>125</sup> W01679, 4 October 2021, T.889, 896. See also Section III.E.2.(b) below.

44. W01679's evidence was clear, focused, detailed, and credible. W01679 provided many details, even though the events in question occurred 23 years ago. W01679's evidence was consistent throughout his in-court testimony,<sup>126</sup> and was also consistent on the major points with prior statements.<sup>127</sup> Finally, he did not embellish his evidence. He testified that "Commander Cali" personally participated in beating him one time, which is when W01679 was first taken to the ZDC,<sup>128</sup> was not present on other occasions,<sup>129</sup> and was an observer at other times during beatings.<sup>130</sup>

## **2. W03593 was abducted, detained, mistreated, and tortured at the ZDC**

45. W03593 was arrested at the beginning of April 1999 in the village [REDACTED] by armed KLA military police.<sup>131</sup> He was visiting people at the school [REDACTED] when two individuals arrived and told W03593 that they were military police and that he had to go with them.<sup>132</sup> The two men were both wearing KLA uniforms and were armed with automatic weapons.<sup>133</sup> They told W03593, "We are going to Zllash to talk",<sup>134</sup> but did not provide him with any documentation.<sup>135</sup> W03593 felt he had no choice but to go with them, and that he would have been killed if he did not comply.<sup>136</sup>

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<sup>126</sup> See evidence given during 4 and 5 October 2021, in direct, cross-examination, and during questions posed by the Victims' Counsel and the Trial Panel; as well as during rebuttal on 1 June 2022.

<sup>127</sup> See 7000687-7000691 RED3; 7000680-7000686 RED; 060698-TR-ET Parts 1-3.

<sup>128</sup> W01679, 5 October 2021, T.1004-1005.

<sup>129</sup> W01679, 5 October 2021, T.984.

<sup>130</sup> W01679, 5 October 2021, T.1005.

<sup>131</sup> W03593, 20 September 2021, T.395-400, and 21 September 2021, T.556.

<sup>132</sup> W03593, 20 September 2021, T.395, and 21 September 2021, T.556.

<sup>133</sup> W03593, 20 September 2021, T.396-397, and 21 September 2021, T.556.

<sup>134</sup> W03593, 21 September 2021, T.557.

<sup>135</sup> W03593, 20 September 2021, T.397.

<sup>136</sup> W03593, 20 September 2021, T.397.

46. After walking about half way to Zllash/Zlaš,<sup>137</sup> two more people in uniforms arrived in a black vehicle that resembled a jeep.<sup>138</sup> W03593 was put in the middle back seat of the car.<sup>139</sup> The two people who had arrested him sat on either side of him in the back.<sup>140</sup> In the car, the soldiers forced W03593 to take a chocolate and, as he was about to eat it, they punched him and he started bleeding.<sup>141</sup> The soldiers then put a sack over W03593's head.<sup>142</sup> The journey in the car to Zllash/Zlaš lasted [REDACTED].<sup>143</sup>

47. Once he arrived at the ZDC, W03593, with the bag still over his head, was grabbed by two people, pushed into a barn, kicked, and brought to his knees.<sup>144</sup> Once he was inside the barn, the sack was removed from his head.<sup>145</sup> There was only one other person in the barn who was lying down and not moving.<sup>146</sup> At first, W03593 did not recognize the other person but then he realized that he knew him from before.<sup>147</sup> That person called W03593 by name.<sup>148</sup> He was [REDACTED].<sup>149</sup> [REDACTED] told W03593, "they will kill you."<sup>150</sup> [REDACTED] could hardly speak and appeared to have been beaten.<sup>151</sup>

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<sup>137</sup> W03593, 20 September 2021, T.397-398, and 21 September 2021, T.556.

<sup>138</sup> W03593, 20 September 2021, T.398.

<sup>139</sup> W03593, 20 September 2021, T.399, and 21 September 2021, T.558-559.

<sup>140</sup> W03593, 21 September 2021, T.558-559.

<sup>141</sup> W03593, 20 September 2021, T.395, 399, and 21 September 2021, T.558.

<sup>142</sup> W03593, 20 September 2021, T.395, 399, and 21 September 2021, T.558.

<sup>143</sup> W03593, 20 September 2021, T.401, and 21 September 2021, T.558.

<sup>144</sup> W03593, 20 September 2021, T.395, 401-402.

<sup>145</sup> W03593, 20 September 2021, T.403, and 21 September 2021, T.558.

<sup>146</sup> W03593, 20 September 2021, T.395, 403, and 21 September 2021, T.560-562.

<sup>147</sup> W03593, 20 September 2021, T.403.

<sup>148</sup> W03593, 20 September 2021, T.403.

<sup>149</sup> W03593, 20 September 2021, T.403-404, 473: This person, whom W03593 recognised from before, was [REDACTED]. See Section III.D. *below*.

<sup>150</sup> W03593, 20 September 2021, T.404.

<sup>151</sup> W03593, 20 September 2021, T.404.



48. W03593 spent about an hour to an hour and a half in the barn.<sup>152</sup> Then, three to five people came to get him.<sup>153</sup> They again put a sack over his head, took him outside, and started to beat him.<sup>154</sup> One of them was called 'Tabut/Tabuti' by the others.<sup>155</sup> W03593 was dragged into a second place, where he was also beaten.<sup>156</sup> W03593 fainted two or three times.<sup>157</sup> Those beating him were swearing at him and accusing him of being "a collaborator with the Serbs".<sup>158</sup> The beating, which lasted for a long time,<sup>159</sup> ended when a man with a "red hat" took a revolver, put it to W03593's head, and pulled the trigger.<sup>160</sup> The gun clicked but did not fire, and the man in the red hat said, "let him be, he is lucky."<sup>161</sup>

49. After about six or seven days, W03593 was taken to a room upstairs where the same person with the red hat, in military uniform and wearing KLA insignia, asked him questions about thieves and beat him with a baseball bat.<sup>162</sup> When the beating ended, the person wearing the red hat ordered two others to take W03593 back to the barn.<sup>163</sup> W03593 was released about 7 or 8 days later.<sup>164</sup>

50. The person in the red hat who interrogated and beat W03593, who used the gun against him during the first beating, and who was giving orders to the others was

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<sup>152</sup> W03593, 20 September 2021, T.402, and 21 September 2021, T.563.

<sup>153</sup> W03593, 20 September 2021, T.407, 409, 414.

<sup>154</sup> W03593, 20 September 2021, T.407.

<sup>155</sup> W03593, 20 September 2021, T.430-431, and 22 September 2021, T.583.

<sup>156</sup> W03593, 20 September 2021, T.408.

<sup>157</sup> W03593, 20 September 2021, T.409, 411.

<sup>158</sup> W03593, 20 September 2021, T.409-410, and 23 September 2021, T.689.

<sup>159</sup> W03593, 20 September 2021, T.411, 414-415, and 21 September 2021, T.563.

<sup>160</sup> W03593, 20 September 2021, T.411-413; 061015-TR-ET Part 2 Revised RED3, pp.7-9.

<sup>161</sup> W03593, 20 September 2021, T.411-412; 061015-TR-ET Part 2 Revised RED3, p.9.

<sup>162</sup> W03593, 20 September 2021, T.419-421, 425-426, 428, 438; 061015-TR-ET Part 2 Revised RED3, pp.26-28.

<sup>163</sup> W03593, 20 September 2021, T.438-439, and 21 September 2021, T.510-511.

<sup>164</sup> W03593, 20 September 2021, T.439.



the Accused, Salih MUSTAFA.<sup>165</sup> W03593 testified that he heard one of the perpetrators call this man, the Accused, “Cali”.<sup>166</sup> He also heard someone referring to the Accused as “commander”.<sup>167</sup> About a month after his release, KLA soldiers from the region confirmed to W03593 that Cali was the commander in Zllash/Zlaš.<sup>168</sup> Later, a KLA member known to the witness also told him that ‘Cali’ was the commander in Zllash/Zlaš.<sup>169</sup>

51. In Zllash/Zlaš, W03593 observed that the other detainees who were being taken out of the second barn and then brought back appeared to have been beaten because they had marks and bruising on their faces.<sup>170</sup> He heard them being beaten on the floor above the stable and he testified that such beatings were taking place almost every night.<sup>171</sup> W03593 learned from other detainees that electricity was used as a form of mistreatment.<sup>172</sup> Every night, two to five KLA soldiers would enter the barn to slap and kick the detainees.<sup>173</sup>

52. W03593’s evidence was detailed, specific, and consistent on key points. The Panel will want to consider what factors may have made W03593 so reluctant in his testimony to identify the Accused by name or nickname.<sup>174</sup> Significantly, shortly before his in-court testimony, W03593 [REDACTED],<sup>175</sup> [REDACTED].<sup>176</sup> As a consequence, W03593 had decided not to go to The Hague to testify, and only changed

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<sup>165</sup> W03593, 20 September 2021, T.412, 420-421, 429, 432, 437-438, and 22 September 2021, T.584; 061015-TR-ET Part 2 Revised RED3, pp.7-8.

<sup>166</sup> W03593, 22 September 2021, T.652-654; 061015-TR-ET Part 2 Revised RED3, pp.28-29.

<sup>167</sup> W03593, 22 September 2021, T.657.

<sup>168</sup> W03593, 20 September 2021, T.428, and 23 September 2021, T.679.

<sup>169</sup> W03593, 22 September 2021, T.658-659.

<sup>170</sup> W03593, 20 September 2021, T.439-440, and 22 September 2021, T.576.

<sup>171</sup> W03593, 20 September 2021, T.476-477.

<sup>172</sup> W03593, 20 September 2021, T.474.

<sup>173</sup> W03593, 20 September 2021, T.441-442, and 22 September 2021, T.575-577.

<sup>174</sup> See e.g. W03593, 20 September 2021, T.434, and 21 September 2021, T.520-522, 531-532.

<sup>175</sup> See W03593, 22 September 2021, T.619.

<sup>176</sup> W03593, 21 September 2021, T.532.

his mind after receiving further reassurance.<sup>177</sup> Notably, [REDACTED].<sup>178</sup>  
[REDACTED].<sup>179</sup>

### 3. W04669 was abducted, detained, and mistreated at the ZDC

53. The experience of W04669 in March/April 1999 matched that of the others. Motivated by “[his] will to defend [his] country”, W04669 decided to join the KLA.<sup>180</sup> He voluntarily reported to a KLA base in Konjuh village,<sup>181</sup> but was instructed to join in Zllash/Zlaš.<sup>182</sup> Consequently, he travelled to Zllash/Zlaš and reported to the Zllash/Zlaš school.<sup>183</sup>

54. Upon his arrival, W04669 met with Mesuesi aka ‘the Teacher’, Fatmir SOPI, and Sejdi VESELI.<sup>184</sup> While at the Zllash/Zlaš school, W04669 was trained by Musli HALIMI, Emin BOROVCİ aka ‘Commander Triumfi’, and ‘Commander Bihi’ on how to use various military weapons.<sup>185</sup> W04669 recalled that his training occurred

<sup>177</sup> W03593, 21 September 2021, T.532.

<sup>178</sup> W03593, 22 September 2021, T.621.

<sup>179</sup> W03593, 22 September 2021, T.622, 658-659.

<sup>180</sup> W04669, 10 November 2021, T.1391.

<sup>181</sup> W04669, 10 November 2021, T.1392.

<sup>182</sup> W04669, 10 November 2021, T.1394.

<sup>183</sup> W04669, 10 November 2021, T.1395, 1402-1403.

<sup>184</sup> W04669, 10 November 2021, T.1395.

<sup>185</sup> W04669, 10 November 2021, T.1400-1401. Defence witness Musli HALIMI, called by the Defence to discredit W01679 and W04669, actually corroborated many aspects of their evidence. Firstly, he confirmed the description of the training process and daily routine at the Zllash/Zlaš school, mirroring the accounts of W04669 and W01679: Cf Musli HALIMI, 20 April 2022, T.3726, 3740-3741, 3748, 3791; W04669, 10 November 2021, T.1399-1403, 11 November 2021, T.1512-1517; and W01679, 4 October 2021, T.864; 5 October 2021, T.956, 968. All three testified that in the course of the training, recruits would be required to participate in guard duty (Musli HALIMI, 20 April 2022, T.3744; W04669, 11 November 2021, T.1516-1517; W01679, 5 October 2021, T.975). Secondly, HALIMI confirmed the names of KLA trainers including Emin BOROVCİ aka ‘Triumfi’ and ‘Mesuesi’ (‘the Teacher’): see 20 April 2022, T.3738, 3792. Both Musli HALIMI and W04699 testified that ‘Triumfi’ was training the recruits on how to deal with weapons: see W04669, 10 November 2021, T.1401; and Musli HALIMI, 20 April 2022, T.3739, 3741-3742. Thirdly, W04699 testified that Musli HALIMI, known as ‘Commander Llapi’ was in charge of the training centre, and Musli HALIMI confirmed that ‘Llapi’ was indeed his nickname: see W04669, 10 November 2021, T.1400, and Musli HALIMI, 20 April 2022, T.3729. W04669 further indicated that Musli HALIMI was responsible for tactical exercises as well as physical training, as he allegedly had a black

[REDACTED].<sup>186</sup> After his training, he was instructed to go home and wait until more weapons arrived.<sup>187</sup> W04669 returned to Zllash/Zlaš several times to check upon the arrival of weapons and the possibility to join the unit.<sup>188</sup>

55. While heading towards Zllash/Zlaš to check again in March/April 1999, he was stopped at a KLA check point [REDACTED].<sup>189</sup> The guards reported his presence<sup>190</sup> and a car arrived to pick him up.<sup>191</sup> The man driving the car was wearing a military uniform and had a “Kalashnikov-type” weapon.<sup>192</sup>

56. W04669 was not told where he was being driven<sup>193</sup> but he was taken to the ZDC.<sup>194</sup> Upon arrival, W04669 was stripped of his belongings,<sup>195</sup> including his belt, laces, [REDACTED].<sup>196</sup> Men in military uniforms placed him inside a “place where the

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belt in Karate (W04669, 10 November 2021, T.1400-1401). Musli HALIMI acknowledged that he indeed was responsible for these elements of the training, including self-defence, and that he was trained in martial arts (Musli HALIMI, 20 April 2022, T.3739, 3792). And finally, Musli HALIMI acknowledged that he could not possibly know all the recruits, as he came from a different region and was not familiar with local names (20 April 2022, T.3756, 3731), and that even if there was a logbook/list where their names were registered, that document had been destroyed (20 April 2022, T.3790). Also Fatmir SOPI confirmed the testimonies of W01679 and W04669 testifying that: the training at Zllash/Zlaš school involved physical and theoretical components, including handling weapons; it was organized both indoors and outdoors; and two of the instructors were Musli HALIMI and Emin BOROVCI aka ‘Triumfi’: cf Fatmir SOPI, 18 January 2022, T.2068-2072, 2081.

<sup>186</sup> W04669, 11 November 2021, T.1536.

<sup>187</sup> W04669, 10 November 2021, T.1407.

<sup>188</sup> W04669, 10 November 2021, T.1410.

<sup>189</sup> W04669, 10 November 2021, T.1410, 1414, and 11 November 2021, T.1534, 1536 (for the time-period).

<sup>190</sup> W04669, 10 November 2021, T.1410.

<sup>191</sup> W04669, 10 November 2021, T.1411.

<sup>192</sup> W04669, 10 November 2021, T.1411.

<sup>193</sup> W04669, 10 November 2021, T.1414.

<sup>194</sup> W04669, 10 November 2021, T.1415.

<sup>195</sup> W04669, 10 November 2021, T.1416.

<sup>196</sup> W04669, 10 November 2021, T.1416.

animals would stay”<sup>197</sup> and closed the door.<sup>198</sup> There were two other men inside the barn.<sup>199</sup> The man who arrested him was [REDACTED].<sup>200</sup>

57. W04669 was escorted blindfolded<sup>201</sup> to a nearby room for interrogation.<sup>202</sup> Two younger men questioned him, while two older men stood close by.<sup>203</sup> He was told, “you’re not telling the truth. You’re a spy. You’re spying.”<sup>204</sup> The guards demanded him to remove his shirt and bend down.<sup>205</sup> W04669 was hit 10 to 12 times with a rubber stick, a baton used by the militia,<sup>206</sup> [REDACTED] resulting in severe bruising<sup>207</sup> all over his back.<sup>208</sup>

58. W04669 was released after approximately one week.<sup>209</sup> He was never given any documentation as a basis for his arrest or any release papers.<sup>210</sup> W04669 believes he was interrogated and beaten [REDACTED].<sup>211</sup>

59. W04669’s evidence was clear, focused, and detailed. His account was consistent with his prior statements on all key points.<sup>212</sup> The Panel should also take into account [REDACTED].<sup>213</sup>

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<sup>197</sup> W04669, 10 November 2021, T.1411.

<sup>198</sup> W04669, 10 November 2021, T.1411-1412.

<sup>199</sup> W04669, 10 November 2021, T.1415.

<sup>200</sup> W04669 stated that the man who arrested him was [REDACTED].

<sup>201</sup> W04669, 10 November 2021, T.1443.

<sup>202</sup> W04669, 10 November 2021, T.1443.

<sup>203</sup> W04669, 10 November 2021, T.1446.

<sup>204</sup> W04669, 10 November 2021, T.1444.

<sup>205</sup> W04669, 10 November 2021, T.1444.

<sup>206</sup> W04669, 10 November 2021, T.1444-1445.

<sup>207</sup> W04669, 10 November 2021, T.1468.

<sup>208</sup> W04669, 10 November 2021, T.1470.

<sup>209</sup> W04669, 10 November 2021, T.1449.

<sup>210</sup> W04669, 10 November 2021, T.1456.

<sup>211</sup> W04669, 10 November 2021, T.1446, 1448.

<sup>212</sup> Cf 082023-TR-ET Parts 1-4 RED1 (SPO interview).

<sup>213</sup> The following are both examples of the general climate of intimidation which is still pervasive in Kosovo. [REDACTED].

**4. W03594 was abducted, detained, and mistreated at the ZDC**

60. W03594 was a [REDACTED].<sup>214</sup> He moved from [REDACTED] after the NATO bombing started, around 28 March 1999, and [REDACTED].<sup>215</sup>

61. On or about 4 April 1999, three KLA soldiers arrived [REDACTED] looking for W03594 at the house where he was staying.<sup>216</sup> They told him, “Baci is looking for you”, and took him away.<sup>217</sup> Baci was a nickname used for Sejdi VESELI.<sup>218</sup> W03594 did not know where they were going, and did not ask anything, thinking that he was [REDACTED].<sup>219</sup> Instead, he was taken to Zllash/Zlaš.<sup>220</sup> Upon arrival at the ZDC, two people wearing masks and uniforms with KLA insignia brought W03594 into a barn without explanation.<sup>221</sup> When he entered, there were four other people in the barn.<sup>222</sup> W03594 remained in this barn from approximately 4 to 18 or 19 April 1999.<sup>223</sup>

62. The other detainees in Zllash/Zlaš told W03594 that they had been seriously mistreated<sup>224</sup> and W03594 saw that two or three of them had scars and marks on their bodies.<sup>225</sup> They said that they had been beaten so badly that they thought death would have been a better option.<sup>226</sup> W03594 saw them being beaten on their hands with a rubber stick, being pushed, threatened, and humiliated.<sup>227</sup>

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<sup>214</sup> W03594, 12 October 2021, T.1032.

<sup>215</sup> W03594, 12 October 2021, T.1034-1035.

<sup>216</sup> W03594, 12 October 2021, T.1035-1036.

<sup>217</sup> W03594, 12 October 2021, T.1036.

<sup>218</sup> Sejdi VESELI, 25 January 2022, T.2196.

<sup>219</sup> W03594, 12 October 2021, T.1036.

<sup>220</sup> W03594, 12 October 2021, T.1037-1038.

<sup>221</sup> W03594, 12 October 2021, T.1037-1038.

<sup>222</sup> W03594, 12 October 2021, T.1040.

<sup>223</sup> W03594, 12 October 2021, T.1040.

<sup>224</sup> W03594, 12 October 2021, T.1058-1062, 1076; 061016-TR-ET Part 3 RED1, p.7.

<sup>225</sup> W03594, 12 October 2021, T.1059, 1062-1065, and 13 October 2021, T.1189; 061016-TR-ET Part 3 RED1, p.7.

<sup>226</sup> W03594, 12 October 2021, T.1063; 061016-TR-ET Part 3 RED1, p.7.

<sup>227</sup> W03594, 12 October 2021, T.1068-1072; 061016-TR-ET Part 4 RED1, pp.2, 6-7.

63. W03594 himself was mistreated while in detention,<sup>228</sup> including by being beaten with a stick on his hands.<sup>229</sup> He testified that he “felt as if I were an animal and no longer a human being” and feared for his life.<sup>230</sup> In the words of W03594, “the conditions were inhuman.”<sup>231</sup> He considered the whole experience humiliating and “spiritually devastating”, and his detention was like a “second death” to him.<sup>232</sup> W03594 too was taken ‘upstairs’ and, according to W01679, when he returned he was in a terrible state.<sup>233</sup> W03594 was next to W01679 when W01679 was urinated on by the guards.<sup>234</sup>

64. W03594 says that he was treated more favourably relative to the other detainees, and he believed this was because “people from the outside knew me.”<sup>235</sup> According to him, when the guards came in, other detainees would move closer to W03594 in hopes of being protected.<sup>236</sup> Notably, [REDACTED].<sup>237</sup>

65. W03594’s demeanour during testimony appears to have been affected by his evident reluctance and fear to be a witness during these proceedings.<sup>238</sup> [REDACTED].<sup>239</sup> The pressure that W03594 clearly felt, heightened by the fact that [REDACTED],<sup>240</sup> shows how much strength it required of other witnesses to testify in this case and state that they were victims of crimes perpetrated by a KLA commander.

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<sup>228</sup> W03594, 12 October 2021, T.1067-1068; 061016-TR-ET Part 4 RED1, p.2. *See also* W03593, 20 September 2021, T.453, and 22 September 2021, T.576; W01679, 4 October 2021, T.894.

<sup>229</sup> W03594, 12 October 2021, T.1067-1070

<sup>230</sup> W03594, 12 October 2021, T.1066.

<sup>231</sup> W03594, 12 October 2021, T.1040.

<sup>232</sup> W03594, 12 October 2021, T.1067, 1076.

<sup>233</sup> W01679, 4 October 2021, T.894.

<sup>234</sup> W01679, 4 October 2021, T.898.

<sup>235</sup> W03594, 12 October 2021, T.1163.

<sup>236</sup> W03594, 12 October 2021, T.1079.

<sup>237</sup> W03594, 13 October 2021, T.1210, and 14 October 2021, T.1239-1240.

<sup>238</sup> *See e.g.* W03594, 12 October 2021, T.1061-1063, 1067-1070.

<sup>239</sup> W03594, 13 October 2021, T.1118.

<sup>240</sup> W03594, 13 October 2021, T.1210, and 14 October 2021, T.1239-1240.

## 5. [REDACTED] were also detained and mistreated at the ZDC

66. [REDACTED] was already in detention at the ZDC when W01679 was taken there.<sup>241</sup> He was detained because he was accused of being a spy.<sup>242</sup>

67. [REDACTED] was beaten up both in the cowshed in front of the others and upstairs.<sup>243</sup> He was also in a very bad state when he returned from upstairs. "He was so tired and exhausted that he could not stand."<sup>244</sup>

68. Another person who was detained at the ZDC was a young man known to the other detainees as '[REDACTED]'.<sup>245</sup> He was from [REDACTED] at the time.<sup>246</sup> An entry on the List of Prisoners names a [REDACTED], as having been arrested on 6 April 1999.<sup>247</sup>

69. According to W01679, he was too afraid to speak to anyone,<sup>248</sup> and he appeared withdrawn because he was traumatized and shaking.<sup>249</sup> [REDACTED] was frequently taken upstairs and beaten.<sup>250</sup> He was also severely beaten downstairs in the stable.<sup>251</sup> [REDACTED] were the two detainees who were mistreated the most.<sup>252</sup>

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<sup>241</sup> W01679, 4 October 2021, T.889.

<sup>242</sup> W01679, 4 October 2021, T.895.

<sup>243</sup> W01679, 4 October 2021, T.895.

<sup>244</sup> W01679, 4 October 2021, T.895.

<sup>245</sup> W01679, 4 October 2021, T.889-890, 899-900; W03593, 20 September 2021, T.444-451; SPOE00127751-00127769 RED4, pp.9-10; W03594, 12 October 2021, T.1052; 061016-TR-ET Part 3 RED1, p.11.

<sup>246</sup> W01679, 4 October 2021, T.900-901; W03593, 20 September 2021, T.445.

<sup>247</sup> U001-0310-U001-0325, p.1. W03593 had in [REDACTED] as one of the detainees at the ZDC, *see* W03593, 20 September 2021, T.444-451; SPOE00127751-00127769 RED4, pp.9-10.

<sup>248</sup> W01679, 4 October 2021, T.889-890, 900; *see also* W03594, 061016-TR-ET Part 3 RED1, pp.11-12.

<sup>249</sup> W01679, 4 October 2021, T.900.

<sup>250</sup> W01679, 4 October 2021, T.901.

<sup>251</sup> W01679, 4 October 2021, T.901; W03594, 12 October 2021, T.1052-1053, 1058; 061016-TR-ET Part 3 RED1, pp.10-11. *See also* W03593, 20 September 2021, T.444-445.

<sup>252</sup> W03593, 20 September 2021, T.445.



## B. MISTREATMENTS AND INHUMANE CONDITIONS OF DETENTION

70. At the ZDC, detainees were beaten almost every day.<sup>253</sup> Every time the soldiers entered the stable, they would kick, punch, or slap those detained there.<sup>254</sup> Detainees were also taken upstairs individually, where they were brutally beaten.<sup>255</sup> The downstairs mistreatments took place in front of the other detainees, while upstairs the detainees were taken one at the time.<sup>256</sup>

71. W04669 testified that two persons who were detained with him were interrogated outside and were slapped in their faces by their interrogators.<sup>257</sup> W04669 also heard them scream when they were being mistreated outside the stable.<sup>258</sup>

72. Detainees could hear from the stable the screams of those being beaten upstairs.<sup>259</sup> W01679 explained, "I could hear all sorts of voices. And it's there where I learned that somebody's voice can change because of what he's undergoing."<sup>260</sup> W01679 heard "people screaming, howling like dogs, making sounds like cats, screaming cats, because of the torture and the pain."<sup>261</sup> Also W03593 testified that: "We could hear people screaming, and we could hear hard sounds. And we simply couldn't sleep because we were scared that at any time they would come down and bring us upstairs as well."<sup>262</sup> He further explained: "These were sounds of people being beaten and their screams."<sup>263</sup>

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<sup>253</sup> See e.g. W01679, 4 October 2021, T.885, 890; W03593, 20 September 2021, T.440-441, 476.

<sup>254</sup> See e.g. W01679, 4 October 2021, T.885, 890; W03593, 20 September 2021, T.441.

<sup>255</sup> See W01679, 4 October 2021, T.885-887; W03593, 20 September 2021, T.475-476.

<sup>256</sup> See W01679, 4 October 2021, T.886, 901.

<sup>257</sup> W04669, 10 November 2021, T.1426.

<sup>258</sup> W04669, 10 November 2021, T.1463-1464.

<sup>259</sup> W01679, 4 October 2021, T.890; W03593, 20 September 2021, T.476.

<sup>260</sup> W01679, 4 October 2021, T.890.

<sup>261</sup> W01679, 4 October 2021, T.890.

<sup>262</sup> W03593, 20 September 2021, T.476.

<sup>263</sup> W03593, 20 September 2021, T.476.



73. Those taken upstairs would be brought back down after they lost consciousness.<sup>264</sup> W01679 and the others would try to help them when they got back down by covering them with a blanket or doing anything else they could.<sup>265</sup> The signs of mistreatment were obvious: they were all covered in blood,<sup>266</sup> they were bruised and hit on their faces.<sup>267</sup> As W01679 testified: “We were all in a very terrible state. You can see whether blood is coming out of your face or not. It was obvious.”<sup>268</sup> He added: “You were just waiting for death, when it will come. Today, tomorrow. You were waiting for you to be killed.”<sup>269</sup> Similarly, W03593 testified that, when hearing the voices and screams of the people being beaten: “We felt very badly, because we were thinking about ourselves and we were thinking that we would have the same chance as them.”<sup>270</sup>

74. In addition to the Accused, BIA soldiers that participated in the mistreatments and torture included those known as Brahim MEHMETAJ aka ‘Bimi’, Fatmir, Afrim, ‘Dardan’, Ilmi VELA, ‘Tabuti’, Bujar, and Avni.<sup>271</sup> BIA soldiers -namely ‘Tabuti’ and Ilmi VELA- urinated on W01679, and W03594 was next to him when that happened.<sup>272</sup> Some of these BIA soldiers were also known to local KLA commanders.<sup>273</sup>

75. The detainees were also psychologically abused, including by soldiers entering the stable and displaying to them the severely beaten [REDACTED].<sup>274</sup>

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<sup>264</sup> W01679, 4 October 2021, T.891.

<sup>265</sup> W01679, 4 October 2021, T.891.

<sup>266</sup> W01679, 4 October 2021, T.896.

<sup>267</sup> W03593, 20 September 2021, T.440.

<sup>268</sup> W01679, 4 October 2021, T.896.

<sup>269</sup> W01679, 4 October 2021, T.903.

<sup>270</sup> W03593, 20 September 2021, T.477.

<sup>271</sup> W01679, 4 October 2021, T.887, 893; W03593, 20 September 2021, T.430-431, and 22 September 2021, T.583.

<sup>272</sup> W01679, 4 October 2021, T.884, 897-899; 060698-TR-ET, Part 3 Revised RED3, p.6.

<sup>273</sup> W04484, 25 January 2022, T.2199-2202. *See also* W04600, 24 September 2021, T.764.

<sup>274</sup> W04669, 10 November 2021, T.1441.

76. During their detention, the detainees were kept in a barn for animals,<sup>275</sup> the door of which was kept locked<sup>276</sup> and guarded.<sup>277</sup> The barn was in very poor condition, with hay on the ground, no proper windows, and no light or air coming in from the outside.<sup>278</sup> Food and water were insufficient.<sup>279</sup> The barn was very cold and wet<sup>280</sup> and the detainees slept on the ground.<sup>281</sup> They were not able to wash themselves or change clothes.<sup>282</sup> They had to relieve themselves inside the barn by using a common bucket in front of one other,<sup>283</sup> or they were accompanied outside by armed guards at the door.<sup>284</sup> Nobody was provided with medical attention.<sup>285</sup> No family contacts or visits were allowed.<sup>286</sup> Guards told the detainees that they would be killed if they talked to one another.<sup>287</sup>

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<sup>275</sup> W03593, 20 September 2021, T.417.

<sup>276</sup> W04669, 10 November 2021, T.1415, 1430, 1468; W01679, 4 October 2021, T.919; W03594, 13 October 2021, T.1175.

<sup>277</sup> W03593, 20 September 2021, T.417; W04669, 10 November 2021, T.1456, 1468; W01679, 4 October 2021, T.919; W03594, 12 October 2021, T.1040.

<sup>278</sup> W03593, 20 September 2021, T.417, and 21 September 2021, T.562, and 22 September 2021, T.577; W04669, 10 November 2021, T.1430.

<sup>279</sup> W03593, 20 September 2021, T.477-478, and 21 September 2021, T.539, 563; W01679, 4 October 2021, T.902.

<sup>280</sup> W03593, 20 September 2021, T.417, and 21 September 2021, T.564.

<sup>281</sup> W03593, 20 September 2021, T.417, 478; W01679, 4 October 2021, T.902; W03594, 12 October 2021, T.1042.

<sup>282</sup> W03593, 20 September 2021, T.478-479; W01679, 4 October 2021, T.902-903.

<sup>283</sup> W01679, 4 October 2021, T.903; W03594, 12 October 2021, T.1042.

<sup>284</sup> W03593, 20 September 2021, T.479-480; W04669, 10 November 2021, T.1441-1442.

<sup>285</sup> W03593, 20 September 2021, T.480; W01679, 4 October 2021, T.903; W04669, 10 November 2021, T.1467.

<sup>286</sup> W03593, 20 September 2021, T.480-481; W04669, 10 November 2021, T.1467; W01679, 4 October 2021, T.903.

<sup>287</sup> W03593, 20 September 2021, T.418.

## C. RELEASE OF SOME OF THE DETAINEES

77. On or about 18 or 19 April 1999, Serbian forces launched an offensive towards the Gollak/Goljak area, shelled Zilash/Zlaš,<sup>288</sup> and caused BIA to leave the ZDC.<sup>289</sup>

78. The detainees, who were in the custody of Salih MUSTAFA and his soldiers, were released with the exception of two. W01679, W03594, and [REDACTED] were released together,<sup>290</sup> followed by W03593.<sup>291</sup> They were not given any release papers.<sup>292</sup>

79. W01679 recalls that Fatmir and 'Bimi' were those who released them.<sup>293</sup> They opened the door and said, without forewarning, "You, you, you, go out." – "Go wherever you want."<sup>294</sup> The suddenness of their release is confirmed by W03593 and W03594.<sup>295</sup> W01679 explained that he remembered Brahim MEHMETAJ aka 'Bimi' because of the comments he made about [REDACTED].<sup>296</sup> When W01679 asked him why he was kept there, Brahim MEHMETAJ aka 'Bimi' replied, [REDACTED].<sup>297</sup>

80. [REDACTED] were not released together with the others.<sup>298</sup> The soldiers did not say why they were not releasing [REDACTED].<sup>299</sup> When the others were released, [REDACTED] was "in a terrible state", "he could not even stand",<sup>300</sup> or walk, he "was

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<sup>288</sup> See e.g. W03593, 21 September 2021, T.552-553; W04600, 24 September 2021, T.801, 819; Fatmir SOPI, 18 January 2022, T.2077-2079, and 19 January 2022, T.2176.

<sup>289</sup> Fatmir SOPI, 18 January 2022, T.2078-2079.

<sup>290</sup> W01679, 4 October 2021, T.905; W03594, 12 October 2021, T.1040, and 13 October 2021, T.1144.

<sup>291</sup> W03593, 21 September 2021, T.562.

<sup>292</sup> W01679, 4 October 2021, T.904.

<sup>293</sup> W01679, 4 October 2021, T.904, and 1 June 2022, T.4445, 4466.

<sup>294</sup> W01679, 4 October 2021, T.904.

<sup>295</sup> W03593, 21 September 2021, T.515; W03594, 13 October 2021, T.1144.

<sup>296</sup> W01679, 1 June 2022, T.4466, 4478.

<sup>297</sup> W01679, 4 October 2021, T.904, and 1 June 2022, T.4466, 4478.

<sup>298</sup> W03593, 20 September 2021, T.484-485; W03593, 22 September 2021, T.613; W01679, 4 October 2021, T.905-906; W03594, 13 October 2021, T.1145. See also W04648, SPOE00128333-00128343 RED1, T.1.

<sup>299</sup> W03593, 20 September 2021, T.485-486; W01679, 4 October 2021, T.905-906.

<sup>300</sup> W01679, 4 October 2021, T.906.

lying on the ground, all the time.”<sup>301</sup> Similarly, [REDACTED] was “in a bad state” by the time the others were released.<sup>302</sup>

81. Upon their release, W01679, W03593, W03594, [REDACTED]<sup>303</sup> and told [REDACTED] about their detention by the KLA in Zllash/Zlaš. [REDACTED] confirmed that the detainees told [REDACTED] that they “came from the prison at Zllash/Zlaš village and they had been in that prison together with [REDACTED]”,<sup>304</sup> and that “they were all released from the prison except [REDACTED]”.<sup>305</sup> W04674 confirmed, as he had told [REDACTED], that the detainees said “that they had been prisoners of UCK soldiers, specifically Skifterat, a group within UCK”.<sup>306</sup>

82. Further, [REDACTED] described the detainees as being in a “horrific” condition, exhausted, with marks on their faces and bodies from beatings and ill-treatment, and hungry, unshaven, with dirty, unwashed clothes and very long nails.<sup>307</sup> W04391 added that those people said [REDACTED] was not released “because his arms and his legs had been broken”.<sup>308</sup>

#### D. MURDER OF [REDACTED]

83. On or shortly after 19 April 1999, following exceptionally harsh detention, mistreatment, and torture, [REDACTED] was murdered by members of the BIA unit

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<sup>301</sup> W01679, 4 October 2021, T.928.

<sup>302</sup> W01679, 4 October 2021, T.907.

<sup>303</sup> W03593, 20 September 2021, T.487, and 22 September 2021, T.614-615; W01679, 4 October 2021, T.910-911.

<sup>304</sup> W04391, 22 November 2021, T.1743. *See also* W04674, 13 December 2021, T.1936.

<sup>305</sup> W04391, 22 November 2021, T.1744.

<sup>306</sup> W04674, 13 December 2021, T.1938-1939; and SPOE00128189-00128201 RED2, p.1. *See also* 076509-TR-ET Part 2 RED1, p.26.

<sup>307</sup> W04391, 22 November 2021, T.1744; W04390, 24 November 2021, T.1869-1870; W04674, 13 December 2021, T.1940.

<sup>308</sup> W04391, 22 November 2021, T.1745. *See also* W04390, 24 November 2021, T.1897; W04674, 14 December 2021, T.2015.

who had him in custody, and he was subsequently buried in the immediate vicinity of the KLA Zllash/Zlaš Detention Compound. Salih MUSTAFA is responsible for [REDACTED]'s death.<sup>309</sup>

84. [REDACTED] was arrested on 1 April 1999 in the village of [REDACTED],<sup>310</sup> and taken to Zllash/Zlaš by [REDACTED], upon the orders of [REDACTED].<sup>311</sup> [REDACTED].<sup>312</sup> Salih MUSTAFA was present when [REDACTED] was brought into the ZDC, and he greeted [REDACTED] from a balcony of one of the buildings, at a distance of about 20-30 metres.<sup>313</sup> [REDACTED] was escorted inside by the guard.<sup>314</sup> [REDACTED] remained there just for the time that [REDACTED] was taken inside, and then left by car.<sup>315</sup>

85. [REDACTED] was accused of being a spy, a Serb collaborator, and a thief.<sup>316</sup> He was detained from 1 April until at least 19 April 1999 when W01679, W03594, [REDACTED], and W03593 were released while he was not.<sup>317</sup>

86. [REDACTED] "was one of the persons who was beaten the most, injured the most. He was brutally mistreated."<sup>318</sup> He was the only one who was restrained in the

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<sup>309</sup> See Section V. *below*.

<sup>310</sup> See W04391, 22 November 2021, T.1733-1734, 1736; W04390, 24 November 2021, T.1861-1862, 1865, and SPOE00127967-00127974 RED1, p.1; W04674, 13 December 2021, T.1933-1934; W04648, SPOE00128061-00128064 RED1, p.2; SPOE00128158-00128162 RED1, p.1; and SPOE00130685-00130687 RED1, p.1; U001-0310-U001-0325, p.1.

<sup>311</sup> W04600, 23 September 2021, T.723-727, and 24 September 2021, T.801-803; W04603, 2 November 2021, T.1302-1304. See also W04390, 24 November 2021, T.1862. On the existence of an order to arrest [REDACTED], see also W04391, 22 November 2021, T.1737.

<sup>312</sup> [REDACTED].

<sup>313</sup> W04600, 23 September 2021, T.728-733. See also 072908-072914 RED1, pp.2-3; REG00-004, and REG00-005, and Section III.E.1.(b).

<sup>314</sup> W04600, 23 September 2021, T.729.

<sup>315</sup> W04600, 23 September 2021, T.730, 733.

<sup>316</sup> W04674, 14 December 2021, T.2018; W01679, 4 October 2021, T.892-893; W04669, 10 November 2021, T.1438, and 11 November 2021, T.1564.

<sup>317</sup> W03593, 20 September 2021, T.484-485, and 22 September 2021, T.613; W01679, 4 October 2021, T.905-906; W03594, 13 October 2021, T.1145.

<sup>318</sup> W01679, 4 October 2021, T.891.

barn and had his hands tied all the time,<sup>319</sup> because – in the assessment of the other detainees – [REDACTED].<sup>320</sup> [REDACTED], “they were afraid [...] to remove his handcuffs.”<sup>321</sup> [REDACTED].<sup>322</sup>

87. When [REDACTED] was brought back to the barn after being taken out, he looked destroyed from the beatings.<sup>323</sup> He had bruises and marks on his face and body, was burnt with an iron and stabbed with a knife.<sup>324</sup> He could not stand up because of the injuries,<sup>325</sup> “because they beat the hell out of me”,<sup>326</sup> as he managed to say to W03593. In the words of W01679, “It was a catastrophe. His body had all these marks. It was terrible. Everyone of us was beaten, but he was beaten the most and he was massacred.”<sup>327</sup>

88. According to W04669, [REDACTED] “was black from the beatings”, “everything on his face, his eyes, nose, everything was black”, “he was bruised, black, on all visible parts of his body”, he could barely open his eyes.<sup>328</sup>

89. W04669 added that, when [REDACTED] was brought to the stable badly mistreated, all the detainees were in fear and understood that the situation was critical as the same could happen to them.<sup>329</sup> Every time [REDACTED] was brought to the barn, W04669 and his co-detainees were forced to say: “Death to the traitors, death to

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<sup>319</sup> W04669, 10 November 2021, T.1432; W01679, 4 October 2021, T.892; W03593, 20 September 2021, T.454-455.

<sup>320</sup> W01679, 4 October 2021, T.892.

<sup>321</sup> W01679, 4 October 2021, T.892.

<sup>322</sup> W01679, 4 October 2021, T.893.

<sup>323</sup> W03593, 20 September 2021, T.454.

<sup>324</sup> W01679, 4 October 2021, T.892; W03593, 20 September 2021, T.454, 474.

<sup>325</sup> W03593, 20 September 2021, T.404.

<sup>326</sup> W03593, 20 September 2021, T.404-405.

<sup>327</sup> W01679, 4 October 2021, T.892.

<sup>328</sup> W04669, 10 November 2021, T.1432-1433.

<sup>329</sup> W04669, 10 November 2021, T.1441.



the thieves, death to the thugs and glory to the KLA!”<sup>330</sup> W04669 saw five or six people beat [REDACTED] with “everything they had in their hands.”<sup>331</sup>

90. The last time W04669 saw [REDACTED], “he was almost dead”, “was lying down and was even more swollen”, “his nose was bleeding, he was unable to speak and was just crying out of pain”.<sup>332</sup> [REDACTED] was in such a bad shape that the soldiers “had to hold him, all the weight of his body, and they placed him lying on the ground because he [could not] stand on his feet”.<sup>333</sup> In the words of W01679, “You cannot even describe his state in words. His body, his injuries. The smell, the smell of flesh that we could sense. It was terrible. In my opinion, it’s a massacre.”<sup>334</sup>

91. While [REDACTED] was held at the ZDC, [REDACTED].<sup>335</sup> In this regard, W04600 testified that he learned around 23 or 24 April 1999 from another KLA member that [REDACTED] had died.<sup>336</sup>

92. [REDACTED].<sup>337</sup> He finally found it, in July 1999, based on the directions received from two local villagers.<sup>338</sup> [REDACTED] body was discovered on or about 4 July 1999 in a shallow grave [REDACTED].<sup>339</sup> A sketch drawn by W04648 shows the

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<sup>330</sup> W04669, 10 November 2021, T.1434.

<sup>331</sup> W04669, 10 November 2021, T.1434.

<sup>332</sup> W04669, 10 November 2021, T.1434.

<sup>333</sup> W04669, 10 November 2021, T.1438.

<sup>334</sup> W01679, 4 October 2021, T.907.

<sup>335</sup> W04674, 13 December 2021, T.1995, 1934; 076509-TR-ET Part 2 RED, pp.2, 6 (SPO Interview); W04391, 22 November 2021, T.1736-1741; 060723-TR-ET Part 1 Revised RED, pp.15-17, and Part 2 Revised RED, p.12 (SPO Interview); W04714, 077816-TR-ET Part 1 RED, pp.11-14, 22 (SPO Interview); W04648, SPOE00128061-00128064 RED, p.3; SPOE00128158-00128162 RED, p.1; SPOE00128333-00128343 RED, p.1; SPOE00128344-00128345 RED; SPOE00130685-00130687 RED. *See also* W04390, 060674-060680 RED, pp.2-3.

<sup>336</sup> W04600, 23 September 2021, T.766-767.

<sup>337</sup> [REDACTED]; W04648, SPOE00128158-00128162 RED, p.1; SPOE00128333-00128343 RED, p.1. *See also* [REDACTED].

<sup>338</sup> [REDACTED]; W04648, SPOE00128333-00128343 RED, p.1; SPOE00128069-00128086 RED, p.2.

<sup>339</sup> [REDACTED].

position of the grave [REDACTED].<sup>340</sup> The grave was [REDACTED].<sup>341</sup> These estimates are consistent with an UNMIK aerial reconnaissance report which described the grave [REDACTED].<sup>342</sup>

93. When in early July 1999, [REDACTED], they found documents at the compound including medical records belonging to [REDACTED].<sup>343</sup> This discovery further confirmed his detention at the ZDC.

94. [REDACTED] exhumed his body on 7 July 1999. His face was decomposed and he was identified, *inter alia*, by his clothes and a damaged tooth.<sup>344</sup> The corpse showed what appeared to be a gunshot wound to the torso. His legs appeared broken.<sup>345</sup> A number of photographs were taken of the body during the exhumation.<sup>346</sup> Another unidentified person was found in that grave.<sup>347</sup> Shortly after the exhumation, [REDACTED]'s body was taken to the village of [REDACTED].<sup>348</sup>

95. A multitude of factors taken together establish the Accused's responsibility for the murder of [REDACTED], namely:

- a) Salih MUSTAFA's awareness of the arrest and detention of [REDACTED], who was delivered to a BIA guard at the ZDC in his presence;<sup>349</sup>

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<sup>340</sup> W04648, SPOE00128158-00128162 RED, p.4. *See also* [REDACTED].

<sup>341</sup> [REDACTED]; W04648, SPOE00128158-00128162 RED, p.1. *See also* [REDACTED].

<sup>342</sup> *See* SPOE00128266-00128273 RED, p.6. *See also* SITF00318201-00318202 RED, p.2; SPOE00130596-00130596 RED.

<sup>343</sup> [REDACTED].

<sup>344</sup> [REDACTED]; W04648, SPOE00128061-00128064 RED, p.3; SPOE00128069-00128086 RED, p.4; SPOE00128333-00128343 RED, p.1.

<sup>345</sup> [REDACTED].

<sup>346</sup> [REDACTED].

<sup>347</sup> [REDACTED].

<sup>348</sup> [REDACTED]; W04648, SPOE00128333-00128343 RED, p.1. [REDACTED].

<sup>349</sup> [REDACTED].

- b) The exceptional severity of the mistreatment of [REDACTED] by subordinates of the Accused;<sup>350</sup>
- c) The fact that [REDACTED] was not freed by the Accused and his subordinates when the other detainees were suddenly released, on or about 19 April 1999;<sup>351</sup>
- d) [REDACTED]'s near-death condition when he was last seen at the ZDC;<sup>352</sup>
- e) The [REDACTED] was found in early July 1999 by W04674 and W04648;<sup>353</sup>
- f) The state of [REDACTED]'s body when [REDACTED];<sup>354</sup> and
- g) The presence of a second body in the grave,<sup>355</sup> noting that a second person, [REDACTED], was not released, along with [REDACTED], when all the other detainees were freed.<sup>356</sup>

96. W01679, W03593, W03594, and [REDACTED] were abruptly released on 19 April 1999 because of the Serbian offensive.<sup>357</sup> After days in detention, they were released without any forewarning and simply told to go. It was done particularly hastily as the KLA in Zllash/Zlaš, and the BIA unit at the ZDC, were making preparations to evacuate the village, including civilians and the wounded. In the words of W03593 "[...] it was the offensive on the 18<sup>th</sup>, and there was no way out. They had to release us on the 18<sup>th</sup>." While W03593's memory may have been off by one day,

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<sup>350</sup> See above paras.87-90.

<sup>351</sup> See evidence of W03593, W01679 and W03594 cited above: para.80.

<sup>352</sup> See evidence cited above: para.90.

<sup>353</sup> See [REDACTED]; W04648, SPOE00128333-00128343 RED1, p.1; SPOE00128069-00128086 RED1, pp.2-3. See also [REDACTED].

<sup>354</sup> [REDACTED]; W04648, SPOE00128333-00128343 RED1, p.2; [REDACTED].

<sup>355</sup> [REDACTED].

<sup>356</sup> See para.94.

<sup>357</sup> W01679, 4 October 2021, T.904; W03593, 21 September 2021, T.515, and 20 September 2021, T.419; W03594, 13 October 2021, T.1144.

his testimony is another indicator that their release was not planned, but dictated by an unexpected change in circumstances.

97. Against this backdrop, there is no reasonable explanation as to why the Accused and his BIA subordinates would keep two detainees in their custody, at least one of whom could not walk and was near death, an undeniably cumbersome presence as they prepared to evacuate the ZDC. The only reasonable explanation is that the Accused, and other members of BIA, never meant to release these last two detainees.

98. Finally, there is no evidence supporting a claim that [REDACTED] was killed by Serbian forces. While the ZDC was shelled from a distance, there is no credible evidence that Serbian troops ever entered the compound. The evidence establishes that the detainees were released on or shortly after 19 April 1999, which was at the beginning of the offensive, and no witnesses say that there were Serbian troops present or nearby at that time. The detainees who were released did not see any Serbian forces on their way out of the compound. In fact, they eventually made it safely to Prishtinë/Priština and other locations.<sup>358</sup>

99. The circumstances of [REDACTED]'s detention, the brutality of his mistreatment, his separation from the group upon release, and the discovery of his body [REDACTED] establish beyond all reasonable doubt that he was murdered by his captors. There is no other cogent explanation that accounts for the evidence in this case.

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<sup>358</sup> W01679, 4 October 2021, T.911; W03594, 13 October 2021, T.1160; W03593, 21 September 2021, T.553.

## E. THE EVIDENCE FROM THE VICTIMS IS CORROBORATED

1. Corroboration by Salih MUSTAFA<sup>359</sup>

100. The accounts of the Victims, compelling and persuasive as they are on their own, are corroborated in key ways by the Accused's own words, in particular regarding the Accused's presence in the ZDC, his role as the commander over BIA and the ZDC, the identity of other members of BIA, and the Accused's distinctive red beret.

101. The Accused made these admissions, and others, in his SPO interview on 19 and 20 November 2019. At the interview, he was represented by counsel<sup>360</sup> and fully informed of his rights, and he clearly indicated that he understood those rights.<sup>361</sup> He answered all of the questions voluntarily and was given a full opportunity to explain or add to his answers.<sup>362</sup> At the end of the interview, he indicated that he had no objections to the manner or process by which his statement was taken.<sup>363</sup>

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<sup>359</sup> Salih MUSTAFA aka 'Cali', Kosovo-Albanian, was born on 1 January 1972 in Prishtinë/Priština. Before the war, he was a member of the People's Movement of the Republic of Kosovo ('LPRK') and of the National Movement for the Liberation of Kosovo ('LKCK'). In August 1993, he was arrested and sentenced to four years in prison, and then released in August 1997. From 1997, he became commander of the 'Pristina Guerillas'. From 20 May 1998 to mid-June 1999, he was the Commander of the BIA unit. For the duration of the Kosovo conflict, he remained in Kosovo, operating mainly on the territory of the KLA Llap OZ. From late June 1999, he became a member of the KLA's military intelligence service of Zone 5, and subsequently of the Kosovo Protection Corps ('TMK'). From 2008/2009, he served in the Kosovo Security Force ('KSF') and later, until his arrest by the Specialist Chambers on 24 September 2020, he operated as senior officer with the Intelligence Department of the Kosovo Ministry of Defence. See 069404-TR-ET Part 1, pp.4,5,9,17, 25-27; Part 7, p.30, Part 8, pp.25-27,30,33. See also Fatmir SOPI, 18 January 2022, T.2036, 2061; Sejdi VESELI, 25 January 2022, T.2196; Fatmir HUMOLLI, 1 February 2022, T.2296-2297, 2303; and SPOE00055799-SPOE00055868-ET, p.69 [Skender ZHITIA's Book].

<sup>360</sup> 069404-TR-ET Part 1, p.1.

<sup>361</sup> 069404-TR-ET Part 1, pp.2-4.

<sup>362</sup> 069404-TR-ET Part 8, pp.31-32.

<sup>363</sup> 069404-TR-ET Part 8, p.32.

*(a) Presence of the Accused in the ZDC*

102. In his interview, the Accused admitted that he was regularly present at Zllash/Zlaš and the ZDC, including during the Indictment period. He admitted that in 1999 he stayed in the village on many occasions,<sup>364</sup> albeit not constantly,<sup>365</sup> as he was engaged in providing Brigade 153 with intelligence, weapons, ammunition, medical supplies, and assistance.<sup>366</sup>

103. The Accused stated that, when in Zllash/Zlaš, he slept on the first floor of a building within the ZDC.<sup>367</sup> While it is likely that the Accused already minimized in his interview the time he spent at the ZDC, as he knew that the alleged crimes occurred there, he nonetheless acknowledged that between 25 March and 22 April 1999, he slept in the ZDC overnight two to three times, for a couple of nights.<sup>368</sup> One such time was “perhaps 15 days or 20 days before the offensive” that the Accused states commenced on or about 16 April 1999.<sup>369</sup> This specific admission is significant, as it is consistent with W01679 and W03593’s evidence about when the Accused participated in interrogations and beatings of them at the ZDC, and with the evidence of [REDACTED] about when [REDACTED] was taken to the ZDC.<sup>370</sup> If all of these witnesses were fabricating their accounts, as the Accused claims, it is impossible to imagine that they would coincidentally claim that they met the Accused at the ZDC at precisely the time that the Accused, unbeknownst to those witnesses, himself admitted to being there.

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<sup>364</sup> 069404-TR-ET Part 7, p.16.

<sup>365</sup> 069404-TR-ET Part 7, p.16.

<sup>366</sup> 069404-TR-ET Part 3, pp.19-20.

<sup>367</sup> 069404-TR-ET Part 7, p.16.

<sup>368</sup> 069404-TR-ET Part 7, p.10.

<sup>369</sup> 069404-TR-ET Part 7, pp.12, 16.

<sup>370</sup> See Section III.D. *above*.



104. The Accused also admitted that he left Zllash/Zlaš at some point between 12 and 14 April, further confirming that he was present at the ZDC before this date, when crimes alleged in the Indictment occurred.<sup>371</sup>

*(b) The Accused's sketch of the location*

105. The Accused's interview also corroborates aspects of [REDACTED]'s testimony that the Accused was present when [REDACTED] to BIA member [REDACTED] who was guarding the ZDC's gate on that date.<sup>372</sup>

106. [REDACTED] testified that the Accused was standing on the balcony of a building about 20 or 30 meters from the ZDC's entrance.<sup>373</sup> [REDACTED] recalled that this building, which was on the right-hand side when entering the compound,<sup>374</sup> had three or four rooms, all of which had access to the balcony where the Accused was standing.<sup>375</sup>

[REDACTED]

REG00-005 – [REDACTED] placed number '3' with a blue marker on the balcony where the Accused appeared. The other blue marking, on the right side of the sketch, indicates the entrance to the ZDC.

107. In describing the building where he and his soldiers slept at the ZDC, the Accused stated that there were "three doors", and "some sort of terrace".<sup>376</sup> The Accused also sketched a drawing of this building, showing a number of rooms that all had access to the balcony, as testified by [REDACTED].<sup>377</sup> It was on this balcony that the Accused was standing when [REDACTED] to the compound.

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<sup>371</sup> 069404-TR-ET Part 7, p.22.

<sup>372</sup> 069404-TR-ET Part 7, pp.10-12; [REDACTED].

<sup>373</sup> [REDACTED].

<sup>374</sup> REG00-004.

<sup>375</sup> REG00-005; [REDACTED].

<sup>376</sup> 069404-TR-ET Part 8, pp.3-4.

<sup>377</sup> 069404-TR-ET Part 8, p.4; 069401-069404 RED, at 069403.

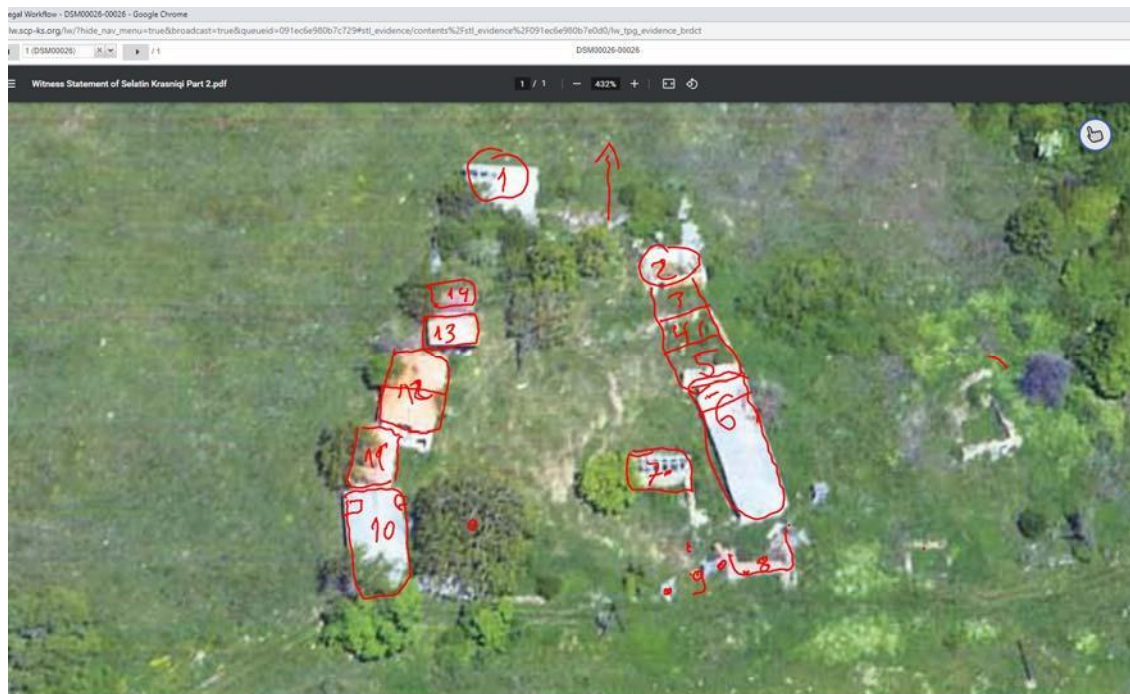


069401-069404 RED, at 069403 (Sketch of BIA's sleeping quarters drawn by the Accused)

108. This evidence is further corroborated by Defence witness Selatin KRASNIQI, the son of the ZDC's owners and a BIA member himself. Selatin KRASNIQI described the rooms marked as 2, 3, 4, and 5 on the aerial photo of the remains of the ZDC as being all part of the same building back in 1999. He stated that in 1999, this building was used as living quarters by himself and the other soldiers.<sup>378</sup> As the aerial picture below shows, the building that hosted BIA's sleeping quarters (numbers 2, 3, 4, and 5) is on the right-hand side of the compound, exactly where [REDACTED].<sup>379</sup>

<sup>378</sup> DSM00018-00035, at p.DSM00026; Selatin KRASNIQI, 21 April 2022, T.3876-3879.

<sup>379</sup> REG00-013.



REG00-013 - Aerial picture of the ZDC, taken in 2006, and marked by Selatin KRASNIQI

*(c) Command of the Accused over the ZDC*

109. The Accused also admitted that BIA was based at the ZDC during the time of the charges in the Indictment. He admitted to BIA's command over the building discussed above,<sup>380</sup> where [REDACTED] to the ZDC. The Accused acknowledged that he participated in the negotiation leading to the handover of the ZDC from Adem KRASNIQI's family to the KLA,<sup>381</sup> and the evidence establishes that BIA, with the Accused in command, was in control of the entire compound.

<sup>380</sup> 069404-TR-ET Part 7, p.5; 069401-069404 RED, at p.069403.

<sup>381</sup> 069404-TR-ET Part 3, pp.17-18.

*(d) Command of the Accused over the BIA unit*

110. "I was the headquarters."<sup>382</sup> This statement from the Accused fully encapsulates his position of ultimate control over BIA during the war. It corroborates the role that W01679 and W03593, as well as others, testified that he had. Salih MUSTAFA admitted that he was the only commander of the BIA unit<sup>383</sup> from its very inception on 20 May 1998<sup>384</sup> until 12-14 June 1999, when the unit was disbanded.<sup>385</sup> He was appointed to the position by the then commander of the KLA's Llap OZ, Rrustem MUSTAFA aka 'Remi'.<sup>386</sup>

111. BIA was organised into sectors<sup>387</sup> and sub-units,<sup>388</sup> having a well-defined area of operations covering Prishtinë/Priština, Fushë Kosovë/Kosovo Polje, and Obiliq/Obilić,<sup>389</sup> and having a presence in Butovc, Rimanishte/Rimanište and Zllash/Zlaš within the Gollak/Goljak region.<sup>390</sup>

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<sup>382</sup> 069404-TR-ET Part 1, p.31.

<sup>383</sup> Records of Witness Hearing with Salih MUSTAFA, 12 March 2003, 7000650-7000660, pp.2, 7. *See also*: Fatmir SOPI, 18 January 2022, T. 2060; Sejdi VESELI, 25 January 2022, T.2195-2196; W04600, 23 September 2021, T. 718; Gani SOPI, 4 April 2022, T.3143-3144; Nuredin IBISHI, 12 April 2022, T.3550, 3611; Fatmir HUMOLLI, 1 February 2022, T.2303; SPOE00055799-SPOE00055868-ET, pp.7,69 (Skender ZHITIA's Book).

<sup>384</sup> 069404-TR-ET Part 1, pp.26-27. *See also* Brahim MEHMETAJ, 23 March 2022, T.2618.

<sup>385</sup> 069404-TR-ET Part 7, pp.24-26; Records of Witness Hearing with Salih MUSTAFA, 12 March 2003, 7000650-7000660, pp.4, 9.

<sup>386</sup> 069404-TR-ET Part 1, pp.24-25; Part 2, pp.22-23; Records of Witness Hearing with Salih MUSTAFA, 12 March 2003, 7000650-7000660, pp.2, 8.

<sup>387</sup> There were four sectors in BIA: Intelligence (led by Salih MUSTAFA), Logistics (led by Agron ZEQUIRI), Health (led by Flora BROVINA) and Morale and Politics (led by Brahim MEHMETAJ aka 'Bimi'). *See* 069404-TR-ET Part 1, p.32; Brahim MEHMETAJ, 23 March 2022, T.2618-2621, 2666-2667; Records of Witness Hearing with Salih MUSTAFA, 12 March, 20037000650-7000660, p.4; Fatmir SOPI, 18 January 2022, T.2036, 2063-2064.

<sup>388</sup> 069404-TR-ET Part 1, pp.28-30.

<sup>389</sup> 069404-TR-ET Part 2, pp.4,8; SPOE00055705-SPOE00055708-ET, p.4.

<sup>390</sup> 069404-TR-ET Part 3, pp.12-16.

112. The Accused reported to, and took orders directly from, the Llap OZ command.<sup>391</sup> He, in turn, had the ability to issue orders to his BIA subordinates,<sup>392</sup> and such orders were duly followed. Examples of his commanding powers over BIA include his orders to subordinates that required co-ordination and planning: the unit's attack on a Serbian fuel deposit conducted in March 1999,<sup>393</sup> the dispatch of BIA's members to other KLA Operational Zones with medical supplies,<sup>394</sup> and the preparation of the report on the Serbian military barracks in Prishtinë/Priština.<sup>395</sup> He specifically admitted giving orders to BIA member Agron ZEQIRI.<sup>396</sup>

113. The Accused had deputy commanders/first assistants in BIA<sup>397</sup> who were under his command.<sup>398</sup> Initially, it was Brahim MEHMETAJ aka 'Bimi'<sup>399</sup> and then, from February 1999 to 21 April 1999, it was Isa KASTRATI, followed by Bahri GASHI aka 'Bafta'.<sup>400</sup> The Accused also directly commanded his subordinates in charge of the respective BIA sectors of health, logistics, and morale/politics.<sup>401</sup>

114. The Accused also had the exclusive power to make appointments within BIA, including his deputy commanders/first assistants.<sup>402</sup>

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<sup>391</sup> 069404-TR-ET Part 1, p.24 ; Part 2, pp.12-20, and Part 3, p.3. *See also*: Brahim MEHMETAJ, 23 March 2022, T.2656-2657, 2665, 2668-2670; Fatmir SOPI, 18 January 2022, T.2059; Sejdi VESELI, 25 January 2022, T.2196.

<sup>392</sup> Brahim MEHMETAJ, 23 March 2022, T.2621,2665, 2668; Ibadete CANOLLI-KACIU, 12 May 2022, T.4356; Bislim NRECI, 5 April 2022, T.3238-3239, 3245; DSM00056-00067, p.5 (Bislim NRECI statement).

<sup>393</sup> 069404-TR-ET Part 2, pp.3-4.

<sup>394</sup> 069404-TR-ET Part 2, p.8.

<sup>395</sup> Brahim MEHMETAJ, 23 March 2022, T.2621, and 24 March 2022, T.2741.

<sup>396</sup> Records of Witness Hearing with Salih MUSTAFA, 12 March 2003, 7000650-7000660, pp.2-3.

<sup>397</sup> 069404-TR-ET Part 1, p.31.

<sup>398</sup> 069404-TR-ET Part 1, p.31. *See also*: Brahim MEHMETAJ, 23 March 2022, T.2666.

<sup>399</sup> Brahim MEHMETAJ, 23 March 2022, T.2618, 2665.

<sup>400</sup> Brahim MEHMETAJ, 23 March 2022, T.2657, 2713-2714.

<sup>401</sup> 069404-TR-ET Part 1, pp.31-32.

<sup>402</sup> Brahim MEHMETAJ, 23 March 2022, T.2666.

115. Many BIA soldiers, including Salih MUSTAFA and his deputies, wore uniforms with KLA badges and were armed.<sup>403</sup> However, many of them wore civilian clothing and operated unarmed, because of the clandestine nature of their work.<sup>404</sup> They also had a communication system, including through mobile phones, satellite telephones, and radio communication devices.<sup>405</sup> BIA members were issued identifying documents with the KLA logo, their names, and the signature of the Accused as the commander, indicating his position over all of the soldiers within the unit.<sup>406</sup>

116. No one other than the Accused had the ability to exercise control over the BIA unit,<sup>407</sup> including commanders of KLA brigades operating within the Llap OZ,<sup>408</sup> such as the Brigade 153 headquartered in Zllash/Zlaš that was separate from BIA.<sup>409</sup> The Accused was the only conduit between the Llap OZ command and the soldiers within BIA: all information gathered by BIA was reported to the Accused,<sup>410</sup> who would then pass it on in the form of reports to the Llap OZ command;<sup>411</sup> in turn, all communications distributed to the BIA unit would come through the Accused.<sup>412</sup>

117. The power to discipline BIA soldiers, including dismissal from duty, also rested with Salih MUSTAFA.<sup>413</sup> By the Accused's own admission, all of his soldiers

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<sup>403</sup> 069404-TR-ET Part 3, pp.25-27, and Part 4, p.2. *See also* Brahim MEHMETAJ, 23 March 2022, T.2622; W04600, 24 September 2021, T.765.

<sup>404</sup> 069404-TR-ET Part 3, pp.25-27, and Part 4, p.2. *See also* Brahim MEHMETAJ, 23 March 2022, T.2622.

<sup>405</sup> Brahim MEHMETAJ, 24 March 2022, T.2742.

<sup>406</sup> 069404-TR-ET Part 4, p.2.

<sup>407</sup> 069404-TR-ET Part 1, pp.29, 31; and Part 2, pp.14-15. *See also* Fatmir HUMOLLI, 2 February 2022, T.2418.

<sup>408</sup> 069404-TR-ET Part 2, p.14.

<sup>409</sup> 069404-TR-ET Part 3, pp.21-24. *See also* Sejdi VESELI, 25 January 2022, T.2196, 2263; W04600, 24 September 2021, T.762; Fatmir HUMOLLI, 2 February 2022, T.2418.

<sup>410</sup> 069404-TR-ET Part 6, p.12. *See also* Brahim MEHMETAJ, 23 March 2022, T.2668-2669; Fatmir HUMOLLI, 2 February 2022, T.2443.

<sup>411</sup> 069404-TR-ET Part 6, pp.13-14.

<sup>412</sup> 069404-TR-ET Part 4, pp.12-13.

<sup>413</sup> 069404-TR-ET Part 6, pp.3, 6, 19.



understood the importance of hierarchy and discipline,<sup>414</sup> and those disobeying orders were disciplined and, in some cases, demobilised.<sup>415</sup> The Accused was to be informed about every infringement committed by BIA members.<sup>416</sup> In sum, the admissions of the Accused with respect to his command over BIA corroborate the Victims and further establish his responsibility for the crimes alleged in the Indictment.

*(e) People were held at the ZDC*

118. By the Accused's own admission, one room underneath the building where he stayed at the ZDC was used to detain soldiers who had violated rules.<sup>417</sup> Further, in an apparent attempt to admit as many facts about the ZDC without admitting responsibility, the Accused stated that when he was there in late March/early April 1999,<sup>418</sup> "there were rumours that civilians were being detained [...]". "I'd heard that there were civilians that were being detained".<sup>419</sup> He stated that he heard about that from soldiers and civilians, and that it was not a secret.<sup>420</sup> The Accused added that there were also rumours of some detained civilians having been released during the evacuation of Zllash/Zlaš around 20 April 1999, but maintained that he did not see them himself. He specified that there were rumours that "thieves" had been detained in Zllash/Zlaš, and that they had been released.<sup>421</sup> Notably, as reviewed above,

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<sup>414</sup> 069404-TR-ET Part 5, pp.21-23. The importance of following the chain of command and following orders was indicated in Chapter V of the 'KLA Provisional Regulations for the Organisation of the Army's Internal Life': IT-05-87 P02449-E. Salih MUSTAFA was the one who received this material from the Llap OZ Command, and distributed it within BIA.

<sup>415</sup> 069404-TR-ET Part 5, p.22.

<sup>416</sup> 069404-TR-ET Part 6, p.2.

<sup>417</sup> 069404-TR-ET Part 7, pp.4-6, and Part 8, pp.4, 6.

<sup>418</sup> 069404-TR-ET Part 7, pp.16-17.

<sup>419</sup> 069404-TR-ET Part 7, p.15.

<sup>420</sup> 069404-TR-ET Part 7, p.18. Brahim MEHMETAJ aka 'Bimi' also admitted that he heard that there were people held at the ZDC (072957-TR-ET Part 4, pp.5-6, *see also* pp.7-9), although he tried to deny it when testifying in court (*cf.* 23 March 2022, T.2677.)

<sup>421</sup> 069404-TR-ET Part 7, pp.23-24.

[REDACTED] had been detained on accusation, *inter alia*, [REDACTED], but he was not in fact released with the other detainees.

*(f) Identification by the Accused of BIA members*

119. Salih MUSTAFA also confirmed the identity of several members of the BIA unit identified as co-perpatrators of the Accused by Victims W01679 and W03593. Again, if the accounts of these Victims were fabricated, it is wholly improbable that they would be able to testify to the presence of specific BIA members that the Accused would later confirm were, in fact, members of BIA.

120. In particular, the Accused acknowledged as a member of BIA one of the Victims' chief tormentors, nicknamed 'Tabuti', with the real name of Nazif.<sup>422</sup>

121. The Accused also admitted that Ilmi VELA, aka 'Vdekija' ('Death'), was a member of BIA,<sup>423</sup> though the Accused sought to distance himself from VELA, describing him as a "problematic person" who acted "like a criminal around town", and who had been suspected of being involved in a killing, a theft in a market, and the beating of his accomplice in the theft.<sup>424</sup> As a consequence of his involvement in these crimes, the Accused claimed that, "we demobilized him," and his weapon was taken from him.<sup>425</sup>

122. The Accused also confirmed that Brahim MEHMETAJ, whom W01679 identified as 'Bimi', was in fact one of the Accused's deputy commanders/first assistants in BIA in 1999.<sup>426</sup> Asked whether 'Bimi' could be in Zllash/Zlaš in April 1999,

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<sup>422</sup> 069404-TR-ET Part 8, pp.9-10. Fatmir SOPI testified that 'Tabuti's real name was Nazif MUSLIU, *see* Fatmir SOPI, 19 January 2022, T.2133.

<sup>423</sup> 069404-TR-ET Part 8, p.10.

<sup>424</sup> 069404-TR-ET Part 8, pp.10-12.

<sup>425</sup> 069404-TR-ET Part 8, pp.10-12.

<sup>426</sup> 069404-TR-ET Part 4, p.3.

the Accused again appeared to try to admit as little as possible, claiming that he never stayed in the village, but he *'might have visited for an hour or two'*.<sup>427</sup>

123. The Accused knew that there was no way to deny he was the commander of BIA or that he was at the ZDC, so he admitted those facts during his SPO interview. The Accused additionally knew that the SPO investigation would undoubtedly reveal that people like Brahim MEHMETAJ 'Bimi' and Ilma VELA 'Death' were members of BIA, so he admitted those facts as well. But the Accused also knew that those very same subordinates tortured prisoners while under his command, a fact which he clearly could not admit, so he devised very transparent and self-serving solutions like claiming VELA was "demobilized" and that MEHMETAJ may only have been in Zlash an hour or two in April 1999. No credible evidence supports these assertions. Instead, these are subtle, yet quite deliberate attempts by the Accused to distance himself from the worst torturers.<sup>428</sup> As he sat for his SPO interview, the Accused knew what the investigation would ultimately show: in April of 1999 these soldiers under his direct command were brutally torturing prisoners. As a result, he vainly attempted to distance himself from his comrades to protect himself from liability.

*(g) The red beret of the Accused*

124. The evidence of victims W01679 and W03593 that the Accused wore a red hat is also corroborated by the Accused's own admissions. When confronted with the information that the person called 'Commander Cali' wearing a red beret was present

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<sup>427</sup> 069404-TR-ET Part 8, p.9.

<sup>428</sup> For the role of VELA and Brahim MEHMETAJ in the torture and humiliation of the detainees, *see e.g.* W01679, 4 October 2021, T.884, 887, 897-899 and 1 June 2022, T.4445, 4465, 4466; 060698-TR-ET, Part 3 Revised RED3, p.6.

upstairs in the old two-storey building in Zllash/Zlaš (within the ZDC), the Accused said: "I'm not denying this."<sup>429</sup>

125. Asked whether there was anyone else he knew in Zllash/Zlaš who was referred to as Commander Cali and was wearing a red beret, the Accused admitted: "No, I wouldn't have thought so, or I never met them."<sup>430</sup>

126. Indeed, by his own admission, for a period of time<sup>431</sup> Salih MUSTAFA wore a red beret<sup>432</sup> that was not part of the standard BIA uniform.<sup>433</sup> The Accused admitted that to his knowledge he was the only member of the unit that had a red beret.<sup>434</sup>

127. [REDACTED], when speaking of the Accused's outfit during the war, confirmed that, "most of the time he wore a uniform and a red hat."<sup>435</sup>

128. When the Accused was arrested in this case, more than twenty years after the crimes alleged in the Indictment, he was carrying in his wallet a photograph of himself from the war wearing a red beret.<sup>436</sup> He also had on his person USB pen-drives which contained numerous photos, including several of him wearing a red beret during the war.<sup>437</sup> Apart from those of the Accused in the red beret, the USB pen-drives also

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<sup>429</sup> 069404-TR-ET Part 8, p.7.

<sup>430</sup> 069404-TR-ET Part 8, p.8.

<sup>431</sup> 069404-TR-ET Part 3, p.27.

<sup>432</sup> The Accused indicated he would occasionally wear also a black beret and an American hat with visor: 069404-TR-ET Part 3, p.27.

<sup>433</sup> 069404-TR-ET Part 4, p.3.

<sup>434</sup> 069404-TR-ET Part 4, p.3.

<sup>435</sup> [REDACTED].

<sup>436</sup> 082249-082258, p.8.

<sup>437</sup> SPOE00222549-00222549; SPOE00222550-00222550; SPOE00222551-00222551; SPOE00222552-00222552; SPOE00222554-00222554; SPOE00222556-00222556; SPOE00222557-00222557; SPOE00222563-00222563; SPOE00222565-00222565; SPOE00222567-00222567; SPOE00222568-00222568; SPOE00222569-00222569; SPOE00222570-00222570; SPOE00222572-00222572; SPOE00222582-00222582; SPOE00222585-00222585; SPOE00222589-00222589; SPOE00222600-00222600; SPOE00222602-00222602; SPOE00222619-00222619; SPOE00222639-00222639; SPOE00222682-00222682; SPOE00222688-00222688; SPOE00222695-00222695.

included photos of the Accused with other BIA members, including Kujtim QERIMI aka 'Dardan'<sup>438</sup> and Muhamet AJETI aka 'Shyti'.<sup>439</sup> Some other photos, which are more contemporaneous, depict the Accused in the company of Brahim MEHMETAJ aka 'Bimi', indicating that they continue to have a relationship to this day.<sup>440</sup>

## 2. The accounts of the Victims corroborate one another

129. In addition to being compelling on their own, and confirmed by significant admissions of the Accused, the Victims corroborate one another in their testimonies. They all recognized the same location as the ZDC where they were held, they named some of the same perpetrators, they mutually corroborated one another with regard to their presence in detention, and they described suffering similar abuses. Their stories are further corroborated by documentary evidence and forensic medical reports.

### *(a) Similar stories concerning arrest*

130. The Victims provided very similar stories concerning the way they themselves, as well as the other detainees whom they met at the ZDC, were arrested and taken there.

131. For example, W01679 said that W03594 had come [REDACTED] when they detained him.<sup>441</sup> This matches W03593's testimony.<sup>442</sup>

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<sup>438</sup> SPOE00222549-00222549; SPOE00222563-00222563; SPOE00222568-00222568; SPOE00222585-00222585; SPOE00222589-00222589; SPOE00222600-00222600; SPOE00222602-00222602; SPOE00222614-00222614; SPOE00222639-00222639.

<sup>439</sup> SPOE00222575-00222575; SPOE00222559-00222559; SPOE00222587-00222587; SPOE00222628-00222628.

<sup>440</sup> SPOE00222566-00222566; SPOE00222574-00222574; SPOE00222588-00222588; SPOE00222592-00222592; SPOE00222593-00222593; SPOE00222613-00222613; SPOE00222622-00222622; SPOE00222624-00222624; SPOE00222632-00222632.

<sup>441</sup> W01679, 4 October 2021, T.893.

<sup>442</sup> See W03593, 22 September 2021, T.575. See also W03594, 12 October 2021, T.1032, 1034-1035, 1075.

132. W01679 and W04669 provided similar information about [REDACTED]. W01679 learned from [REDACTED] that he had come to join the army [REDACTED]; they took those away from him and tortured him, telling him he was a spy.<sup>443</sup> This was similar to the story recounted by W04669.<sup>444</sup>

133. W01679 testified that the man called [REDACTED] was held because he [REDACTED].<sup>445</sup> He was beaten downstairs with the others in the cowshed and upstairs.<sup>446</sup> Similarly, W03594 testified that [REDACTED].<sup>447</sup> This matches W03593's evidence.<sup>448</sup>

134. W03594 remembered that a fellow detainee [REDACTED] used to [REDACTED].<sup>449</sup> This matches W01679's evidence.<sup>450</sup>

*(b) Victims saw one another*

135. The Victims held at the ZDC corroborated one another about their respective detentions and presence at the ZDC.

136. When W01679 was taken to the barn after his first beating, in which Salih MUSTAFA participated, he found there [REDACTED], W03594, W03593, and [REDACTED].<sup>451</sup> He did not know these people from before but met them there for the first time, and learned their names in the barn.<sup>452</sup> During his detention, W01679 also saw W04669, who was brought after W01679's arrival and [REDACTED],<sup>453</sup> and

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<sup>443</sup> W01679, 4 October 2021, T.894-895.

<sup>444</sup> W04669, 10 November 2021, T.1417-1418.

<sup>445</sup> W01679, 4 October 2021, T.895-896.

<sup>446</sup> W01679, 4 October 2021, T.896.

<sup>447</sup> W03594, 13 October 2021, T.1137; 12 October 2021, T.1049.

<sup>448</sup> W03593, 20 September 2021, T.410.

<sup>449</sup> W03594, 13 October 2021, T.1141.

<sup>450</sup> W01679, 4 October 2021, T.875.

<sup>451</sup> W01679, 4 October 2021, T.889.

<sup>452</sup> W01679, 4 October 2021, T.889.

<sup>453</sup> W01679, 4 October 2021, T.889, 896.



a young man named [REDACTED].<sup>454</sup> The detainees were afraid to speak, but when they did manage to speak, they told W01679 their names.<sup>455</sup>

137. W01679 [REDACTED] learned his last name when they were held there together.<sup>456</sup> [REDACTED].<sup>457</sup>

138. W03593 identified [REDACTED], as reiterated by W01679 and W03594.<sup>458</sup> W03593 said he shared a blanket with W03594 in the barn.<sup>459</sup> W03594 corroborated this when he identified W03593 as a fellow detainee [REDACTED].<sup>460</sup>

139. When W03594 was brought to the barn, he saw four other people there,<sup>461</sup> [REDACTED].<sup>462</sup> W03594 recalled that [REDACTED] was brought to the barn about seven or eight days after him.<sup>463</sup>

*(c) Matching identification and description of the place of detention*

140. The Victims consistently recognized the ZDC in photos shown to them during their in-court testimonies. W01679 was able to describe where he was held and the “upstairs part” where he was interrogated,<sup>464</sup> and recognised the location on photographs shown to him during his in-court testimony.<sup>465</sup> He described how, to go from the cowshed to the upstairs part of the building, where detainees were taken for

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<sup>454</sup> W01679, 4 October 2021, T.889.

<sup>455</sup> W01679, 4 October 2021, T.889.

<sup>456</sup> W01679, 4 October 2021, T.896-897.

<sup>457</sup> W04669, 10 November 2021, T.1436-1437.

<sup>458</sup> W03593, 20 September 2021, T.471; W01679, 4 October 2021, T.900; W03594, 12 October 2021, T.1052.

<sup>459</sup> W03593, 20 September 2021, T.452-453.

<sup>460</sup> W03594, 12 October 2021, T.1048; *see also* W03593, 20 September 2021, T.393 [REDACTED].

<sup>461</sup> W03594, 12 October 2021, T.1040.

<sup>462</sup> W03594, 12 October 2021, T.1046.

<sup>463</sup> W03594, 12 October 2021, T.1052.

<sup>464</sup> W01679, 4 October 2021, T.915-916, 918-919.

<sup>465</sup> W01679, 4 October 2021, T.919-925; SPOE00128386-00128420 (UNMIK Photobook), pp.3 (SPOE00128388), 7 (SPOE00128392); 100801-100806 RED1, pp.3 (100803), 5 (100805), 6 (10806); DSM00031-DSM00031 RED.

interrogations and beatings, one would need to take an external stair comprised of a few steps, in front of the entrance.<sup>466</sup> W04669 recognised the place of his detention on the photographs shown to him in court.<sup>467</sup> He stated that it was a place used to keep animals, which is consistent with what Selatin KRASNIQI stated when he explained that it was used to keep oxen.<sup>468</sup> W03593 also recognised the same photographs as the place where he was held.<sup>469</sup>

141. The building recognized by the Victims as the place where they were detained is exactly the building that Selatin KRASNIQI, BIA member and son of the owners of the ZDC, “forgot” to include in the sketch of the ZDC during his first interview with the Defence, despite having spent hours working on that drawing and having meticulously described every other building in the compound.<sup>470</sup>

142. During his second interview with the Defence, asked what the building he had omitted in the first interview was used for, Selatin KRASNIQI claimed that it “was impossible to inhabit”<sup>471</sup> and that “it was a complete rubble from inside”, but then he was unable to substantiate, or even explain, that statement when confronted with it at trial.<sup>472</sup> Eventually, Selatin KRASNIQI stated that the problem with the building was that it was leaking from the roof.<sup>473</sup> However, he was unable to explain why, amidst a refugee crisis and lack of shelter, the KLA did not use the barn/stable marked with 4A in the picture below to house some of the refugees.<sup>474</sup>

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<sup>466</sup> W01679, 4 October 2021, T.915-916.

<sup>467</sup> W04669, 10 November 2021, T.1471-1472; 082020-082023.

<sup>468</sup> Selatin KRASNIQI, 21 April 2022, T.3940; DSM00018-00035, at DSM00020.

<sup>469</sup> W03593, 21 September 2021, T.512-517; SPOE00128388; 100966-100969; SITF00072231; 061012-061015.

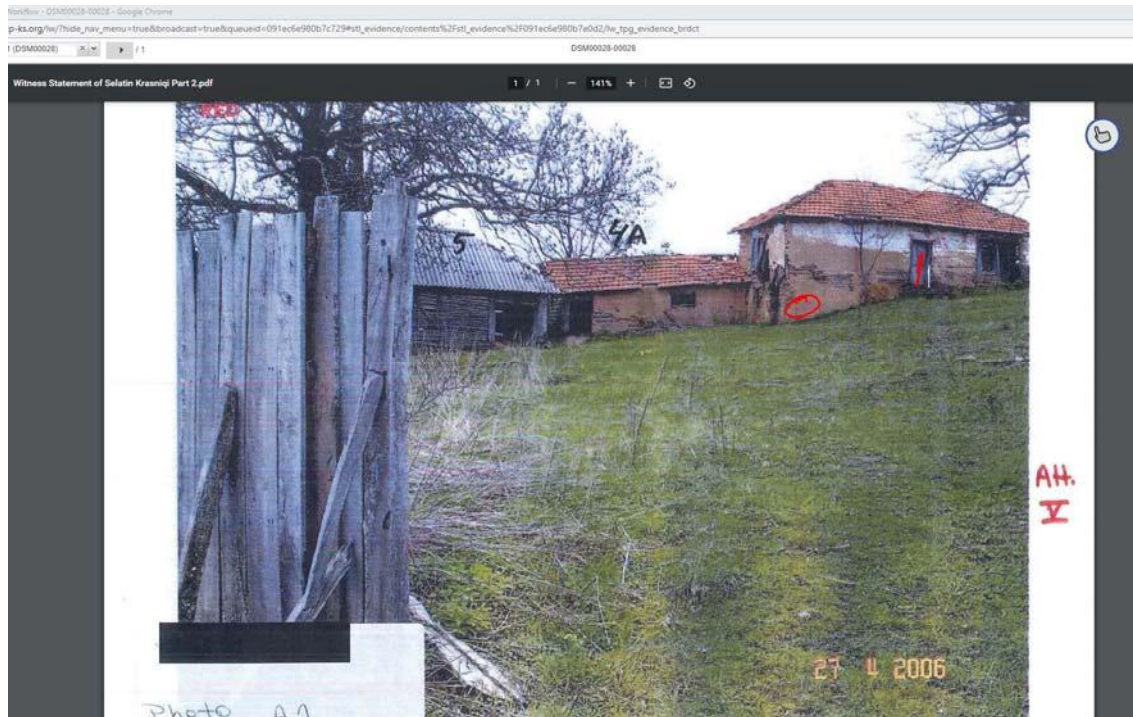
<sup>470</sup> Selatin KRASNIQI, 21 April 2022, T.3930-3938; DSM0001-00017, at p.DSM00017; DSM00018-00035, at p.DSM00035.

<sup>471</sup> Selatin KRASNIQI, 21 April 2022, T.3938-3939; DSM00018-00035, at DSM00020 and DSM00028.

<sup>472</sup> Selatin KRASNIQI, 21 April 2022, T.3940-3943.

<sup>473</sup> Selatin KRASNIQI, 21 April 2022, T.3941.

<sup>474</sup> Selatin KRASNIQI, 21 April 2022, T.3947-3949. Building 5 was made of twigs while building 4A had solid walls.



143. Moreover, Selatin KRASNIQI's testimony that the roof of building 4A was leaking water corroborates the testimony of W03593, who testified that the barn where they were kept was wet with water, which was all over the floor.<sup>475</sup>

*(d) Indication of the same treatment and abuse*

144. The Victims also corroborated one another's physical conditions. W01679 saw signs of mistreatment on W03593, W03594, [REDACTED].<sup>476</sup> W03594 and W03593 witnessed [REDACTED]'s injuries when he returned to the barn and "could hardly stand up".<sup>477</sup>

145. W03593 could hear screams from the others when they were brought upstairs for beatings.<sup>478</sup> When presented with his previous statement, W04669 recalled stating

<sup>475</sup> W03593, 20 September 2021, T.411, 417, 478.

<sup>476</sup> W01679, 4 October 2021, T.891-892, 894, 896.

<sup>477</sup> W03594, 12 October 2021, T.1058; W03593, 20 September 2021, T.444-445.

<sup>478</sup> W03593, 20 September 2021, T.476.

that he heard the others say “ow” as they were hit.<sup>479</sup> W01679 also heard people screaming when they were taken upstairs.<sup>480</sup> W04669 could hear the sound of beatings when [REDACTED] was taken outside the barn.<sup>481</sup>

146. W03593 and W01679 testified about having a black sack/bag placed over their head while being escorted by guards.<sup>482</sup>

147. The witnesses testified to similar tools of abuse. Both W03593 and W01679 were beaten with a baseball bat.<sup>483</sup> W04669 and W01679 both refer to beatings with militia/police batons.<sup>484</sup> W01679 was burned with a hot iron<sup>485</sup> and W03593 witnessed burn marks on [REDACTED] that seemed to be from an iron rod.<sup>486</sup>

148. The witnesses were consistent about the type and nature of the mistreatments and torture received by [REDACTED] and the condition he was in as a result.<sup>487</sup>

*(e) Victims identified similar BIA soldiers present*

149. Apart from the Accused whom both W03593 and W01679 identified as present at the ZDC and participating to their beatings, both W01679 and W03593 identified, as one of their captors and torturers, a person nicknamed ‘Tabuti’. During his first beating, W03593 heard other perpetrators calling one of them ‘Tabut’, or ‘Tabuti’.

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<sup>479</sup> W04669, 10 November 2021, T.1463.

<sup>480</sup> W01679, 4 October 2021, T.890.

<sup>481</sup> W04669, 10 November 2021, T.1427-1429.

<sup>482</sup> W03593, 20 September 2021, T.476; W01679, 4 October 2021, T.867.

<sup>483</sup> W03593, 22 September 2021, T.657; W01679, 4 October 2021, T.875.

<sup>484</sup> W01679, 4 October 2021, T.884; W04669, 10 November 2021, T.1444.

<sup>485</sup> W01679, 5 October 2021, T.985.

<sup>486</sup> W03593, 20 September 2021, T.454.

<sup>487</sup> See Section III.D. *above*.

Whenever somebody was saying: “Hit him!”, ‘Tabuti’ would immediately follow.<sup>488</sup>

W01679 indicated that ‘Tabuti’ was one of the persons who tortured him.<sup>489</sup>

150. Further, at the ZDC, W01679 heard the names of Afrim, ‘Dardan’, ‘Bimi’, and Fatmir.<sup>490</sup> These were all BIA members, as confirmed by a number of witnesses,<sup>491</sup> including the Accused.<sup>492</sup> [REDACTED].<sup>493</sup> [REDACTED].<sup>494</sup> [REDACTED].<sup>495</sup>

*(f) Victims provided the same description of release*

151. W01679, W03593, and W03594 provided almost identical descriptions of their release from the ZDC on or about 18 or 19 April 1999. They all confirmed that W01679, W03594, and [REDACTED] were released together,<sup>496</sup> followed by W03593.<sup>497</sup> They were released by KLA soldiers who, without warning, opened the door and let them go.<sup>498</sup>

152. They all independently indicated that [REDACTED] stayed behind.<sup>499</sup> The soldiers did not say why they were not releasing [REDACTED].<sup>500</sup>

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<sup>488</sup> W03593, 20 September 2021, T.430-431, and 22 September 2021, T.583.

<sup>489</sup> W01679, 4 October 2021, T.887.

<sup>490</sup> W01679, 5 October 2021, T.977, 978, and 1 June 2022, T.4445, 4465.

<sup>491</sup> W04600, 24 September 2021, T.763-764; Brahim MEHMETAJ, 23 March 2022, T.2662, 2705-2706, 2712, 2714-2715; Ahmet ADEMI, 28 March 2022, T.2815.

<sup>492</sup> 069404-TR-ET Part 8, p.9.

<sup>493</sup> [REDACTED].

<sup>494</sup> [REDACTED].

<sup>495</sup> [REDACTED].

<sup>496</sup> W01679, 4 October 2021, T.905; W03593, 20 September 2021, T.484, W03594, 12 October 2021, T.1144.

<sup>497</sup> W01679, 4 October 2021, T.905; W03593, 20 September 2021, T.482, 484.

<sup>498</sup> W01679, 4 October 2021, T.904; W03593, 20 September 2021, T.481-482; W03594, 13 October 2021, T.1144.

<sup>499</sup> W01679, 4 October 2021, T.905-906; W03593, 20 September 2021, T.484-485; 22 September 2021, T.613; W03594, 13 October 2021, T.1145, 1153.

<sup>500</sup> W01679, 4 October 2021, T.905-906; W03593, 20 September 2021, T.485-486.

153. The Victims all testified that they were not given any reason for being released<sup>501</sup> or any release papers.<sup>502</sup> Upon their release, W01679, W03593, and W03594 said they went to [REDACTED]<sup>503</sup> and [REDACTED] about their detention by the KLA in Zllash/Zlaš and that [REDACTED].<sup>504</sup> [REDACTED].<sup>505</sup>

154. In sum, the Victims corroborate one another regarding many significant details in their accounts. To believe that their accounts were fabricated requires believing not just that each of them invented the story that they testified to under oath, but that they somehow collaborated to make up the details of their stories before they were even interviewed during the investigations of this case. There is absolutely no evidence that such a fantastical conspiracy ever occurred.

### 3. Corroboration by other witnesses

#### *(a) Other witnesses who put the Accused at the ZDC*

155. Salih MUSTAFA's presence in Zllash/Zlaš during the Indictment period was also confirmed by various other non-victim witnesses.

156. As noted above, [REDACTED] testified about seeing the Accused at the ZDC when [REDACTED].<sup>506</sup> [REDACTED]'s testimony was consistent with his prior

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<sup>501</sup> W01679, 4 October 2021, T.904; W03593, 20 September 2021, T.485.

<sup>502</sup> W01679, 4 October 2021, T.904; W03593, 20 September 2021, T.485.

<sup>503</sup> W01679, 4 October 2021, T.910-911; W03593, 20 September 2021, T.487-488; 22 September 2021, T.613-615; W03594, 13 October 2021, T.1153; 061016-TR-ET Part 5, p.13.

<sup>504</sup> W01679, 4 October 2021, T.910-911; W03593, 20 September 2021, T.487; 22 September 2021, T.614-615; W03594, 13 October 2021, T.1153, 1156.

<sup>505</sup> W01679, 4 October 2021, T.910; W03593, 20 September 2021, T.487; 22 September 2021, T.614; W03594, 13 October 2021, T.1153.

<sup>506</sup> [REDACTED].



statement, and was strongly corroborated by other witnesses, including [REDACTED], on key points.<sup>507</sup>

157. Sejdi VESELI acknowledged that the Accused was often in Zllash/Zlaš in April 1999.<sup>508</sup> Fatmir SOPI saw the Accused in the village many times, as they had routine, in-person meetings.<sup>509</sup> Once in Zllash/Zlaš, the Accused would usually stay at the ZDC<sup>510</sup> for two to five nights.<sup>511</sup>

158. Selatin KRASNIQI confirmed that he saw the Accused at the ZDC a few days before the offensive in April 1999, when the latter stayed there for one night, and then on the 21 April 1999, when he was dealing with the transportation of the wounded from Zllash/Zlaš to Koliq.<sup>512</sup>

159. There is also evidence that the Accused was at other locations during the Indictment period, such as Prishtinë/Priština, Butovc, Mramor, and Barilevë/Bariljevo. However, all of these locations are accessible from Zllash/Zlaš within less than a day.<sup>513</sup> There is no evidence that the Accused was not in Zllash/Zlaš during critical moments during the Indictment period, or that he could not have committed the crimes charged in the Indictment. Moving throughout the area in April 1999 was at times challenging, because of the occasional presence of Serbian forces, and the topographical characteristics of the terrain. However, the evidence clearly shows that

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<sup>507</sup> Such key points include: the identity of the arrestee, and of [REDACTED], place and month of his arrest, the circumstances of the arrest, the fact that the KLA soldiers were armed, and that [REDACTED] was taken by car driven by [REDACTED], and the make of that car; *see* [REDACTED].

<sup>508</sup> Sejdi VESELI, 25 January 2022, T.2233.

<sup>509</sup> Fatmir SOPI, 19 January 2022, T.2155.

<sup>510</sup> Sejdi VESELI, 25 January 2022, T.2233.

<sup>511</sup> 069404-TR-ET Part 3, p.20 (Salih MUSTAFA); Fatmir SOPI, 19 January 2022, T.2156.

<sup>512</sup> Selatin KRASNIQI, 21 April 2022, T.3922-3923.

<sup>513</sup> Prishtinë/Priština is 22 kilometres away from Zllash/Zlaš (40 mins by car); Butovc 32 kilometres (about 50 mins by car); Mramor 19 kilometres (about 25 mins by car); and Barilevë/Bariljevo 31 kilometres (about 30 mins by car).

the Accused had access to vehicles that he could use, and in fact used, to move around.<sup>514</sup> He was also able to quickly traverse the area on foot.<sup>515</sup>

*(b) Other witnesses confirm the identity of BIA members mentioned by W01679 and W03593*

160. Several witnesses further confirmed the existence of BIA members mentioned by W01679 and W03593, as well as by the Accused.

161. Fatmir SOPI acknowledged that a person nicknamed 'Tabuti' was one of the BIA soldiers,<sup>516</sup> and that his name was Nazif MUSLIU.<sup>517</sup>

162. Sejdi VESELI confirmed that Nazif MUSLIU aka 'Tabuti' was a BIA member, and heard that he was a repeat offender.<sup>518</sup>

163. Brahim MEHMETAJ aka 'Bimi' confirmed membership in BIA of several co-perpetrators named by W01679, including Nazif ('Tabuti'),<sup>519</sup> Ilmi VELA ('Vdekja'),<sup>520</sup> and 'Dardan'.<sup>521</sup> He indicated that Avni and Afrim could also be members of BIA.<sup>522</sup>

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<sup>514</sup> For example, a VW GOLF II, four-wheel drive, mentioned by Bislim NRECI: 5 April 2022, T.3207, 3222-3223, 3274, and by Avni GASHI: 6 April 2022, T.3307, 3359-3362. *See also* Nazmi VERBOVCI, DSM00076-00089, p.8; 069404-TR-ET Part 2, pp.21, 27; 069404-TR-ET Part 7, pp.22-23 (Salih MUSTAFA); Fatmir HUMOLLI, 1 February 2022, T.2328. Considering the Accused's co-operation with Brigade 153, it is likely he could also use their cars, if needed: *see* Fatmir SOPI, 18 January 2022, T.2117. On the presence of cars and other means of transportation in Zllash/Zlaš, *see also*: Teuta HADRI, 11 May 2022, T.4187, and 12 May 2022, T.4293; 069404-TR-ET Part 7, pp.22-23 (Salih MUSTAFA).

<sup>515</sup> The Accused knew the area particularly well, as he routinely delivered supplies to various KLA locations, was engaged in safely escorting KLA officials and the wounded within the zone. *See* 069404-TR-ET Part 2, pp.21, 27; 069404-TR-ET Part 7, pp.22-23.

<sup>516</sup> Fatmir SOPI, 18 January 2022, T.2077, and 19 January 2022, T.2133.

<sup>517</sup> Fatmir SOPI, 19 January 2022, T.2133.

<sup>518</sup> Sejdi VESELI, 25 January 2022, T.2201-2202.

<sup>519</sup> Brahim MEHMETAJ, 23 March 2022, T.2712-2713.

<sup>520</sup> Brahim MEHMETAJ, 23 March 2022, T.2705-2706 (where B.MEHMETAJ also clarified that 'Vdekja' means 'death', and that Ilmi VELA called himself that), 2711.

<sup>521</sup> Brahim MEHMETAJ, 23 March 2022, T.2654, 2715.

<sup>522</sup> Brahim MEHMETAJ, 23 March 2022, T.2654, 2715.

164. Also, Defence witness Muhamet AJETI aka 'Shyti', himself a BIA member, testified that Nazif MUSLIU aka 'Tabuti',<sup>523</sup> and Kujtim QERIMI aka 'Dardan'<sup>524</sup> were both in BIA. He also recognised Kujtim QERIMI aka 'Dardan' on the photo taken in Zllash/Zlaš in one of the buildings located within the ZDC.<sup>525</sup>

165. [REDACTED] confirmed that members of BIA included 'Dardani'<sup>526</sup> and Nazif MUSLIU aka 'Tabuti'.<sup>527</sup> When describing the [REDACTED] also indicated that the person who stood guard at the ZDC, and took [REDACTED] over from him, was a BIA soldier [REDACTED].<sup>528</sup>

166. Defence witness, Muhamet AJETI aka 'Shyti' confirmed that he was a BIA member in 1999,<sup>529</sup> was in Zllash/Zlaš in April 1999<sup>530</sup>, and that people indeed called him 'Shyti'.<sup>531</sup> The Accused called Muhamet AJETI 'Shyti',<sup>532</sup> and had him saved in his phone directory as 'Shyti AAK'.<sup>533</sup>

*(c) Other witnesses who confirmed that the Accused/BIA were in command of the ZDC*

167. Evidence of Salih MUSTAFA's command over the ZDC was further corroborated by Fatmir SOPI and Sejdi VESELI, who both independently testified that

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<sup>523</sup> Muhamet AJETI, 22 April 2022, T.4107.

<sup>524</sup> Muhamet AJETI, 22 April 2022, T.4108-4109, 4111-4112.

<sup>525</sup> Muhamet AJETI, 22 April 2022, T.4111-4112; SPOE00325840-00325840.

<sup>526</sup> [REDACTED].

<sup>527</sup> [REDACTED].

<sup>528</sup> [REDACTED].

<sup>529</sup> Muhamet AJETI, 22 April 2022, T.4086-4087, 4096.

<sup>530</sup> Muhamet AJETI, 22 April 2022, T.4063-4064.

<sup>531</sup> Muhamet AJETI, 22 April 2022, T.4114.

<sup>532</sup> Muhamet AJETI, 22 April 2022, T.4116.

<sup>533</sup> Muhamet AJETI, 22 April 2022, T.4119; SPOE00325853-00325864.

it was Salih MUSTAFA who had the authority over the ZDC.<sup>534</sup> According to Fatmir SOPI, BIA occupied the whole compound, which was locally regarded as their base.<sup>535</sup>

168. W04600 also indicated that Salih MUSTAFA was in control/in charge of the BIA base in Zllash/Zlaš.<sup>536</sup> He added that every KLA soldier knew that the ZDC was a BIA base, and that it was under their control, was “led by BIA”.<sup>537</sup> Referring to the notion of a “BIA base”, the witness clarified that he meant the entire compound.<sup>538</sup>

169. The ZDC was organized as a military establishment,<sup>539</sup> partly fenced,<sup>540</sup> and guarded by BIA soldiers,<sup>541</sup> rotating every eight hours.<sup>542</sup> Those entering had to identify themselves, “like in every military base”.<sup>543</sup>

170. Witnesses also corroborated that Brigade 153 was a distinct unit. Fatmir SOPI testified that he had no knowledge of any soldiers of Brigade 153 who would stay at the ZDC.<sup>544</sup> Sejdi VESELI indicated that there were none, as 153 Brigade and BIA were separate units.<sup>545</sup> W04600 confirmed there were no brigade soldiers stationed there.<sup>546</sup>

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<sup>534</sup> Sejdi VESELI, 25 January 2022, T.2198, 2199; Fatmir SOPI, 18 January 2022, T.2049, 2054, 2089.

<sup>535</sup> Fatmir SOPI, 18 January 2022, T.2049, 2054, 2089.

<sup>536</sup> W04600, 27 September 2021, T.845-846.

<sup>537</sup> W04600, 24 September 2021, T.811-812.

<sup>538</sup> W04600, 24 September 2021, T.814.

<sup>539</sup> Fatmir SOPI, 18 January 2022, T.2049.

<sup>540</sup> Fatmir SOPI, 29 October 2003, 7000593-7000609 RED, p.10; Selatin KRASNIQI, 21 April 2022, T.3889; W04600, 24 September 2021, T.749-750.

<sup>541</sup> W04600, 23 September 2021, T.721, 728-729; Fatmir SOPI, 18 January 2022, T.2049.

<sup>542</sup> Fatmir SOPI, 19 January 2022, T.2132.

<sup>543</sup> Fatmir SOPI, 19 January 2022, T.2130-2132.

<sup>544</sup> Fatmir SOPI, 18 January 2022, T.2049, 2054, 2090.

<sup>545</sup> Sejdi VESELI, 25 January 2022, T.2198, 2263.

<sup>546</sup> W04600, 23 September 2021, T.721, 796.

#### 4. Corroboration by other case records

##### (a) *List of prisoners*<sup>547</sup>

171. The testimony of the Victims is also significantly corroborated by the content of the List of Prisoners<sup>548</sup> provided by the International Criminal Tribunal for the Former Yugoslavia ('ICTY'). The original document in Albanian<sup>549</sup> lists a number of people as having been detained in Zllash/Zlaš in the month of April 1999, including [REDACTED],<sup>550</sup> W03593,<sup>551</sup> [REDACTED],<sup>552</sup> W03594,<sup>553</sup> and W01679.<sup>554</sup> The document indicates the dates of their arrest consistent with those stated by the Victims, including the date of 1 April 1999 for [REDACTED] arrest, and also some other personal details including names of fathers, dates/places of births, as well as the place of residence.

172. The List of Prisoners corroborates other aspects of the evidence heard from witnesses in this case. For instance, it contains what appears to be notes taken during the interrogation of prisoners. Some of these notes concern the interrogation of W03594.<sup>555</sup> W03594 testified that, [REDACTED], he went to [REDACTED] where he had met some people [REDACTED].<sup>556</sup> The witness also stated that when he was taken

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<sup>547</sup> The List of Prisoners was part of a large collection of documents seized by Serb forces from a number of KLA bases around Kosovo, and then handed over to the ICTY who subsequently passed it on to the Special Investigative Task Force ('SITF'), the precursor of the SPO. The Document was part of a binder containing materials pertaining to the territory of the KLA Llap Operational Zone. *See* Prosecution notice of disclosure pursuant to Rule 102(4), KSC-BC-2020-05/F00279, 7 December 2021, Public with confidential Annex.

<sup>548</sup> U001-0310-U001-0325 and U001-0310-U001-0322-ET, pp.1-2.

<sup>549</sup> The last few pages of the document are in Serbian, containing various words that do not appear to be directly related to the list of prisoners or interrogation notes.

<sup>550</sup> [REDACTED].

<sup>551</sup> [REDACTED].

<sup>552</sup> [REDACTED].

<sup>553</sup> [REDACTED].

<sup>554</sup> [REDACTED].

<sup>555</sup> U001-0310-U001-0322-ET, at p.U001-0313.

<sup>556</sup> W03594, 12 October 2021, T.1034-1035.

out of the barn and brought upstairs for interrogation, he was asked about his role [REDACTED].<sup>557</sup> According to the notes in the List of Prisoners, during his interrogation W03594 was asked about [REDACTED], and W03594 answered: "I was [REDACTED]". This entry corroborates W03594's testimony that he was asked about [REDACTED] during his interrogation.

173. Furthermore, the List of Prisoners contains the names of 19 detainees. As set forth in this brief, the SPO has proven that at least seven people were detained at the ZDC. This was the number of people for whose detention the SPO could offer direct, irrefutable evidence to the Panel. It is clear, however, that others were detained at the ZDC as well. For example, W03593 testified that "they were bringing people every night. We have been up to 17 people in that same room."<sup>558</sup>

174. Finally, a page of notes within the document contains the annotation "For Cali",<sup>559</sup> further indicating the connection between the Accused and the detainees.

175. The List of Prisoners thus offers a striking level of corroboration to the evidence presented by the witnesses in this case, and its authenticity is proven by the aggregate details of its very contents, which could have only been accumulated by those who imprisoned the Victims.

*(b) The Accused's Conduct during the Investigation*

176. The conduct of the Accused during the investigation of this case further corroborates and establishes his responsibility for the crimes alleged in the Indictment.

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<sup>557</sup> W03594, 12 October 2021, T.1075.

<sup>558</sup> W03593, 20 September 2021, T.419.

<sup>559</sup> U001-0310-U001-0322-ET, at p.U001-0321.

177. The Accused received a summons to appear before the SPO in the capacity of a suspect [REDACTED].<sup>560</sup> [REDACTED].<sup>561</sup> [REDACTED].<sup>562</sup>

178. The only connection between [REDACTED] and the Accused was [REDACTED] imprisonment and torture at the ZDC in April 1999.<sup>563</sup> This witness never had any contact with the Accused after the war.<sup>564</sup> If [REDACTED] fabricated his evidence, as the Accused now claims, there is no reasonable explanation for [REDACTED]. [REDACTED].

179. Therefore, the Accused's interest in [REDACTED] further corroborates that this witness was a detainee at ZDC. The Accused had no way to know that the SPO had interviewed [REDACTED] at that point, and thus his interest in [REDACTED] could only stem from the fact that he independently knew this witness, and that the latter was a prisoner at ZDC who could give evidence against him.

180. [REDACTED].<sup>565</sup>

181. In addition, there is evidence that the Accused actively tracked investigations of him, including by the SPO, and interfered with those investigations, indicating a consciousness of guilt.

182. [REDACTED], he had a conversation with Salih MUSTAFA.<sup>566</sup> When [REDACTED], the Accused replied: "Even if the court has summonsed you, there will be no case. There will be no trial [...]"<sup>567</sup> and "For as long as I am here, this case will

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<sup>560</sup> [REDACTED].

<sup>561</sup> [REDACTED].

<sup>562</sup> See 061015-TR-ET Part 1 Revised RED3.

<sup>563</sup> See Section III.A.2. *above*.

<sup>564</sup> [REDACTED].

<sup>565</sup> See [REDACTED].

<sup>566</sup> [REDACTED].

<sup>567</sup> [REDACTED].



not go ahead”.<sup>568</sup> In fact, as the Accused predicted, no case was initiated.<sup>569</sup> Salih MUSTAFA was at that time [REDACTED].<sup>570</sup>

183. The Accused also tracked and sought to influence and interfere with the SPO’s investigation. In the course of the investigation, [REDACTED]<sup>571</sup> about developments in the case, including the [REDACTED].<sup>572</sup> [REDACTED].<sup>573</sup>

184. In this conversation, Salih MUSTAFA [REDACTED].<sup>574</sup> [REDACTED].<sup>575</sup> This exchange indicates that the Accused [REDACTED].

185. [REDACTED].<sup>576</sup> [REDACTED].<sup>577</sup>

*(c) Medical records*

186. There are three types of medical records corroborating the accounts of the Victims: documents found in 1999 in Zllash/Zlaš by [REDACTED], and forensic reports concerning [REDACTED].

187. In early July 1999, [REDACTED]<sup>578</sup> at the ZDC, in the upper part (“upstairs”) of the building with a basement.<sup>579</sup> The fact that those documents were found at the ZDC confirms that [REDACTED] was indeed detained in the compound, as testified to by W01679, W04669, W03593, and W03594.

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<sup>568</sup> [REDACTED]; 072914-TR-ET, Part 3, p.26 (SPO statement).

<sup>569</sup> [REDACTED].

<sup>570</sup> 069404-TR-ET Part 8, p.30 (Salih MUSTAFA).

<sup>571</sup> [REDACTED].

<sup>572</sup> [REDACTED].

<sup>573</sup> [REDACTED].

<sup>574</sup> See [REDACTED].

<sup>575</sup> [REDACTED].

<sup>576</sup> [REDACTED].

<sup>577</sup> [REDACTED].

<sup>578</sup> 076276-076281-ET RED3 (076276-076281 RED3).

<sup>579</sup> See [REDACTED]. See also SPOE00128189-00128201 RED2, p.8.

188. [REDACTED].<sup>580</sup>

189. Finally, the evidence of [REDACTED], particularly with regard to the injuries sustained, is corroborated by their respective forensic medical examinations.<sup>581</sup>

190. The forensic medical examination [REDACTED] revealed symptoms of PTSD and despondency that “could be related to the alleged violence inflicted on the subject during the period in the shed”.<sup>582</sup> The PTSD symptoms started after his release “from the shed”.<sup>583</sup> His physical examination revealed [REDACTED].<sup>584</sup> With regard to the overall assessment of [REDACTED], the forensic expert concluded that the totality of the medical symptoms was “typical of the alleged violence in the shed”, that the physical examination supported the psychological examination, and that the totality of the medical symptoms was “typical of the alleged events recounted by the subject”.<sup>585</sup>

191. The forensic medical examination of [REDACTED] revealed symptoms of PTSD and depression.<sup>586</sup> His physical examination confirmed the presence of [REDACTED].<sup>587</sup> Several other physical symptoms consistent with the alleged violence and attributable to “the acts of torture” were also observed, including [REDACTED].<sup>588</sup> [REDACTED].<sup>589</sup> The forensic expert concluded that all the medical

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<sup>580</sup> [REDACTED].

<sup>581</sup> Annex 1 and 2 to Victim’s Counsel’s Submission of medical reports pertaining to Victims 08/05 and 09/05, Forensic medical examination, KSC-BC-2020-05/F00417/A01 (‘Forensic Medical Examination on [REDACTED]’) and KSC-BC-2020-05/F00417/A02 (‘Forensic Medical Examination on [REDACTED]’), [REDACTED].

<sup>582</sup> Forensic Medical Examination on [REDACTED], p.18. *See also* pp.1, 16, 20.

<sup>583</sup> Forensic Medical Examination on [REDACTED], p.16.

<sup>584</sup> Forensic Medical Examination on [REDACTED], p.18; *see also* p.21.

<sup>585</sup> Forensic Medical Examination on [REDACTED], pp.19-21.

<sup>586</sup> Forensic Medical Examination on [REDACTED], pp.18, 24-25.

<sup>587</sup> Forensic Medical Examination on [REDACTED], pp.12-13, 20-25.

<sup>588</sup> Forensic Medical Examination on [REDACTED], pp.22-25.

<sup>589</sup> Forensic Medical Examination on [REDACTED], pp.1-2, 25.

findings corresponded to the alleged experiences of violence in 1999, and that the totality of the medical symptoms “are assessed as typical of the story recounted by the subject”.<sup>590</sup>

## F. DEFENCES

192. None of the defences put forward by the Defence cast doubt on the Accused’s responsibility for the crimes charged in the Indictment.

### 1. Alibi

193. In order to convict the Accused of the charges in the Indictment, it is not necessary to find that he was at the ZDC at all times during the Indictment period. The evidence establishes beyond reasonable doubt that BIA was based at and controlled the ZDC, that the Accused was in charge of BIA, and that he was present at the ZDC at specific times, including: i) on 1 April 1999, when [REDACTED] was delivered to BIA; ii) on at least two occasions during the first week of April 1999, when the Accused interrogated and mistreated W01679 and W03593.

194. Evidence suggesting that the Accused may have at times been at other locations during the Indictment period, including Prishtinë/Priština, Barilevë/Bariljevo, Butovc, Rimanishtë/Rimanište, or Bellopoje, all just a few hours traveling distance from Zllash/Zlaš,<sup>591</sup> provide no defence to the charges in the Indictment.

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<sup>590</sup> Forensic Medical Examination on [REDACTED], p.25.

<sup>591</sup> See para.159 above.

195. To support the defence of alibi, several witnesses, mostly former members of the KLA,<sup>592</sup> including BIA,<sup>593</sup> were called to testify, some claiming to have had interactions with the Accused in the first days of April 1999.<sup>594</sup> However, as demonstrated below, none of these witnesses provide a complete alibi for the Accused, most of them showed strong bias towards him<sup>595</sup> and against the Specialist Chambers,<sup>596</sup> and two were proven to have agreed on their respective testimonies.<sup>597</sup>

*(a) Presence of the Accused in Priština*

*(i) Fatmir HUMOLLI*

196. Fatmir HUMOLLI claimed being with Salih MUSTAFA in Prishtinë/Priština for one day around 1 April 1999.<sup>598</sup> According to this witness, they both left the city on 1 April 1999 early in the morning.<sup>599</sup> They then reached the village of Barilevë/Bariljevo where they parted ways at some point in the afternoon.<sup>600</sup>

197. Fatmir HUMOLLI's testimony showed that he was uncertain about the dates of the aforementioned events.<sup>601</sup> That uncertainty was clearly evidenced when he indicated different dates during his in-court testimony,<sup>602</sup> as well as in the pre-trial

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<sup>592</sup> Bislim NRECI, Nazmi VRBOVCI, Fatmir HUMOLLI, Kapllan PARDUZI, Nuredin IBISHI, Sheqir RRAHIMI, and Musli HALIMI.

<sup>593</sup> Jakup ISMAILI, Hazir BOROVC, Gani SOPI, Selatin KRASNIQI, and Muhamet AJETI.

<sup>594</sup> Fatmir HUMOLLI, Ahmet ADEMI, Nazmi VERBOVCI, Gani SOPI, Hazir BOROVC.

<sup>595</sup> Fatmir HUMOLLI, Ahmet ADEMI, Jakup ISMAILI, Hazir BOROVC, Gani SOPI, Bislim NRECI, Nazmi VRBOVCI, Kapllan PARDUZI, and Selatin KRASNIQI.

<sup>596</sup> Fatmir HUMOLLI and Kapllan PARDUZI.

<sup>597</sup> Bislim NRECI and Nazmi VRBOVCI.

<sup>598</sup> Fatmir HUMOLLI, 1 February 2022, T.2306.

<sup>599</sup> Fatmir HUMOLLI, 1 February 2022, T.2306, 2308.

<sup>600</sup> Fatmir HUMOLLI, 1 February 2022, T.2310-2311.

<sup>601</sup> The witness visibly struggled especially with indicating the date of entering Prishtinë/Priština together with the Accused.

<sup>602</sup> In his in-court testimony the witness claimed that it was "at the end of March 1999. Probably 30 March or early morning of 31 March" (Fatmir HUMOLLI, 1 February 2022, T.2304) and "I remember that it was the beginning of April or the end of March." (Fatmir HUMOLLI, 1 February 2022, T.2335).

statements he gave to the SPO<sup>603</sup> and the Defence.<sup>604</sup> By his own admission, this witness was not able to recall the exact dates due to the passage of time.<sup>605</sup> He also admitted that during the war he prepared himself to “forget those events”.<sup>606</sup> Asked about other meetings with Salih MUSTAFA in January and February 1999, he was not able to provide any concrete dates whatsoever.<sup>607</sup> In view of the above, Fatmir HUMOLLI’s evidence did not establish that the Accused was not in Zllash/Zlaš on 1 April 1999.

198. Moreover, the main signpost for the timing of Fatmir HUMOLLI’s interaction with the Accused was the exodus of the population to Macedonia passing through Prishtinë/Priština that, according to this witness, happened on 1 April 1999.<sup>608</sup> However, various documents tendered at trial<sup>609</sup> and admitted by the Panel,<sup>610</sup> including reports of international organisations,<sup>611</sup> media outlets,<sup>612</sup> and a book,<sup>613</sup> show that refugees began leaving Prishtinë/Priština shortly after the NATO bombing campaign started on 24 March 1999, and their exodus continued at least until 6 April

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<sup>603</sup> To the SPO, the witness pointed out that “the dates could be either 31 March or 1 April. I am not sure about them” (100954-TR-ET Part 2, 4 June 2021, p.28).

<sup>604</sup> In his Defence statement, the witness indicated that he entered the city “sometime on 28 March 1999” (DSM00119-00133, p.5.)

<sup>605</sup> Fatmir HUMOLLI, 1 February 2022, T.2305, 2335, 2348-2349.

<sup>606</sup> Fatmir HUMOLLI, 1 February 2022, T.2346-2347; 100954-TR-ET Part 2, pp.24-25 (SPO interview).

<sup>607</sup> Fatmir HUMOLLI, 1 February 2022, T.2345-2346.

<sup>608</sup> Fatmir HUMOLLI, 1 February 2022, T.2306-2307, 2309, 2336.

<sup>609</sup> Prosecution Request for the Admission of Documentary Evidence in Rebuttal, KSC-BC-2020-05/F00426, 1 June 2022, public, with confidential Annex 1

<sup>610</sup> Public Readacted Version of Decision on items used with Witnesses WDSM 600 to 1100, 1300 to 1700 and [REDACTED] during their in-court testimonies, on the Specialist Prosecutor’s request for the admission of documentary evidence in rebuttal, and on the Defence request to present evidence in rejoinder, with one confidential annex, KSC-BC-2020-05/F00436/RED, 20 June 2022, para.26(d).

<sup>611</sup> See *supra* Section III.G. below for reference to reports published by: Organization for Security and Cooperation in Europe Kosovo Verification Mission (‘OSCE’), United Nations High Commissioner for Human Rights (‘UNHCR’), Human Rights Watch (‘HRW’), and European Commission Monitoring Mission (‘ECMM’).

<sup>612</sup> Associated Press (‘AP’); State Informative Agency ‘Kosova Press’, Radio Free Kosovo (‘RFK’).

<sup>613</sup> “The Kosovo Years, 1998-1999”/“Vitet e Kosovës, 1998-1999”, by Blërim SHALA, published by Zëri in Prishtinë/Priština in 2003, SPOE00058041-00058445.

1999.<sup>614</sup> Therefore, the alleged meeting with the Accused could have occurred at any time between these dates and not, as Fatmir HUMOLLI seemed to claim, only on 31 March/1 April 1999.<sup>615</sup>

199. Fatmir HUMOLLI's evidence, and in particular his attempt to focus on 1 April 1999 in his in-court testimony, must be considered in light of his evident bias in favour of the accused and against the court. The witness considers himself a friend of Salih MUSTAFA, as they were long-term comrades in the LKCK and KLA.<sup>616</sup> He also published Facebook posts in support of the Accused.<sup>617</sup> Fatmir HUMOLLI also displayed a strong, negative bias towards the Specialist Chambers.<sup>618</sup>

(ii) Ahmet ADEMI

200. Defence witness Ahmet ADEMI was called to testify about meeting the Accused and Fatmir HUMOLLI in Prishtinë/Priština for one day at the end of March/beginning of April 1999.<sup>619</sup> ADEMI's evidence does not provide an alibi for the

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<sup>614</sup> OSCE Activity Report, 29 of March 1999, SPOE00061256-00061258, p.SPOE00061257; OSCE Activity Report of 1 April 1999, covering the period of 31 March 1999, SPOE00061259-00061261, p.SPOE00061260; OSCE Activity Report of 6 April 1999, covering the Period of 2-5 April 1999, SPOE00061262-00061265, pp.SPOE00061263, SPOE00061264; "The Kosovo Years, 1998-1999"/"Vitet e Kosovës, 1998-1999", by Blerim SHALA, published by Zëri in Prishtinë/Priština in 2003, SPOE00058374-SPOE00058374-ET, UNHCR, Kosovo Crisis Update Report of 30 March 1999, 106475-106478; UNHCR, Kosovo Crisis Update Report of 2 April 1999, 106471-106474; UNHCR Albanian Relief Web Situation Report Kosovo Crisis Update, of 2 April 1999, 106465-106470, pp.106465-106466; State Informative Agency "Kosovapress": The War Archive - Second volume (1st of March- 10th of April 1999), Prishtinë/Priština, 2016, SPOE00054089-00054655, p.SPOE00054543.

<sup>615</sup> Also witness Fatmir SOPI indicated that the population started leaving Prishtinë/Priština in big numbers after the commencement of the NATO strikes, moving in large numbers to the Gollak region to seek shelter: Fatmir SOPI, 18 January 2022, T.2093, and 19 January 2022, T.2146. Sejdi VESELI claimed that some population movements in the area had started even before the NATO strikes: Sejdi VESELI, 25 January 2022, T.2210.

<sup>616</sup> Fatmir HUMOLLI, 2 February 2022, T.2394-2395; 100954-TR-ET, Part 2, pp.21-22 (SPO interview).

<sup>617</sup> Fatmir HUMOLLI, 2 February 2022, T.2396-2398.

<sup>618</sup> Fatmir HUMOLLI, 2 February 2022, T. 2384, 2387, 2389, 2394, 104790, 104793, 104803-104804.

<sup>619</sup> Ahmet ADEMI, 28 March 2022, T.2809-2810, 2811-2812.

Accused for 1 April 1999, and further underscores the uncertainty of HUMOLLI's evidence as well.

201. Ahmet ADEMI was not sure about the date of the meeting with the Accused, indicating that it occurred at the "end of March, beginning of April. I don't know whether it was the 30<sup>th</sup> of March or 2,3, 4 April. I don't remember. So it is between the 30<sup>th</sup> of March and 2,3,4 April. All I know it was end of March, beginning of April."<sup>620</sup>

202. Referring to the timeframe of a particular incident concerning his family, that immediately preceded the alleged encounter with the Accused, the witness admitted that due to the lapse of time "it is possible that I don't recall very well what happened. (...) I am not completely sure. I have forgotten."<sup>621</sup>

203. Further, ADEMI's evidence will need to be assessed in light of his reluctance to admit his membership in the KLA<sup>622</sup> as well as his expressions of support for the Accused.<sup>623</sup>

*(b) Presence of the Accused in BARILEVË/BARILJEVO*

*(i) Nazmi VRBOVCI*

204. Nazmi VRBOVCI was yet another witness called by the Defence to support the claim of alibi for the first days of April 1999. This KLA member<sup>624</sup> was providing

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<sup>620</sup> Ahmet ADEMI, 28 March 2022, T.2810.

<sup>621</sup> Ahmet ADEMI, 28 March 2022, T.2802-2803.

<sup>622</sup> Ahmet ADEMI, 28 March 2022, T.2824, 2829-2830, 2839, 2842; 105296-105317, 105296-105296-ET (KLA Veterans List for Llap Operational Zone, 151 Brigade "Zahir Pajaziti").

<sup>623</sup> Ahmet ADEMI, 28 March 2022, T.2839, 2845, 2847-2850; SPOE00325261-SPOE00325261-ET (Facebook post from profile of Brahim MEHMETAJ BIMI, 18 November 2019); SPOE00325274-SPOE00325274-ET (Facebook comment by Ahmet ADEMI); SPOE00325284-SPOE00325284-ET (Facebook post from profile of Brahim MEHMETAJ BIMI, 18 December 2019); SPOE00325318-SPOE00325318-ET (Facebook comment by Ahmet ADEMI); 105322-105322 (Facebook post from profile of Brahim MEHMETAJ BIMI (re-posted by Ahmet ADEMI), 20 February 2020).

<sup>624</sup> Nazmi VRBOVCI, 6 April 2022, T.3381-3382.



both the KLA and the civilian population with a safe stopping point in Barilevë/Bariljevo as they travelled to and from the Llap OZ.<sup>625</sup> When passing through the area, KLA soldiers, including Salih MUSTAFA, allegedly used his house in Barilevë/Bariljevo to rest.<sup>626</sup> The account of this witness does not conflict with the Prosecution case.

205. In his in-court testimony, Nazmi VRBOVCI testified that he saw the Accused in Barilevë/Bariljevo on 1 or 2 April 1999, and then on 20 or 21 April of the same year.<sup>627</sup> During his first visit, Salih MUSTAFA allegedly stayed in the village from one to three hours.<sup>628</sup> Bearing in mind this short timespan when Nazmi VRBOVCI claims he saw the Accused, his evidence does not establish that Salih MUSTAFA was not at the ZDC when [REDACTED] was delivered to BIA.<sup>629</sup>

206. The evidence of this witness demonstrably changed over time, and he was not able to convincingly explain that change. In his Defence statement, he never mentioned the 1<sup>st</sup> of April, claiming instead that he met the Accused either on 2 or 3 April 1999.<sup>630</sup> Asked about this discrepancy, Nazmi VRBOVCI said: "Then I wasn't under oath. Today I speak under oath. I stand by the 1<sup>st</sup> and the 2<sup>nd</sup> of April. Under oath."<sup>631</sup> When asked in court about the reason why he suddenly remembered the dates with such precision despite the lapse of 23 years, Nazmi VRBOVCI vaguely

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<sup>625</sup> Nazmi VRBOVCI, 6 April 2022, T.3286-3288, 3292, 3295-3296, 3399; Bislim NRECI, 5 April 2022, T.3184-3186, 3201-3202, 3255.

<sup>626</sup> Nazmi VRBOVCI, 6 April 2022, T.3297-3298.

<sup>627</sup> Nazmi VRBOVCI, 6 April 2022, T.3305, T.3328.

<sup>628</sup> Nazmi VRBOVCI, 6 April 2022, T.3297-3298, 3328, 3353.

<sup>629</sup> Barilevë/Bariljevo is about 31 kilometres away from Zllash/Zlaš. This distance was easily traversable, especially bearing in mind the Accused's access to the vehicle of Jusuf SHALAKU. *See* Nazmi VRBOVCI, 6 April 2022, T.3307, 3359-3362; DSM00076-00089, p.8 (Defence statement of Nazmi VRBOVCI).

<sup>630</sup> Nazmi VRBOVCI, 6 April 2022, T.3330, 3335; DSM00076-00089, p.9 (Defence statement of Nazmi VRBOVCI).

<sup>631</sup> Nazmi VRBOVCI, 6 April 2022, T.3353.

indicated that: “A man can remember something and cannot remember something else. But I do remember these dates”.<sup>632</sup> He then hinted that the day in question was April Fool’s Day,<sup>633</sup> before acknowledging that “there wasn’t any specific occurrence on that day. Before 15 April and March—March, there wasn’t any event that one can remember.”<sup>634</sup>

207. Furthermore, the account of Nazmi VRBOVCI was not given independently. This witness eventually admitted discussing the dates of his encounters with Salih MUSTAFA with his brother, Daut VRBOVCI, as well as with Ismajl NRECAJ<sup>635</sup> and Defence witness Bislim NRECI.<sup>636</sup> They all suggested to the witness the 1<sup>st</sup> and 2<sup>nd</sup> of April 1999 as the days of the meetings with the Accused.<sup>637</sup> These discussions took place shortly after Nazmi VRBOVCI had given his Defence statement.<sup>638</sup> Asked why he consulted those men, the witness indicated: “I don’t remember things very well and I was afraid that I might have given the incorrect dates. You don’t – you remember the events but the dates – it’s true that we didn’t have television then. (...) You would easily mix up the days of the week, let alone dates.”<sup>639</sup> By the witness’s own admission, Daut VERBOVCI, Ismajl NRECAJ, and Bislim NRECI - who apparently suggested the revised dates to VRBOVCI - were not even present in Barilevë/Bariljevo when the Accused allegedly went there at the beginning of April 1999.<sup>640</sup>

208. In relation to Bislim NRECI, Nazmi VRBOVCI specifically indicated that he discussed with him not only the date when he met the Accused,<sup>641</sup> but also other

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<sup>632</sup> Nazmi VRBOVCI, 6 April 2022, T.3305.

<sup>633</sup> Nazmi VRBOVCI, 6 April 2022, T.3329.

<sup>634</sup> Nazmi VRBOVCI, 6 April 2022, T.3340, 3343, 3353.

<sup>635</sup> Nazmi VRBOVCI, 6 April 2022, T.3335-3336, 3375.

<sup>636</sup> Nazmi VRBOVCI, 6 April 2022, T.3373, 3375.

<sup>637</sup> Nazmi VRBOVCI, 6 April 2022, T.3335-3336, 3343, 3375.

<sup>638</sup> Nazmi VRBOVCI, 6 April 2022, T.3336, 3373-3374.

<sup>639</sup> Nazmi VRBOVCI, 6 April 2022, T.3336-3337.

<sup>640</sup> Nazmi VRBOVCI, 6 April 2022, T.3337.

<sup>641</sup> Nazmi VRBOVCI, 6 April 2022, T.3373-3375.

circumstances surrounding the events that took place in Barilevë/Bariljevo in April 1999.<sup>642</sup> Nazmi VRBOVCI admitted knowing Bislim NRECI since childhood,<sup>643</sup> and that they meet “very often as friends, as brothers, as neighbours.”<sup>644</sup>

(ii) Bislim NRECI

209. The account of Bislim NRECI is also not in contradiction with the Prosecution case. He testified about meeting Salih MUSTAFA in Barilevë/Bariljevo twice: first in February/March, and alternatively in mid-April, “or a bit further from mid-April” 1999,<sup>645</sup> or between 12 and 22 April 1999.<sup>646</sup> He confirmed that the Accused arrived by car together with Jusuf SHALAKU,<sup>647</sup> and that from Barilevë/Bariljevo they both drove to Zllash/Zlaš, as Salih MUSTAFA received a call on a satellite phone, “because there were many wounded persons in their area, so he left towards there in a hurry.”<sup>648</sup>

210. The witness was uncertain about the date of his encounter with the Accused.<sup>649</sup> Moreover, whenever it might have occurred in mid-April 1999, the alleged meeting is not inconsistent with the charges in the Indictment or the proof of those charges offered by the Prosecution.

211. In assessing this witness’s evidence, furthermore, the Panel will want to consider his bias<sup>650</sup> and his interactions with other defence witnesses.<sup>651</sup> Regarding the

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<sup>642</sup> Nazmi VRBOVCI, 6 April 2022, T.3376-3377.

<sup>643</sup> Nazmi VRBOVCI, 6 April 2022, T.3325.

<sup>644</sup> Nazmi VRBOVCI, 6 April 2022, T.3378.

<sup>645</sup> Bislim NRECI, 5 April 2022, T.3214, 3234.

<sup>646</sup> Bislim NRECI, 5 April 2022, T.3234.

<sup>647</sup> Bislim NRECI, 5 April 2022, T.3207, 3222-3223, 3234.

<sup>648</sup> Bislim NRECI, 5 April 2022, T.3216-3218, 3234-3235; DSM00056-00067, p.6 (Defence statement of Bislim NRECI).

<sup>649</sup> Bislim NRECI, 5 April 2022, T.3214-3216, 3231-3233, 3236-3237.

<sup>650</sup> Bislim NRECI, 5 April 2022, T.3251; SPOE00325341-SPOE00325341-ET (Facebook post from Profile in the name of Brahim MEHMETAJ aka ‘Bimi’, 26 September 2020); SPOE00325348-SPOE00325348-ET (Facebook the comment of Bislim NRECI).

<sup>651</sup> Nazmi VRBOVCI, 6 April 2022, T. 3335-3336, 3373-3377.

latter aspect, and in particular in light of the collusion with Nazim VBROVCI discussed above, it bears recalling that Bislim NRECI was examined in court before Nazmi VRBOVCI, and therefore the former was not questioned about the influence he exerted over VRBOVCI's testimony.

*(c) Presence of the Accused in BUTOVCI*

212. Gani SOPI, Hazir BOROVCI, and Jakup ISMAILI were all called by the Defence to confirm the Accused's alibi for a few days at the beginning of April 1999. According to these witnesses, Salih MUSTAFA allegedly spent those days in the village of lower Butovc, located around 13 kilometres from Zllash/Zlaš.<sup>652</sup> All three witnesses belonged to the same KLA unit in Butovc, that at some point formed part of BIA.<sup>653</sup> They were also friends during the war and have remained friends today.<sup>654</sup>

*(i) Gani SOPI*

213. According to Gani SOPI, Salih MUSTAFA came to Butovc to meet the witness's brother, Mustaf SOPI, to assist the civilian population,<sup>655</sup> and to monitor the movements of the Serbian Police and Army, who were stationed nearby.<sup>656</sup>

214. Asked about dates, Gani SOPI initially testified that he saw the Accused "at the beginning of April, in the first weeks of April".<sup>657</sup> He subsequently clarified that

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<sup>652</sup> Gani SOPI, 4 April 2022, T.3081-3082.

<sup>653</sup> Gani SOPI, 4 April 2022, T.3137-3142, 3168; Jakup ISMAILI, 29 March 2022, T.2907; Hazir BOROVCI, 30 March 2022, T.2985-2986, 2990-2991; SPOE00325565-00325565 (Facebook post (photograph) from Profile in the name of Hazir BOROVCI, 9 October 2013).

<sup>654</sup> Gani SOPI, 4 April 2022, T.3149-3151, 3153-3155; Hazir BOROVCI, 30 March 2022, T. 2988; SPOE00325566-00325566-ET (Facebook post from profile of Hazir BOROVCI, 9 October 2013); SPOE00325583-00325583 (Facebook post from profile of Gani SOPI, 23 November 2019).

<sup>655</sup> Gani SOPI, 4 April 2022, T.3090.

<sup>656</sup> Gani SOPI, 4 April 2022, T.3091-3093.

<sup>657</sup> Gani SOPI, 4 April 2022, T.3089.

the Accused arrived in the village on 30 or 31 March 1999,<sup>658</sup> and stayed there during the first and second week of April 1999.<sup>659</sup>

215. The main signpost for the timing of Gani SOPI's first interaction with the Accused was the Muslim celebration of Eid al-Adha, or 'Small Bajram', that, according to this witness, commenced on 31 March 1999.<sup>660</sup> In fact, the date of Eid al-Adha was 28 March 1999.<sup>661</sup> Gani SOPI conceded that he could not in fact remember on which day of the 'Small Bajram' the Accused went to Butovc, speculating that it could be the third, fourth or fifth day.<sup>662</sup> He added that he would rather not refer to dates "because of the time that has passed and I might have forgotten after 23 years."<sup>663</sup>

216. In his interview with the SPO, Gani SOPI gave a different account concerning the dates of the Accused's time in Butovc, claiming that it was "towards the end of the first week of April",<sup>664</sup> and that he stayed there "sometime until the end of the second week".<sup>665</sup> When confronted with his SPO statement, Gani SOPI conceded that "it was around that time."<sup>666</sup>

217. The Accused's possible presence in Butovc at some point in early April 1999 is not inconsistent with the proof offered by the Prosecution. Moreover, he could move between Butovc and Zilash/Zlaš on a daily basis. By the witness's admission, the

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<sup>658</sup> Gani SOPI, 4 April 2022, T.3096.

<sup>659</sup> Gani SOPI, 4 April 2022, T.3090.

<sup>660</sup> Gani SOPI, 4 April 2022, T.3096, 3098-3099.

<sup>661</sup> Gani SOPI, 4 April 2022, T.3115-3116; SPOE00325819-00325819 (Table with Eid Al-Adha dates); SPOE00325820-00325820, SPOE00325821-00325821.

<sup>662</sup> Gani SOPI, 4 April 2022, T.3166.

<sup>663</sup> Gani SOPI, 4 April 2022, T.3090, 3114-3115. The witness admitted also having memory problems, which he linked to his severe mistreatment he was subjected to in the past. *See* Gani SOPI, 4 April 2022, T.3122-3124; 104551-TR-ET Part 1, p.17.

<sup>664</sup> Gani SOPI, 4 April 2022, T.3117, 104551-TR-ET Part 1, p.31 (Gani SOPI SPO interview).

<sup>665</sup> Gani SOPI, 4 April 2022, T.3119; 104551-TR-ET Part 1, p.31 (Gani SOPI SPO interview).

<sup>666</sup> Gani SOPI, 4 April 2022, T.3120.

distance between lower Butovc and Zllash/Zlaš is around 13 kilometres,<sup>667</sup> which could be covered in less than two hours.<sup>668</sup>

218. In assessing SOPI's evidence, the Panel will also want to consider the witness's bias,<sup>669</sup> as well as his admission that he had been following the trial,<sup>670</sup> allowing him to tailor his testimony in an attempt to assist the Accused with his alibi defence.

(ii) Jakup ISMAILI

219. Jakup ISMAILI admitted meeting Salih MUSTAFA in Butovc first at the end of March 1999: "I cannot give you a specific date or hour, but it's from the 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup>, around these dates."<sup>671</sup> Subsequently he saw him around 7 or 8 April 1999,<sup>672</sup> and then approximately on 20 April 1999, when they both attempted to enter Prishtinë/Priština.<sup>673</sup>

220. The dates ISMAILI says he saw the Accused are not inconsistent with the charges in the Indictment or the Prosecution's proof. Further, this witness admitted that it was impossible for him to remember precise dates, and indicated that he had "problems, issues with my memory."<sup>674</sup> The witness invoked the issue of his poor memory several times during his testimony.<sup>675</sup>

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<sup>667</sup> Gani SOPI, 4 April 2022, T.3081-3082.

<sup>668</sup> Gani SOPI, 4 April 2022, T. 3082.

<sup>669</sup> Gani SOPI, 4 April 2022, T.3078, 3128, 3130-3131; 104551-TR-ET Part 1, 12 January 2022, pp.21-22.

<sup>670</sup> Gani SOPI, 4 April 2022, T.3170.

<sup>671</sup> Jakup ISMAJLI, 29 March 2022, T.2881, 2888, 2911, 2913.

<sup>672</sup> Jakup ISMAJLI, 29 March 2022, T.2900, 2912-2913.

<sup>673</sup> Jakup ISMAJLI, 29 March 2022, T.2912-2913.

<sup>674</sup> Jakup ISMAJLI, 29 March 2022, T.2888.

<sup>675</sup> Jakup ISMAJLI, 29 March 2022, T.2888, 2912, 2917, 2923.

221. Jakup ISMAILI acknowledged being a good friend of Salih MUSTAFA's, with whom he had stayed in frequent contact both before and after his arrest.<sup>676</sup>

(iii) Hazir BOROVC

222. When asked about meeting Salih MUSTAFA in Butovc in 1999, Hazir BOROVC testified: "I think it was the 2<sup>nd</sup> or the 3<sup>rd</sup>."<sup>677</sup> This witness indicated that he remembered these days as they coincided with 'Small Bajram', or Eid al-Adha, that in 1999 commenced, according to him, on 31 March.<sup>678</sup> When confronted with the moving nature of this religious holiday, and the fact that it falls on a different date each year, the witness conceded that he was not good at remembering dates of Muslim holidays.<sup>679</sup> He claimed that being uncertain about the dates, he consulted the Muslim priest who allegedly told him that in 1999 Eid al-Adha was on 31 March 1999.<sup>680</sup> The fact, however, is that this holiday commenced on 28 March.<sup>681</sup>

223. After that first encounter, Hazir BOROVC said that he met the Accused "maybe three, four, five times. I can't be precise",<sup>682</sup> and that such meetings lasted "until the 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> of April."<sup>683</sup> He clarified that he did not see the Accused every day as it was impossible: he was spending time at the observation post, and otherwise was staying in a place distant from where the Accused was accommodated.<sup>684</sup>

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<sup>676</sup> Jakup ISMAJLI, 29 March 2022, T.2923-2925, 2930, 2934. *See also* SPOE00325590-00325606 (Cellbrite Reports of instant messages between Cali (+38344175132) and Jakup ISMAILI (+38343910720)).

<sup>677</sup> Hazir BOROVC, 30 March 2022, T.2963, 3038, 3062.

<sup>678</sup> Hazir BOROVC, 30 March 2022, T.2963-2964, 3026-3030, 31 March 2021, T.3053, 3059.

<sup>679</sup> Hazir BOROVC, 30 March 2022, T.3027.

<sup>680</sup> Hazir BOROVC, 30 March 2022, T.3030.

<sup>681</sup> SPOE00325821-00325821 (Table with Eid Al-Adha dates).

<sup>682</sup> Hazir BOROVC, 30 March 2022, T.2964, 3039.

<sup>683</sup> Hazir BOROVC, 30 March 2022, T.2966.

<sup>684</sup> Hazir BOROVC, 30 March 2022, T.3039, 3044, 3046, 3062-3063.



224. This witness admitted that in April 1999, the humanitarian situation in Butovc was chaotic and severe, and that he was busy standing guard duty in the village and securing aid for the population.<sup>685</sup> He was also moving around in that period of time.<sup>686</sup>

225. In evaluating the testimony of Hazir BOROVCI, the Panel will also want to consider the witness's bias in favor of the Accused.<sup>687</sup>

*(d) Presence of the Accused in RIMANISHTË/BELLOPOJE*

*(i) Kapllan PARDUZI*

226. Kapllan PARDUZI, wounded in the battle of Surdull on 10 April 1999,<sup>688</sup> attempted to provide the Accused with an alibi for an unspecified day between 10 and 13 April of that year, claiming that the latter escorted him and Nuredin IBISHI to Rimanishtë or Bellopoje, on their way to the KLA hospital in Potok.<sup>689</sup>

227. The evidence of PARDUZI does not undermine the proof offered by the Prosecution. Moreover, his ability to register events during that trip was critically impaired, as he was severely wounded.<sup>690</sup> Due to his sustained wounds, he was in pain,<sup>691</sup> was continually bleeding,<sup>692</sup> was constantly going in and out of consciousness,<sup>693</sup> and was receiving sedatives and IV drips along the way.<sup>694</sup> Sheqir

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<sup>685</sup> Hazir BOROVCI, 30 March 2022, T.3034-3035.

<sup>686</sup> Hazir BOROVCI, 30 March 2022, T.3036-3037.

<sup>687</sup> Hazir BOROVCI, 30 March 2022, T.3018, 3020-3021, 31 March 2021, T.3054, 3065-3066; SPOE00325261-SPOE00325261-ET (Facebook post from Profile in the name of Brahim MEHMETAJ aka 'Bimi', 18 November 2019); SPOE00325271-SPOE00325271-ET (Comment by Hazir BOROVCI to Facebook post from Profile in the name of Brahim MEHMETAJ aka 'Bimi', 18 November 2019).

<sup>688</sup> Kapllan PARDUZI, 11 April 2022, T.3427-3428.

<sup>689</sup> Kapllan PARDUZI, 11 April 2022, T.3430-3431, 3472-3473

<sup>690</sup> Nuredin IBISHI, 12 April 2022, T.3558, 3568; Kapllan PARDUZI, 11 April 2022, T.3470.

<sup>691</sup> Kapllan PARDUZI, 11 April 2022, T.3484; Nuredin IBISHI, 12 April 2022, T.3583.

<sup>692</sup> Nuredin IBISHI, 12 April 2022, T.3583; Kapllan PARDUZI, 11 April 2022, T.3470.

<sup>693</sup> Kapllan PARDUZI, 11 April 2022, T.3472.

<sup>694</sup> Kapllan PARDUZI, 11 April 2022, T.3472; Sheqir RRAHIMI, 13 April 2022, T.3667.

RRAHIMI, a person who drove the vehicle in which both wounded were transported, testified that he was told to stop as Kaplan PARDUZI was dying.<sup>695</sup>

228. Speaking about the Accused, Kaplan PARDUZI testified that he saw him only for a brief moment,<sup>696</sup> but he could not indicate the time,<sup>697</sup> place,<sup>698</sup> or the number of times he might have seen him.<sup>699</sup> He testified that it was his presumption that Salih MUSTAFA was in charge of the transport, but he “couldn’t see really with my eyes – own eyes because I was gravely wounded.”<sup>700</sup>

229. Further, for security reasons, the trip was taking place mostly at night,<sup>701</sup> and the witness admitted that he was not able to identify anyone else as “it was raining, it was dark.”<sup>702</sup>

230. Finally, the Panel will consider this witness’s evidence in light of his statements about the Accused<sup>703</sup> and the unfairness of the KSC.<sup>704</sup>

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<sup>695</sup> Sheqir RRAHIMI, 13 April 2022, T.3667.

<sup>696</sup> Kaplan PARDUZI, 11 April 2022, T.3431.

<sup>697</sup> Kaplan PARDUZI, 11 April 2022, T.3481.

<sup>698</sup> The witness first indicated that he saw the Accused either in Rimanishte or Bellopoje (which are about 15 kilometres apart). Then, the witness admitted that he could not tell where exactly he saw the Accused (Kaplan PARDUZI, 11 April 2022, T.3443, 3473-3474, 3476, 3484). Also, in his SPO statement, the witness clearly stated he could not determine the place where he saw the Accused (104544-TR-ET, Parts 2-3, p.16).

<sup>699</sup> The witness initially claimed seeing the Accused only once during the whole trip, but then changed his version indicating that he could not determine whether he saw him “once, twice, five times, ten times. I was wounded.” (Kaplan PARDUZI, 11 April 2022, T.3476).

<sup>700</sup> Kaplan PARDUZI, 11 April 2022, T.3430-3431.

<sup>701</sup> Nuredin IBISHI, 12 April 2022, T.3564; Kaplan PARDUZI, 11 April 2022, T.3430.

<sup>702</sup> Kaplan PARDUZI, 11 April 2022, T.3431, 3443. *See also* Sheqir RRAHIMI, 13 April 2022, T.3667, 3677.

<sup>703</sup> Kaplan PARDUZI, 11 April 2022, T.3505-3506.

<sup>704</sup> Kaplan PARDUZI, 11 April 2022, T.3506.

## (ii) Nuredin IBISHI

231. Nuredin IBISHI, who travelled with Kaplan PARDUZI on the same trailer, and whose injuries were lighter,<sup>705</sup> does not mention any encounter with Salih MUSTAFA, claiming instead that it was Latif GASHI who was in charge of that transport.<sup>706</sup> He indicated that he could not see what was happening outside as “the trailer was covered with a tarpaulin due to weather conditions. It was raining all the time.”<sup>707</sup> Both he, and Kaplan PARDUZI, were wounded in the stomach and had to lie during the transportation.<sup>708</sup>

232. The evidence of Nuredin IBISHI casts additional, serious doubts on the ability of Kaplan PARDUZI to see people outside, including the Accused.

## (iii) Sheqir RRAHIMI

233. Sheqir RRAHIMI drove the vehicle in which the wounded Nuredin IBISHI and Kaplan PARDUZI were transported. He testified that at some point during the trip, he met two people driving the tractor, and heard one of them calling another “Cali”.<sup>709</sup> This witness did not know Salih MUSTAFA at that time,<sup>710</sup> and acknowledged that 23 years after that encounter, he was unable to determine whether the person called Cali was actually the Accused.<sup>711</sup>

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<sup>705</sup> Nuredin IBISHI, 12 April 2022, T.3579.

<sup>706</sup> Nuredin IBISHI, 12 April 2022, T.3562, 3573-3577; DSM00460-00475, p.8 (Defence statement of Nuredin IBISHI); SPOE00123560-00123574, p.12 (Records on the witness hearing of Nuredin IBISHI before investigating judge, 27 August 2002).

<sup>707</sup> Nuredin IBISHI, 12 April 2022, T.3559, 3562-3563, 3583. *See also* Kaplan PARDUZI, 11 April 2022, T.3484.

<sup>708</sup> Nuredin IBISHI, 12 April 2022, T.3582; Kaplan PARDUZI, 11 April 2022, T.3471; *see also* Sheqir RRAHIMI, 13 April 2022, T.3664.

<sup>709</sup> Sheqir RRAHIMI, 13 April 2022, T.3671, 3678.

<sup>710</sup> Sheqir RRAHIMI, 13 April 2022, T.3672, 3676.

<sup>711</sup> Sheqir RRAHIMI, 13 April 2022, T.3672.

## 2. Refutation of the Prosecution case

### *(a) Presence of detainees at the ZDC during the Indictment period*

234. Muhamet AJETI aka 'Shyti' and Selatin KRASNIQI were specifically put forward to attempt to demonstrate that, during the Indictment period, no detainees were held at the ZDC. Their testimony was not credible and does not refute the overwhelming evidence of a detention center at the ZDC.

#### *(i) Selatin KRASNIQI*

235. Selatin KRASNIQI, member of the BIA unit,<sup>712</sup> is the son of the owners of the ZDC.<sup>713</sup> In April 1999, he allegedly arrived at the compound, "if I'm not mistaken", on the 1<sup>st</sup> of that month,<sup>714</sup> left three or four days later for Prishtinë/Priština where he stayed several hours,<sup>715</sup> after which he returned to Zllash/Zlaš and remained there.<sup>716</sup> This witness testified that during his time in Zllash/Zlaš, he stayed in the ZDC most of the time,<sup>717</sup> and that he was sleeping there.<sup>718</sup>

236. This witness testified that he was not aware of any detainees kept at the ZDC: "as far as I know, there have never been detained people in this building"<sup>719</sup>, "I say it in full belief, that there wasn't any, and that I haven't seen any such people".<sup>720</sup> He did not hear about anyone being detained in that location, either.<sup>721</sup> Selatin KRASNIQI

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<sup>712</sup> Selatin KRASNIQI, 21 April 2022, T.3954-3955.

<sup>713</sup> Selatin KRASNIQI, 21 April 2022, T.3866-3867, 3877-3878.

<sup>714</sup> Selatin KRASNIQI, 21 April 2022, T.3871.

<sup>715</sup> Selatin KRASNIQI, 21 April 2022, T.3871, 3909.

<sup>716</sup> Selatin KRASNIQI, 21 April 2022, T.3905-3906, 3908.

<sup>717</sup> Selatin KRASNIQI, 21 April 2022, T.3909.

<sup>718</sup> Selatin KRASNIQI, 21 April 2022, T.3909.

<sup>719</sup> Selatin KRASNIQI, 21 April 2022, T.3909.

<sup>720</sup> Selatin KRASNIQI, 21 April 2022, T.3910-3911.

<sup>721</sup> Selatin KRASNIQI, 21 April 2022, T.3912.

also claimed that at ZDC there were no guards “as long as I was there”.<sup>722</sup> He concluded that there had never been a detention centre in the whole village.<sup>723</sup>

237. Selatin KRASNIQI’s testimony can be summarized as a futile, clumsy, and internally inconsistent attempt to erase the existence of detentions at the ZDC. As noted above, during his first Defence interview dated 23 February 2021, while drawing the detailed sketch of the compound he allegedly knew very well, he “forgot” to draw and mark the entire building where the detainees were held,<sup>724</sup> even though it was rather a big and important structure within the compound. The witness indicated that he “does not remember” how such an omission happened.<sup>725</sup> Discussing the relevance of the building for the case, the witness claimed, “I didn’t even have an idea about the importance it had for you as a Prosecutor. For me it had no importance at all.”<sup>726</sup>

238. When the Prosecution case was put to the witness, he doubled down on his assertions, reiterating that no one was detained in Zllash/Zlaš.<sup>727</sup> He admitted, however, that people, including himself, were questioned at the ZDC in the period after NATO commenced its strikes.<sup>728</sup> Later, apparently realizing the gravity of what he had stated, the witnesses changed the description of the questioning to “conversation”.<sup>729</sup>

239. Selatin KRASNIQI was asked a number of times about who was in charge of the ZDC. In his answers, he mentioned a variety of names,<sup>730</sup> but remarkably never

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<sup>722</sup> Selatin KRASNIQI, 21 April 2022, T.3890.

<sup>723</sup> Selatin KRASNIQI, 21 April 2022, T.3912.

<sup>724</sup> Selatin KRASNIQI, 21 April 2022, T.3928-3935; DSM00017, DSM00025, DSM00035.

<sup>725</sup> Selatin KRASNIQI, 21 April 2022, T.3930-3931.

<sup>726</sup> Selatin KRASNIQI, 21 April 2022, T.3934.

<sup>727</sup> Selatin KRASNIQI, 21 April 2022, T.3948.

<sup>728</sup> Selatin KRASNIQI, 21 April 2022, T.3924, 3950-3951.

<sup>729</sup> Selatin KRASNIQI, 21 April 2022, T.3950-3953.

<sup>730</sup> Selatin KRASNIQI, 21 April 2022, T.3912, 3988, 3994.

mentioned Salih MUSTAFA amongst those in command. This is despite knowing that the latter was the BIA commander, his commander. Asked whether he is friends with the Accused, Selatin KRASNIQI stated: “we are all friends and will remain friends until we die and after death.”<sup>731</sup>

240. He further tried to ‘sanitize the scene’, when he attempted to remove from Zllash/Zlaš his close acquaintance<sup>732</sup> and co-fighter in BIA,<sup>733</sup> Muhamet AJETI aka ‘Shyti’,<sup>734</sup> who himself admitted being present in Zllash/Zlaš.<sup>735</sup>

241. Selatin KRASNIQI was in the past convicted for the intentional crime of fraud.<sup>736</sup>

(ii) Muhamet AJETI

242. Muhamet AJETI aka ‘Shyti’ says that he went to Zllash/Zlaš shortly after NATO commenced its bombing campaign, around 30-31 March 1999.<sup>737</sup> In April of that year, he admitted staying in the village only intermittently: a few hours after he arrived in Zllash/Zlaš, he went to Kecekolle where he stayed with his family for two-three days;<sup>738</sup> he would also spend most of the nights in Kecekolle, as there was no space for him to sleep in Zllash/Zlaš;<sup>739</sup> he also went for one day to Krileve or Gllgovice.<sup>740</sup> The witness left the village around 16 April 1999 when the Serbian

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<sup>731</sup> Selatin KRASNIQI, 21 April 2022, T.3974.

<sup>732</sup> Muhamet AJETI, 22 April 2022, T.4134, Selatin KRASNIQI, 21 April 2022, T.3965.

<sup>733</sup> Muhamet AJETI, 22 April 2022, T.4086; Selatin KRASNIQI, 21 April 2022, T.3954-3955.

<sup>734</sup> Selatin KRASNIQI, 21 April 2022, T.3965-3967.

<sup>735</sup> See paras.242-243 below.

<sup>736</sup> The appeal in this case is pending. In a separate case, Selatin KRASNIQI was also convicted for unlawful possession of weapons. See Selatin KRASNIQI, 21 April 2022, T.3998-4000.

<sup>737</sup> Muhamet AJETI, 22 April 2022, T.4057-4059.

<sup>738</sup> Muhamet AJETI, 22 April 2022, T.4059, 4063, 4133.

<sup>739</sup> Muhamet AJETI, 22 April 2022, T.4063, 4134, 4169.

<sup>740</sup> Muhamet AJETI, 22 April 2022, T.4134.

offensive in Viti of Marec village commenced,<sup>741</sup> and returned around 20 April 1999 to assist with the evacuation of the wounded.<sup>742</sup> Muhamet AJETI aka 'Shyti' claims that, in Zllash/Zlaš, he stayed at the ZDC.<sup>743</sup>

243. This witness denied having seen or heard about any detainees kept in the ZDC.<sup>744</sup> He also testified that he had not seen any guards at the compound.<sup>745</sup> However, in his evidence, he distanced himself from the specific locations where the alleged crimes occurred. He did not remember sleeping in the building of the compound used, according to the Victims, as the detention and interrogation site.<sup>746</sup> He also admitted that he never visited the basement of the house, where at least some detainees were held, and that he only stayed outside in the yard.<sup>747</sup> He was also not sure which rooms in that house were occupied by soldiers and civilians.<sup>748</sup> Confronted with the evidence from the Accused, who admitted that people were actually detained in the ZDC,<sup>749</sup> Muhamet AJETI aka 'Shyti' conceded: "Of course, Salih MUSTAFA knows better."<sup>750</sup>

244. In addition, Muhamet AJETI aka 'Shyti' claims that when he was in Zllash/Zlaš in April 1999, he did not see the Accused there, despite the Accused's admission that he was present in the ZDC on several occasions during this period.<sup>751</sup> By AJETI's own admission, he was a BIA member<sup>752</sup> and the Accused was his

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<sup>741</sup> Muhamet AJETI, 22 April 2022, T.4063-4064.

<sup>742</sup> Muhamet AJETI, 22 April 2022, T.4074.

<sup>743</sup> Muhamet AJETI, 22 April 2022, T.4064, 4072-4073, 4075, 4139; DSM00615-00632, p.15 and 17 (Defence witness statement of Muhamet AJETI, 20 February 2022).

<sup>744</sup> Muhamet AJETI, 22 April 2022, T.4076.

<sup>745</sup> Muhamet AJETI, 22 April 2022, T.4076.

<sup>746</sup> Muhamet AJETI, 22 April 2022, T.4073.

<sup>747</sup> Muhamet AJETI, 22 April 2022, T.4152.

<sup>748</sup> Muhamet AJETI, 22 April 2022, T.4074.

<sup>749</sup> Muhamet AJETI, 22 April 2022, T.4153-4154.

<sup>750</sup> Muhamet AJETI, 22 April 2022, T.4155.

<sup>751</sup> Muhamet AJETI, 22 April 2022, T.4084, 4144-4146.

<sup>752</sup> Muhamet AJETI, 22 April 2022, T.4086, 4096.



commander<sup>753</sup> whom he deeply admired.<sup>754</sup> He certainly would have been aware of the Accused's presence in the ZDC.

245. Further, the Panel will need to assess this witness's testimony in light of his motivations and bias. He was identified as the BIA guard nicknamed 'Shyti'<sup>755</sup>, [REDACTED] on 1 April 1999.<sup>756</sup> Further, there is evidence regarding Muhamet AJETI aka 'Shyti's ties to the Accused<sup>757</sup> and one of his key co-perpetrators, Brahim MEHMETAJ aka 'Bimi'.<sup>758</sup>

(iii) Other witnesses

246. Some other witnesses were asked by the Defence about their knowledge of detainees at the ZDC in April 1999, including KLA commanders Fatmir SOPI, Sejdi VESELI, and Fatmir HUMOLLI, as well as two KLA medical personnel present in Zllash/Zlaš in April 1999, Teuta HADRI and Ibadete CANOLLI-KACIU. Whereas all five denied having any knowledge in this regard,<sup>759</sup> the analysis of their evidence indicates that they do not possess any basis to testify to the presence or non-presence of the detained persons.

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<sup>753</sup> Muhamet AJETI, 22 April 2022, T.4086, 4096, 4125.

<sup>754</sup> Muhamet AJETI, 22 April 2022, T.4125-4126; SPOE00325825-SPOE00325825-ET (Facebook post from profile of Muhamet AJETI, 11 June 2021).

<sup>755</sup> Muhamet AJETI, 22 April 2022, T.4114, 4116; 4119; SPOE00325853-00325864.

<sup>756</sup> See para.84 above.

<sup>757</sup> Muhamet AJETI, 22 April 2022, T. 4096-4097, 4118-4125; Facebook post from profile of Muhamet AJETI, 11 June 2021, SPOE00325825-SPOE00325825-ET. See also Call logs from Salih MUSTAFA's telephone, SPOE00325853-00325864; Cellebrite records from forensic image of the seized phone of Salih MUSTAFA. The attached records relate to contacts/chat with phone number used by Muhamet AJETI, SPOE00325866-SPOE00325876-ET.

<sup>758</sup> Muhamet AJETI, 22 April 2022, T. 4099-4102, 4132-4133; Facebook post from profile of Muhamet AJETI, 3 March 2019, SPOE00325835-00325835; 4104 Facebook post from profile of Muhamet AJETI, 11 June 2021, SPOE00325826-SPOE00325826-ET; Facebook post from profile of Muhamet AJETI, 27 January 2021, SPOE00325827-00325827-ET.

<sup>759</sup> Fatmir SOPI, 18 January 2022, T.2107, 2114, and 19 January 2022, T.2161; Sejdi VESELI, 25 January 2022, T.2223-2224; Fatmir HUMOLLI, 2 February 2022, T.2425-2426; Teuta HADRI, 11 May 2022, T.4209; Ibadete CANOLLI-KACIU, 12 May 2022, T.4333.

247. By his own admission, in March/April 1999, Fatmir SOPI was continuously on the move, was engaged in fighting, and does not remember whether he was in the ZDC in that period,<sup>760</sup> but does not think he was there in April 1999.<sup>761</sup>

248. Sejdi VESELI, for his part, never visited the ZDC,<sup>762</sup> and no one ever relayed to him any information about the ZDC.<sup>763</sup> This witness indicated that when in Zllash/Zlaš, he minded his own business.<sup>764</sup>

249. Fatmir HUMOLLI never visited any locations within the ZDC other than the one where the wounded were staying.<sup>765</sup> When he met his family there, they were staying outside in the yard and he did not enter any buildings.<sup>766</sup>

250. Teuta HADRI arrived in Zllash/Zlaš towards the end of the Indictment period, on 16 April,<sup>767</sup> and remained there for three days, until the evacuation of the village around 18 April 1999.<sup>768</sup> The witness was unfamiliar with the area as she had never been there before.<sup>769</sup>

251. In the course of her stay at ZDC, she was extremely busy, being solely focused on her medical work.<sup>770</sup> She stayed mainly in her assigned room,<sup>771</sup> rarely got out in the yard,<sup>772</sup> and did not visit any other buildings at ZDC.<sup>773</sup> She indicated that she

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<sup>760</sup> Fatmir SOPI, 18 January 2020, T. 2094, and 19 January 2022, T.2160.

<sup>761</sup> Fatmir SOPI, 19 January 2020, T. 2159.

<sup>762</sup> Sejdi VESELI, 25 January 2022, T.2197, 2233.

<sup>763</sup> Sejdi VESELI, 25 January 2022, T.2236.

<sup>764</sup> Sejdi VESELI, 25 January 2022, T.2233.

<sup>765</sup> Fatmir HUMOLLI, 1 February 2022, T.2368, 2370; 100954-TR-ET, Part 3, p.7.

<sup>766</sup> Fatmir HUMOLLI, 2 February 2022, T.2405, 2409.

<sup>767</sup> Teuta HADRI, 11 May 2022, T.4191, 4255.

<sup>768</sup> Teuta HADRI, 11 May 2022, T.4212, 4255.

<sup>769</sup> Teuta HADRI, 11 May 2022, T.4234-4235.

<sup>770</sup> Teuta HADRI, 11 May 2022, T.4192-4193, 4206, 4235, 4237-4238, 4273-4274.

<sup>771</sup> Teuta HADRI, 11 May 2022, T.4196, 4202, 4252, 4274.

<sup>772</sup> Teuta HADRI, 11 May 2022, T.4206.

<sup>773</sup> Teuta HADRI, 11 May 2022, T.4204-4205, 4236, 4272-4273.

could only see the nearby area of the ZDC from the inside of her room.<sup>774</sup> Asked about other buildings in the premises of the ZDC, this witness testified: "I don't remember. I think there was a granary as well. I don't really remember. There were three or four houses there in the yard, and I don't remember anything else but those three or four houses."<sup>775</sup>

252. Ibadete CANOLLI-KACIU, a BIA member,<sup>776</sup> arrived in Zllash/Zlaš on 16 April 1999<sup>777</sup> where she stayed until 21 April of that year.<sup>778</sup> She had not been there before and never went back there again.<sup>779</sup> Due to the passage of time, she was not able to provide the description of the place where she stayed.<sup>780</sup> When shown photographs of the buildings within the ZDC, she said she did not remember whether she had seen them.<sup>781</sup> She testified that she did not pay attention to them.<sup>782</sup> She only remembered a particular well, and the tree depicted on one of the photos.<sup>783</sup>

253. By her own admission, she stayed mostly inside, and did not move much in the yard.<sup>784</sup> For the two first days, 16 and 17 April 1999, she was entirely indoors, dealing with medication.<sup>785</sup> The following day she left her room only once, to fetch some food from the nearby kitchen.<sup>786</sup> That kitchen however, does not feature on any of the photographs of the ZDC shown to her in court.<sup>787</sup> The witness did not visit any

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<sup>774</sup> Teuta HADRI, 11 May 2022, T.4204, 4235.

<sup>775</sup> Teuta HADRI, 11 May 2022, T.4205.

<sup>776</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4339-4341.

<sup>777</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4322.

<sup>778</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4325, 4328, 4377.

<sup>779</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4377.

<sup>780</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4324-4326.

<sup>781</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4325-4326.

<sup>782</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4381.

<sup>783</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4327.

<sup>784</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4326.

<sup>785</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4378.

<sup>786</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4378-4379.

<sup>787</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4379.

other buildings within the compound.<sup>788</sup> While in Zllash/Zlaš she had a great deal of medical work, and her focus was mainly on the wounded.<sup>789</sup>

*(b) Whether he Accused was in charge of the ZDC*

254. The Defence attempted to demonstrate that the Accused was not in charge of the ZDC, claiming instead that it was Rrahman DINI,<sup>790</sup> Isa KASTRATI,<sup>791</sup> Brigade 153, or other soldiers of the KLA Karadak OZ.

255. The Defence's attempts to specifically put Rrahman DINI in charge of the ZDC, do not withstand closer scrutiny. This member of Brigade 153<sup>792</sup> was admittedly in Zllash/Zlaš in March/April 1999, but one of his superiors, Fatmir SOPI, does not recall him having any particular task,<sup>793</sup> or having any authority to discipline people.<sup>794</sup>

256. Apart from general assertions of Defence witness Selatin KRASNIQI,<sup>795</sup> there are no indications that Rahman DINI was in any commanding position over the ZDC. But even if he formally was, which is not in evidence, he could not exercise any effective control over that location or over soldiers stationed therein as he was in a particularly dire physical condition.<sup>796</sup> His state was so bad, that 'at one point he was even unable to act.'<sup>797</sup> He had issues with his breathing, heart, and lungs, and he could not walk.<sup>798</sup> In March/April 1999 his condition was very poor, he was unable to have

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<sup>788</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4381.

<sup>789</sup> Ibadete CANOLLI-KACIU, 12 May 2022, T.4379, 4381.

<sup>790</sup> Selatin KRASNIQI, 21 April 2022, T.3912, 3951.

<sup>791</sup> Selatin KRASNIQI, 21 April 2022, T.3912-3913, 3995.

<sup>792</sup> In Brigade 153, Rrahman DINI was responsible for civilian-military relations and at some point, also for morale and politics: Fatmir SOPI, 18 January 2022, T.2038.

<sup>793</sup> Fatmir SOPI, 18 January 2022, T.2106.

<sup>794</sup> Fatmir SOPI, 18 January 2022, T.2106.

<sup>795</sup> Selatin KRASNIQI, 21 April 2022, T.3912, 3951, 3988.

<sup>796</sup> Fatmir SOPI, 18 January 2022, T.2040; Sejdi VESELI, 25 January 2022, T.2194, 2229.

<sup>797</sup> Fatmir SOPI, 18 January 2022, T.2040.

<sup>798</sup> Fatmir SOPI, 18 January 2022, T.2040, 2042-2043; Sejdi VESELI, 25 January 2022, T.2194, 2229.

any active operational role, and he couldn't move without someone assisting him.<sup>799</sup> Those around him even expected him to die soon.<sup>800</sup> After the offensive in mid-April 1999, he was hospitalized in Marec, Viti.<sup>801</sup>

257. When in Zllash/Zlaš, Rahman DINI would usually stay in the house of Fatmir SOPI, or in the house of Mr SOPI's uncle,<sup>802</sup> and not in the ZDC. This testimony is consistent with the evidence of Musli HALIMI according to whom Rahman DINI was staying at the 153 Brigade staff location, near the training centre.<sup>803</sup>

258. Another person indicated by Selatin KRASNIQI as the person who could possibly have been in charge of the ZDC was Isa KASTRATI.<sup>804</sup> This person, however, was a deputy of the Accused in BIA,<sup>805</sup> which further solidifies the evidence that Salih MUSTAFA and BIA were controlling the ZDC.

259. As for Brigade 153, contrary to the Defence claims and, as indicated in paragraph 116 of this brief, even if it had headquarters in Zllash/Zlaš, it was neither based nor was in control of the ZDC.

260. The Accused and certain witnesses stated that soldiers from the Karadak OZ were temporarily staying at the ZDC.<sup>806</sup> Little is known about those soldiers, including the KLA military unit they belonged to, the identity of their commander, or their numbers. Further, with regard to the time of their presence in Zllash/Zlaš, it is not clear whether they were at the ZDC in April 1999.<sup>807</sup> There is no evidence that Karadak

<sup>799</sup> Sejdi VESELI, 25 January 2022, T.2194, 2229.

<sup>800</sup> Sejdi VESELI, 25 January 2022, T.2231, 2259.

<sup>801</sup> Fatmir SOPI, 18 January 2022, T.2040, 2115.

<sup>802</sup> Fatmir SOPI, 18 January 2022, T.2106.

<sup>803</sup> Musli HALIMI, 20 April 2022, T.3728.

<sup>804</sup> Selatin KRASNIQI, 21 April 2022, T.3912-3913, 3995.

<sup>805</sup> 069404-TR-ET Part 7, p.21 (Salih MUSTAFA); Brahim MEHMETAJ, 23 March 2022, T.2713-2714.

<sup>806</sup> 069404-TR-ET Part 7, p.11 (Salih MUSTAFA); Fatmir SOPI, 18 January 2022, T.2089-2090; Selatin KRASNIQI, 21 April 2022, T.3884, 3886, 3960. *See, however*, Sejdi VESELI, 25 January 2022, T.2195; W04600, 23 September 2021, T.722.

<sup>807</sup> Muhamet AJETI, 22 April 2022, T.4039, 4159-4160.

soldiers were in any way in charge of the ZDC, in whole or in part. The evidence discussed in the brief only points towards BIA members as those responsible for the crimes charged in the Indictment.

G. EXISTENCE OF AN ARMED CONFLICT AT THE TIMES RELEVANT TO THE CHARGES

261. Throughout the Indictment Period, an armed conflict existed between the KLA and forces of the Federal Republic of Yugoslavia ('FRY') and Republic of Serbia, including units of the Yugoslav Army ('VJ'), police and other units of the Ministry of Internal Affairs ('MUP'), and other groups fighting on behalf of the FRY and Serbia (collectively, 'FRY forces').

262. The Trial Panel took judicial notice, pursuant to Rule 157,<sup>808</sup> of 52 facts establishing the existence of that conflict, its protracted character, and the level of organization of the warring parties. Those facts were reliably adjudicated in trials before the International Criminal Tribunal for the former Yugoslavia and Kosovo courts on the basis of a thorough analysis of an extensive body of evidence, including reports of international organizations such as the Organization for Security and Co-operation in Europe ('OSCE') and Human Rights Watch, reports of the FRY forces and its officials on the status of the hostilities, as well as testimony of KLA members.<sup>809</sup>

263. SPO evidence further supported those adjudicated facts. OSCE/KVM Reports,<sup>810</sup> UNHCR Reports,<sup>811</sup> KLA General Staff communiqués,<sup>812</sup> KLA political

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<sup>808</sup> Decision on judicial notice of adjudicated facts, KSC-BC-2020-05/F00191, 7 September 2021, para.14.

<sup>809</sup> See e.g. *Dorđević* TJ, IT-05-87/1-T, paras 1531-1579; *Šainović et al.* TJ, IT-05-87-T, paras 790-841; *Latif Gashi et al.* Verdict, C. Nr. 425/2001, pp.4, 11-12.

<sup>810</sup> IT-05-87 P00444 (OSCE Report 1999); IT-05-87 P00680 (OSCE Fusion Working Papers 1999); IT-05-87.1 P01029 (OSCE Memo Daily Bluebook).

<sup>811</sup> 074222-074225 (UNHCR Kosovo Crisis); 074226-074231 (Update UNHCR Kosovo Crisis).

<sup>812</sup> U003-8552-U003-8690, pp.113-115 (KLA/UCK Communiqués); SPOE00055399-SPOE00055399-ET (KLA Communiqué no.79).

declarations,<sup>813</sup> and mobilisation orders/decisions<sup>814</sup> demonstrate that between the end of February and late April 1999, the conflict between FRY forces and the KLA was in full force, with an increase in the number of units fielded by the former, and a high frequency of armed clashes between the two warring factions.

264. In February 1999, an international peace conference was organised in Rambouillet, France.<sup>815</sup> In late February and early March 1999, FRY forces launched a series of further offensives. The peace talks collapsed in mid-March 1999.

265. On 24 March 1999, NATO forces began air strikes against targets in Kosovo and Serbia and Montenegro, and the FRY declared a state of war.<sup>816</sup> In ordering an attack on 15 April against the KLA in the Bajgora region, the FRY's Joint Command for Kosovo and Metohija noted that since the beginning of April 1999, there had been an increase in KLA attacks.<sup>817</sup> At the same time, large-scale operations were conducted by FRY forces in Kosovo.

266. Fighting took place throughout Kosovo during the Indictment period,<sup>818</sup> including between Serbian forces and the KLA.<sup>819</sup> The KLA was fully engaged and the

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<sup>813</sup> U003-8552-U003-8690, p.112 (KLA/UCK Communiques); SPOE00054441-SPOE00054442-ET (Book State Informative Agency).

<sup>814</sup> SPOE00054517-SPOE00054518-ET (Book excerpt State Informative Agency); SPOE00054519-SPOE00054522-ET (Book excerpt State Informative Agency). *See also* SPOE40000793-SPOE40000793-ET Revised (KLA Communiqué no.48).

<sup>815</sup> *See e.g.* SPOE00055752-SPOE00055752-ET (Skender ZHITIA's book).

<sup>816</sup> *See e.g.* SPOE00061241-00061243 (OSCE KVM Report 24 March 1999).

<sup>817</sup> *See e.g.* IT-05-87 P01975-E, p.1. (Joint Command KiM Order no.455-151).

<sup>818</sup> *See e.g.* SPOE00061241-00061243, p.3 (OSCE KVM Report 24 March 1999); SPOE00061248-00061251, p.2 (OSCE KVM Report 27-28 March 1999); SITF00011677-00011685, pp.2-3 (OSCE Monthly report re UNSC Res. 1160).

<sup>819</sup> *See e.g.* SITF00011677-00011685, p.4 (OSCE Monthly report re UNSC Res 1160).



KLA General Staff called for a general mobilization.<sup>820</sup> The conflict resulted in many casualties.<sup>821</sup>

## 1. The KLA

267. Throughout the Indictment period, the KLA was an organised armed group with a sufficient degree of organisation to control territory and to plan and carry out synchronised armed attacks and other offensive and defensive military operations.

268. The KLA was headed by a General Staff, was organised into Operational Zones, and issued political declarations and communiqués setting out policy and actions.<sup>822</sup> At all relevant times, the KLA had an official commander, political representatives, an official spokesperson, and various written rules and regulations.<sup>823</sup>

269. Each of the Operational Zones into which the KLA was organised had a command structure.<sup>824</sup> The KLA General Staff issued orders and tasks to the KLA

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<sup>820</sup> See e.g. SPOE00061244-00061247, p.3 (OSCE KVM Report 25 March 1999); SPOE00054517-SPOE00054518-ET (Book excerpt State Informative Agency); SPOE00054519-SPOE00054522-ET (Book excerpt State Informative Agency).

<sup>821</sup> See e.g. SPOE00061241-00061243, p.3. (OSCE KVM Report 24 March 1999).

<sup>822</sup> See e.g. 043802-043802-ET Revised (KLA Communique no.53); 043803-043803-ET Revised ("Zëri i Kosovës" magazine, no.38 containing KLA Communique no.54); 043848-043848-ET (KLA Communique no.48); U003-8552-U003-8690 (KLA Communiques 20 May-18 Aug); SPOE00238093-00238093 (Map of Kosovo under UNMIK admin).

<sup>823</sup> See U003-8552-U003-8690 (KLA Communiques 20 May-18 Aug); 043848-043848-ET (KLA Communique no.48); IT-05-87 P02449-E (KLA Provisional Regulation for Organization of Army's Internal Life); SITF00068883-00068899 (KLA General HQ, Reg on Discipline); U000-5395-U000-5395-ET (KLA General Rules and Tasks issued by Head of Military Police); U002-2800-U002-2822-ET (Special Warfare booklet, KLA signed by LlapO). See also SPOE00055736-SPOE00055742-ET, p.1. (Skender ZHITIA's book).

<sup>824</sup> See e.g. SPOE00119363-00119367 (Rrustem MUSTAFA's instructions to KLA Llap Zone).

Operational Zones.<sup>825</sup> The KLA Operational Zones reported to the KLA General Staff.<sup>826</sup>

*(a) The Llap Operational Zone*

270. The Llap Operational Zone ('Llap OZ') covered the geographical area that encompassed Prishtinë/Priština and Podujevo in the northeast of Kosovo,<sup>827</sup> including the village of Zllash/Zlaš where the crimes charged in the Indictment took place. On the orders of the KLA General Staff, the headquarters of the Llap OZ had taken measures to recruit, train, and deploy new soldiers, as well as to structure, expand and consolidate command structures for the Zone.<sup>828</sup>

271. Throughout the Indictment period, Rrustem Mustafa (aka 'Remi') was the Commander of the Llap OZ, Kadri Kastrati (aka 'Daja') was the Deputy Commander of the Llap OZ, Nuredin Ibishi (aka 'Leka') was the Chief of Staff of the Llap OZ, and Latif Gashi (aka 'Lata') was the head of intelligence (G2) within the Llap OZ Command Staff.<sup>829</sup>

272. The chain of command in the Llap OZ followed the rules set out in the KLA General Headquarters Regulations on Discipline, and in the KLA Regulations for the

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<sup>825</sup> See e.g. SPOE00119161-SPOE00119161-ET (KLA General Staff Order No6-3/33-03); IT-05-87.1 P00437\_E (KLA General Staff Order no.99-111/11). See also 069404-TR-ET Part 1 RED, pp.21-23 (Salih MUSTAFA).

<sup>826</sup> See e.g. IT-05-87.1 P00446.E (KLA General Staff report).

<sup>827</sup> SPOE00238090-00238090 (Map of Pristina); SPOE00238092-00238092 (Map of Kosovo Region). See also SPOE00055705-SPOE00055708-ET, p.4 (Skender ZHITIA's book); SPOE00208166-00208166 (Map of Kosovo by Toena); SPOE00238093-00238093 (Map of Kosovo under UNMIK admin); SPOE00238094-00238094 (Map of the Pristina area).

<sup>828</sup> See SPOE00055705-SPOE00055708-ET, p.1 (Skender ZHITIA's book); SPOE00055799-SPOE00055868-ET, pp.1-10 (Skender ZHITIA's book).

<sup>829</sup> See Fatmir SOPI, 18 January 2022, T.2075, 2035; 7000669-7000676 RED, p.3; 7000593-7000609 RED, p.4; 069474-TR-ET Part 1 RED, p.14; Fatmir HUMOLLI, 2 February 2022, T.2417. See also SPOE00055705-SPOE00055708-ET, p.1 (Skender ZHITIA's book).

Organisation of the Army's Internal Life.<sup>830</sup> Within brigades, written instructions existed demanding that the military orders issued by Brigade Commanders be executed without deviation.<sup>831</sup>

273. Overall, there was a clear structure for communication and command and control within the Llap OZ,<sup>832</sup> and there were regular lines of ordering and reporting between the General Staff and the Llap OZ.<sup>833</sup>

274. Between at least October 1998 and April 1999, the KLA ran additional detention sites other than the Zllash/Zlaš Detention Compound in the Llap OZ.<sup>834</sup> The Panel has taken judicial notice of these facts.<sup>835</sup>

275. There were three Brigades in the Llap OZ: 151, 152 and 153.<sup>836</sup> The Commander of KLA Brigade 153, which operated in the area of Zllash/Zlaš, was Adem SHEHU.<sup>837</sup>

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<sup>830</sup> IT-05-87 P02449-E (KLA Provisional Regulations for the Organization of the Army's Internal Life); SITF00068883-00068899 (KLA General HQ Regulations on Discipline); SPOE00119363-00119367 (Rrustem MUSTAFA's instructions to the KLA Llap Zone); U000-4224-U000-4224-ET (KLA Order Llap Zone no.01/17).

<sup>831</sup> See e.g. U000-4204-U000-4204-ET (KLA Order 153 Brigade re duties/orders).

<sup>832</sup> SPOE00119363-00119367 (Rrustem MUSTAFA's instructions to the KLA Llap Zone). See also SPOE00055799-SPOE00055868-ET, pp.51-53 (Skender ZHITIA's book).

<sup>833</sup> See e.g. SPOE00119161-SPOE00119161-ET (KLA Staff Order no.6-3/33-03 on rules of engagement); IT-05-87.1 P00446.E (KLA General Staff report); IT-05-87.1 P00437\_Ea (KLA General Staff Order no.99-111/11).

<sup>834</sup> Nuredin IBISHI, 12 April 2022, T.3623-3625. See also SITF00242602-SITF00242602-ET (KLA Decision Llap Zone no.004/1998); SITF00242603-SITF00242603-ET (KLA Decision Llap Zone no.003/1998).

<sup>835</sup> Decision on judicial notice of adjudicated facts, KSC-BC-2020-05/F00191, 7 September 2021, para.14.

<sup>836</sup> See e.g. Fatmir SOPI, 18 January 2022, T.2113 ; 069474-TR-ET Part 1 RED, pp.14-15.

<sup>837</sup> Fatmir SOPI, 18 January 2022, T.2037; 069474-TR-ET Part 2, p.1; Sejdi VESELI, 25 January 2022, T.2191; 069889-TR-ET Part 1, p.18; 069889-TR-ET Part 2 RED, p.2. See also SITF00427788-00427788 (KLA 154 Brigade Organigram); SITF00427789-00427789 (KLA 153 Brigade Staff Chart); U000-4204-U000-4204-ET (KLA Order 153 Brigade re duties/orders); U000-4319-U000-4321-ET (Memo by A.SHEHU regarding implementation of Orders in 153 Brigade); U001-0399-U001-0400-ET (KLA Llap 153 Brigade combat order).

276. KLA Brigade 153 (aka 'Hyzri Talla') comprised the units that were in area of Gollak/Goljak.<sup>838</sup> Its headquarters was based in the village of Zllash/Zlaš,<sup>839</sup> where the Brigade also had a training centre in the local school building.<sup>840</sup> Sejdi VESELI was the Deputy Commander of the Brigade, Agron XHEMAJLI was the chief of the Information Service, and Fatmir SOPI was initially the Commander of Civilian Protection.<sup>841</sup> Fatmir SOPI was appointed Deputy Commander of Brigade 153 after the April 1999 offensive.<sup>842</sup>

277. During the Indictment period, KLA 153 Brigade was operational, as shown by combat orders and other documents issued by the Brigade Command.<sup>843</sup>

278. FRY forces carried out offensives against the KLA in April 1999,<sup>844</sup> including one that took place between approximately 16 and 22 April 1999, in the area of

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<sup>838</sup> See W01679, 4 October 2021, T.864; Fatmir SOPI, 18 January 2022, T.2044 ; 069474-TR-ET Part 1 RED, p.12; SPOE00055799-SPOE00055868-ET, p.50 (Skender ZHITIA's book).

<sup>839</sup> Fatmir SOPI, 18 January 2022, T.2102; 069474-TR-ET Part 1 RED, p.25. See also SPOE00055870-SPOE00055988-ET, p.43 (Skender ZHITIA's book); Brahim MEHMETAJ, 23 March 2022, T.2650-2651.

<sup>840</sup> Fatmir SOPI, 18 January 2022, T.2044; 069474-TR-ET Part 1 RED, p.23; 069474-TR-ET Part 2, p.5; Sejdi VESELI, 25 January 2022, T.2195; 069889-TR-ET Part 1, pp.21-22; W01679, 4 October 2021, T.864; SPOE00128386-00128420 RED2, p.27 (Photo book of location sites Zllash/Zlaš). See also SPOE00213459-00213487 (Content of folder WCIS/Zllash/Zlaš, with photos).

<sup>841</sup> Fatmir SOPI, 18 January 2022, T.2036; 7000593-7000609 RED, p.5; 069474-TR-ET Part 1 RED, pp.24-25; 069474-TR-ET Part 2, p.8; Sejdi VESELI, 25 January 2022, T.2211, 2214-2215 ; 069889-TR-ET Part 1, p.17; U000-4204-U000-4204-ET (KLA order 153 Brigade re duties/orders); U001-0399-U001-0400-ET (KLA Llap 153 Brigade Protocol no.153-004 combat order). See also SPOE00055870-SPOE00055988-ET, p.42 (Book excerpt Ushtria Clirimtare e Kosoves - Zona Operative e Llapit by Zhitia).

<sup>842</sup> Fatmir SOPI, 18 January 2022, T.2036; 7000593-7000609 RED, p.5.

<sup>843</sup> See e.g. U001-0399-U001-0400-ET (KLA Llap 153 Brigade Protocol no.153-004); U000-9175-U000-9175-ET (KLA 153 Brigade Llap Arrest Order); U000-4319-U000-4321-ET (Memo by A.SHEHU regarding implementation of Orders in 153 Brigade); U000-4205-U000-4206-ET (KLA Order no.08-153-004).

<sup>844</sup> IT-05-87 P01975-E (Joint Command KiM Order no.455-151); IT-05-87 P01977-E (Joint Command KiM Order no.455-160).

Gollak/Goljak.<sup>845</sup> When that offensive started on or about 16 April 1999, BIA soldiers were involved in the fight against Serbian forces.<sup>846</sup>

279. During the Indictment period, BIA soldiers had a base in Zllash/Zlaš.<sup>847</sup> The Accused commanded BIA and also led the BIA intelligence sector and information gathering, which also included gathering information on Albanians who were believed to be assisting/working with the FRY forces.<sup>848</sup> Soldiers from the BIA unit used the base in Zllash/Zlaš to monitor the movements of FRY forces.<sup>849</sup>

280. All acts and omissions charged as war crimes in the Indictment took place in the context of, and were associated with, the armed conflict between the KLA and FRY forces. The crimes were committed at a KLA base and/or during KLA activities. As shown in Section IV below, the Victims were persons taking no active part in hostilities. The Accused and other perpetrators of the alleged crimes were aware of the factual circumstances establishing the existence of the armed conflict and the status of the victims. In fact, they were members of the BIA unit, which throughout the period relevant to the Indictment, was engaged in armed conflict with the FRY forces.<sup>850</sup>

281. The Accused and the other perpetrators involved in the charged crimes exploited the conditions created by the armed conflict to arrest, detain, interrogate, and mistreat persons at the ZDC. The majority of the Victims/witnesses have stated that, during interrogations, they were accused of not supporting the KLA, of having

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<sup>845</sup> IT-05-87.1 P01384.E (Joint Command KiM Order no.455-147); IT-05-87.1 D00633.E, p.3 (FRY Supreme Command combat report op. no.26). *See also* Fatmir SOPI, 18 January 2022, T.2077-2078; 069474-TR-ET Part 3 RED, pp.7, 12-14.

<sup>846</sup> 069404-TR-ET Part 7, p.14 (Salih MUSTAFA).

<sup>847</sup> Sejdi VESELI, 25 January 2022, T.2195; Brahim MEHMETAJ, 23 March 2022, T.2653.

<sup>848</sup> *See supra*, Section III.E.1.

<sup>849</sup> *See supra*, Section III.A.; Brahim MEHMETAJ, 23 March 2022, T.2621-2622.

<sup>850</sup> 069404-TR-ET Part 6 RED, pp.7-10; Part 7, pp.14-15; and Part 8, pp.8-12 (Salih MUSTAFA).

cooperated with FRY forces, or of being spies.<sup>851</sup> There is no evidence that they were actually spies or assisted the Serbian forces in any way.

## **2. Protected status of the Victims**

282. During the time of their arrest, detention and mistreatment, and in the case of of [REDACTED] also of his murder, W01679, W03593, W03594, W04669, [REDACTED] were all civilians and not taking part in the hostilities.<sup>852</sup>

## **IV. ELEMENTS OF CRIMES AND EVIDENCE PROVING THE ELEMENTS**

283. As discussed above, the evidence adduced at trial establishes that, between about 1 and 19 April 1999, the Accused and certain other KLA members arbitrarily deprived at least seven civilians, including W01679, W03593, [REDACTED], W03594, W04669, [REDACTED] of their liberty without due process of law at the KLA ZDC. While in detention, these Victims were subjected to cruel treatment and torture, and one of them, [REDACTED], was murdered on or shortly after 19 April 1999.

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<sup>851</sup> See e.g. W03593, 20 September 2021, T.409-410, and 22 September 2021, T.575; W01679, 4 October 2021, T.875, and 5 October 2021, T.981; 7000687-7000691 RED3, p.1; W04674, 14 December 2021, T.2018; W04669, 10 November 2021, T.1444; W03594, 12 October 2021, T.1032, 1075, and 13 October 2021, T.1169.

<sup>852</sup> W01679, 4 October 2021, T.862; 060698-TR-ET Part 1 Revised RED3, p.9; 060698-TR-ET Part 2 Revised RED3, pp.13, 31-33; W03594, 12 October 2021, T.1032, 1075; 061016-TR-ET Part 1 RED1, pp.6, 8; W03593, 22 September 2021, T.575; W04669, 10 November 2021, T.1390; 082023-TR-ET Part 1 RED1, p.6; W04391, 22 November 2021, T.1732; 060723-TR-ET Part 1 Revised RED3, pp.7-8; W04390, 24 November 2021, T.1865; 060680-TR-ET Part 1 Revised RED3, pp.21-22; W04676, 17 November 2021, T.1668-1669; 076539-TR-ET Part 3 RED1, p.10.

## A. COUNT 1 - ARBITRARY DETENTION

284. There is ample evidence supporting a conviction beyond reasonable doubt that, between approximately 1 and 19 April 1999, the Accused and other KLA members arbitrarily deprived at least seven civilians of their liberty without due process of law or basic procedural safeguards at the KLA ZDC. The Victims were arrested and detained without legal basis, and had no opportunity to challenge their detention.

## 1. Deprivation of liberty

285. W01679<sup>853</sup> was arrested at the Zllash/Zlaš school by armed members of the KLA's BIA/Skifterat unit who took the witness to the ZDC upon orders of their commander.<sup>854</sup> W01679 was not shown any documents that justified his arrest, but was told he had to go with the soldiers.<sup>855</sup> W01679 was detained for 18 days<sup>856</sup> and was released together with W03594 and [REDACTED].<sup>857</sup>

286. W03593<sup>858</sup> was arrested at the beginning of April 1999 in [REDACTED] by armed KLA military police.<sup>859</sup> He was given no other explanation than: "We are going to Zllash to talk".<sup>860</sup> His detention lasted 18 days,<sup>861</sup> when he was freed with other detainees, including W03594.<sup>862</sup>

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<sup>853</sup> See also Section III.A.1. *above*.

<sup>854</sup> W01679, 4 October 2021, T.865-867.

<sup>855</sup> W01679, 4 October 2021, T.866.

<sup>856</sup> W01679, 4 October 2021, T.883.

<sup>857</sup> W01679, 4 October 2021, T.905.

<sup>858</sup> See also Section III.A.2. *above*.

<sup>859</sup> W03593, 20 September 2021, T.395-400, and 21 September 2021, T.556.

<sup>860</sup> W03593, 21 September 2021, T.557, and 20 September 2021, T.397.

<sup>861</sup> W03593, 20 September 2021, T.394-395, 418.

<sup>862</sup> W03593, 21 September 2021, T.552-553.



287. W04669<sup>863</sup> was arrested in April 1999 at a KLA-manned checkpoint in [REDACTED] and, without knowing where he was being driven, was taken to the ZDC.<sup>864</sup> W04669 was detained for about a week,<sup>865</sup> and was released at the beginning of the Serbian offensive in mid-April 1999.<sup>866</sup>

288. W03594<sup>867</sup> was arrested on 4 April 1999 in [REDACTED] by three KLA soldiers<sup>868</sup> and was taken to the ZDC without explanation.<sup>869</sup> He was detained there until 19 April 1999, when he was finally released together with W03593, W01679, and [REDACTED].<sup>870</sup>

289. [REDACTED]<sup>871</sup> was already in detention at the ZDC when W01679 was taken there,<sup>872</sup> and was released together with W01679 on or about 19 April 1999.<sup>873</sup>

290. [REDACTED],<sup>874</sup> known to the other detainees as [REDACTED], was also detained in the ZDC,<sup>875</sup> and was not released with the others on 19 April 1999.<sup>876</sup>

291. [REDACTED]<sup>877</sup> was arrested on 1 April 1999 in [REDACTED], and taken to the ZDC by three KLA soldiers including [REDACTED].<sup>878</sup> This victim was detained

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<sup>863</sup> See also Section III.A.3. *above*.

<sup>864</sup> W04669, 10 November 2021, T.1410-1415, and 11 November 2021, T.1518-1519, 1534, 1536.

<sup>865</sup> W04669, 10 November 2021, T.1449.

<sup>866</sup> W04669, 10 November 2021, T.1457-1459.

<sup>867</sup> See also Section III.A.2. *above*.

<sup>868</sup> W03594, 12 October 2021, T.1035-1036, 1038-1039.

<sup>869</sup> W03594, 12 October 2021, T.1037, 1039.

<sup>870</sup> W03594, 12 October 2021, T.1040; W01679, 4 October 2021, T.905; W03594, 13 October 2021, T.1144.

<sup>871</sup> See also Section III.A.5. *above*.

<sup>872</sup> W01679, 4 October 2021, T.889.

<sup>873</sup> W01679, 4 October 2021, T.905.

<sup>874</sup> See also Section III.A.5. *above*.

<sup>875</sup> W01679, 4 October 2021, T.889, 900; W03593, 20 September 2021, T.444-451.

<sup>876</sup> W03593, 20 September 2021, T.484; W01679, 4 October 2021, T.905-906; W03594, 13 October 2021, T.1145.

<sup>877</sup> See also Section III.D. *above*.

<sup>878</sup> See Section III.D. *above*, para.83.

until at least 19 April 1999 when W01679, W03594, [REDACTED] and W03593, were released.<sup>879</sup> The soldiers did not say why they were not releasing [REDACTED].<sup>880</sup>

## 2. Absence of due process guarantees

292. The deprivation of liberty of all the Victims took place in the absence of due process guarantees. None of the detainees were shown any legal paper authorising their arrest.<sup>881</sup> When released, BIA soldiers did not give the detainees any release documents, or explain the reasons for the end of their detention.<sup>882</sup>

293. During interrogations, some detainees were accused of being collaborators, friends of the Serbs, spies, or thieves.<sup>883</sup> According to W04669, possible reasons for his detention and mistreatment were, among other, [REDACTED].<sup>884</sup> W03594, too, believed his [REDACTED] to be the possible reasons for his arrest.<sup>885</sup> At no point during their detention were any of the detainees brought before a judge or other competent authority, provided with access to a lawyer, or otherwise permitted to challenge the lawfulness of their detention.

294. The detainees were not allowed to have contact with anyone from outside the ZDC, including family members.<sup>886</sup> [REDACTED].<sup>887</sup>

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<sup>879</sup> W03593, 20 September 2021, T.484-485, and 22 September 2021, T.613; W01679, 4 October 2021, T.905-906; W03594, 13 October 2021, T.1145. *See also* Section III.C. *above*.

<sup>880</sup> W03593, 20 September 2021, T.485-486; W01679, 4 October 2021, T.905-906.

<sup>881</sup> *See e.g.* W03593, 20 September 2021, T.397; W01679, 4 October 2021, T.866; W04669, 10 November 2021, T.1456.

<sup>882</sup> *See e.g.* W03593, 20 September 2021, T.485; W04669, 10 November 2021, T.1456; W01679, 4 October 2021, T.904.

<sup>883</sup> *See e.g.* W03593, 20 September 2021, T.410; W01679, 4 October 2021, T.892-893, 895, 896.

<sup>884</sup> W04669, [REDACTED].

<sup>885</sup> W03594, [REDACTED].

<sup>886</sup> W03593, 20 September 2021, T.480-481; W04669, 10 November 2021, T.1467-1648; W01679, 4 October 2021, T.903; W03594, 13 October 2021, T.1133-1134.

<sup>887</sup> *See e.g.* [REDACTED]; W04648, SPOE00128061-00128064 RED1, p.3; SPOE00128158-00128162 RED1, p.1; [REDACTED].

**B. COUNT 2 - CRUEL TREATMENT**

295. The evidence adduced at trial establishes beyond all reasonable doubt that, between approximately 1 and 19 April 1999, the Accused and certain other KLA members subjected at least the seven aforementioned people<sup>888</sup> to cruel treatment, by establishing and maintaining inhumane conditions at the KLA ZDC, and by inflicting beatings and other forms of maltreatment, including serious mental and physical harm.

**1. Detention conditions**

296. The evidence adduced at trial proves beyond reasonable doubt the inhumane conditions of detention at the ZDC.<sup>889</sup>

**2. Infliction of serious mental or physical suffering and attacks on the prisoners' dignity**

297. The evidence described in Section III above, and further described below, details the mistreatments, including those directly inflicted by the Accused, suffered by W01679,<sup>890</sup> W03593,<sup>891</sup> W04669,<sup>892</sup> W03594,<sup>893</sup> [REDACTED],<sup>894</sup> [REDACTED].<sup>895</sup>

298. The detainees were beaten and maltreated in various ways almost every day by BIA soldiers including those known as Brahim MEHMETAJ aka 'Bimi', Fatmir, Afrim, Kujtim QERIMI aka 'Dardan', Ilmi VELA, Nazif MUSLIU aka 'Tabuti', Bujar,

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<sup>888</sup> See above Section IV.A.1. above, paras.296-302.

<sup>889</sup> See Section III.B. above.

<sup>890</sup> See Section III.A.1. and III.B. above.

<sup>891</sup> See Section III.A.2. and III.B. above.

<sup>892</sup> See Section III.A.3. and III.B. above.

<sup>893</sup> See Section III.A.4. and III.B. above.

<sup>894</sup> See Section III.B. and III.D. above.

<sup>895</sup> See Section III.A.5. and III.B. above.

and Avni.<sup>896</sup> The Accused himself took part in and oversaw the mistreatment.<sup>897</sup> The detainees were also psychologically abused, including by soldiers entering the stable and displaying to them the severely injured body of [REDACTED].<sup>898</sup>

299. W01679 still has a scar [REDACTED] where he received burnings during his detention, and still has injuries in several places [REDACTED].<sup>899</sup> After his release, W01679 [REDACTED] which was the result of the beatings received.<sup>900</sup> He testified that: “To this day, I can’t sleep properly and I don’t feel calm. Even if you think of the nightmares I have, when I think of those voices, and I have those flashbacks, in addition to the consequences, physical consequences that I have to this day.”<sup>901</sup>

300. While held at the ZDC, W03593 felt lost, scared and could not sleep, hearing screams of people being mistreated upstairs.<sup>902</sup> He was so scared that every time the guards entered the barn, he approached W03594, seeking his protection.<sup>903</sup> As a result of the beatings, W03593’s [REDACTED].<sup>904</sup> He also had to [REDACTED].<sup>905</sup> [REDACTED].<sup>906</sup> W03593 is currently unable to work,<sup>907</sup> and has sleeping problems.<sup>908</sup> To this day, he feels so traumatised that he is uncomfortable to mention the name, or even the nickname, of the Accused.<sup>909</sup>

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<sup>896</sup> See Section III.B. *above*.

<sup>897</sup> See e.g. W01679, 4 October 2021, T.869, 872-873; W03593, 20 September 2021, T.412, 420-421, 429, 432, 437-438, and 22 September 2021, T.584.

<sup>898</sup> W04669, 10 November 2021, T.1441.

<sup>899</sup> W01679, 4 October 2021, T.929.

<sup>900</sup> W01679, 4 October 2021, T.929-930.

<sup>901</sup> W01679, 4 October 2021, T.930.

<sup>902</sup> W03593, 20 September 2021, T.476, 481.

<sup>903</sup> W03594, 12 October 2021, T.1079.

<sup>904</sup> W03593, 20 September 2021, T.425-426, and 21 September 2021, T.523-524, 538.

<sup>905</sup> W03593, 20 September 2021, T.409, and 21 September 2021, T.523-524, 528-529, 541.

<sup>906</sup> W03593, 20 September 2021, T.409, and 21 September 2021, T.523-524, 526, 538-540.

<sup>907</sup> W03593, 21 September 2021, T.524, 542.

<sup>908</sup> W03593, 21 September 2021, T.541.

<sup>909</sup> W03593, 21 September 2021, T.520-522, 531.

301. W04669's [REDACTED] as a result of the beating that he received.<sup>910</sup> By witnessing [REDACTED]'s injuries, W04669 felt he was "at a critical situation" and "could have the same chance as he."<sup>911</sup> W04669 was afraid and unsure of the reason for being kept there.<sup>912</sup>

302. W03594 felt that he was treated like an animal and not like a human being. He considered the whole experience humiliating and spiritually devastating, and feared for his life.<sup>913</sup> He felt half-dead and half-alive.<sup>914</sup>

### C. COUNT 3 - TORTURE

303. All of the evidence indicated above under Count 2 also relates to, and supports, the charges in Count 3. The Accused, being in charge of the ZDC, created and maintained inhumane conditions of detention, through beatings and other forms of mistreatment, thereby inflicting on the Victims severe physical and psychological harm. The torture inflicted was aimed at obtaining information, punishing, coercing and intimidating. Detainees were questioned and/or accused of being collaborators, friends of the Serbs, spies, or thieves.

#### 1. Infliction of severe physical and psychological pain

304. The evidence reviewed above under Count 2 proves beyond reasonable doubt the infliction of severe physical and psychological harm on the Victims.<sup>915</sup>

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<sup>910</sup> W04669, 10 November 2021, T.1468-1470.

<sup>911</sup> W04669, 10 November 2021, T.1441.

<sup>912</sup> W04669, 10 November 2021, T.1441.

<sup>913</sup> W03594, 12 October 2021, T.1066-1067, 1076.

<sup>914</sup> W03594, 12 October 2021, T.1086-1087.

<sup>915</sup> See *supra* Section IV.B. *above*.

305. For example, throughout his detention, W01679 was subjected to beatings and mistreatments including burnings with candles,<sup>916</sup> electro-shocks,<sup>917</sup> and beatings with wooden sticks and iron rods.<sup>918</sup> The torture with the electricity box was usually done by two subordinates of Salih MUSTAFA: Kujtim QERIMI aka 'Dardan' and Afrim.<sup>919</sup>

306. W03593 was severely beaten for the first time shortly after he was brought to Zllash/Zlaš by three to five people,<sup>920</sup> including Nazif MUSLIU aka 'Tabut/Tabuti',<sup>921</sup> who used wood to beat him and kicked him.<sup>922</sup> W03593 fainted two or three times.<sup>923</sup> During the beating, W03593 heard the perpetrators saying that they had to kill him as he was a spy and a collaborator with the Serbs.<sup>924</sup> At some point, the Accused pushed W03593 against a wall, took out a revolver, pressed it against his head and said that he was going to kill him. The Accused then pulled the trigger but the revolver did not go off.<sup>925</sup>

307. The most severely and most frequently mistreated detainee was [REDACTED].<sup>926</sup> Unlike the other detainees, he was tied up.<sup>927</sup> He was burnt with a

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<sup>916</sup> W01679, 4 October 2021, T.883-884.

<sup>917</sup> W01679, 4 October 2021, T.883-884.

<sup>918</sup> W01679, 4 October 2021, T.883-884.

<sup>919</sup> W01679, 5 October 2021, T.987. On Kujtim QERIMI aka 'Dardan' and Afrim being subordinates of Salih MUSTAFA, *see* 069404-TR-ET Part 4, pp.3, 26; 069404-TR-ET Part 8, pp.9-13; Brahim MEHMETAJ, 23 March 2022, T.2665-2666, 2706, 2712; Muhamet AJETI, 22 April 2022, T.4103-4104.

<sup>920</sup> W03593, 20 September 2021, T.407, 409, 414, and 21 September 2021, T.539.

<sup>921</sup> W03593, 20 September 2021, T.430-431, and 22 September 2021, T.583.

<sup>922</sup> W03593, 20 September 2021, T.409.

<sup>923</sup> W03593, 20 September 2021, T.409, 411, and 22 September 2021, T.580.

<sup>924</sup> W03593, 20 September 2021, T.409-410, and 23 September 2021, T.689; 061015-TR-ET Part 2 Revised RED3, pp.6-7.

<sup>925</sup> W03593, 20 September 2021, T.411-412; 061015-TR-ET Part 2 Revised RED3, pp.8-9.

<sup>926</sup> W03593, 20 September 2021, T.405, 445; W01679, 4 October 2021, T.891-892.

<sup>927</sup> W03593, 20 September 2021, T.454-455, and 21 September 2021, T.510; W01679, 4 October 2021, T.892; W04669, 10 November 2021, T.1432, 1435, 1441.

hot iron rod,<sup>928</sup> cut,<sup>929</sup> and electrocuted.<sup>930</sup> He was “brutally mistreated”.<sup>931</sup> He was burned and had bruises and marks on his face and body.<sup>932</sup> He could not stand up because of the injuries,<sup>933</sup> and could hardly speak.<sup>934</sup>

## **2. Aimed at obtaining information, punishing, coercing or intimidating**

308. In the course of their mistreatment, detainees were questioned and/or accused of being collaborators, friends of the Serbs, spies or thieves.

309. W01679 was accused of being a spy and beaten because of it by the Accused.<sup>935</sup> W03593 was accused of being a Serbian collaborator,<sup>936</sup> and was ordered by the Accused to reveal information on the identities of thieves.<sup>937</sup> W03594 was detained on account of [REDACTED].<sup>938</sup> W04669 was beaten because he was accused of being a spy and a collaborator of the Serbs, [REDACTED].<sup>939</sup> [REDACTED] was tortured because he was accused of being a Serbian collaborator,<sup>940</sup> a spy and a thief.<sup>941</sup> [REDACTED] was accused of being a spy.<sup>942</sup> The nature of the interrogations and questioning endured by the detainees is further corroborated by the contemporaneous notes contained in the List of Prisoners.<sup>943</sup>

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<sup>928</sup> W03593, 20 September 2021, T.454; 061015-TR-ET Part 2 Revised RED3, p.20; W01679, 4 October 2021, T.892; 7000687-7000691 RED3, p.1.

<sup>929</sup> W01679, 4 October 2021, T.892; 060698-TR-ET Part 2 Revised RED3, p.29.

<sup>930</sup> W01679, 4 October 2021, T.892.

<sup>931</sup> W01679, 4 October 2021, T.891-892.

<sup>932</sup> W03593, 20 September 2021, T.454, 474; W01679, 4 October 2021, T.892.

<sup>933</sup> W03593, 20 September 2021, T.404.

<sup>934</sup> W03593, 20 September 2021, T.404-405.

<sup>935</sup> W01679, 4 October 2021, T.875-876; 7000691 RED3, p.1.

<sup>936</sup> W03593, 20 September 2021, T.409-410, and 23 September 2021, T.689; *see also* W03594, 12 October 2021, T.1048-149, and 13 October 2021, T.1137.

<sup>937</sup> W03593, 20 September 2021, T.419-420.

<sup>938</sup> W03594, 12 October 2021, T.1032, 1075, and 13 October 2021, T.1169.

<sup>939</sup> W04669, 10 November 2021, T.1443-1444, 1446-1448.

<sup>940</sup> W04669, 10 November 2021, T.1438, 1564.

<sup>941</sup> W01679, 4 October 2021, T.892-893; W03594, 12 October 2021, T.1049, and 13 October 2021, T.1137.

<sup>942</sup> W01679, 4 October 2021, T.895.

<sup>943</sup> *See* para 172.



#### D. COUNT 4 - MURDER

310. The evidence discussed in Section III.D. above demonstrates beyond all reasonable doubt that, on or shortly after 19 April 1999, following exceptionally harsh detention, mistreatment, and torture, [REDACTED] was killed and subsequently buried next to the ZDC. The circumstances surrounding his detention, mistreatment, torture, and lack of release, coupled with the evidence that [REDACTED], demonstrates that he was not released because it was the intention of Salih MUSTAFA and his subordinates to kill him, and not to set him free like the other detainees. There is no other reasonable explanation that accounts for those events.

### V. INDIVIDUAL CRIMINAL RESPONSIBILITY AND EVIDENCE ESTABLISHING LIABILITY

#### A. JOINT CRIMINAL ENTERPRISE ('JCE')

311. The evidence adduced at trial establishes beyond all reasonable doubt that Salih MUSTAFA is responsible for the crimes charged in the Indictment as a participant in a joint criminal enterprise. The crimes were committed by Salih MUSTAFA together with a plurality of persons who included members of BIA, which was under his command. Salih MUSTAFA and other JCE members, including Nazif MUSLIU aka 'Tabuti' (or 'Kommandant Tabuti'), Ilmi VELA, Brahim MEHMETAJ aka 'Bimi', Kujtim QERIMI aka 'Dardan', Afrim, and other KLA soldiers, military police, and guards at the ZDC all shared the intent to interrogate and mistreat detainees at the ZDC, and for the crimes of arbitrary detention, cruel treatment, torture, and murder. Alternatively, it was foreseeable to Salih MUSTAFA that the crime of murder might be perpetrated in the execution of the common criminal plan.

312. All JCE members, including Salih MUSTAFA, significantly contributed to the execution of the common criminal plan through the acts and omissions discussed below in this section.

**1. The charged crimes were part of a common criminal purpose shared by a plurality of persons, including Salih MUSTAFA**

313. The crimes described above were committed in furtherance of a common criminal plan shared by Salih MUSTAFA and other KLA soldiers, including a number of his direct subordinates in the BIA unit.

314. It was armed members of BIA who, at the end of March or beginning of April 1999, arrested W01679 as he was training at the Zllash/Zlaš school, telling W01679 that their commander wanted to question him, and taking him to Salih MUSTAFA after his arrest.<sup>944</sup> These soldiers included Brahim MEHMETAJ aka 'Bimi', Salih MUSTAFA's deputy commander in BIA until February 1999<sup>945</sup> and a close associate of his.<sup>946</sup> When [REDACTED].<sup>947</sup>

315. W03593, W1679, W3594, and W04669 and the other victims were all detained at the ZDC, as clearly emerged from the witnesses' consistent descriptions and identifications of the buildings where they were detained.<sup>948</sup> The same buildings, in turn, were identified by defence witnesses as parts of the ZDC,<sup>949</sup> which, as discussed above were under the control of Salih MUSTAFA and the BIA.<sup>950</sup>

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<sup>944</sup> See *supra* Section III.A.1. *above*.

<sup>945</sup> See *supra* Section III.E.1(d) and (e) *above*.

<sup>946</sup> Brahim MEHMETAJ, 23 March 2022, T.2694, 2697.

<sup>947</sup> See *supra* Section III.D. *above*.

<sup>948</sup> See *supra* Section III.E.2(b) *above*.

<sup>949</sup> See *supra* Section III.E.2(b) *above*.

<sup>950</sup> See *supra* Section III.E.1(c) *above*.

316. Members of BIA who mistreated the detainees included Nazif MUSLIU aka 'Tabuti', Ilmi VELA, Afrim, Kujtim QERIMI aka 'Dardan', Fatmir, and Brahim MEHMETAJ aka 'Bimi', in addition to the Accused himself, who personally took part in mistreatments and interrogations.<sup>951</sup>

317. This evidence demonstrates beyond reasonable doubt that the crimes charged in the Indictment were part of a common criminal plan shared by the Accused and the other JCE members, including a number of his BIA subordinates. This plan included the commission of the crimes of arbitrary detention, cruel treatment, torture, and murder. The existence of an explicit agreement is not necessary, as it can be inferred from the unified actions of the JCE members.<sup>952</sup>

318. Further, a plethora of different facts and circumstances demonstrate the Accused's intent to commit these crimes. The first, most striking evidence of his intent consists of his personal participation in the crimes. BIA members who arrested W01679 brought him before the Accused immediately after his arrest.<sup>953</sup> The Accused also personally participated in the interrogation and mistreatment of W01679 and W03593, which he carried out with a number of his subordinates.<sup>954</sup>

319. The Accused's intent is further evidenced by his knowledge and continued participation in the detention and severe mistreatment of the detainees arbitrarily held at the ZDC.<sup>955</sup> In addition to the knowledge logically stemming from his personal participation described above, the Accused was by his own admission often present

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<sup>951</sup> See *supra* Section III.B. *above*.

<sup>952</sup> Vasiljević AJ, IT-98-32-A, para.109; Šainović *et al.* AJ, IT-05-87-A, paras.611, 654.

<sup>953</sup> See *supra* Section III.A.1. *above*.

<sup>954</sup> See *supra* Sections III.A.1. and III.A.2. *above*.

<sup>955</sup> According to established and consistent jurisprudence, criminal intent can be inferred by knowledge that crimes are being committed coupled with continued participation in the acts amounting to such crimes, see e.g. Karemera & Ngirumpatse AJ, ICTR-98-44-A, para.632; Kvočka *et al.* AJ, IT-98-30/1-A, paras.109-110.

at the ZDC during the Indictment Period.<sup>956</sup> He was also present at the ZDC when [REDACTED].<sup>957</sup> It would be unreasonable to conclude that the Victims in this case could be detained, interrogated, and mistreated for over two weeks within the tight confines of the ZDC, by the Accused's subordinates, without the Accused knowing what was happening and approving of it. It bears recalling, in this regard, that the Accused had complete control over the ZDC, which functioned as BIA's base in Zllash/Zlaš.<sup>958</sup>

320. The Accused also possessed the necessary intent for the murder of [REDACTED]. This is evidenced by the severity and frequency of the mistreatment suffered by [REDACTED] at the ZDC, which left clearly visible signs that he had been tortured obvious to anyone who saw him.<sup>959</sup> W03593, W01679 and W04669 provided chilling details of the consequences that the brutal mistreatment inflicted on [REDACTED] had caused to his health. He was "massacred". He could not stand for the severity of the beatings that he sustained. His body and face were completely black from the beatings.<sup>960</sup> The last time that W04669 saw [REDACTED], "he was almost dead."<sup>961</sup>

321. The Accused's intent in relation to murder is also apparent from the Accused's conduct with other detainees: his use of a gun during the interrogation of W03593,<sup>962</sup> his order to his subordinates to "finish" W01679,<sup>963</sup> and the use of other potentially lethal instruments, such as metal rods and knives, during beatings.<sup>964</sup>

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<sup>956</sup> See *supra* Section III.E.1(a) *above*.

<sup>957</sup> See *supra* Section III.D. *above*.

<sup>958</sup> See *supra* Section III.E.1(c) and (d) *above*.

<sup>959</sup> See *supra* Section III.D. *above*.

<sup>960</sup> See *supra* Section III.D. *above*.

<sup>961</sup> W04669, 10 November 2021, T.1434.

<sup>962</sup> See *supra* Section III.A.2. *above*.

<sup>963</sup> See *supra* Section III.A.1. *above*.

<sup>964</sup> See *supra* Section III.D. *above*.

322. “I was the headquarters”, stated the Accused during his interview to stress the high degree of control he had over his men and over the headquarters.<sup>965</sup> [REDACTED] was singled out for particularly abusive treatment during his entire stay in the ZDC,<sup>966</sup> which could only have been ordered or approved by the Accused. Similarly, there was a decision not to release [REDACTED] when the other detainees were released. As argued above, this differential treatment, at a time when the Accused and his subordinates in BIA were trying to evacuate Zllash/Zlaš, evidences a decision, which could only have made or approved by the Accused, to murder [REDACTED].<sup>967</sup> The evidence of the Victims, of the Accused’s subordinates, and of the Accused himself demonstrate that the members of BIA followed the orders and directions of the Accused.<sup>968</sup>

323. This evidence, considered in its entirety, demonstrates beyond reasonable doubt the Accused’s intent for the murder of [REDACTED].

324. In the alternative, and at the very least, the evidence establishes beyond reasonable doubt that it was foreseeable to the Accused that the severe mistreatment continuously inflicted on [REDACTED] could have resulted in his death and that, in spite of this, the Accused willingly took that risk.

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<sup>965</sup> 069404-TR-ET Part 1, p.31.

<sup>966</sup> See *supra* Section III.D. *above*.

<sup>967</sup> See *supra* Section III.D. *above*.

<sup>968</sup> See e.g. Section III.A.1 for evidence showing that W01679 was arrested by BIA members upon orders of Salih MUSTAFA, and Section III.A.2 for Salih MUSTAFA ordering his subordinates to beat W03593, an order that they followed without hesitation. See also e.g. Brahim MEHMETAJ, 23 March 2022, T.2621, 2632, 2666 testifying about Commander Cali giving him and other subordinates tasks that they would carry out; and 069404-TR-ET Part 2, pp.3-4, 8; Records of Witness Hearing with Salih MUSTAFA, 12 March 2003, 7000650-7000660, pp.2-3.

## 2. Salih MUSTAFA significantly contributed to the common criminal purpose

325. The Accused significantly contributed to the common criminal plan in a variety of ways.

326. As the commander of the BIA unit and the ZDC, he directed, controlled, and ultimately oversaw the crimes committed at the ZDC. For example, when BIA members arrested W01679, they immediately brought him before the Accused.<sup>969</sup> Once at the ZDC, BIA members told the Accused ““Here you are, here’s the person”,<sup>970</sup> which demonstrates that W01679’s arrest had been ordered, and was controlled and overseen by the Accused himself. After one of the beatings suffered by W03593, the Accused ordered two of his men to bring him back to the stable.<sup>971</sup> As the commander of BIA and the ZDC, the Accused allowed the detention and mistreatment of the detainees to take place and continue until 19 April 1999. He took no measures to prevent the mistreatments, to punish those responsible, or to ensure the humane treatment of the victims.

327. In fact, Salih MUSTAFA personally participated in the beating of W01679 and W03593, and imparted clear orders to his soldiers to beat them. His presence during the beatings, considering his position of command, control, and influence over his subordinates, greatly encouraged his subordinates to beat the detainees both in his presence and when he was not personally present. In this regard, it bears recalling that for responsibility under JCE to arise, the Accused’s physical presence at the time of the crimes’ commission is not required.<sup>972</sup> Salih MUSTAFA can be held responsible for

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<sup>969</sup> See *supra* Section III.A.1. *above*.

<sup>970</sup> W01679, 5 October 2021, T.980-981.

<sup>971</sup> See *supra* Section III.A.2. *above*.

<sup>972</sup> *Simba* AJ, ICTR-01-76-A, para.296.

crimes committed by other physical perpetrators, whether or not they were JCE members, provided that the crimes were part of the common criminal plan.<sup>973</sup>

328. In conclusion, the evidence reviewed in this brief proves beyond reasonable doubt that the Accused is responsible for the war crimes of arbitrary detention, cruel treatment, torture, and murder as a participant in a joint criminal enterprise. He possessed the intent to commit these crimes and through his conduct he significantly contributed to their commission.

329. With respect to murder, as discussed above, the evidence also demonstrates that, at an absolute minimum, it was foreseeable to the Accused that [REDACTED] would die as a consequence of the mistreatment he received, and that he willingly took this risk.

#### B. AIDING AND ABETTING

330. Through the same acts and omissions that significantly contributed to the furtherance of the common criminal plan, the Accused also aided and abetted the crimes committed by other members of BIA at the ZDC.

331. His personal participation in the crimes, his orders, his presence as his subordinates beat the Victims, and the accusations he levied against them provided assistance, encouragement and moral support to the physical perpetrators. By way of example, by pulling the trigger of his gun on the forehead of W03593, the Accused undoubtedly encouraged the severe beatings that his subordinates inflicted on the Victims during their detention. By allowing the premises of the ZDC to be used as a place of illegal detention and mistreatment, the Accused provided practical assistance to the commission of these crimes. He was in charge of the men and infrastructure that

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<sup>973</sup> *Šainović et al.* AJ, IT-05-87-A, para.1256.



made the commission of the crimes possible, and allowed these crimes to continue for almost twenty days.

332. The practical assistance, encouragement and moral support provided by the Accused to the perpetrators had a substantial effect on the commission of the crimes. As the commander with ultimate authority over BIA and the ZDC, and with knowledge of the crimes being committed at the ZDC, Salih MUSTAFA was aware that his conduct would contribute to their commission.

#### C. PHYSICAL COMMISSION

333. The Accused's direct participation in the detention and beatings described above also makes him responsible for the crimes of arbitrary detention, cruel treatment and torture as a physical perpetrator.

#### D. ORDERING AND INSTIGATING

334. The Accused is responsible for the crimes of arbitrary detention, cruel treatment and torture also through the modes of liability of ordering and instigating.

335. Several examples demonstrate that the crimes committed at the ZDC were ordered by the Accused. As discussed above under Section V(A), the modality of the arrest of W01679 clearly demonstrates that his arrest had been ordered by the Accused. After one of the beatings suffered by W03593, the Accused ordered two of his men to bring him back to the stable.<sup>974</sup> He ordered his men to "finish" W01679 during one of the beatings.<sup>975</sup> As the person in charge of the ZDC and of BIA, the Accused modelled the conduct he wanted from his subordinates and was thus the most responsible for the crimes that they committed at the ZDC.

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<sup>974</sup> See *supra* Section III.A.2. *above*.

<sup>975</sup> See *supra* Section III.A.1. *above*.

336. The Accused's presence during the beatings and direct participation therein, his orders, his words towards the detainees, and his behavior in front of his subordinates also make him responsible as an instigator. For instance, he interrogated W01679 in front of his subordinates and accused him of being a spy.<sup>976</sup> He pulled the trigger on the forehead of W03593 in front of his subordinates, again modelling the behavior he wanted them to follow.<sup>977</sup> He stood present as his subordinates savagely beat the Victims during interrogation. This behaviour had a substantial contribution on the commission of the crimes against the Victims. The Accused intended for these crimes to be committed or was at least aware of the substantial likelihood that they would be committed in execution of his orders or acts of instigation.

E. SUPERIOR RESPONSIBILITY

337. In the alternative, the Accused is criminally responsible for the crimes charged in the Indictment because as a superior, with the requisite knowledge, he failed to prevent and/or punish the crimes committed by his subordinates.

338. The physical perpetrators of the crimes were all members of BIA, of which the Accused was the commander both *de jure* and *de facto*.

339. Numerous factors discussed extensively in Section III(E)(1)(d) above demonstrate that as the BIA commander, the Accused had effective control over his subordinates. Firstly, Salih MUSTAFA admitted that he was the only commander of the BIA unit from its very inception on 20 May 1998 until 12-14 June 1999, when the unit was disbanded. He held that position by virtue of his appointment by the Commander of the KLA's Llap OZ.<sup>978</sup>

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<sup>976</sup> See *supra* Section III.A.1. above.

<sup>977</sup> See *supra* Section III.A.2. above.

<sup>978</sup> See *supra* Section III.E.1(d). above.

340. As stated by the Accused himself and confirmed by several witnesses, he had the ability to issue orders to his BIA subordinates, and these orders were followed. The Accused also received reports from his subordinates.<sup>979</sup>

341. Significantly, the Accused had disciplinary powers over his subordinates, which he exercised also by virtue of KLA regulations that he received from the Llap OZ and distributed to his BIA members. The Accused himself admitted that he exercised disciplinary powers over BIA members, including by demobilising soldiers who had disobeyed orders or committed other disciplinary violations.<sup>980</sup> This demonstrates the Accused's material ability to prevent offenses and punish the offender, which is an important indicator of effective control.<sup>981</sup>

342. The Accused also had knowledge, as discussed above under Section V(A), that his subordinates were committing crimes against those detained at the ZDC. His presence as detainees were brought to the ZDC, and during their beatings, establishes his knowledge of those crimes. His presence while crimes were committed, the visible marks and effects on the detainees, the screams that could be heard during interrogations and mistreatments, and his general presence at the ZDC as the commander in charge of the compound establish that the Accused also had reason to know that his subordinates would commit the charged crimes in his absence.

343. Despite knowing or having reason to know that his subordinates would commit crimes, and despite his effective control and disciplinary powers over them, the Accused failed to take necessary and reasonable measure to prevent those crimes,

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<sup>979</sup> See *supra* Section III.E.1(d) *above*. While not necessary to establish effective control, the following of orders issued by a superior, as well as the reporting to the superior, amount to *indicia* of effective control, see *Nyiramasuhuko et al.* AJ, ICTR-98-42-A, paras.1003, 2568, 2570.

<sup>980</sup> See e.g. 069404-TR-ET Part 5, p.22.

<sup>981</sup> *Popović et al.* AJ, IT-05-88-A, paras.1857-1860.

or to punish his subordinates for their commission. In fact, Salih MUSTAFA failed to take any measures at all.

## VI. SENTENCING

344. In the circumstances of this case, the Panel should impose a lengthy term of imprisonment on the Accused, reflecting the gravity of the crimes he committed and their severe consequences on the Victims, the role of the Accused in the crimes, the importance of general deterrence, the presence of multiple aggravating factors, and the lack of mitigating factors.

345. In addition to imprisonment, the Panel should also order the Accused to make restitution or pay compensation to the Victims in this case, pursuant to Article 44(6).

### A. APPLICABLE SENTENCING RANGES

346. The Specialist Chambers may impose upon a convicted person imprisonment up to a maximum term of life-long imprisonment.<sup>982</sup> The Trial Panel is vested with broad discretion in determining the appropriate sentence to be imposed on the Accused due to its obligation to individualise the penalty to the circumstances of the Accused and the gravity of the crimes, having regard to the entirety of the case.<sup>983</sup> While the Panel can take guidance from the relevant case-law of other courts, every case adjudicated before a national or international court is unique and specific. Comparison with other cases, such as war crimes cases tried by Kosovo courts, is of limited value given that each case has its own specific circumstances and that considerations linked to the gravity of the crimes, and aggravating and mitigating

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<sup>982</sup> Article 44(1).

<sup>983</sup> See e.g. *Brdanin* AJ, IT-99-36-A, para.500; *Momir Nikolić* JSA, IT-02-60/1-A, para.8; *Krstić* AJ, IT-98-33-A, paras 242, 248; *Semanza* AJ, ICTR-97-20-A, para.394.

factors, may dictate different results.<sup>984</sup> The decision concerning the length of sentence ultimately turns on the circumstances of the particular case.<sup>985</sup>

347. Pursuant to Rule 163(4), the Trial Panel shall determine a sentence in respect of each charge in the indictment under which an accused has been convicted and shall impose a single sentence reflecting the totality of the criminal conduct of the accused. The single sentence shall not be less than the highest individual sentence determined in respect of each charge.<sup>986</sup> In imposing a sentence of imprisonment, the Panel shall deduct the time, if any, during which the Accused was detained.<sup>987</sup>

348. Pursuant to Article 44(2), the punishment imposed on persons adjudged guilty of international crimes under the Law shall also take into account: *a.* the sentencing range for the crime provided under Kosovo Law at the time of the commission, and *b.* any subsequent more lenient sentencing range for the crime provided in Kosovo Law, as well as the relevant provisions of the legal instruments referred to in paragraph *c.*<sup>988</sup>

349. The Criminal Code of the Socialist Federal Republic of Yugoslavia ('CCSFRY') of 1 July 1977<sup>989</sup> was in force at the time of the commission of the charged crimes.<sup>990</sup> On a purely temporal scope, the Criminal Law of the Socialist Autonomous Province of Kosovo of 28 June 1977<sup>991</sup> was also applicable at the time of the charged

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<sup>984</sup> See *Delalić et al.* AJ, IT-96-21-A, para.717, 757; *Semanza* AJ, ICTR-97-20-A, para.394; *Lubanga* AJS, ICC-01/04-01/06-3122, para.76; *Al Mahdi* SJ, ICC-01/12-01/15-171, para.107; *Taylor* TJ, SCSL-03-01-A, para. 705.

<sup>985</sup> See *Krstić* AJ, IT-98-33-A, para.248; *Semanza* AJ, ICTR-97-20-A, para.394; *Taylor* TJ, SCSL-03-01-A, para.705; *Bemba et al.* Sentencing Decision, ICC-01/05-01/13-2123-Corr, para.36.

<sup>986</sup> Rule 163(4).

<sup>987</sup> Rule 163(6).

<sup>988</sup> Article 44(2).

<sup>989</sup> Official Gazette SFRY No. 44 of 8 October 1976.

<sup>990</sup> Article 15(1).

<sup>991</sup> Criminal Law of the Socialist Autonomous Province of Kosovo of 28 June 1977, PS No.011-25/77 ("1977 KCL").

crimes, however that Code did not provide for crimes under international law and merely included provisions regarding “ordinary/general crime”.<sup>992</sup> Therefore, the CCSFRY constitutes *lex specialis* in this instance.

350. Article 142 of the CCSFRY (“War Crimes against the civilian population”) - which addressed, *inter alia*, war crimes of killings, torture, inhuman treatment and illegal arrests and detention - provided for punishment of either imprisonment for not less than five years or the death penalty.<sup>993</sup> Article 38(1) and (2) of the CCSFRY additionally provided that the punishment of imprisonment may not be greater than 15 years,<sup>994</sup> but that a term of 20 years may be imposed for criminal acts eligible for the death penalty.<sup>995</sup> All subsequent relevant laws or codes adopted in Kosovo have provided for equal or more severe sentencing ranges, with higher minimum penalties, and up to life imprisonment.<sup>996</sup>

351. The Accused has been charged on the basis of multiple modes of liability.<sup>997</sup> This does not impact the sentencing range under the CCSFRY as the provisions in the

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<sup>992</sup> See e.g. 1977 KCL Art.30 “Murder”; Art.38 “Serious bodily injury”; Art.48 “Endangering the safety”.

<sup>993</sup> See Art.142 CCSFRY.

<sup>994</sup> Art.38(1) CCSFRY.

<sup>995</sup> Art.38(2) CCSFRY.

<sup>996</sup> Cf. Provisional Criminal Code of Kosovo (PCCK), introduced under UNMIK Regulation No. 2003/25 in July 2003, entered into force on 6 April 2004: Articles 118 and ff. provided for punishments regarding war crimes. The sentencing range encompassed imprisonment of at least five years or long-term imprisonment for “unlawful confinement”, and imprisonment of at least ten years or long-term imprisonment for “willful killing”, “torture” and “inhuman treatment”. The same sentencing range applies for command responsibility pursuant to Article 129 PCCK; Kosovo Criminal Code of 20 April 2012, Law No. 04/L-082, where war crimes are provided for in Articles 150 and ff. For Article 150, the sentencing range encompasses imprisonment of at least ten years or life imprisonment for “unlawful confinement” and imprisonment of at least fifteen years or life long imprisonment for “willful killing”, “torture” and “inhuman treatment”. The same sentencing range applies for command responsibility pursuant to Article 161. The same sentencing ranges apply with regards to the Kosovo Criminal Code as amended 23 November 2018 (Law No. 05/L074): see Articles 144 and 145.

<sup>997</sup> See Section V.

code concerning such modes stipulate that the perpetrator shall be punished as prescribed for the underlying criminal offense.<sup>998</sup>

352. While the Specialist Chambers should “take into account”<sup>999</sup> the applicable ranges provided for in the CCSFRY, by the plain language of the Law itself, it is not bound by them. This is also consistent with, for example, the framework at the ICTY where, when assessing recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia, the ICTY repeatedly found that such practice “may be used for guidance, but it is not binding.”<sup>1000</sup>

353. Moreover, in taking into account the sentencing ranges applicable under Kosovo law at the time of the offences, the Panel will consider that, at that time, war crimes were punished with very harsh penalties, including the death penalty. The fact that the death penalty was prescribed by Article 142 of the CCSFRY for “War Crimes against the civilian population” made offenders aware of the potential imposition of very harsh penalties for crimes of the nature of those under the jurisdiction of the KSC. Once the death penalty was abolished, Kosovo laws in fact provided for a maximum term of life imprisonment for war crimes.

354. The Accused was therefore aware, or should have been aware – both from the sentencing provisions of the CCSFRY (which, as noted above, provided for a potential sentence of death) and prior sentencing practice for international crimes - that such crimes were subject to severe punishment. For example, in *Delalić*, the ICTY Appeals Chamber found that, “there can be no doubt that the accused must have been aware

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<sup>998</sup> See CCSFRY Articles 22, 24, 26, 30. This means that the applicable punishment is the one prescribed by Art.142. Exceptionally, for aiding and abetting, the punishment “may also be reduced”, though a reduction is not required under the law (Art.24(1) CCSFRY).

<sup>999</sup> Article 44(2).

<sup>1000</sup> See e.g. *Limaj et al.* TJ, IT-03-66-T, para.734; *Haradinaj et al.* TJ, IT-04-84-T, para.497; *Tadić* SJ, IT-94-1-T bis-R117, paras.11-12; *Delalić et al.* AJ, IT-96-21-A, paras.813-816; see also *Serushago* AJ, ICTR-98-39-A, para.30.



of the fact that the crimes for which they were indicted are the most serious violations of international humanitarian law, punishable by the most severe penalties.”<sup>1001</sup> Lengthy sentences (including ones in excess of 20 years) were imposed for example in *Stakić*,<sup>1002</sup> *Krstić*,<sup>1003</sup> *Blaskić*,<sup>1004</sup> and *Galić*.<sup>1005</sup>

355. In conclusion, therefore, in terms of applicable sentencing ranges, it would be open to the Panel to impose a sentence of imprisonment up to a maximum term of life.

## B. THE GRAVITY OF THE CRIMES AND THE ROLE OF THE ACCUSED REQUIRE A SEVERE SENTENCE

### 1. The Accused’s Crimes were Brutal and Devastating for the Victims

356. The gravity of the crimes and its consequences are fundamental factors in guiding the imposition of punishment by the Specialist Chambers.<sup>1006</sup> Gravity does not refer only to a crime’s objective gravity, but also to the particular circumstances surrounding the case and the form and degree of the Accused’s participation in the

<sup>1001</sup> *Delalić et al.* AJ, IT-96-21-A, para.817.

<sup>1002</sup> *Stakić* AJ, IT-97-24-A (sentenced to life imprisonment, then turned into 40 on appeal). In issuing a sentence of life imprisonment, the *Stakić* Trial Chamber noted that the death penalty could no longer be imposed in the states of the former Yugoslavia and had been replaced by the maximum penalty of life imprisonment (except where a lower maximum was specified). This means, “if the SFRY CC were applied today, the maximum penalty would be life imprisonment” (*Stakić* TJ, IT-97-24-T, para.889).

<sup>1003</sup> *Krstić* AJ, IT-98-33-A (sentenced to 35 years imprisonment). The Appeals Chamber emphasized that as long as the sentencing practice in the former Yugoslavia was taken into consideration there was no need to further justify deviation (*Krstić* AJ, IT-98-33-A, para.261), and that the ICTY was not prevented from imposing a greater or lesser sentence than would have been imposed under the legal regime of the Former Yugoslavia (*Krstić* AJ, IT-98-33-A, para.261).

<sup>1004</sup> *Blaskić* AJ, IT-95-14-A (sentenced to 45 years imprisonment; reduced to 9 years on appeal because the conviction of various counts were reversed). The Appeals Chamber emphasizes that the ICTY was able to impose a sentence in excess of that which would be applicable under relevant law in the former Yugoslavia, without violating the principle of *nulla poena sine lege* because “an accused must have been aware that the crimes for which he is indicted are the most serious violations of international humanitarian law, punishable by the most severe of penalties.” *Blaskić* AJ, IT-95-14-A, para.681.

<sup>1005</sup> *Galić* AJ, IT-98-29-A (sentenced to life imprisonment).

<sup>1006</sup> Cf Art.44(5) of the Law.

crimes.<sup>1007</sup> As such, this factor must always be assessed in view of the particular circumstances of each case.<sup>1008</sup> The consequences of the Accused's actions, including the potential and actual personal and psychological consequences for the Victims of the crimes, is another relevant factor in assessing gravity.<sup>1009</sup>

357. The crimes proven in this case were indisputably brutal. The Victims were apprehended without warning and taken to an unfamiliar and isolated location.<sup>1010</sup> They were held together in a dark, damp, and crowded cowshed in degrading conditions.<sup>1011</sup> W03594 testified that he "felt as if I were an animal and no longer a human being."<sup>1012</sup> The beatings that were inflicted were unpredictable and extraordinarily violent.<sup>1013</sup> The Victims were randomly attacked in the cowshed or pulled upstairs for lengthy sessions of interrogation and beatings, struck repeatedly with fists and weapons.<sup>1014</sup> At times the Victims were beaten so severely they were rendered unconscious.<sup>1015</sup>

358. When they weren't being beaten, the Victims were in a state of extreme fear. They did not know why they were being held, where they were being held, how long they would be held, what would happen to them. At any moment, the door to the cowshed could open and the beatings begin. The evidence is that the Victims would

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<sup>1007</sup> See e.g. *Nshogoza*, AJ, ICTR-07-91-A, para.98.

<sup>1008</sup> See e.g. *Bemba et al.* Sentencing Decision, ICC-01/05-01/13-2123-Corr, para.23; *Ayyash* SJ, STL-11-01/T/TC, para.24; *Gucati and Haradinaj*, TJ, KSC-BC-2020-07, para.951.

<sup>1009</sup> See e.g. *Nshogoza* TJ, ICTR-07-91-T, para.219; *Bemba et al.* Second Sentencing Decision, ICC-01/05-01/13-2312, paras.76-79, 93-96, 111-114; *Margetic* TJ, IT-95-14-R77.6, para.86.

<sup>1010</sup> See *supra* Section IV.A.

<sup>1011</sup> See *supra* Section III.A and B.

<sup>1012</sup> W03594, 12 October 2021, T.1066.

<sup>1013</sup> See *supra* Section III.B.

<sup>1014</sup> See *supra* Section III.A. and B.

<sup>1015</sup> See e.g. W01679, 4 October 2021, T.870, 882; W03593, 20 September 2021, T.409, 411..

literally cower when the guards entered, terrified of what could happen next.<sup>1016</sup> It is difficult to fully imagine the brutality of those days and nights in the cowshed.

359. The circumstances of the Victims' detention and mistreatment were also extremely humiliating and isolating. Several of the Victims sought to join the KLA, or support its cause, but were targeted by the Accused and his subordinates and labeled as collaborators or spies, without any basis or possibility to defend themselves or refute the accusations.<sup>1017</sup> By their arrests, they were separated from their families and communities; branded as 'collaborators' they were also deemed enemies of the KLA and pariahs in their communities, a designation that isolated them both during their detentions and long afterwards.<sup>1018</sup>

360. Thus even after their release, the Victims had to hide, in shame, what had happened to them, forced to live as survivors without any community or support. When [REDACTED], [REDACTED] pretended not to recognize him and said: "You better go. I don't want anyone to hear us speak about this."<sup>1019</sup> [REDACTED] shared a fear that others may overhear and put them at risk of blackmail or prejudice.<sup>1020</sup> [REDACTED] testified that [REDACTED], but [REDACTED] felt "it is not the right time" because "all the institutions are held by those people."<sup>1021</sup> The climate of intimidation continued to place witnesses in fear of testifying.<sup>1022</sup> In this respect, the Victims in this case were vulnerable *when targeted* – by their isolation, status, and, in many cases, young age – and they were rendered *even more vulnerable* by the false accusations made against them and the treatment they received.

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<sup>1016</sup> See eg. W03594, 12 October 2021, T.1079.

<sup>1017</sup> See *supra* Section III.A.

<sup>1018</sup> See *supra* Section III.A.

<sup>1019</sup> [REDACTED].

<sup>1020</sup> [REDACTED].

<sup>1021</sup> [REDACTED].

<sup>1022</sup> See Section III.A.4. (para.65).

361. As a result, crimes committed by the Accused resulted in far-reaching physical and psychological consequences for the Victims and their family members. [REDACTED].<sup>1023</sup> [REDACTED]. W01679 has nightmares and flashbacks of the terrible things that happened over 20 years ago,<sup>1024</sup> including the cruelty of hot iron burns and electrocution.<sup>1025</sup>

362. W03593 had [REDACTED].<sup>1026</sup> W03593 is currently unable to work, and has sleeping problems.<sup>1027</sup> To this day, he is still severely traumatised.<sup>1028</sup>

363. Similarly, [REDACTED],<sup>1029</sup> testifying that he still carries the fear instilled within him in Zllash/Zlaš.<sup>1030</sup> In the words of W04669, the fear will remain “up until the perpetrators of those crimes are put before justice and up until they are convinced of their illegal actions.”<sup>1031</sup>

364. [REDACTED].<sup>1032</sup> They [REDACTED] witnessed the inflicted wounds resulting in his death.<sup>1033</sup> W04648 spent years seeking answers about his son’s death, [REDACTED].<sup>1034</sup> [REDACTED], W04648 was unable to witness [REDACTED].<sup>1035</sup> The pain and suffering caused by the murder of [REDACTED].

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<sup>1023</sup> See [REDACTED].

<sup>1024</sup> W01679, 5 October 2021, T.939.

<sup>1025</sup> W01679, 5 October 2021, T.985; and 4 October 2021, T.884.

<sup>1026</sup> W03593, 20 September 2021, T.425-426; and 21 September 2021, T.523-524, 526-529, 538-540.

<sup>1027</sup> W03593, 21 September 2021, T.524, 541-542.

<sup>1028</sup> See e.g. W03593, 21 September 2021, T.520-522, 531.

<sup>1029</sup> See [REDACTED].

<sup>1030</sup> W04669, 11 November 2021, T.1506.

<sup>1031</sup> W04669, 11 November 2021, T.1506.

<sup>1032</sup> See Section III.D.

<sup>1033</sup> See Section III.D.

<sup>1034</sup> See Section III.D; SPOE00128344-00128345; SPOE00128158-00128162 RED1; SPOE00128061-00128064 RED1; SPOE00128333-00128343 RED1.

<sup>1035</sup> 077825-077825 (W04648 Death certificate).

## 2. The Accused's participation in the crimes was direct, deliberate, and unequivocal

365. Among the factors relevant to the assessment of the Accused's participation in the crimes are the specific role of the Accused in the commission thereof,<sup>1036</sup> the deliberate way in which the crimes were undertaken,<sup>1037</sup> and the systematicity of the Accused's actions.<sup>1038</sup>

366. In this case, the Accused both directed the crimes and participated in them. He caused harm to the Victims by ordering others to detain and abuse them, resulting in at least one victim's death,<sup>1039</sup> and by using his own hands and weapons to abuse and mistreat them.<sup>1040</sup> His sentence should reflect his dual roles as commander and participant.

367. As set out above,<sup>1041</sup> the Accused is responsible for the crimes through his role as the commander of BIA and the ZDC.<sup>1042</sup> The evidence shows that he ordered and instigated the crimes, aided and abetted them, and was aware they were being committed and did nothing to prevent or punish them. On several occasions, he witnessed the mistreatment of Victims and encouraged his subordinates to continue. When in the immediate presence of W01679's beating, the Accused commanded his subordinates to "finish him."<sup>1043</sup>

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<sup>1036</sup> *Nzabonimpa et al.* TJ, MICT-18-116-T, para.399.

<sup>1037</sup> 2011 *Šešelj Contempt* TJ, IT-03-67-R77.3, para.78.

<sup>1038</sup> *Bemba et al.*, Second Sentencing Decision, ICC-01/05-01/13-2312, paras 76-79, 93-96, 111-114; *Akhbar Beirut* SJ, STL-14-06/S/CJ, para.17. *See also*, *Nshogoza* TJ, ICTR-07-91-T, para.222; *Senessie* SJ, SCSL-2011-01-T, paras 18, 22.

<sup>1039</sup> *See* Section III.D.

<sup>1040</sup> *See* Section V.C.

<sup>1041</sup> *See generally*, Section V.

<sup>1042</sup> *See* Section III.E(1)(c).

<sup>1043</sup> W01679, 4 October 2021, T.869, and T.981.

368. The Accused also actively participated in the crimes. He interrogated and beat W03593 in the presence of his subordinates, modelling for his subordinates the type of conduct he desired.<sup>1044</sup> After W03593 was beaten, the Accused placed a revolver against the middle of his forehead and pulled the trigger.<sup>1045</sup> In so doing, he displayed for his subordinates an utter disregard for human dignity, a desire to instill terror, and even a readiness to kill.<sup>1046</sup> The Accused's direct participation in the crimes both adds to his culpability and helped ensure that his orders as a commander would be fully carried out by his subordinates. A severe sentence is warranted in this case because of the different ways that the Accused participated in the crimes and ensured that they would be committed with extreme brutality.

C. DETERRENCE REQUIRES A SEVERE SENTENCE IN THIS CASE

369. The recognized purposes of sentencing include deterrence as a main goal. The establishment of the KSC recognized the importance of bringing to justice the perpetrators of international crimes, even decades after the events. The sentence imposed in this case should recognize the seriousness of the crimes committed and be sufficiently severe to deter others in the future from committing such crimes.<sup>1047</sup> As set forth above, a significant sentence is warranted because of the gravity of the crimes and the Accused's role in those crimes. Such a sentence will also send a message to future potential perpetrators that their crimes will be investigated and severely punished. In this way, the process of sentencing also serves to reassure the general public, surviving victims, their relatives, and witnesses, that the legal system is

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<sup>1044</sup> W03593, 20 September 2021, T.411-412.

<sup>1045</sup> W03593, 20 September 2021, T.411-412.

<sup>1046</sup> 041888-041889.

<sup>1047</sup> *Todorović* SJ, IT-95-9/1-S, para.30; *Aleksovski* AJ, IT-95-14/1-A, para.185; *Delalić et al.* AJ, IT-96-21-A, para.803.

implemented and enforced, and it conveys the message that “globally accepted laws and rules have to be obeyed by everybody.”<sup>1048</sup>

370. Deterrence also requires a severe sentence because of the particular circumstances of this case. The crimes proven in this case – targeting individuals as alleged collaborators and enemies of the KLA – are by their nature extraordinarily difficult to investigate and prove. This challenge has been accentuated by the ongoing climate of intimidation and fear for witnesses in Kosovo, which was at issue throughout this case. An additional justification for the establishment of the KSC was the recognition that many prior investigations and prosecutions had been defeated by these very forces. In light of the recognized challenges in bringing these cases in Kosovo, it is particularly important for deterrent purposes that convictions result in an appropriately severe sentence.

D. THERE ARE MULTIPLE ADDITIONAL AGGRAVATING FACTORS

371. Pursuant to Article 44(5) and Rule 163(1)(b), in determining the Accused’s sentence, the Panel shall take into account, as appropriate, aggravating circumstances where applicable. The Trial Panel has wide discretion in determining what constitutes aggravating circumstances, which need to be proven beyond reasonable doubt, and the weight to be accorded thereto.<sup>1049</sup>

372. While not exhaustive, Rule 163(1)(b) provides for aggravating circumstances such as: (i) relevant prior criminal convictions; (ii) abuse of power or official capacity; (iii) commission of/participation in a crime where the victim is particularly vulnerable or defenceless; and (iv) commission of a crime with particular cruelty or where there were multiple victims. Three (ii., iii., and iv.) of the four outlined aggravating

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<sup>1048</sup> See *Brdanin* TJ, IT-99-36-T, para.1091; *Dragan Nikolić* SJ, IT-94-2-S, para.139.

<sup>1049</sup> *Nshogoza* TJ, ICTR-07-91-T, para.220; *Delalići et al.* AJ, IT-96-21-A, para.777; *Brdanin* TJ, IT-99-36-T, para.1096.



circumstances have been proven beyond a reasonable doubt in this case, as well as additional aggravating factors as listed below.

**1. The Accused abused his power or official capacity to committ the crimes**

373. The Accused abused his power as the Commander of BIA.<sup>1050</sup> In his interview with the SPO, he bragged about his authority over BIA, declaring that he was the “headquarters.”<sup>1051</sup> After serving as a commander in the KLA, the Accused continued to occupy positions of responsibility after the conflict, up until his arrest in this case, in the intelligence services of Kosovo. His superior position and central role in the creation of a system of illegal detentions, beatings and torture at the ZDC, together with his continued approval and endorsement of the same acts during the Indictment period, should be considered a highly aggravating circumstance.<sup>1052</sup>

**2. The Victims were particularly vulnerable or defenceless and caused them to experience fear and intimidation**

374. As set forth in detail above, the Victims of the Accused’s crimes were vulnerable and defenceless, and rendered even more vulnerable as a result of the crimes. They were all civilians, caught in the events of the war, some of them young, and abruptly taken into detention with no explanation and no possibility to defend themselves.<sup>1053</sup> The Victims were given no process to appeal their detention or make complaints about their mistreatment.<sup>1054</sup>

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<sup>1050</sup> See generally Section V.

<sup>1051</sup> 069404-TR-ET Part 1, p.31.

<sup>1052</sup> The abuse of power or official capacity is an aggravating circumstance specifically referred to in Rule 163(1)(b)(ii). See also Basic Court of Pristina, P. No. 448.2012, 7 June 2013 (*Latif Gashi et al.*), paras.111, 113; *Gucati and Haradinaj* TJ, KSC-BC-2020-07, para.948 and jurisprudence cited in footnote n.1957.

<sup>1053</sup> See Section III.A.

<sup>1054</sup> See Section IV.A.

375. The Victims were particularly defenceless as they routinely witnessed the beatings endured by one another.<sup>1055</sup> The Victims testified to a general state of fear and inability to escape the compound.<sup>1056</sup> The infliction of personal pain, degrading conditions, and loss of dignity resulted in a vulnerable and defenceless state for the Victims. Labeled as ‘collaborators’, they were further prevented from seeking justice after they were released.<sup>1057</sup> As a consequence and as described above, the crimes committed against the Victims had long-lasting consequences, both physical and psychological.<sup>1058</sup>

### **3. The crimes were committed with particular cruelty and against multiple victims**

376. The crimes were perpetrated against multiple victims and some of the crimes were particularly cruel. As detailed above, the Accused and other KLA members arbitrarily deprived at least seven civilians of their liberty without due process of law at the KLA ZDC, mistreated them, and tortured them.<sup>1059</sup>

377. The brutality of the crimes has been evidenced above. The use of hot irons or bars and electrocution speaks to the brutality of the mistreatments and torture, and the firing of a gun against W03593’s forehead denotes deliberate cruelty.<sup>1060</sup>

378. All of these circumstances should be taken into consideration as aggravating factors.

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<sup>1055</sup> See Section IV.B.

<sup>1056</sup> See Section IV.A.

<sup>1057</sup> See Section III.A. and B.

<sup>1058</sup> See Section VI.B.

<sup>1059</sup> W01679, W03593, and [REDACTED]. See Sections III.A. and IV.

<sup>1060</sup> See e.g. W03593, 20 September 2021, T.411-412. See also Sections III.A. and IV.

## E. THERE ARE NO MITIGATING FACTORS

379. The Panel has wide discretion in determining what constitutes mitigating circumstances, which must be established on a balance of probabilities, and the weight to be accorded thereto.<sup>1061</sup>

380. Pursuant to Rule 163(1)(a) of the Rules, mitigating circumstances may include the convicted person's conduct after the act, including any efforts to compensate the victims, voluntary surrender, and any cooperation with the Specialist Prosecutor or the Specialist Chambers. In this case, there are no circumstances which could mitigate the sentence to be imposed on the Accused.

381. At no point in the many years since the crimes occurred has the Accused expressed remorse, or indicated an intention to take accountability for his action. On the contrary, the Accused publicly bragged about committing violence at a press conference organized around June 1999 in Prishtinë/Priština.<sup>1062</sup> Subsequently, hearing about the possibility of an investigation specifically into events at the ZDC, the Accused vowed to prevent any case from proceeding.<sup>1063</sup>

382. The Accused expressed no remorse or indication of sympathy, compassion, or sorrow for the Victims. Regardless of whether he declared himself innocent or guilty, never once did he address, if nothing else at least out of respect, the Victims in this case: Kosovo-Albanian civilians who suffered severe crimes committed by fellow Kosovars. The Accused offered no condolences for the harm suffered by the Victims and their families, and never acknowledged the pain and suffering that the Victims in this case have endured.

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<sup>1061</sup> See e.g. *Simba* AJ, ICTR-01-76-A, para.328; *Brdanin* TJ, IT-99-36-T, para.1117.

<sup>1062</sup> 041888-041889.

<sup>1063</sup> See Section III(E)(4)(b) above.

383. Any possible submissions as to the good character of the Accused should not be given any substantial weight, given the gravity of the crimes he has committed.

F. REQUESTED SENTENCE

384. Having considered the applicable sentencing ranges and the factors set out above (in particular the gravity of the crimes and Accused's conduct, the numerous aggravating circumstances, the lack of any mitigating circumstances, the crucial importance of general deterrence), and given that pursuant to Rule 163(4) the Panel must first determine a sentence in respect of each charge in the Indictment, the SPO requests the Panel to impose the following sentences on the Accused:

- a. **Count 1:** 10 years' imprisonment;
- b. **Count 2:** 20 years' imprisonment;
- c. **Count 3:** 25 years' imprisonment;
- d. **Count 4:** 33 years' imprisonment.

385. Rule 163(4) requires the Panel to impose a single sentence reflecting the totality of the criminal conduct of the Accused, which shall not be less than the highest individual sentence determined in respect of each charge. It remains open to the Panel to sentence the Accused to the terms of imprisonment set out in relation to Counts 1-4 cumulatively, or to a higher sentence of imprisonment than that set out in relation to any specific Count.

386. In order to reflect the totality of the criminal conduct of the Accused, the SPO requests to impose on the Accused a single sentence of 35 years' imprisonment.

**VII. CLASSIFICATION**

387. The present submission is filed confidentially in order to protect confidential material such as trial transcripts, confidential exhibits and testimony heard in private session. A public redacted version will be filed.

**VIII. RELIEF SOUGHT**

388. For the foregoing reasons, the Accused should be convicted of all counts in the Indictment and sentenced to 35 years of imprisonment for his crimes.

**Word count: 38.595**