



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

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

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Public Redacted Version of 'Prosecution first motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-17', KSC-BC-2020-06/F01329, dated 1 March 2023

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I. INTRODUCTION

1. Pursuant to the Decision,¹ the Trial Panel's Order,² Article 37 of the Law,³ and Rule 155 of the Rules,⁴ the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,⁵ together with associated exhibits and/or other written records where applicable,⁶ of 15 deceased witnesses: W00100,⁷ W04416,⁸ W04418,⁹ W04589,¹⁰ W04835,¹¹ W01448,¹² W04733,¹³ W04848,¹⁴ W01143,¹⁵ W02618,¹⁶ W04783,¹⁷ W04829,¹⁸ W01456,¹⁹ W04597,²⁰ W04836,²¹ and one incapacitated witness: W01984²² (collectively, 'Rule 155 Witnesses').

2. The Proposed Evidence should be admitted because: (i) the Rule 155 Witnesses are unavailable;²³ (ii) the Proposed Evidence meets the requirements of the Rule, is

¹ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.51 (encouraging 'Parties and participants to consider making effective use of Rules 153, 154 and 155, to the greatest extent possible') ('Decision').

² Third Oral Order, 18 January 2023, T.1903 lines 14-22 ('Order').

³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to the Law, unless otherwise specified. Certain of the statements and associated exhibits or records are admissible pursuant to Article 37, as they were in prior criminal proceedings or investigations.

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules of Procedure and Evidence.

⁵ The account of each witness tendered for admission is the 'Rule 155 Statement'.

⁶ See Annexes 1-16. The Rule 155 Statements and, where applicable, associated exhibits/other written records for each witness are the 'Proposed Evidence.'

⁷ See Annex 1, items no.1-6.

⁸ See Annex 2, items no.1-2.

⁹ See Annex 3, items no.1-3.

¹⁰ See Annex 4, item no.1.

¹¹ See Annex 5, items no.1-3.

¹² See Annex 6, items no.1-9.

¹³ See Annex 7, items no.1-10.

¹⁴ See Annex 8, items no.1-2.

¹⁵ See Annex 10, items no.1-5.

¹⁶ See Annex 11, items no.1-6.

¹⁷ See Annex 12, items no.1-4.

¹⁸ See Annex 13, item no.1.

¹⁹ See Annex 14, items no.1-9.

²⁰ See Annex 15, items no.1-15.

²¹ See Annex 16, items no.1-4.

²² See Annex 9, items no.1-2.

²³ Rules, Rule 155(1)(a).

relevant, authentic and reliable and has probative value, which is not outweighed by any prejudice.²⁴ Admission is therefore in the interests of justice.

3. Section III of this Motion presents submissions related to the Rule 155 requirements in relation to each of the 16 Rule 155 Witnesses, organised by relevant areas. Attached to this Motion are 17 Annexes. Annexes 1-16, one for each of the Rule 155 Witnesses, contain a table identifying the Proposed Evidence for that witness, which includes the Rule 155 Statement and, where applicable, associated exhibits and/or other written records tendered for admission into evidence with the specific witness. Annex 17 contains the documents supporting the unavailability of the Rule 155 Witnesses.

II. APPLICABLE LAW

4. Rule 155(1) allows a Panel to admit the evidence of a person in the form of a written statement, transcript, or other written record, provided that the Panel is satisfied (i) of the person's unavailability or inability to testify orally, and (ii) that the statement, written record or transcript is *prima facie* reliable, having regard to the circumstances in which it was made, recorded, and maintained.

5. Evidence admitted pursuant to Rule 155 must satisfy the standard admissibility criteria provided for in Rules 137 and 138(1).²⁵ This means that the requirements for relevance, authenticity and probative value of the evidence, as well as the condition that any prejudicial effect should not outweigh the probative value of the evidence, must be met.²⁶

6. In addition to assessments of the reliability of written statements,²⁷ similarly-situated courts have found that transcripts of prior testimony are appropriate for

²⁴ Rules, Rules 137-138, 155(1)(b).

²⁵ Cf *Prosecutor v. Mustafa*, Decision on the Prosecution application for the admission of prior statements of witness W04648 and related documents ('*Mustafa* R155 Decision'), KSC-BC-2020-05/F00235, 15 October 2021, para.9. Similarly, see ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Judgement, 4 December 2012 ('*Lukić* Appeal Judgement'), para.566.

²⁶ Indicia of reliability for the Proposed Evidence are detailed in Annexes 1-16 to this Motion.

²⁷ See eg ICTY, *Lukić* Appeal Judgement, fn.1633 (setting out relevant factors).

admission in writing as they are inherently authentic and reliable, often video-recorded, verbatim records, which include all questions, answers and clarifications of witnesses, who in addition testified under oath, and were subject to cross-examination.²⁸ Further, documents used with the witnesses in the tendered evidence are appropriate for admission as associated exhibits when they are used or explained by a witness and are an integral part of the statement or testimony.²⁹

7. The use of Rules 153, 154 and 155 is consistent with the Law, which recognises the admissibility of evidence from other entities that preceded the KSC's establishment and outlines the eligibility requirements for such evidence.³⁰ Below, additional factors and considerations regarding the admissibility of the Proposed Evidence is incorporated, where relevant.

III. SUBMISSIONS

8. The Proposed Evidence of the Rule 155 Witnesses should be admitted as it (i) is relevant to the allegations in the Indictment,³¹ (ii) is *prima facie* reliable and contains

²⁸ See eg ICTY, *Prosecutor v. Prlić et al*, IT-04-74-T, Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rules 92 *bis* and *quarter* of the Rules, 27 October 2006, para.10; SCSL, *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Public with Confidential Annexes C to E Prosecution Motion for Admission of the Prior Trial Transcripts of Witnesses TF1-021 and TF1-083 Pursuant to Rule 92*quater*, 5 February 2009 ('*Taylor Decision*'), para.17.

²⁹ See *Specialist Prosecutor v. Mustafa*, Decision on the submission and the admissibility of evidence, KSC-BC-2020-05/F00169, 25 August 2021 ('*Mustafa Decision on the admissibility of evidence*'), para.29, fn.27 ('the term "written statement" and "transcript" also includes annexes or other documents associated with the written statement/transcript, which are used or explained by the witness and which, as such, are an integral part of the testimony itself'), referring to the International Criminal Court ('ICC'), *Prosecutor v. Ongwen*, ICC-02/04-01/15-596-Red, Trial Chamber IX, Public Redacted Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016 ('*Ongwen Decision*'), para.10.

³⁰ Law, Art. 37. See also Law, Art.40(2).

³¹ For an indication of the relevant Indictment paragraphs, see below paras 15, 20, 28, 36, 52, 61, 70.

sufficient indicia of authenticity,³² (iii) has probative value³³ that is not outweighed by its prejudicial effect, and (iv) meets the requirements of Rule 155.

9. As detailed below, and in the accompanying Annexes, the Proposed Evidence fulfils the requirements of admissibility under Rules 137 and 138(1). In this respect, where applicable, the associated exhibits are an integral part of the Rule 155 Statements, without which the statements may become less complete or be of diminished probative value. The associated exhibits provide context to the evidence contained in the Rule 155 Statements and corroborate that evidence.

10. In assessing the *prima facie* reliability of the evidence, the Panel is not obliged to consider factors that go beyond formal requirements,³⁴ such as the circumstances in which the evidence was taken, recorded and maintained.³⁵ Even if the Panel were to find that any given indicia of reliability or authenticity were missing, the Panel should

³² For each item, the Annexes provide a description, date of the document, English and Albanian ERN, and indicia of reliability. Indicia of reliability include the circumstances in which the evidence was obtained and recorded, including any oath or acknowledgement of truth, signature, presence of a qualified interpreter, and whether it has been subject to cross-examination. Admission of evidence does not require definitive proof of reliability or credibility of the evidence, but rather a showing of *prima facie* reliability on the basis of sufficient indicia, see ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the *Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence*, 3 November 2009, paras 32-36; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para.22; IRMCT, *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table (Intercepted and Downloaded Communications), 29 April 2021, p.2. See also ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater* and Prosecution Motion for the Admission of the Evidence of GH-083 Pursuant to Rule 92 *quater*, 9 May 2013 ('Hadžić Decision'), para.17 and the sources cited therein.

³³ Since the Proposed Evidence is relevant, authentic, and reliable, it also has probative value. The probative value of a document is determined by two primary factors: (i) the *prima facie* reliability of the tendered evidence; and (ii) the measure by which that evidence is likely to influence the determination of a particular issue in dispute in the case. See *Specialist Prosecutor v. Mustafa*, Public Redacted Version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material, KSC-BC-2020-05/F00281RED, 13 December 2021, para.13.

³⁴ *Mustafa* R155 Decision, KSC-BC-2020-05/F00235, para.10.

³⁵ *Mustafa* R155 Decision, KSC-BC-2020-05/F00235, para.10.

still admit the Proposed Evidence and consider its weight in light of the entire evidentiary record.³⁶

11. Rule 155(1), which derives from the statutory scheme of similarly situated courts,³⁷ does not preclude the admission of evidence which goes to the acts and conduct of an accused.³⁸ The fact that evidence goes to proof of the acts and conduct of an accused³⁹ is merely a factor that the Panel *may* choose to take into account when

³⁶ *Hadžić* Decision, para.17 and the sources cited therein. *See also* See ECtHR, *Schatschaschwili v. Germany* [GC], 9154/10, Judgement, 14 December 2015 ('*Schatschaschwili* Judgement'), para.126 (concerning the consideration of the reliability of evidence in light of other available evidence).

³⁷ *See* ICTY, RPE Rule 92 *quater*(B); SCSL, RPE Rule 92 *quater*(B); ICC, RPE Rule 68(2)(c)(ii); STL, RPE Rule 168(B) and IRCMT, RPE Rule 112(B).

³⁸ *See* Rule 155(5). *Cf with* *Lukić* Appeal Judgement, para.565; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning Into Evidence ('*Prlić* Decision'), 23 November 2007, para.48; ICTY, *Prosecutor v. Martić*, IT-95-11-T, Decision on Defence Motion to exclude testimony of Witness Milan Babić ('*Martić* Decision'), 9 June 2006, para.67, upheld by the Appeals Chamber in *Prosecutor v. Martić*, IT-95-11-A, Decision on Appeal Against the Trial Chamber's Decision on the Evidence of Milan Babić ('*Martić* Appeal Decision'), 14 September 2006, para.20; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1029, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, 20 November 2015, paras 13, 37-38; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18 OA4, Judgement on the appeal of the Prosecution against Trial Chamber X's "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules" ('*Al Hassan* Decision'), 13 May 2022, paras 2-3, 60; IRMCT, *Prosecutor v. Stanišić and Simatović*, MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of Milan Babić pursuant to Rule 112 ('*Stanišić and Simatović* Decision'), 17 January 2018, paras 5-7, 13-14; STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/A-2/AC, Appeal Judgement, 10 March 2022 ('*Merhi and Oneissi* Appeal Judgement'), paras 195-196; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision Admitting into Evidence the Audio Recordings and Transcripts of the Prosecution Interview of Mr Wissam Al-Hassan (Witness PRH680) Under Rule 158 and Three Related Documents under Rule 154 ('*Ayyash* Decision'), 20 October 2017, para.84; *Taylor* Decision, para.17.

³⁹ The phrase 'acts and conduct of the Accused' should be accorded its ordinary meaning, and thus refers to the personal actions and omissions of the Accused which are described in the charges brought against them. 'Acts and conduct of the Accused' refer to the acts and conduct 'as charged in the indictment'. *See* Decision on Taçi Defence Motion Regarding the Preservation of Evidence, KSC-BC-2020-06/F01250 ('Decision on the Preservation of Evidence'), 2 February 2023, para.31. *Cf* Annex 1 to Submission of Confirmed Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022 ('Indictment'). *See also* *Prosecutor v. Mustafa*, Decision on the Prosecution application pursuant to Rule 153 of the Rules, KSC-BC-2020-05/F00286/RED, 17 December 2021, para.19, citing ICC, *Ongwen* Decision, paras 11-12; ICTY, Appeals Chamber, *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92bis(C), 7 June 2002, paras 9-10, relying in fn.28 on *Prosecutor v. Milošević*, Case No.IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92bis(C), 21 March 2002, para.22 ('The phrase "acts and conduct of the accused" in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and

deciding on the admission of the statement; it is not a determinative factor which would necessarily preclude the admission of such statement.⁴⁰ Similarly, evidence that goes to the acts and conducts of subordinates of the Accused is admissible.⁴¹

12. Considering available counterbalancing factors and opportunities by the Defence to challenge the evidence,⁴² there is the opportunity for a fair and proper assessment of the Proposed Evidence and, in turn, the probative value thereof is not outweighed by any prejudice. Provided that the admissibility criteria under the Law and Rules are satisfied, it is essential that the Prosecution has the opportunity to rely upon – and the Panel, consider – the Proposed Evidence, which constitutes compelling evidence of the commission of serious international crimes as charged in this case.⁴³

13. In addition to satisfying the requirements of Rules 137, 138, and 155(1)(b), the Proposed Evidence satisfies the requirements of Rule 155(1)(a). Witnesses W00100, W04416, W04418, W04589, W04835, W01448, W04733, W04848, W01143, W02618, W04783, W04829, W01456, W04597 and W04836 are unavailable since they are

conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so.’). *See also* ICC, *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/21-505-Red, Decision on the Prosecution’s Request under Rule 68(2)(c) to introduce the prior recorded testimony of six witnesses (‘*Said Decision*’), 26 October 2022, paras 18-21.

⁴⁰ Rule 155(5); Decision on the Preservation of Evidence, KSC-BC-2020-06/F01250, 2 February 2023, para.31. *See also* ICTY, *Lukić Appeal Judgement*, para.565; ICTY, *Prlić Decision*, para.48; ICTY, *Martić Decision*, para.67, upheld by the Appeals Chamber in *Martić Appeal Decision*, para.20; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1029, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, 20 November 2015, paras 13, 37-38; ICC, *Al Hassan Decision*, paras 2-3, 60; ; IRMCT, *Stanišić and Simatović Decision*, paras 5-7, 13-14; STL, *Merhi and Oneissi Appeal Judgement*, paras 195-196; STL, *Ayyash Decision*, para.84.

⁴¹ *See* ICC, *Said Decision*, paras 10, 17-21; ICC, *Al Hassan Decision*, para.54.

⁴² Relevant factors include whether the evidence is approached with caution, availability of corroborative evidence (including witness and documentary evidence), and the opportunity for the Defence to give its own version of the events, investigate the witness and his/her motives, and cast doubts on the credibility of the absent witness (for example, pointing to any incoherence or inconsistency). *See Schatschaschwili Judgement*, paras 126-131. *See also*, on the importance of corroboration of the evidence, ICTY, *Martić Decision*, para.67, upheld by the Appeals Chamber in *Martić Appeal Decision*, para.20.

⁴³ *See, similarly*, ECtHR, *Marguš v Croatia* [GC], 4455/10, Judgement, 25 May 2014, paras 124-127; ECtHR, *Ibrahim and Others v. UK* [GC], 50541/08 et al., Judgement, 13 September 2016 (‘*Ibrahim Judgement*’), para.252.

deceased, as confirmed by the supporting proof of death documents presented in Annex 17.⁴⁴ Witness W01984 is unavailable because he is not fit to testify due to health reasons.⁴⁵

14. The following sub-sections discuss the Rule 155 Witnesses by grouping them by areas of relevance, to the extent possible.

A. MALISHEVE/MALIŠEVO

15. The evidence of W00100 is relevant to prove the charges in the Indictment related to Malishevë/Mališevo .⁴⁶

1. W00100

16. *Relevance.* W00100, a Kosovar-Serb now deceased,⁴⁷ was living in Reti/Retimlje village with her family up until the KLA attack starting 17 July 1998.⁴⁸ The KLA demanded that the Serbs surrender or be killed; when they did, the men -including W00100's husband and son- were separated from them and the women were transported to Zoçishtës/Zočişte, where they took refuge at the Zoçishtës/Zočişte monastery.⁴⁹ During the night of 20 July 1998, the KLA attacked the monastery, which surrendered the next morning.⁵⁰ W00100 and her group were put on a bus to Suharekë/Suva Reka.⁵¹ However, at an Albanian village, they were instead put into the care of the Red Cross. W00100 never saw her husband or son again.⁵²

17. *Authenticity and Reliability.* W00100's Proposed Evidence, with an individualised explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 1 to this Motion. W00100's audio-video recorded SPO

⁴⁴ See Annex 17, items no.1-16.2.

⁴⁵ See Annex 17, item no.9. See also para.51 below.

⁴⁶ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 67, 96-98, 103, 136, 138, 154.

⁴⁷ See Annex 17, item no.1: 106937-106938 RED.

⁴⁸ See Annex 1, item no.2: U002-4871-U002-4878 RED, p.2; and item no.4: 030961-030971-ET RED, p.3.

⁴⁹ See Annex 1, item no.2: U002-4871-U002-4878 RED, p.3-4; and item no.4: 030961-030971-ET RED, p.5.

⁵⁰ See Annex 1, item no.2: U002-4871-U002-4878 RED, p.5; and item no.4: 030961-030971-ET RED, p.5.

⁵¹ See Annex 1, item no.2: U002-4871-U002-4878 RED, p.5; and item no.4: 030961-030971-ET RED, p.5.

⁵² See Annex 1, item no.2: U002-4871-U002-4878 RED, pp.5-6; and item no.4: 030961-030971-ET RED, pp.4-5.

interview – as recorded in a verbatim transcript – was conducted by the SPO on 15 November 2019 with an interpreter understood by the witness. W00100 was duly advised of her rights and obligations as a witness.⁵³ The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview. Additionally, W00100 confirmed that the contents of her statement are true and accurate, that her statement was given voluntarily without any threats, force, or guarantees, and that she had no objections to the manner or process by which the statement was taken.⁵⁴ The witness confirmed all of this on camera. During the SPO interview, W00100 confirmed her signature and discussed the contents of her ICTY statement, which was taken on 17 October 2001 by a duly empowered investigator, and orally translated into a language understood by the witness by an interpreter duly certified by the ICTY Registry. The statement contains a witness acknowledgement and interpreter certification, is signed by the witness and initialled on all pages.⁵⁵

18. Other statements and related records of the witness include a statement given by W00100 to the Serbian police in 2004,⁵⁶ records of proceedings at the District Court of Belgrade from 2007,⁵⁷ and an SITF Investigator's Report on a meeting with W00100 in 2015.⁵⁸ They are all discussed in the SPO interview and confirmed by the witness,⁵⁹ thus also constituting an integral part thereof.⁶⁰ These statements and records are also *prima facie* reliable, as detailed in Annex 1.

19. *Fairness.* The probative value of the Proposed Evidence for W00100 is not outweighed by any prejudice. Indeed, the evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in

⁵³ See Annex 1, item no.1: 069697-TR-ET Part 1 Revised RED, p.3.

⁵⁴ See Annex 1, item no.1: 069697-TR-ET Part 1 Revised RED, p.9.

⁵⁵ See Annex 1, item no.2: U002-4871-U002-4878 RED.

⁵⁶ See Annex 1, item no.3: 026115-026116-ET Revised RED.

⁵⁷ See Annex 1, item no.4: 030961-030971-ET RED, and item no.5: 030972-030978-ET RED.

⁵⁸ See Annex 1, item no.6: 030947-030949 RED.

⁵⁹ See Annex 1, item no.1: 069697-TR-ET Part 1 Revised RED, pp.4-5.

⁶⁰ See *similarly*, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1205, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony, 11 March 2016, para.7.

reaching a conviction;⁶¹ (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's credibility;⁶² (iv) is consistent with, and corroborated by, statements and associated exhibits of other witnesses in the case who will be available for cross-examination and/or have their evidence introduced in writing;⁶³ and (v) the Defence is aware of the witness's identity, may investigate the witness, her motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward a different version of events.

B. LLAP OPERATIONAL ZONE

20. The evidence of W04416 and W04418 is relevant to prove the charges in the Indictment related to Bajgorë/Bajgora and Llapashticë/Lapaštica.⁶⁴

2. W04416

21. *Relevance.* W04416, a Kosovar-Albanian now deceased,⁶⁵ was a former elementary school teacher imprisoned by the KLA in August 1998.⁶⁶ One day in August 1998,⁶⁷ W04416 was taken from his house by five KLA soldiers who told him he was summoned for an interview at the Headquarters.⁶⁸ The people who arrested him were all in uniform and W04416 did not know them.⁶⁹ The witness was taken by those soldiers in a car to the KLA Headquarters in Bajgorë/Bajgora and interrogated about alleged work he had done 'with the Serbian State Security'.⁷⁰ When he denied having ever dealt with the State Security, and told them he had been working as elementary

⁶¹ Rule 140(4)(a).

⁶² In this respect, the SPO interview – during which the witness affirmed and discussed the other relevant statements and records – was audio-video recorded.

⁶³ See eg the statements and associated exhibits of W0067, W00072, W00083, [REDACTED], W00498, W02257, W02303, [REDACTED], W04278, [REDACTED], [REDACTED], and [REDACTED].

⁶⁴ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 70-71, 96-98, 106-107, 136-137.

⁶⁵ See Annex 17, item no.2: 106544-106545 RED.

⁶⁶ See Annex 2, item no.1: SPOE00123775-00123786 RED, pp.2-3.

⁶⁷ W04416 believed he was arrested on 18 August 1998. See Annex 2, item no.1: SPOE00123775-00123786 RED, p.4.

⁶⁸ See Annex 2, item no.1: SPOE00123775-00123786 RED, pp.2-3.

⁶⁹ See Annex 2, item no.1: SPOE00123775-00123786 RED, p.9.

⁷⁰ See Annex 2, item no.1: SPOE00123775-00123786 RED, p.3.

school teacher for 39 years, they told him they had to keep him in detention to verify that.⁷¹ W04416 was held in detention for about 18-19 days,⁷² together with W03540 and about seven or eight other detainees.⁷³ W04416 was then released at the same time as W03540.⁷⁴

22. *Authenticity and reliability.* W04416's Rule 155 Statement, listed in Confidential Annex 2 to this Motion, is the witness hearing in front of the investigating judge in the case against *Latif Gashi et al.*. It is an official record from that case, bearing the case number, date, time and place of the interview, names and roles of the persons present, witness details and relevant signatures, including the witness's signature.⁷⁵ The Rule 155 Statement has related records (discussed during the witness hearing), which include medical records of the witness.⁷⁶ These medical records constitute an integral part of the witness hearing in front of the investigating judge,⁷⁷ and are thus tendered as associated exhibits together with the Rule 155 Statement.

23. *Fairness.* The probative value of the Proposed Evidence for W04416 is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) is complemented and corroborated by statements of other witnesses in the case,⁷⁸ who will be available for cross-examination by the Defence; and (iv) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward a different version of events.

⁷¹ See Annex 2, item no.1: SPOE00123775-00123786 RED, p.3.

⁷² See Annex 2, item no.1: SPOE00123775-00123786 RED, p.4.

⁷³ See Annex 2, item no.1: SPOE00123775-00123786 RED, pp.3-4.

⁷⁴ See Annex 2, item no.1: SPOE00123775-00123786 RED, p.4.

⁷⁵ See Annex 2, item no.1: SPOE00123775-00123786 RED, pp.1, 12.

⁷⁶ See Annex 2, item no.2: SPOE00209279-SPOE00209282-ET.

⁷⁷ The medical records are mentioned at pp.2, 7, 9, and 10 of SPOE00123775-00123786 RED (item 1, Annex 2).

⁷⁸ See in particular W03540 and W04732.

3. W04418

24. *Relevance.* In November 1998, W04418 – a Kosovar-Albanian now deceased⁷⁹ – was travelling to [REDACTED] when he was stopped by about 3-4 KLA soldiers in [REDACTED].⁸⁰ The witness was brought to Llapashticë/Lapaštica where he was detained until [REDACTED].⁸¹ While detained in Llapashticë/Lapaštica, W04418 was beaten, mistreated, and kept in deplorable conditions.⁸² W04418 was interrogated on [REDACTED] occasions by [REDACTED] and [REDACTED], beaten by them [REDACTED] with wooden sticks, and given electric shocks.⁸³ Upon release, W04418 was given a written amnesty and was told [REDACTED].⁸⁴

25. *Authenticity and reliability.* The Proposed Evidence for W04418 is listed in Confidential Annex 3 to this Motion. W04418's [REDACTED] audio-video recorded interview was conducted [REDACTED] through an interpreter understood by the witness.⁸⁵ W04418 was duly advised of his rights and obligations as a witness.⁸⁶ The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.⁸⁷ W04418 confirmed on camera that the contents of that statement were true and accurate, that he gave that statement voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.⁸⁸

⁷⁹ See Annex 17, item no.3: 106521-106521.

⁸⁰ See Annex 3, item no.2: SITF00068687-00068691 RED2, p.1; and item no.3: SPOE00122306-SPOE00122330 RED2, pp.2-3.

⁸¹ See Annex 3, item no.2: SITF00068687-00068691 RED2, pp.1-2; item no.3: SPOE00122306-SPOE00122330 RED2, pp.2-3, 11; and item no.1: 066543-TR-ET Part 1 RED2, p.12.

⁸² See Annex 3, item no.2: SITF00068687-00068691 RED2, p.2; and item no.3: SPOE00122306-SPOE00122330 RED2, pp.6-10, 13-15, 18-19. See also item no.1: 066543-TR-ET Part 1 RED2, pp.18-19, 23-25.

⁸³ See Annex 3, item no.2: SITF00068687-00068691 RED2, pp.2-3; and item no.3: SPOE00122306-SPOE00122330 RED2, pp.6-13. See also item no.1: 066543-TR-ET Part 1 RED2, pp.18-29.

⁸⁴ See Annex 3, item no.2: SITF00068687-00068691 RED2, p.3; item no.3: SPOE00122306-SPOE00122330 RED2, pp.13-14; item no.1: 066543-TR-ET Part 3 RED2, pp.16-17.

⁸⁵ Annex 3, item no.1: 066543-TR-ET Parts 1-3, see in particular 066543-TR-ET Part 1 RED2, p.2.

⁸⁶ Annex 3, item no.1: 066543-TR-ET Part 1 RED2, pp.2-4.

⁸⁷ Annex 3, item no.1: 066543-TR-ET Parts 1-3, see in particular 066543-TR-ET Part 1 RED2, p.1.

⁸⁸ Annex 3, item no.1: 066543-TR-ET Part 3 RED2, pp.18-19.

26. [REDACTED], W04418 confirmed his [REDACTED] statement,⁸⁹ which was signed by W04418 and taken by a duly appointed [REDACTED] official.⁹⁰ The [REDACTED] statement was read back to W04418 in Albanian [REDACTED] as the original [REDACTED] interview was [REDACTED],⁹¹ and the witness confirmed its accuracy.⁹² [REDACTED], W04418 also confirmed the record from his [REDACTED].⁹³ This record is in the official format, and was signed by the witness, the Investigating Judge, the International Prosecutor, the Defence Counsel, the Court Recorder and the Interpreter.⁹⁴ W04418 was given the official warning to speak the truth, which he acknowledged.⁹⁵ Even though W04418 did not recall initialling the [REDACTED] record,⁹⁶ his statement before [REDACTED] is indeed initialled, *prima facie* reliable, and W04418 confirmed its accuracy.⁹⁷

27. *Fairness.* The probative value of the Proposed Evidence for W04418 is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's credibility;⁹⁸ (iv) is consistent with, and corroborated by, statements of other witnesses in the case,⁹⁹ some of whom will be available for cross-examination by the Defence, and other testimonial and documentary evidence;¹⁰⁰ and

⁸⁹ Annex 3, item no.1: 066543-TR-ET Part 1 RED2, pp.11-31, and 066543-TR-ET Part 2 RED2, pp.4-6.

⁹⁰ Annex 3, item no.2: SITF00068687-00068691 RED2.

⁹¹ See Annex 3, item no.1: 066543-TR-ET Part 1 RED2, pp.14-31, and 066543-TR-ET Part 2 RED2, pp.4-6; item no.2: SITF00068687-00068691 RED2, p.5.

⁹² Annex 3, item no.1: 066543-TR-ET Part 2 RED2, p.6.

⁹³ See Annex 3, item no.1: 066543-TR-ET Part 2 RED2, pp.7-14, and item no.3: SPOE00122306-SPOE00122330 RED2.

⁹⁴ Annex 3, item no.3: SPOE00122306-SPOE00122330 RED2, see in particular p.25.

⁹⁵ Annex 3, item no.3: SPOE00122306-SPOE00122330 RED2, p.2.

⁹⁶ Cf Annex 3, item no.1: 066543-TR-ET Part 2 RED2, p.10.

⁹⁷ Annex 3, item no.1: 066543-TR-ET Part 2 RED2, pp.10-14; and item no.3: SPOE00122306-SPOE00122330 RED2.

⁹⁸ In this respect, the [REDACTED] interview – during which the witness affirmed and discussed the other relevant statements – was audio-video recorded.

⁹⁹ See particularly statements of witnesses [REDACTED].

¹⁰⁰ See e.g. SITF00243091-00243150, p.40 (SITF00243130) [REDACTED]; SITF00069018-SITF00069021 [REDACTED].

(v) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

C. JABLLANICË/JABLANICA

28. The evidence of W04589 and W04835 is relevant to prove the charges in the Indictment related to Jabllanicë/Jablanica.¹⁰¹

4. W04589

29. *Relevance.* W04589, a Catholic Kosovar-Albanian now deceased,¹⁰² was living in [REDACTED] municipality with his family in [REDACTED] 1998.¹⁰³ In late 1998, W04589 was informed by a friend that [REDACTED], had been arrested by the KLA and taken to their headquarters in Jabllanicë/Jablanica.¹⁰⁴ W04589, together with [REDACTED], presented himself at the Headquarters and demanded the release of [REDACTED].¹⁰⁵ W04589 was informed by [REDACTED] had been convicted and would have to serve time with the KLA.¹⁰⁶ W04589 visited the Headquarters daily for a period of [REDACTED] but was unable to see [REDACTED].¹⁰⁷ W04589 met [REDACTED], who he later discovered was [REDACTED].¹⁰⁸ [REDACTED] facilitated W04589's visit to [REDACTED] before his release, [REDACTED].¹⁰⁹

30. *Authenticity and reliability.* W04589's Rule 155 Statement is listed in Confidential Annex 4 to this Motion. At the outset, the SPO notes that this statement has provider applied redactions, limited to the identity of one individual discussed therein.¹¹⁰

¹⁰¹ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 63, 97-98, 100, 138, 142-144.

¹⁰² See Annex 17, item no. 4: [REDACTED].

¹⁰³ See Annex 4, item no.1: [REDACTED].

¹⁰⁴ See Annex 4, item no.1: [REDACTED].

¹⁰⁵ See Annex 4, item no.1: [REDACTED].

¹⁰⁶ See Annex 4, item no.1: [REDACTED].

¹⁰⁷ See Annex 4, item no.1: [REDACTED].

¹⁰⁸ See Annex 4, item no.1: [REDACTED].

¹⁰⁹ See Annex 4, item no.1: [REDACTED].

¹¹⁰ See Annex 4, item no.1: [REDACTED]. The SPO does not possess a lesser or unredacted version of this statement.

[REDACTED]¹¹¹ ordered that the statement be provided to the SPO with redactions to the identity of [REDACTED]. However, these limited redactions do not affect the reliability of the statement or the fairness of the proceedings, for the reasons given below.

31. W04589's [REDACTED] Statement was taken by [REDACTED] interviewers on [REDACTED] through an interpreter understood by the witness. The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.¹¹² Additionally, W04589 confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.¹¹³ The statement contains a witness acknowledgement and interpreter certification, is signed by the witness and initialled on all pages. The consistency of the Rule 155 Statement – considered together and with corroborating evidence¹¹⁴ – further demonstrates its reliability.

32. *Fairness.* The probative value of the Proposed Evidence for W04589 is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was stated in a manner that enables the Parties and Panel to assess the witness's credibility; (iv) is consistent with, and corroborated by, the statements of other witnesses in the case who will be available for cross-examination by the Defence;¹¹⁵ and (v) the Defence is aware of the witness's identity, may

¹¹¹ The statement was provided following [REDACTED]. *See* [REDACTED]. The SPO intends to file a protective measures application for this witness in due course, taking into account, *inter alia*, the applicable provider-applied restrictions, the [REDACTED] protective measures granted the witness, which are still in effect, and the in-court protective measures already granted by the Pre-Trial Judge to [REDACTED].

¹¹² *See* Annex 4, item no.1: [REDACTED].

¹¹³ *See* Annex 4, item no.1: [REDACTED].

¹¹⁴ *See* para.32 below.

¹¹⁵ *See* particularly [REDACTED].

investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial.

5. W04835

33. *Relevance.* W04835, a Kosovar-Albanian now deceased,¹¹⁶ was a farmer living in the village of Lutogllave.¹¹⁷ In July 1998, W04835 went to his cousin Skender KUQI's shop in Zahaq/Zahać.¹¹⁸ Two armed and masked men entered in the shop.¹¹⁹ The two men took Skender KUQI out of the shop and transported him with his Mercedes in direction of Klinë/Klina.¹²⁰ To W04835's recollection, Skender KUQI was in good health at the time of his abduction.¹²¹ Two or three weeks after his abduction, Skender KUQI's body was found in Jabllanicë/Jabllanica.¹²² Skender KUQI is a named murder victim in the Indictment, and other witnesses provide evidence concerning his detention, mistreatment, and death at Jabllanicë/Jabllanica.¹²³

34. *Authenticity and reliability.* The Proposed Evidence for W04835 is listed in Confidential Annex 5 to this Motion. The UNMIK statement dated 7 August 2002 bears an official logo and template, date, time and place of the interview, names and roles of the persons present, witness details and relevant signatures.¹²⁴ W04835's audio-video recorded ICTY testimony, dated 31 October 2007, is recorded in a verbatim transcript. W04835 took a solemn declaration, confirming the truthfulness of

¹¹⁶ See Annex 17, item no.5: 106546-106547 RED.

¹¹⁷ See Annex 5, item no.2: U015-3476-U015-3480, p.2.

¹¹⁸ See Annex 5, item no.1: SITF00070513-SITF00070518, p.1; item no.2: U015-3476-U015-3480, p.2; item no.3: IT-04-84bis P00068, pp.3-4.

¹¹⁹ See Annex 5, item no.1: SITF00070513-SITF00070518, p.1; item no.2: U015-3476-U015-3480, p.2; item no.3: IT-04-84bis P00068, pp.6-14.

¹²⁰ See Annex 5, item no.1: SITF00070513-SITF00070518, p.1; item no.2: U015-3476-U015-3480, pp.2-3; item no.3: IT-04-84bis P00068, pp.15-17.

¹²¹ See Annex 5, item no.3: IT-04-84bis P00068, pp.10005-10006.

¹²² See Annex 5, item no.1: SITF00070513-SITF00070518, p.1.

¹²³ See e.g. W01236, 073616-TR-ET Part 3 RED, pp.4, 9-10, and 073616-TR-ET Part 4 RED, pp.11-13; W01236, IT-04-84 T5186-T5283 unredacted, pp.5237-5240; IT-04-84 T5284-T5405 unredacted, p.5338; W04448, IT-04-84bis P00119, pp.4225-4256, and U008-3893-U008-3917 RED, paras 43, 47-48; W04305, IT-04-84bis T1495-T1589 unredacted, p.1571;. See also W04592, 091693-TR-ET Part 2, p.25; W01511, IT-04-84bis P00075, pp.3682-3683.

¹²⁴ See Annex 5, item no.1: SITF00070513-SITF00070518, pp.4-6.

his testimony.¹²⁵ A previous ICTY statement was taken on 13 August 2006 by a duly empowered investigator, and orally translated into a language understood by the witness by an interpreter duly certified by the ICTY Registry.¹²⁶ The statement contains a witness acknowledgement and interpreter certification, is signed by the witness and initialled on all pages.¹²⁷

35. *Fairness.* The probative value of the Proposed Evidence for W04835 is not outweighed by any prejudice. Indeed this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's credibility;¹²⁸ (iv) is consistent with, and corroborated by, statements of other witnesses in the case,¹²⁹ who will be available for cross-examination by the Defence; and (v) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial.

D. KUKËS, ALBANIA

36. The evidence of W01448, W04733, W04848 and W01984 is relevant to prove the charges in the Indictment related to Kukës, Albania.¹³⁰

6. W01448

37. *Relevance.* W01448, a Kosovo Albanian now deceased,¹³¹ worked as an immigrant worker in Germany in the beginning of 1999. On 13 May 1999, he travelled to Albania to visit his family.¹³² When he arrived by ferry-boat in Durrës, he was

¹²⁵ See Annex 5, item no.3: IT-04-84bis P00068, p.2.

¹²⁶ See Annex 5, item no.2: U015-3476-U015-3480.

¹²⁷ See Annex 5, item no.2: U015-3476-U015-3480.

¹²⁸ In this respect, the ICTY testimony in the case *Haradinaj et al.* was audio-video recorded.

¹²⁹ See in particular witnesses [REDACTED].

¹³⁰ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 82, 88, 96-98, 119-120, 138, 167.

¹³¹ See Annex 17, item no.6: 108902-108902-ET.

¹³² See Annex 6, item no.1: SITF00013852-00013885, p.3; item no.7: SITF00013736-SITF00013800 RED2, p.2; and item no.8: SITF00016221-00016285 RED2, p.7.

approached by two men who took him to Durrës, where he was interrogated and detained for four days.¹³³ W01448 was then transferred to the Kukës Metal Factory.¹³⁴ He was detained in Kukës for a month in unsanitary conditions, with inadequate food, water and medical care, partly without daylight and crammed with other detainees in a small space.¹³⁵ While detained in Kukës, W01448 saw Sabit GECI¹³⁶ and was interrogated, among others, by Fatmir LIMAJ.¹³⁷ According to W01448, he was severely mistreated by Xhemshit KRASNIQI, Pjetër SHALA, and others during his detention in Kukës, and witnessed the savage beatings and torture of other detainees by the same persons until they lost consciousness or control over their bodily functions.¹³⁸ W01448 and his co-detainees were subject to daily harassment and mistreatment by armed KLA soldiers, culminating in [REDACTED].¹³⁹ On 17 June 1999, W01448 was transferred to the police station in Prizren, where he was released by the German KFOR on 18 June 1999.¹⁴⁰

38. *Authenticity and reliability.* The Proposed Evidence for W01448, with an individualised explanation of circumstances militating for its *prima facie* reliability, is

¹³³ See Annex 6, item no.1: SITF00013852-00013885, pp.3-4; item no.7: SITF00013736-SITF00013800 RED2, pp.2-3; and item no.8: SITF00016221-00016285 RED2, pp.7-8.

¹³⁴ See Annex 6, item no.1: SITF00013852-00013885, pp.4-5; item no.7: SITF00013736-SITF00013800 RED2, p.4; and item no.8: SITF00016221-00016285 RED2, pp.8-9.

¹³⁵ See Annex 6, item no.1: SITF00013852-00013885, pp.5-10; item no.7: SITF00013736-SITF00013800 RED2, pp.6, 13-18; item no.8: SITF00016221-00016285 RED2, pp.9-10; and item no.9: SITF00016140-00016220 RED2, pp.5-9.

¹³⁶ See Annex 6, item no.1: SITF00013852-00013885, pp.6, 9-10; item no.2: SITF00013833-00013847 RED2, pp. 4-6; item no.4: SITF00013886-00013908 RED, p.2; item no.7: SITF00013736-SITF00013800 RED2, pp.6-8, 19, 28; item no.8: SITF00016221-00016285 RED2, p.11; item no.9: SITF00016140-00016220 RED2, pp.9-11.

¹³⁷ See Annex 6, item no.1: SITF00013852-00013885, pp.9-10; item no.9: SITF00016140-00016220 RED2, pp.11, 14.

¹³⁸ See Annex 6, item no.1: SITF00013852-00013885, pp.5-10; item no.2: SITF00013833-00013847 RED2, p.4; item no.7: SITF00013736-SITF00013800 RED2, pp.8-12; and item no.8: SITF00016221-00016285 RED2, pp.11-16.

¹³⁹ See Annex 6, item no.1: SITF00013852-00013885, pp.5-10; item no.2: SITF00013833-00013847 RED2, pp.4-6; item no.7: SITF00013736-SITF00013800 RED2, pp.18-21; item no.8: SITF00016221-00016285 RED2, pp.17-19; and item no.9: SITF00016140-00016220 RED2, pp.2-3.

¹⁴⁰ See Annex 6, item no.1: SITF00013852-00013885, pp.10-12; item no.7: SITF00013736-SITF00013800 RED2, pp.21, 28-29; and item no.9: SITF00016140-00016220 RED2, pp.3, 9.

listed in Confidential Annex 6 to this Motion. Statements given by W01448 in the period 2003-2011 were taken by duly empowered law enforcement authorities, namely the ICTY and EULEX, in the course of their investigations, or are transcripts of the witness's testimony in the case against *Sabit GECI et al.* (P. no. 45/2010). W01448 was duly advised of his rights and obligations. The statements were signed by the interviewers and/or the witness and interpreters, and were all given voluntarily and freely.¹⁴¹ W01448 confirmed and re-signed his statement given to the ICTY in 2003 in his two statements given to EULEX in August and December 2009.¹⁴²

39. Noting related allegations in the Indictment and Pre-Trial Brief, the SPO has determined that, for the following reasons, it does not intend to rely on W01448's evidence concerning the Accused Kadri VESELI at Kukës.¹⁴³ This was a misidentification, as the witness himself explained in his testimony in the case against *Sabit GECI et al.* in 2011. W01448 confused the Accused's name with another Veseli family he knew, when he referred to a Kadri VESELI coming from Likovc, Skenderaj¹⁴⁴ and having a father that went to school with W01448.¹⁴⁵ The Accused Kadri VESELI is from Mitrovica and his father was 20 years older than W01448.¹⁴⁶ This misidentification does not impact the general reliability or probative value of W01448's Proposed Evidence, which is corroborated by and consistent with the evidence of other witnesses, in particular (but not only) with regard to W01448's abduction and detention in Kukës,¹⁴⁷ the inhumane conditions of the detention

¹⁴¹ See Annex 6, Indicia of Reliability for items no.1-9.

¹⁴² See Annex 6, Indicia of Reliability for items no.1, 2 and 7.

¹⁴³ In his statements of 2003 (Annex 6, item no.1) and 2009 (Annex 6, item no. 7), W01448 identified a Kadri VESELI as one of the persons present in Kukës.

¹⁴⁴ See Annex 6, item no.1: SITF00013852-00013885, pp.9-10.

¹⁴⁵ See Annex 6, item no.7: SITF00013736-SITF00013800 RED2, p.28.

¹⁴⁶ See Annex 6, item no.9: SITF00016140-00016220 RED2, p.9.

¹⁴⁷ Cf [REDACTED]'s evidence: Annex 7, particularly items no.3, 5, 7, 8, 9 and 10 Parts 2, 4 and 5; and [REDACTED]'s evidence: Annex 9, items no.1 and 2. See also [REDACTED].

there,¹⁴⁸ the cruel treatment W01448 suffered himself,¹⁴⁹ and the severe mistreatment of other detainees.¹⁵⁰

40. *Fairness.* The probative value of the Proposed Evidence pertaining to W01448 is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused as charged in the Indictment;¹⁵¹ (ii) will not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies – that enables the Parties and Panel to assess the witness’s credibility; (iv) is consistent with, and corroborated by, statements of other witnesses in the case,¹⁵² most of whom will be available for cross-examination by the Defence, and (v) the Defence is aware of the witness’s identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

7. W04733

41. *Relevance.* W04733, a Kosovar-Albanian now deceased,¹⁵³ worked as a [REDACTED] and fled to Durrës, Albania, in [REDACTED].¹⁵⁴ Shortly after his arrival in Durrës, KLA members repeatedly visited the home where W04733 and his family had found shelter, and eventually kidnapped W04733 on or around [REDACTED].¹⁵⁵

¹⁴⁸ Cf [REDACTED]’s evidence: Annex 7, particularly items no.2, 3, 5, 7, 8, 9 and 10 Parts 4 and 5; and [REDACTED]’s evidence: Annex 9, items no.1 and 2. *See also* [REDACTED].

¹⁴⁹ Cf [REDACTED]’s evidence: Annex 7, particularly items no.5, 8 and 10 Part 4.

¹⁵⁰ Cf [REDACTED]’s evidence: Annex 7, particularly items no.2, 4, 5, 8 and 10 Parts 4 and 5. *See also* [REDACTED]’s evidence in [REDACTED].

¹⁵¹ As noted above, the SPO does not intend to rely on the evidence amounting to a mis-identification of Kadri VESELI.

¹⁵² *See* particularly statements of witnesses [REDACTED], who were detained together with W01448. In relation to W01448’s identification of the Kukës Metal Factory as the place of this detention, the conditions of detention and the treatment of the detainees, W01448’s evidence is corroborated additionally by the statements of witnesses [REDACTED].

¹⁵³ *See* Annex 17, item no.7: 106419-106419.

¹⁵⁴ *See* Annex 7, item no.1: SITF00390625-00390626 RED2, pp.1-2; item no.2: SITF00013181-SITF00013189 RED2, pp.2-3; item no.9: SPOE00013793-00013900 RED, p.7; item no.10: 082892-TR-AT-ET Part 1 RED, p.51.

¹⁵⁵ *See* Annex 7, item no.10: 082892-TR-AT-ET Part 2 RED, pp.2-4, 21-29.

The four KLA soldiers in black uniforms took him [REDACTED], before he was transferred to Kukës around [REDACTED].¹⁵⁶ Shortly after his arrival at the Kukës Metal Factory around midnight, W04733 was brought into a room where he was met by a group of KLA members, including alleged JCE members [REDACTED].¹⁵⁷ They asked him to confess [REDACTED] crimes; W04733 refused.¹⁵⁸ He was then [REDACTED] beaten all over his body, [REDACTED].¹⁵⁹ When W04733 lost consciousness, they threw water on him and continued the beating, [REDACTED].¹⁶⁰ [REDACTED].¹⁶¹ Later on, they were transferred to a detention room in another building, where they joined further detainees. There, W04733 was crammed together into a room with, among others, [REDACTED] in inhumane conditions.¹⁶² The detainees suffered mistreatment almost every day, mainly during the night.¹⁶³ While

¹⁵⁶ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, pp.4-5; item no.4: SPOE00185335-00185363 RED, pp.5-6; item no.5: SITF00018740-00018767 RED, p.2; item no.7: SITF00019824-00019876, pp.4-6; item no.9: SPOE00013793-00013900 RED, pp.12-13; item no.10: 082892-TR-AT-ET Part 2 RED, pp.50, 082892-TR-AT-ET Part 3 RED, pp.2-12.

¹⁵⁷ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, p.6; item no.5: SITF00018740-00018767 RED, p.2; item no.7: SITF00019824-00019876, pp.10-13; item no.9: SPOE00013793-00013900 RED, pp.18-20; item no.10: 082892-TR-AT-ET Part 4 RED, pp.16-17, 21-28.

¹⁵⁸ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, p.6; item no.3: U003-2283-U003-2289 RED2, p.3; item no.9: SPOE00013793-00013900 RED, p.22.

¹⁵⁹ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, p.6; item no.3: U003-2283-U003-2289 RED2, pp.3-4; item no.5: SITF00018740-00018767 RED, pp.3-4; item no.7: SITF00019824-00019876, p.19; item no.8: 107258-107300, p.3; item no.9: SPOE00013793-00013900 RED, pp.22, 24-26; item no.10: 082892-TR-AT-ET Part 4 RED, pp.21-28, 082892-TR-AT-ET Part 5 RED, pp.10-12.

¹⁶⁰ See Annex 7, item no.1: SITF00390625-00390626 RED2, p.2; item no.2: SITF00013181-SITF00013189 RED2, pp.6-7; item no.3: U003-2283-U003-2289 RED2, pp.2-3; item no.5: SITF00018740-00018767 RED, pp.4-5; item no.8: 107258-107300, pp.2-3; item no.9: SPOE00013793-00013900 RED, pp.26, 34; item no.10: 082892-TR-AT-ET Part 4 RED, p.35, 082892-TR-AT-ET Part 5 RED, pp.4, 7-8.

¹⁶¹ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, pp.5-6; item no.4: SPOE00185335-00185363 RED, pp.7-8; item no.5: SITF00018740-00018767 RED, pp.2, 5; item no.7: SITF00019824-00019876, pp.6-10; item no.8: 107258-107300, pp.9-11; item no.9: SPOE00013793-00013900 RED, pp.16-18, 20, 29; item no.10: 082892-TR-AT-ET Part 4 RED, pp.7, 10-11.

¹⁶² See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, p.6; item no.3: U003-2283-U003-2289 RED2, p.4; item no.4: SPOE00185335-00185363 RED, pp.10-11; item no.5: SITF00018740-00018767 RED, p.6; item no.7: SITF00019824-00019876, pp.7-8; item no.8: 107258-107300, p.11, 13; item no.9: SPOE00013793-00013900 RED, pp.20-21, 30-31; item no.10: 082892-TR-AT-ET Part 4 RED, pp.5-6.

¹⁶³ See Annex 7, item no.5: SITF00018740-00018767 RED, pp.6-7; item no.8: 107258-107300, pp.10-12; item no.9: SPOE00013793-00013900 RED, pp.31-33; item no.10: 082892-TR-AT-ET Part 8 RED, p.28.

in Kukës, W04733 was interrogated several times.¹⁶⁴ During his detention, W04733 saw Hashim THAÇI and Jakup KRASNIQI visiting Kukës and meeting up with the senior officers present there.¹⁶⁵ W04733 was also brought to see [REDACTED] on a separate occasion [REDACTED].¹⁶⁶ [REDACTED].¹⁶⁷ W04733 was consequently released around [REDACTED].¹⁶⁸

42. In addition to his evidence concerning Kukës, W04733 also provides evidence concerning the targeting of his family by soldiers from the [REDACTED] headquarters in [REDACTED].¹⁶⁹

43. *Authenticity and reliability.* The Proposed Evidence for W04733, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed in Confidential Annex 7 to this Motion. The statements given by W04733 [REDACTED] were taken by duly empowered law enforcement authorities [REDACTED] in the course of their investigations, or are transcripts of the witness's testimony in the Main Trial [REDACTED]. W04733 was duly advised of his rights and obligations. The statements were all signed by the witness, the interpreters and/or the officials conducting the hearing and were all given voluntarily and freely.¹⁷⁰ W04733 confirmed and re-signed his statement [REDACTED].¹⁷¹ The consistency of the Proposed Evidence – considered together and with corroborating evidence¹⁷² – further demonstrates its reliability.

¹⁶⁴ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, pp.5, 7; item no.4: SPOE00185335-00185363 RED, p.10; item no.8: 107258-107300, p.11; item no.9: SPOE00013793-00013900 RED, pp.31, 33.

¹⁶⁵ See Annex 7, item no.9: SPOE00013793-00013900 RED, pp.33-35; item no.10: 082892-TR-AT-ET Part 6 RED, pp.7, 9, 20, 23-24.

¹⁶⁶ See Annex 7, item no.9: SPOE00013793-00013900 RED, pp.36-37; item no.10: 082892-TR-AT-ET Part 8 RED, pp.2-8.

¹⁶⁷ See Annex 7, item no.3: U003-2283-U003-2289 RED2, p.4; item no.5: SITF00018740-00018767 RED, p.7; item no.8: 107258-107300, p.13; item no.9: SPOE00013793-00013900 RED, pp.36-37; item no.10: 082892-TR-AT-ET Part 6 RED, pp.12-15; 082892-TR-AT-ET Part 8 RED, p.28.

¹⁶⁸ See Annex 7, item no.2: SITF00013181-SITF00013189 RED2, p.7; item no.5: SITF00018740-00018767 RED, p.6; item no.8: 107258-107300, p.13; item no.9: SPOE00013793-00013900 RED, pp.31, 34.

¹⁶⁹ See, for example, Annex 7, item no.2: SITF00013181-SITF00013189 RED2, pp.2-3.

¹⁷⁰ See Annex 7, Indicia of Reliability for items no.1-10.

¹⁷¹ See Annex 7, Indicia of Reliability for item no.2; see also item no.4: SPOE00185335-00185363 RED, p.2.

¹⁷² See para.44 below.

44. *Fairness.* The probative value of W04733's Proposed Evidence is not outweighed by any prejudice. While this evidence goes to proof of [REDACTED], it should still be admitted since Rule 155's conditions are met. In this case, the probative value of the Proposed Evidence is not outweighed by undue prejudice because it: (i) will not be relied upon to a sole or decisive extent in reaching a conviction; (ii) was recorded in a manner – [REDACTED] – that enables the Parties and Panel to assess the witness's credibility; (iii) is consistent with, and corroborated by, statements of other witnesses in the case,¹⁷³ most of which will be available for cross-examination by the Defence, and (iv) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

8. W04848

45. *Relevance.* W04848, a Kosovo Albanian now deceased,¹⁷⁴ worked as a prosecutor in Prishtinë/Pristina until 1990. He left Kosovo in spring 1999 in the course of the NATO bombing. He crossed the border to Albania and went to Kukës, where he joined the KLA around April 1999.¹⁷⁵ W04848 took charge of the investigations into matters happening in the area.¹⁷⁶ There were about five to six individuals conducting such investigations, including into people suspected of collaboration with the Serbs.¹⁷⁷ These people were brought to Kukës, held there and questioned.¹⁷⁸ According to W04848, these investigations were not governed or guided by any regulations or the

¹⁷³ See particularly statements of [REDACTED], who were detained together with W04733 in Kukës, who testify about W04733's reports and health right after his release from Kukës. In relation to W04733's identification of the Kukës Metal Factory as a detention site, the conditions of detention and the treatment of the detainees, W04733's evidence is corroborated additionally by the statements of witnesses [REDACTED].

¹⁷⁴ See Annex 17, item no.8: 108716-108716.

¹⁷⁵ See Annex 8, item no.1: SITF00014088-00014120 RED, pp.2-6; item no.2: SITF00016908-SITF00016926 RED2, pp.3-4.

¹⁷⁶ See Annex 8, item no.1: SITF00014088-00014120 RED, pp.8-9.

¹⁷⁷ See Annex 8, item no.1: SITF00014088-00014120 RED, p.9; item no.2: SITF00016908-SITF00016926 RED2, pp.9-11.

¹⁷⁸ See Annex 8, item no.1: SITF00014088-00014120 RED, p.9.

like.¹⁷⁹ W04848 interviewed [REDACTED]¹⁸⁰ in the course of their detention in Kukës.¹⁸¹ W04848 left Kukës in June 1999 and went back to Kosovo.¹⁸²

46. *Authenticity and reliability.* The Proposed Evidence for W04848, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed in Confidential Annex 8 to this Motion. The first statement is an SPRK record of a witness hearing taken by duly empowered law enforcement authority in the course of the criminal investigations against Sabit GECI and Xhemshit KRASNIQI.¹⁸³ The second statement is the transcript of the witness' testimony in the case against *Sabit GECI et al.* (Case no.45/2010).¹⁸⁴ W04848 was duly advised of his rights and obligations. The statement given to the Public Prosecutor was signed by the witness, the Public prosecutor, the interpreter and two court recorders. Both statements were given voluntarily and freely.¹⁸⁵ The consistency of the Proposed Evidence – considered together and with corroborating evidence¹⁸⁶ – further demonstrates its reliability.

47. *Fairness.* The probative value of W04848's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) will not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's credibility; (iv) is consistent with, and corroborated by, statements of other witnesses in the case,¹⁸⁷ who will be available for cross-examination by the Defence, and (v) the Defence is aware of the witness's identity,

¹⁷⁹ See Annex 8, item no.1: SITF00014088-00014120 RED, p.9.

¹⁸⁰ Cf W04366, 059351-TR-ET Part 1 RED2, p.11; 059351-TR-ET Part 2 RED2, p.12.

¹⁸¹ See Annex 8, item no.1: SITF00014088-00014120 RED, pp.13-14; item no.2: SITF00016908-SITF00016926 RED2, p.9.

¹⁸² See Annex 8, item no.1: SITF00014088-00014120 RED, p.15.

¹⁸³ See Annex 8, Indicia of Reliability for item no.1: SITF00014088-00014120 RED.

¹⁸⁴ See Annex 8, Indicia of Reliability for item no.2: SITF00016908-SITF00016926 RED2.

¹⁸⁵ See Annex 8, Indicia of Reliability for items no.1-2.

¹⁸⁶ See para.47 below.

¹⁸⁷ See particularly statements of witnesses [REDACTED]. In relation to W04848's identification of the Kukës Metal Factory as a detention center, W04848's evidence is corroborated additionally by the statements of witnesses [REDACTED].

may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

9. W01984

48. *Relevance.* W01984, a Kosovar-Albanian, arrived in Kukës to seek refuge on around [REDACTED].¹⁸⁸ On or around [REDACTED], three uniformed KLA soldiers including [REDACTED] arrived in a vehicle and told W01984 to accompany them to the 'headquarters' to undergo questioning.¹⁸⁹ W01984 was taken to the site of the Kukës Metal Factory, where he was, *inter alia*, interrogated throughout several weeks, held in inhumane conditions and subjected to daily forced labour.¹⁹⁰ He was kept together with a group of other civilian detainees, including [REDACTED].¹⁹¹ Upon his arrival at the Kukës Metal Factory, W01984 was aggressively interrogated on allegations that he had been friendly with Serbs, that he owned a gun and that he had collaborated with the Serbs in the expulsions from his village, [REDACTED].¹⁹² [REDACTED] forced him to write a statement in response. W01984 observed that [REDACTED] held special authority over the interrogation process and that, together with [REDACTED], they made decisions over the prisoners' fate.¹⁹³ W01984 was transferred to [REDACTED].¹⁹⁴

49. *Authenticity and reliability.* The Proposed Evidence for W01984 is listed in Confidential Annex 9 to this Motion. The statements given by W01984 were taken by duly empowered law enforcement authorities and officially recorded by a clerk/court

¹⁸⁸ See Annex 9, item no.2: SITF00013123-00013153 RED, pp.3, 5; item no.1: SITF00372498-00372510 RED2, p.3.

¹⁸⁹ See Annex 9, item no.2: SITF00013123-00013153 RED, pp.4-5; item no.1: SITF00372498-00372510 RED2, pp.3-4.

¹⁹⁰ See Annex 9, item no.2: SITF00013123-00013153 RED, pp.5-9, 11.

¹⁹¹ See Annex 9, item no.2: SITF00013123-00013153 RED, pp.9-11; item no.1: SITF00372498-00372510 RED2, pp.3-4.

¹⁹² See Annex 9, item no.2: SITF00013123-00013153 RED, pp.5-9.

¹⁹³ See Annex 9, item no.2: SITF00013123-00013153 RED, pp.10-12, 14.

¹⁹⁴ See Annex 9, item no.2: SITF00013123-00013153 RED, p.13; item no.1: SITF00372498-00372510 RED2, p.5.

recorder, using official templates that bear the case number, date, time and place of the interview and indicate names and roles of the persons present. They provide the witness's personal details and bear the signatures of at least the witness, the interpreter and the interviewer. In both interviews, the witness was informed of his rights and obligations at the beginning of the interview. Both statements were given voluntarily and freely.¹⁹⁵ Further, [REDACTED], W01984 confirmed that his prior statement, [REDACTED], was truthful.¹⁹⁶ The consistency of the Proposed Evidence – considered together and with corroborating evidence¹⁹⁷ – further demonstrates its reliability.

50. *Fairness.* The probative value of W01984's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) is consistent with, and corroborated by, statements of other witnesses in the case,¹⁹⁸ most of whom will be available for cross-examination by the Defence, and (iv) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

¹⁹⁵ See Annex 9, Indicia of Reliability for items no.1-2.

¹⁹⁶ See Annex 9, item no.2: SITF00013123-00013153 RED, p.2.

¹⁹⁷ See para.50 below.

¹⁹⁸ See particularly statements of witness [REDACTED], who was detained together with W01984 in Kukës. In relation to W01984's identification of the Kukës Metal Factory as a detention site, the conditions of detention and the treatment of the detainees, W01984's evidence is corroborated additionally by the statements of witnesses [REDACTED].

51. *Unavailability pursuant to Rule 155(1)*. W01984 is unavailable¹⁹⁹ [REDACTED].²⁰⁰ [REDACTED],²⁰¹ [REDACTED].²⁰²

E. PRIZREN

52. The evidence of W01143 and W02618 is relevant to prove the charges in the Indictment related to Prizren.²⁰³

10. W01143

53. *Relevance*. W01143, a Kosovar-Serb now deceased,²⁰⁴ was a school teacher in Dušanovo, near Prizren, until 1980 and held a civilian position in the Territorial Defence until 1990.²⁰⁵ On 13 June 1999, while leaving his village via the road to Prizren, W01143 was taken captive by three armed KLA members.²⁰⁶ After taking the witness captive, the KLA members abducted an elderly Serbian named Gojko AKSIĆ.²⁰⁷

¹⁹⁹ See also [REDACTED].

²⁰⁰ See ICTY, *Prosecutor v. Gotovina et al.*, IT -06-90-T, Decision on the Admission of Statements of Four Witnesses pursuant to Rule 92 *quater*, 24 July 2008, para.16 (where the Chamber discusses the witness's old age and health preventing her from leaving her house, which meant that she would not be able to go anywhere to give evidence, thus satisfying the Chamber that the witness's physical condition rendered her unable to testify orally); ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on the Admission of Statements of Two Witnesses and Associated Documents pursuant to Rule 92 *quater*, 16 January 2009, paras 8, 10 (where a witness suffering from Parkinson's disease which had developed into severe symptoms satisfied the Chamber that the witness was unable to testify orally); ICTY, *Prosecutor v. Hadžić*, IT -95-5118-T, Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits pursuant to Rule 92*quater*, 30 November 2009, para.5; ICTY, *Hadžić* Decision, 9 May 2013, paras 23, 29, 41, 95, 101; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-1588-Red, Trial Chamber X, Public redacted version of Decision on the introduction into evidence of P-0570's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 11 August 2021, paras 18-20; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision Admitting Witness PRH437's Statements Under Rule 158 and Granting Protective Measures, 28 February 2017, paras 12-14.

²⁰¹ See Annex 17, item no.9: 106514-106519-ET RED.

²⁰² See [REDACTED], SITF00432046-00432059, pp.5-7 [Disclosure 137: Rule 102(1)(b)].

²⁰³ See Indictment, KSC-BC-2020-06/F00999/A01, paras.16-31, 32-57, 59-61, 87-90, 96-98, 125-128, 138.

²⁰⁴ See Annex 17, items no.10.1-10.3.

²⁰⁵ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.1; item no.4: SITF00034178-SITF00034183 RED3, p.1.

²⁰⁶ See Annex 10, item no.1: SITF00326412-SITF00326415 RED2, p.2; item no.2: SITF00311849-00311857 RED2, pp.1-2; item no.4: SITF00034178-SITF00034183 RED3, p.1; item no.5: 101690-101693-ET RED2, pp.1-2.

²⁰⁷ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.2; item no.4: SITF00034178-SITF00034183 RED3, p.1; item no.5: 101690-101693-ET RED2, p.2.

W01143 and Gojko AKSIĆ were both taken to an unfinished house and were both beaten and tortured.²⁰⁸ The KLA Military Police searched their belongings, tied their hands behind their backs and put bags over their heads, before transporting them in a van to a farm house.²⁰⁹ The ties cut off his circulation and the bag almost suffocated him, and when he asked for air, a KLA member blocked his nose with his hand, further restricting his ability to breathe.²¹⁰

54. After arriving at the farm house, Commander Drini, who W01143 knew previously, checked his documents.²¹¹ W01143 and AKSIĆ were transported to another location where they were beaten, tortured and abused.²¹² They were then taken to a garage where W01143 met two heavily injured men, Todor STANKOVIĆ and "Semo", a Bosniac.²¹³ They were held in the garage until the early morning of 17 June 1999.²¹⁴ W01143 and the other detainees were taken to the Prizren MUP building, where they were beaten, kicked and made to scream 'Viva UCK.'²¹⁵ Todor SAVIĆ was detained with them.²¹⁶ On 18 June 1999, when German KFOR soldiers arrived at the MUP building, W01143, AKSIĆ and other detainees were concealed from KFOR.²¹⁷

²⁰⁸ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.2; item no.4: SITF00034178-SITF00034183 RED3, p.1; item no.5: 101690-101693-ET RED2, p.2.

²⁰⁹ See Annex 10, item no.2: SITF00311849-00311857 RED2, pp.2-3; item no.4: SITF00034178-SITF00034183 RED3, p.1; item no.5: 101690-101693-ET RED2, p.2.

²¹⁰ See Annex 10, item no.2: SITF00311849-00311857 RED2, pp.2-3; item no.4: SITF00034178-SITF00034183 RED3, p.1; item no.5: 101690-101693-ET RED2, p.2.

²¹¹ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.1.

²¹² See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.2; item no.5: 101690-101693-ET RED2, p.3.

²¹³ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.3: SITF00289702-00289702, p.1; item no.4: SITF00034178-SITF00034183 RED3, p.2; item no.5: 101690-101693-ET RED2, p.3.

²¹⁴ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.2.

²¹⁵ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.2; item no.5: 101690-101693-ET RED2, p.3.

²¹⁶ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.2.

²¹⁷ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.2; item no.5: 101690-101693-ET RED2, p.3.

W01143 and the other concealed detainees were transferred back to the garage, where W01143 was held until his release on 23 June 1999.²¹⁸

55. *Authenticity and reliability.* The Proposed Evidence for W01143, with an individualised explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 10 to this Motion. W01143's witness statements were taken by duly empowered law enforcement authorities, both international and Serbian, and were prepared using official templates that bear the date, time and place of the interviews and indicate names and roles of the persons present. They provide the witness's personal details and most bear the signature of the witness.²¹⁹

56. *Fairness.* The probative value of the Proposed Evidence pertaining to W01143 is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of nearly 10 years – that enables the Parties and Panel to assess the witness's credibility; (iv) is consistent with, and corroborated by, statements of other witnesses in the case,²²⁰ and (v) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

11. W02618

57. *Relevance.* W02618, a Lieutenant Colonel [REDACTED], now deceased,²²¹ was deployed in Prizren from July to November 1999.²²² During this time, W02618, then serving with the rank of Captain, was part of the Military Police Operations

²¹⁸ See Annex 10, item no.2: SITF00311849-00311857 RED2, p.3; item no.4: SITF00034178-SITF00034183 RED3, p.2; item no.5: 101690-101693-ET RED2, pp.3-4.

²¹⁹ See Annex 10, Indicia of Reliability for items no.1-5.

²²⁰ See particularly statements of W02087, [REDACTED].

²²¹ See Annex 17, item no.11: 108132-108132-ET.

²²² See Annex 11, item no.1: 086914-TR-ET Part 2 RED, pp.2-3.

Company.²²³ From early July through mid-August 1999, he served as a prison warden.²²⁴ From mid-August 1999, he served as Station Commander of the Military Police Station in Prizren.²²⁵ As a prison warden and Station Commander, W02618 participated in the production of [REDACTED] reports concerning criminal incidents in Prizren.²²⁶ W02618 received reports about evictions from Serb-owned properties,²²⁷ as well as reports of violent crimes committed against alleged collaborators.²²⁸ W02618 also observed numerous cases where the KLA Military Police (PU) conducted unauthorised activities, including forcibly detaining persons without authorisation, operating illegal police stations and the physical mistreatment of detainees.²²⁹ W02618 met on different occasions with Nexhmedin KRASNIQI, who identified himself as the commander of the PU,²³⁰ Nezir KRYEZIU, KRASNIQI's deputy,²³¹ Tahir SINANI, Pashtrik Zone Commander and Skender HOXHA, acting as the KLA liaison staff officer.²³² As part of one such meeting with Nexhmedin KRASNIQI, W02618 produced [REDACTED] concerning his questioning of KRASNIQI concerning crimes committed by KRASNIQI's subordinates and KRASNIQI's admission of knowledge and responsibility for the same.²³³

58. *Authenticity and reliability.* The Proposed Evidence for W02618, with an individualised explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 11. W02618's 2020 audio-video recorded interview – as

²²³ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, p.3.

²²⁴ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, p.3. His official title was Platoon Leader and Deputy Company Commander of the Military Police Operations Company.

²²⁵ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, p.3.

²²⁶ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, p.4; and Part 4 RED2, pp.1, 6. See also associated exhibits at Annex 11, items no.2-5.

²²⁷ See Annex 11, item no.1: 086914-TR-ET Part 4 RED2, pp.1-5.

²²⁸ See Annex 11, item no.1: 086914-TR-ET Part 3 RED, p.7.

²²⁹ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, pp.7-8, 11; Part 3 RED, pp.5-6; Part 4 RED2, pp.1-4.

²³⁰ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, pp.8, 11.

²³¹ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, p.11; and Part 3 RED, pp.1, 4.

²³² See Annex 11, item no.1: 086914-TR-ET Part 3 RED, pp.1, 3, 5.

²³³ See Annex 11, item no.2: SITF00189153-SITF00189178-ET; and item no.1: 086914-TR-ET Part 2 RED, pp.4, 7, 11.

recorded in a verbatim transcript – was conducted by SPO representatives and the Chief of the Police from his local jurisdiction on 1 July 2020. W02618 was duly advised of his rights and obligations as a witness.²³⁴ The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.²³⁵ W02618 confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.²³⁶

59. During his SPO interview, W02618 discussed and authenticated multiple [REDACTED] reports that concerned events that he was personally involved in during his deployment.²³⁷ These associated exhibits constitute an integral part of the witness's evidence.²³⁸ In addition, these exhibits are also *prima facie* reliable, as detailed for each of them in Annex 11.²³⁹

60. *Fairness.* The probative value of the Proposed Evidence pertaining to W02618 is not outweighed by any prejudice. Indeed, this evidence: (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and Panel to assess the witness's demeanour and credibility;²⁴⁰ (iv) is consistent with, and corroborated by, statements of other witnesses in the case,²⁴¹ who will be available for cross-examination by the Defence, and other documentary evidence;²⁴² and (v) the Defence is aware of the witness's identity, may investigate the witness, his motives

²³⁴ See Annex 11, item no.1: 086914-TR-ET Part 1 RED, p.1.

²³⁵ See Annex 11, item no.1: 086914-TR-ET Part 1 RED, p.1.

²³⁶ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, p.1.

²³⁷ See Annex 11, item no.1: 086914-TR-ET Part 2 RED, pp.4-7, 10-11; Part 3 RED, pp.6, 9; Part 4 RED2, pp.1-6.

²³⁸ See *similarly*, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1205, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony, 11 March 2016, para.7.

²³⁹ See Annex 11, items no.2-6.

²⁴⁰ In this respect, the SPO interview – during which the witness affirmed and discussed the other relevant records – was audio-video recorded.

²⁴¹ See particularly statements of witnesses [REDACTED], W04765, W04691, [REDACTED] and W04752.

²⁴² See Annex 11, items no.2-5.

and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

F. DRENOC/DRENOVAC

61. The evidence of W04783 and W04829 is relevant to prove the charges in the Indictment related to Drenoc/Drenovac.²⁴³

12. W04783

62. *Relevance.* W04783 is [REDACTED]²⁴⁴ [REDACTED].²⁴⁵ W04783 [REDACTED].²⁴⁶ Following the arrest of [REDACTED], W04783 twice visited the Drenoc/Drenovac KLA headquarters where a 'superior' first confirmed [REDACTED] was held.²⁴⁷ In his subsequent visit, W04783 was informed [REDACTED] had been escorted to [REDACTED],²⁴⁸ after which time he never saw [REDACTED] alive again.²⁴⁹

63. *Authenticity and reliability.* The Proposed Evidence for W04783, with an individualised explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 12. W004783's evidence in the [REDACTED] investigations and trial was professionally recorded and done with an interpreter understood by the witness.²⁵⁰ W04783 was duly advised of his rights and obligations

²⁴³ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 65-66, 96-98, 102, 137-138, 147-152, 175.

²⁴⁴ See Annex 17, item no.12: 106523-106524.

²⁴⁵ See Annex 12, item no.3: SITF00180542-00180576 RED, p.5; item no.1: SITF00306147-SITF00306153 RED, p.1; item no.2: SPOE00208970-SPOE00208982 RED, p.1.

²⁴⁶ See Annex 12, item no.2: SPOE00208970-SPOE00208982 RED; item no.3: SITF00180542-00180576 RED; item no.4: SITF00181515-00181534 RED.

²⁴⁷ See Annex 12, item no.3: SITF00180542-00180576 RED, pp.5-7.; item no.4: SITF00181515-00181534 RED; item no.1: SITF00306147-SITF00306153 RED, p.1; item no.2: SPOE00208970-SPOE00208982 RED, pp.5-6.

²⁴⁸ See Annex 12, item no.1: SITF00306147-SITF00306153 RED, p.1; item no.2: SPOE00208970-SPOE00208982 RED, p.7.

²⁴⁹ See Annex 12, item no.1: SITF00306147-SITF00306153 RED, p.1; item no.2: SPOE00208970-SPOE00208982 RED, p.8.

²⁵⁰ See Annex 12, item no.2: SPOE00208970-SPOE00208982 RED; item no.3: SITF00180542-00180576 RED; item no.4: SITF00181515-00181534 RED.

as a witness.²⁵¹ The date, time and place of the proceedings, as well as all persons present, are reflected in the records.²⁵² Additionally, in W04783's last appearance, [REDACTED], he confirmed that the contents of his previous testimony were accurate.²⁵³ W04783's UNMIK statement is also *prima facie* reliable, as detailed in Annex 12.²⁵⁴ The consistency of W04783's Proposed Evidence – considered together and with corroborating evidence²⁵⁵ – further demonstrates its reliability.

64. *Fairness.* The probative value of W04783's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded by different law enforcement official and at different times, which enables the Parties and Panel to assess the witness's credibility; (iv) is consistent with, and corroborated by, statements of other witnesses in the case, who will be available for cross-examination by the Defence;²⁵⁶ and (v) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge W04783's Proposed Evidence at trial and put forward its own version of events.

13. W04829

65. *Relevance.* W04829 worked for the Yugoslav Secret Service. In 2005, he was shot and killed in broad daylight by, *inter alia*, a cousin of W04455 (an accused in the *Selim Krasniqi et al.* trial).²⁵⁷ Following the public execution of W04829 and his subsequent

²⁵¹ See Annex 12, item no.2: SPOE00208970-SPOE00208982 RED, p.4; item no.3: SITF00180542-00180576 RED, p.4; item no.4: SITF00181515-00181534 RED, p.3.

²⁵² See Annex 12, item no.2: SPOE00208970-SPOE00208982 RED, pp.1-2; item no.3: SITF00180542-00180576 RED, p.1; item no.4: SITF00181515-00181534 RED, p.1.

²⁵³ See Annex 12, item no.4: SITF00181515-00181534 RED, pp.3-4, *referencing* item no.2: SPOE00208970-SPOE00208982 RED, and item no.3: SITF00180542-00180576.

²⁵⁴ See Annex 12, item no.1: SITF00306147-SITF00306153 RED.

²⁵⁵ See para.64 below.

²⁵⁶ See statements of witnesses [REDACTED].

²⁵⁷ See Annex 17, item no.13.1: SITF00297366-00297368.

burial, the body was illegally disinterred and burned.²⁵⁸ The desecration of the corpse of this witness, aimed at terrorising the population, epitomised the climate of witness intimidation.²⁵⁹

66. W04829 describes the initial public appearance of the KLA in Llaushe in 1997, as well as the activities and organisation of the KLA in Drenoc/Drenovac in 1998.²⁶⁰ In Drenoc/Drenovac, the leaders were identified as Bedri ZYBERAJ, Xhemajl GASHI, Isuf GASHI, Mahir GASHI/HASANI, Gani PAQARIZI, and Selim KRASNIQI.²⁶¹ The KLA established a headquarters in Drenoc/Drenovac; a prison for Serbian collaborators and people who spoke against the KLA was established in the basement of the old school building.²⁶²

67. W04829 also provides evidence regarding the detention as well as the murder of certain victims at Drenoc/Drenovac, Malishevë/Mališevo, and Kleçkë/Klečka,²⁶³ including his brother Murat RRUSTEMI, Hysen KRASNIQI from Dejne, Hidaj POPAJ, Shani RABA, Avdi BERISHA, Bedri BERISHA, Shaban SHALA, 'Hazer/Azer' from Piranë/Pirane, and a Roma named Hasan MORINA.²⁶⁴

68. *Authenticity and Reliability.* The Rule 155 Statement proposed for W04829 is listed in Confidential Annex 13 to this Motion, with a list of indicia that show its *prima facie* reliability. The interviews composing the Rule 155 Statement were taken by UNMIK, were officially recorded and bear the case number, date, time and place of the interview, names and roles of the persons present, witness details and relevant signatures.²⁶⁵ The interviews also occurred over the time period of nearly a year

²⁵⁸ See Annex 17, item no.13.1: SITF00297366-00297368; item no.13.2: SPOE00094142-00094143, p.2

²⁵⁹ See Annex 17, item no.13.1: SITF00297366-00297368.

²⁶⁰ Annex 13, item no.1: SITF00305080-00305129, p.30.

²⁶¹ Annex 13, item no.1: SITF00305080-00305129, pp.30-32.

²⁶² Annex 13, item no.1: SITF00305080-00305129, pp.13-14, 32-33.

²⁶³ Annex 13, item no.1: SITF00305080-00305129, pp.10-11 (SITF00299963-SITF00299964 for the English version).

²⁶⁴ Annex 13, item no.1: SITF00305080-00305129, pp.10-11 (SITF00299963-SITF00299964 for the English version), 33-35.

²⁶⁵ See Annex 13, item no.1: SITF00305080-00305129.

(February 2004 to January 2005), in which the witness had time to both correct earlier statements or provide newly developed information.

69. *Fairness.* The probative value of the Proposed Evidence pertaining to W04829 is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) is consistent with, and corroborated by, statements of other witnesses in the case, who will be available for cross-examination by the Defence;²⁶⁶ and (iv) the Defence is aware of the witness's identity, may investigate the witness, including motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

G. W01456, W04597 AND W04836

70. The evidence of witnesses W01456, W04597 and W04836 is relevant to prove, *inter alia*, contextual elements, the campaign of persecution, the common purpose, its implementation, the Accused's contributions, and the organisation of the KLA.²⁶⁷

14. W01456

71. *Relevance.* W01456, who is deceased,²⁶⁸ was a Professor of Albanologic Studies and Human rights activist who founded the Human Rights Council in Kosovo in 1989.²⁶⁹ Based on his own personal observations and experiences, W01456 provides a history of the origins and growth of the KLA,²⁷⁰ as well as descriptions of its hierarchy, structure and organisation, including the KLA General Staff membership and leadership roles of Hashim THAÇI, Rexhep SELIMI and Jakup KRASNIQI.²⁷¹

²⁶⁶ See in particular, statements of [REDACTED].

²⁶⁷ See Indictment, KSC-BC-2020-06/F00999/A01, paras 16-57, 59-60.

²⁶⁸ See Annex 17, item no.14: 110526-110529-ET.

²⁶⁹ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.2-3.

²⁷⁰ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.2-5.

²⁷¹ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.5-7, 14-16.

72. In 1998, W01456's name was put on a list of ten people condemned to death by the The People's Movement for Kosovo ('LPK') for 'national betrayal'.²⁷² On 31 October 1998, he was interrogated and intimidated by Rexhep SELIMI at the Jabllanicë/Jablanica headquarters for criticising the KLA.²⁷³ Later that day, W01456 escaped what he considered to be a KLA execution attempt and he identified those he believed were involved.²⁷⁴ W01456 also describes the 20 September 1998 KLA arrest and detention of 15 political party members and parliamentary deputies at Qirez/Ćirez,²⁷⁵ as well as other KLA kidnappings, disappearances and executions of alleged 'Serb Collaborators'.²⁷⁶ W01456 also details an atmosphere in Kosovo of fear of retaliation in the minds of witnesses, and described being threatened.²⁷⁷

73. *Authenticity and reliability.* The Proposed Evidence for W01456 is listed in Confidential Annex 14 to this Motion. The record of W01456's interview conducted by the ICTY in July 2004 reflects date, time and place of the interview, the persons present, and the fact that the interpreter was understood by the witness.²⁷⁸ W01456 confirmed at the interview's outset and conclusion that he made his statement voluntarily, without threat, force or promise of any incentive for doing so. W01456 consented to the interview being provided to other law enforcement agencies, acknowledged his understanding that the statement could be used in future legal proceedings and stated that he was prepared to testify if called to do so. W01456 and the interpreter signed or initialled each page, and W01456 confirmed in writing that the statement's contents were accurate to the best of his knowledge and recollection.²⁷⁹

74. The other related records tendered as part of the W01456's Proposed Evidence all consist of records provided by W01456 during the ICTY Interview and/or discussed

²⁷² See Annex 14, item no.5: U008-2529-U008-2531-ET, p.3.

²⁷³ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.9-10.

²⁷⁴ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.10-11.

²⁷⁵ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.21-22.

²⁷⁶ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.14, 16-17, 20-25.

²⁷⁷ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.25-26.

²⁷⁸ See Annex 14, item no.1 and Indicia of Reliability.

²⁷⁹ See Annex 14, item no.1.

during that interview, thus constituting an integral part thereof.²⁸⁰ To the extent such associated exhibits also concern the same topics and constitute the witness's contemporaneous observations, which informed his ICTY Statement, they also provide important context and are relevant for a fulsome analysis thereof.

75. In addition, these related records are also *prima facie* reliable, as detailed for each of them in Annex 14. For example, W01456 authored several of the related records, which contain his contemporaneous personal observations of events described in his statement and relevant to the case, and interactions with, *inter alia*, other witnesses and victims in this case, and senior officials of the KLA and LDK/government-in-exile.²⁸¹ In the instances where W01456 did not author the related record itself, he nevertheless provided the record as evidence and described the underlying events during his ICTY Statement.²⁸² Furthermore, in several cases the incident at issue in the related record is also the subject of and corroborated by the testimony of one or more other witnesses.²⁸³

76. *Fairness.* The probative value of W01456's Proposed Evidence is not outweighed by any prejudice. While certain aspects of this evidence go to proof of the acts and conduct of the Accused as it relates to their leadership roles in the KLA and, in one instance, W01456's personal interaction with SELIMI,²⁸⁴ the evidence should be admitted since Rule 155's conditions are met. In this case, the probative value of the proposed evidence is not outweighed by undue prejudice because the evidence (i) may not be relied upon to a sole or decisive extent in reaching a conviction; (ii) is largely corroborated by statements of other witnesses in the case,²⁸⁵ including witnesses who will be available for cross-examination by the Defence; and (iii) the

²⁸⁰ See Annex 14, items 2-9 and related Indicia of Reliability.

²⁸¹ See e.g. Annex 14, item no.2: U008-2528-U008-2528-ET; item no.7: U008-2533-U008-2535-ET; item no.8: U008-2728-U008-2846-ET; item no.9: U008-3015-U008-3015-ET and U008-3026-U008-3027-ET.

²⁸² See Annex 14, item no.3: U008-2529-U008-2531-ET, p.1; item no.4: U008-2529-U008-2531-ET, p.2; item no.5: U008-2529-U008-2531-ET, p.3; item no.6: U008-2532-U008-2532-ET; item no.8: U008-2728-U008-2846-ET.

²⁸³ See e.g. Annex 14, item no.2: U008-2528-U008-2528-ET; item no.6: U008-2532-U008-2532-ET.

²⁸⁴ See Annex 14, item no.1: U008-2500-U008-2535 RED2, pp.9-13.

²⁸⁵ See in particular W04448, [REDACTED].

Defence is aware of the witness's identity, may investigate the witness, including motives and credibility, and has the opportunity to challenge the proposed evidence at trial and put forward its own version of events.

15. W04597

77. *Relevance.* W04597, a Kosovar Albanian now deceased,²⁸⁶ was a former JNA officer from Isniq/Isnić, in the Deçan/Dečani Municipality.²⁸⁷ In April 1998, W04597 assumed control of a KLA unit in his village²⁸⁸ and was later appointed commander of an operative sub-zone of the Dukagjini area.²⁸⁹ W04597 took part in several high-level KLA meetings. On or around 23 June 1998, he participated in a meeting held in Jabllanicë/Jablanica, when the Dukagjini Operational Zone was established and Ramush HARADINAJ was appointed as zone commander, with Lahi BRAHIMAJ as his deputy.²⁹⁰ Rexhep SELIMI was present at this meeting.²⁹¹ W04597 witnessed the appointment of Tahir ZEMAJ as commander of the Dukagjini Operational Zone in mid-August 1998,²⁹² and the reinstatement of Ramush HARADINAJ as Zone commander, after the intervention of General Staff members Hashim THAÇI, Bislim ZYRAPI, Rexhep SELIMI and Lahi BRAHIMAJ during a meeting held in Prapaçan/Prapaćan.²⁹³

78. W04597 further became acquainted with Nazmi and Lahi BRAHIMAJ, as well as with Idriz BALAJ aka Togeri, who headed the rapid intervention KLA unit known as the Black Eagles.²⁹⁴ He also knew about the role of Faton MEHMETAJ, a KLA

²⁸⁶ See Annex 17, item no.15: 108719-108719.

²⁸⁷ See Annex 15, item no.1: T000-5321-TR-ET Part 1, pp.2-4; item no.5: U009-4688-U009-4698, p.2.

²⁸⁸ See Annex 15, item no.8: T977-T1066, p.1035; item no.1: T000-5321-TR-ET Part 1, p.10; item no.5: U009-4688-U009-4698, p.3.

²⁸⁹ See Annex 15, item no.8: T977-T1066, pp.1049-1052; item no.5: U009-4688-U009-4698, pp.2-3.

²⁹⁰ See Annex 15, item no.6: U017-4085-U017-4092, pp.4-5; item no.7: U017-5646-U017-5653, p.7.

²⁹¹ See Annex 15, item no.9: IT-04-84bis T1067-T1122, p.4 (T.1070).

²⁹² See Annex 15, item no.2: T000-5322-TR-ET Part 1, p.10; item no.5: U009-4688-U009-4698, p.6.

²⁹³ See Annex 15, item no.2: T000-5322-TR-ET Part 1, pp.13-14; item no.5: U009-4688-U009-4698, pp.6-7.

²⁹⁴ See Annex 15, item no.3: T000-5323-TR-ET Part 1, pp.5-6; item no.5: U009-4688-U009-4698, pp.8-9; item no.6: U017-4085-U017-4092, pp.4-5.

intelligence officer in the Dukagjini zone, who identified and interrogated persons suspected of being collaborators.²⁹⁵

79. The SPO intends to rely on W04597's evidence insofar as it concerns his direct, first-hand observations, experiences, and interactions, as generally outlined above. The majority of his evidence concerns other matters limited by his own point of view and area of responsibility, which is not directly concerned by the crimes charged. Accordingly, these parts of his evidence are of limited relevance to the case. To permit a full evaluation of this deceased witness's evidence, the SPO nevertheless tenders his statements and testimony in full.

80. *Authenticity and reliability.* The Proposed Evidence for W04597, with an individualised explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 15. During W04597's ICTY witness statement dated 24 September 2010,²⁹⁶ W04597 discussed the contents of his prior ICTY statement taken on 24 March 2006.²⁹⁷ Both statements were taken by a duly empowered investigator, and orally translated into a language understood by the witness by an interpreter certified by the ICTY Registry. Both statements contain a witness acknowledgement and an interpreter certification, are signed by the witness and initialled on all pages.²⁹⁸ During his supplementary statement dated 30 August 2011, W04597 confirmed his signature on and discussed the content of his ICTY statements of 24 March 2006 and 24 September 2010.²⁹⁹ The related transcripts of the W04597's ICTY interview of 24 March 2006 are also *prima facie* reliable.³⁰⁰

81. Further, W04597's audio-video recorded examination – as recorded in a verbatim transcript – was conducted before the ICTY on 1 and 2 September 2011 with

²⁹⁵ See Annex 15, item no.2: T000-5322-TR-ET Part 2, pp.17-21; item no.3: T000-5323-TR-ET Part 1, p.1; item no.5: U009-4688-U009-4698, p.9.

²⁹⁶ Annex 15, item no.6: U017-4085-U017-4092.

²⁹⁷ Annex 15, item no.5: U009-4688-U009-4698.

²⁹⁸ See Annex 15, Indicia of Reliability for items no.5 and 6.

²⁹⁹ See Annex 15, item no.7: U017-5646-U017-5653.

³⁰⁰ See Annex 15, item no.1: T000-5321-TR-ET Parts 1-2; item no.2: T000-5322-TR-ET Parts 1-2; item no.3: T000-5323-TR-ET Parts 1-2; item no.4: T000-5324-TR-ET Parts 1-2.

an interpreter understood by the witness. The date, time and place of the testimony, the personal details of W04597, as well as all persons present, are reflected in the record of the testimony, which was under oath.³⁰¹ W04597's prior ICTY statements were admitted into evidence during that testimony.³⁰² The consistency of the Proposed Evidence – considered together and with corroborating evidence³⁰³ – further demonstrates its reliability.

82. Finally, as set out in Annex 15, the exhibits associated with W04597's testimony and statements were discussed therein and/or authenticated or confirmed by the witness;³⁰⁴ they therefore form an integral part of his evidence and meet the requirements for admissibility. These exhibits were also admitted in prior proceedings before the ICTY, which indicates their *prima facie* reliability.³⁰⁵

83. *Fairness.* The probative value of the Proposed Evidence pertaining to W04597 is not outweighed by any prejudice. While the evidence contains *inter alia* references to two of the Accused, Hashim THAÇI and Rexhep SELIMI,³⁰⁶ the evidence should be admitted. The probative value of the Proposed Evidence is not outweighed by undue prejudice because (i) there is other evidence that can be challenged by the Defence that corroborates the evidence of W04597;³⁰⁷ (ii) the evidence may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) the evidence was recorded in a manner – including at different times over the course of nearly 5 years – that enables the Parties and Panel to assess the witness's credibility; and (iv) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

³⁰¹ See Annex 15, item no.8: IT-04-84bis T977-T1066; and item no.9: IT-04-84bis T1067-T1122.

³⁰² See Annex 15, item no.8: IT-04-84bis T977-T1066, pp.45-46 (T.1021-1022).

³⁰³ See para.83 below.

³⁰⁴ See Annex 15, items no.10-15 and related Indicia of Reliability.

³⁰⁵ See Annex 15, items no.10-15 and related Indicia of Reliability.

³⁰⁶ See Annex 15, item no.2: T000-5322-TR-ET Part 1, pp.4-5,13-15; item no.5: U009-4688-U009-4698, pp.6-7.

³⁰⁷ See eg W04752, 083280-TR-ET Part 3, pp.20.

16. W04836

84. *Relevance.* W04836, a Kosovar-Albanian now deceased,³⁰⁸ was a commander in the Armed Forces of the Republic of Kosovo ('FARK') between 19 June 1998 and the end of June 1999.³⁰⁹ He provided information concerning the structure of the KLA, especially in the Dukagjini Operational Zone,³¹⁰ and propaganda against, and the intimidation and mistreatment of, *inter alia*, FARK members.³¹¹ For example, on 4 July 1998, four FARK soldiers were stopped in Gllogjan/Glođane, in Dukagjini Operation Zone, and were shot, beaten and mistreated by KLA soldiers.³¹² W04836 was also made aware of an order to kill him.³¹³

85. When W04836 was appointed commander of the Third Operational Zone by the Ministry of Defence in exile,³¹⁴ General Staff representatives, including Hashim THAÇI and Rexhep SELIMI, reinstated Ramush HARADINAJ as zone commander in early September 1998.³¹⁵ W04836 reported a phone conversation between the Minister of Defence and Hashim THAÇI in the course of which the latter was informed that W04836 would be under the Ministry of Defence's command. Hashim THAÇI replied that if W04836 did not obey him, THAÇI would fight him and any others who opposed him.³¹⁶

³⁰⁸ W04836 was murdered in Pejë/Peč on 4 January 2003. See Annex 17, item no.16.1: U016-6858-U016-6861, and item no.16.2: U016-6910-U016-6911.

³⁰⁹ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, pp.7, 9-10, 16.

³¹⁰ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, pp.3, 17; item no.2: SPOE00084827-SPOE00084854 RED, pp.6-7, 25-26; item no.3: U002-3153-U002-3228-ET.

³¹¹ See Annex 16, item no.2: SPOE00084827-SPOE00084854 RED, pp.6, 8, 10; item no.3: U002-3153-U002-3228-ET, pp.46-47.

³¹² See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, p.9; item no.2: SPOE00084827-SPOE00084854 RED, pp.18-19, 23; item no.3: U002-3153-U002-3228-ET, pp.25-26.

³¹³ See Annex 16, item no.2: SPOE00084827-SPOE00084854 RED, pp.14-16; item no.3: U002-3153-U002-3228-ET, pp.56-58.

³¹⁴ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, p.3; item no.3: U002-3153-U002-3228-ET, p.41.

³¹⁵ See Annex 16, item no.2: SPOE00084827-SPOE00084854 RED, pp.6-7; item no.3: U002-3153-U002-3228-ET, p.47.

³¹⁶ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, pp.3, 17; item no.3: U002-3153-U002-3228-ET, pp.47-48.

86. After W04836's units left Kosovo in September 1998,³¹⁷ they were called traitors in the press.³¹⁸ W04836 provided information regarding the Mergimi brigade created in early 1999 in Albania and which he commanded.³¹⁹ When members of that brigade returned to Kosovo in June 1999, they were mistreated by the KLA in Prizren, Gjakovë/Đakovica,³²⁰ and Pejë/Peč,³²¹ and certain soldiers of that brigade disappeared in Pejë/Peč.³²²

87. *Authenticity and reliability.* The Proposed Evidence for W04836, with an individualised explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 16. The statement given by W04836 on 26 November 2002³²³ was taken before the District Court of Pejë/Peč by a duly authorised panel of judges, in the framework of the case against *Idriz BALAJ et al.*, in a session open to the public, in the presence of the Defence counsels, and was duly recorded. W04836 was advised of his rights and obligations as a witness, and his testimony was given voluntarily and freely.

88. The prior statement dated 2 July 2002³²⁴ was taken by a duly empowered investigative judge of the Pejë/Peč District Court, in the framework of criminal investigations against *Idriz BALAJ et al.*, in the presence of the Defence counsels, and was duly recorded. W04836 was advised of his rights and obligations, and gave his statement freely and voluntarily.

³¹⁷ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, pp.4, 11, 13; item no.3: U002-3153-U002-3228-ET, pp.50-52.

³¹⁸ See Annex 16, item no.2: SPOE00084827-SPOE00084854 RED, p.8; item no.3: U002-3153-U002-3228-ET, p.54.

³¹⁹ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, pp.4-6, 11.

³²⁰ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, pp.5, 8; item no.2: SPOE00084827-SPOE00084854 RED, pp.4, 10-11; item no.4: 0189-2748-0189-2759-ET, pp.4-6.

³²¹ See Annex 16, item no.4: 0189-2748-0189-2759-ET, pp.6-7; item no.3: U002-3153-U002-3228-ET, p.61.

³²² See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED, p.7; item no.2: SPOE00084827-SPOE00084854 RED, pp.11-14, 15-17, 24; item no.3: U002-3153-U002-3228-ET, p.61.

³²³ See Annex 16, item no.1: SPOE00083495-SPOE00083512 RED.

³²⁴ Annex 16, item no.2: SPOE00084827-SPOE00084854 RED.

89. The Proposed Evidence for W04836 includes two associated exhibits: parts 1 and 2 of the book 'Keshtu foli Tahir Zemaj', published in 2000 and 2001, respectively, which are based on interviews with W04836.³²⁵ The book was discussed in W04836's July 2002 statement and forms an indispensable part thereof. W04836 identified it as 'his' book and indicated certain control over the book's contents.³²⁶ W04836 also wrote a forward for part 2 and both book parts include photographs of the witness with various individuals, contemporaneous documents, including signed and authored by the witness, and the witness's accounts of various matters of direct relevance to the case, including as confirmed by other witnesses, such as [REDACTED].³²⁷

90. *Fairness.* The probative value of W04836's Proposed Evidence is not outweighed by any prejudice. Even though the statements of this witness go to proof of the acts and conduct of the Accused, their probative value is not outweighed by undue prejudice because (i) there is evidence that corroborates the statements of W04836, including witnesses who will be available for cross-examination,³²⁸ and documentary evidence;³²⁹ (ii) the evidence may not be relied upon to a sole or decisive extent in reaching a conviction; and (iii) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

IV. CLASSIFICATION

91. This Motion is filed as confidential as it contains information concerning witnesses with protective measures and/or whose identities are not public at this time. For the same reason, the Annexes are confidential. Similarly, the classification of the

³²⁵ Annex 16, items no.3: U002-3153-U002-3228 (with related English translation), and item no.4: 0189-2599-0189-2785 (with related English translations). For item no.4, the SPO is relying on, and tendering into evidence, only the pages that have been translated into English, plus the photographs at the end of the book. Cf Annex 16, item no.4, footnote 1.

³²⁶ Annex 16, item no.2: SPOE00084827-SPOE00084854 RED, pp.14, 17.

³²⁷ See e.g. [REDACTED], 105527-TR-ET Part 2 RED, pp.1-7.

³²⁸ See e.g. [REDACTED], 105527-TR-ET Parts 1-22 ([REDACTED] and his evidence corroborates various aspects of W04836's statements and associated exhibits); W04752, 083280-TR-ET Part 3, pp.23-24, 27; W01511; 074569-TR-ET Part 7, pp.15-22.

³²⁹ See e.g. 056484-056485-ET; IT-04-84 P00258.E Revised.

Proposed Evidence in Annexes 1-16 is all confidential. The SPO will file a public redacted version of this filing in due course. Further, if admitted, the SPO will submit public redacted versions of the material proposed for admission under seal, seek reclassification, and/or provide related justifications, where no redactions would adequately give effect to the witnesses' protective measures.

V. RELIEF REQUESTED

92. For the foregoing reasons, the SPO respectfully requests that the Trial Panel admit the Proposed Evidence as identified in Annexes 1-16.

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Alex Whiting

Acting Specialist Prosecutor

Thursday, 16 March 2023

At The Hague, the Netherlands.