



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 motion for admission of evidence of Witnesses W04474, W04421, W04355, W02161, W01236, W04337, and W03165 pursuant to Rule 154

with confidential Annexes 1-7'

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. Pursuant to the Decision,¹ the Trial Panel's Order,² Article 37 of the Law,³ and Rule 154 of the Rules,⁴ the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,⁵ together with the associated exhibits,⁶ of the following witnesses: W04474,⁷ W04421,⁸ W04355,⁹ W02161,¹⁰ W01236,¹¹ W04337,¹² and W03165¹³ (collectively, 'Rule 154 Statements').

2. The Rule 154 Statements and associated exhibits of the witnesses addressed below (collectively, the 'Proposed Evidence') meet the requirements of the Rule, are relevant, authentic and reliable and have probative value, which is not outweighed by any prejudice.¹⁴ Admission is therefore in the interests of justice.

3. Attached to this Motion are seven annexes, one for each Rule 154 witness addressed in this motion. Each annex contains a table identifying the proposed statement(s) that collectively comprise the proposed Rule 154 Statement for that

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'). Unless otherwise stated, all references to Kosovo Specialist Chambers ('KSC') filings are to this case.

² Third Oral Order, 18 January 2023, p.1902 lines 6-19 ('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.

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 154 Statement'.

⁶ See Annexes 1-7. The Rule 154 Statement and the associated exhibits for each witness are the 'Proposed Evidence.'

⁷ [REDACTED] (collectively, 'W04474 Rule 154 Statement').

⁸ [REDACTED] (collectively, 'W04421 Rule 154 Statement').

⁹ [REDACTED] (collectively, 'W04355 Rule 154 Statement').

¹⁰ [REDACTED] (collectively, 'W02161 Rule 154 Statement').

¹¹ [REDACTED] (collectively, 'W01236 Rule 154 Statement').

¹² [REDACTED] (collectively, 'W04337 Rule 154 Statement').

¹³ [REDACTED] ('W03165 Rule 154 Statement').

¹⁴ Rules, Rules 137-138, 154.

witness. In addition, where applicable, the annexes contain a second table identifying the associated exhibits tendered for admission for each witness.

II. APPLICABLE LAW

4. Rule 154 allows a Panel to admit the evidence of a witness—including evidence that relates to the acts and conduct of the accused as charged in the Indictment¹⁵—in the form of a written statement or transcript if the witness is (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) attests that the written statement or transcript accurately reflects that witness's declaration and what they would say if examined.

5. Evidence admitted pursuant to Rule 154 must satisfy the standard admissibility criteria provided for in Rules 137 and 138(1).¹⁶ 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.¹⁷ In addition to assessments of the authenticity and reliability of written statements, similarly-situated courts have found that transcripts of prior testimony are appropriate for admission in writing as they are inherently authentic and reliable, often video-recorded, verbatim records, which include all questions, answers and

¹⁵ See Annex 1 to Submission of Confirmed Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022 ('Indictment').

¹⁶ See, similarly International Residual Mechanism for Criminal Tribunals ('IRMCT'), Trial Chamber *Prosecutor v. Stanišić and Simatović*, MICT-15-96-PT, Decision on Prosecution Motion for Admission of Evidence of John Wilson pursuant to Rule 111, 1 June 2017 ('*Stanišić Wilson Decision*') para.8 (the evidence sought to be admitted must fulfill the general requirements of admissibility under Rule 105(C) of the Rules- it must be relevant and have probative value. A trial chamber may, however, exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial); See also International Criminal Tribunal for the former Yugoslavia ('ICTY'), *Prosecutor v. Hadžić*, IT-04-75-PT, Decision on Prosecution Motion for Admission of Evidence of GH-102, GH-075, and GH-093 Pursuant to Rule 92ter, 26 September 2012 (*Hadžić Decision 26 September 2012*'), para.8 (the evidence sought to be admitted pursuant to Rule 92ter, whether a statement or a transcript of oral testimony, must fulfil the general requirements of admissibility of Rule 89(c): the proposed evidence must be relevant and have probative value.).

¹⁷ Indicia of reliability and authenticity for statements and transcripts are contained in each annex to this Motion.

clarifications of witnesses, who in addition testified under oath, and were subject to cross-examination.¹⁸

6. Exhibits used with the respective 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.¹⁹

7. The use of Rules 153, 154 and 155 is also consistent with the Law, which recognises the admissibility of evidence from other entities that preceded the KSC's establishment and outlines the eligibility requirements.²⁰

III. SUBMISSIONS

8. The Proposed Evidence of each of the witnesses should be admitted as it (i) is relevant to the allegations in the Indictment, (ii) is *prima facie* reliable and contains sufficient indicia of authenticity, (iii) has probative value²¹ that is not outweighed by its prejudicial effect, and (iv) meets the requirements of Rule 154.

¹⁸ ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Appeals Judgment, 4 December 2012, fn.1633; 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; The Special Court for Sierra Leone ('SCSL'), *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Public with Confidential Annexes C to E Prosecution Motion for the Admission of the Prior Trial Transcripts of Witnesses TF1-021 and TF1-083 Pursuant to Rule 92 *quarter*, 5 February 2009, para.17; cf. ICTY, *Prosecutor v. Kordić and Čerkez*, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, paras 26-28.

¹⁹ See *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'), Trial Chamber IX, *Prosecutor v. Ongwen*, ICC-02/04-01/15-596-Red, 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.

²⁰ Law, Art. 37. See also Law, Art.40(2).

²¹ Since the interviews are relevant, authentic, and reliable, they also have 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 *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.

9. Rule 154, which derives from the statutory scheme of similarly situated courts,²² allows a party to present its case ‘as efficiently as possible.’²³ It is not intended to replace oral testimony, but rather to complement it.²⁴ Admission pursuant to this Rule functions to expedite and streamline the presentation of the calling party’s evidence²⁵ and will reduce the expenditure of court time on conducting the examination-in-chief (and potentially any cross-examination and/or examination by other parties or participants), thereby reducing the length of the trial.²⁶ This serves an essential purpose—ensuring an effective and expeditious trial in accordance with the rights of the Accused.²⁷ Admission pursuant to the Rule is not unduly prejudicial as the

²² See ICTY Rules, Rule 92ter, Special Tribunal for Lebanon (‘STL’) Rules, Rule 156, SCSL Rules, Rule 92ter, IRMCT Rules, Rule 111 and ICC Rules, Rule 68(3).

²³ ICTY, *Prosecutor v. Sainović*, IT-05-87-A, Appeal Judgement, 23 January 2014 (‘*Sainović* Appeal Judgement’), para.135.

²⁴ ICC, Trial Chamber V, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-685-907-Red, Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-02926, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, 1 April 2021, para.14.

²⁵ See *Mustafa* Decision on the admissibility of evidence, KSC-BC-2020-05/F00169, para.29 (noting that Rules 153-155 are ‘tools to expedite and streamline the proceedings’); ICC, Trial Chamber V, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-685, Decision on the Prosecution Extension Request and Guidance on Rule 68 of the Rules, 16 October 2020 (‘*Yekatom and Ngaïssona* Decision’), para.26 (noting that ‘Rule 68 of the Rules is widely acknowledged as a useful tool to expedite and streamline the proceedings’); see also Decision, KSC-BC-2020-06/F01226/A01, para.51.

²⁶ See similarly ICC, Trial Chamber V, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-1186-Red, Public redacted version of Eighth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1193, P-0876, and P-0475’, 17 June 2022, (‘*Yekatom and Ngaïssona* Eighth Decision’), paras.13, 27, 33 (testimony pursuant to Rule 68(3) would cut time for the Prosecution’s examination of the witness, thereby promoting the expeditiousness of the proceedings). See also *Specialist Prosecutor v. Mustafa*, Public redacted version of Decision on the Prosecution application pursuant to Rule 153 of the Rules, KSC-BC-2020-05/F00286/RED, 17 December 2021, para.27 (the admission of the evidence in written form, under Rule 153, would, *inter alia*, save court time).

²⁷ ICTY, Trial Chamber, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Renewed Defence Motion for Admission of Evidence Pursuant to Rule 92ter (DGH-113), 4 February 2015 (‘*Hadžić* Decision 4 February 2015’), para.7; ICTY, Trial Chamber II, *Prosecutor v. Ramush Haradinaj et al.*, IT-04-84bis-T, Decision on Prosecution Motion to Admit Evidence from the Bar Table, Revise its 65ter Witness and Exhibit Lists an Admit Evidence Pursuant to Rule 92ter, 26 January 2012 (‘*Haradinaj* Decision to Admit Evidence’), para.21; *Stanišić Wilson* Decision, para.8; ICC, Trial Chamber X, ICC-01/12-01/18-2233, *Prosecutor v. Al Hassan*, Decision on the introduction of D-0272’s prior recorded testimony pursuant to Rules 68(3) of the Rules, 27 May 2022 (‘*Al Hassan* Decision’), para.13; ICC, Trial Chamber I, ICC-02/05-01/20-699-Red, *Prosecutor v. Ali Kushayb*, Public redacted version of the Decision on the Prosecution’s eleventh

Defence is aware of the identity of the witnesses, may investigate the witnesses, including motives and credibility, and may cross-examine the witnesses on the entirety of the Proposed Evidence.²⁸

10. 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, the associated exhibits are an integral part of the Rule 154 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 154 Statements and corroborate that evidence.

A. W04474

11. *Relevance.* [REDACTED].²⁹ [REDACTED].

12. [REDACTED]. [REDACTED].

13. [REDACTED]. [REDACTED].

14. [REDACTED].³⁰

15. [REDACTED]. [REDACTED]. [REDACTED].³¹ [REDACTED].³² [REDACTED]. [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵ [REDACTED].³⁶

application to introduce prior recorded testimonies under Rule 68(3), 3 June 2022, para.24; Decision, KSC-BC-2020-06/F01226/A01, para.51.

²⁸ Decision, KSC-BC-2020-06/F01226/A01, para.106 ('Cross-examination will be limited to matters set out in Rule 143(3), *i.e.*: (i) the subject-matter of the direct examination and/or (ii) matters affecting the credibility of the witness. Where the witness is able to give evidence relevant to the case of the cross-examining Party, he or she may be examined on the subject-matter of that case, provided that the cross-examining Party puts to that witness the nature of that case.'). *Mustafa* Decision on the admissibility of evidence, KSC-BC-2020-05/F00169, para. 31 ('the non-calling party has the opportunity to test the entirety of the witness's testimony, both in relation to the in-court testimony and the written statement/transcript').

²⁹ [REDACTED].

³⁰ *See, generally* Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, [REDACTED].

³¹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

³² For an individualised assessment of reliability, see Annex 1.

³³ [REDACTED]; [REDACTED].

³⁴ [REDACTED]; [REDACTED].

³⁵ [REDACTED]; [REDACTED].

³⁶ [REDACTED]; [REDACTED].

16. [REDACTED]. [REDACTED]. [REDACTED].

17. Rule 154 admission for W04474's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04474's evidence for 4.5 hours.³⁷ [REDACTED].

18. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of W04474's Proposed Evidence in Annex 1 – [REDACTED] – should be admitted as they are used and explained in W04474's evidence. The Associated Exhibits are integral to the W04474 Rule 154 Statement as they were discussed and reviewed therein, as detailed in Annex 1.

B. W04421

19. *Relevance.* W04421 is [REDACTED] a deceased victim.³⁸ [REDACTED] was summoned by letter by the KLA and presented himself to the KLA headquarters [REDACTED], from where he was sent to Llapashticë/Lapaštica. At that time, [REDACTED], was not politically active, [REDACTED]. The witness states that [REDACTED] wanted to join the KLA to show that KLA accusations against him of cooperating with the Serbs were false.

20. [REDACTED]. W04421 describes the location of the KLA headquarters and of the military police. [REDACTED]. They brought [REDACTED], that they had received complaints about him, and that he was cooperating with the enemy. [REDACTED].

21. When W04421 saw [REDACTED], he was in poor condition, 'grey-faced' and had difficulty moving and holding himself up. According to W04421, [REDACTED] looked like he had been beaten up—he looked bruised and seemed to be in a lot of pain. He had [REDACTED], as if to cover his injuries.

³⁷ Annex 1 to Prosecution submission of list of first 12 witnesses and associated information, KSC-BC-2020-06/F01243/A01, 1 February 2023 ('SPO First Witnesses').

³⁸ See Indictment, KSC-BC-2020-06/F00999/A01, [REDACTED].

22. [REDACTED]. W04421 went to Llapashticë/Lapaštica almost every day [REDACTED]. [REDACTED].

23. W04421's evidence is thus relevant to the charged crimes in the Indictment.³⁹

24. *Authenticity and Reliability.* W04421's Proposed Evidence is *prima facie* authentic and reliable. The W04421 Rule 154 Statement is comprised of (i) W04421's SPO interview,⁴⁰ (ii) W04421's statements [REDACTED]⁴¹ and [REDACTED],⁴² (iii) W04421's [REDACTED],⁴³ (iv) [REDACTED] W04421's [REDACTED],⁴⁴ and (v) [REDACTED] W04421's [REDACTED].⁴⁵ Each statement bears sufficient indicia of reliability.⁴⁶ W04421's audio-video recorded SPO interview, as recorded in verbatim transcripts, is authentic and reliable. The transcript of the SPO interview includes details such as the date, time, and attendees.⁴⁷ The interview was conducted with the assistance of an interpreter in a language understood by the witness.⁴⁸ W04421 was duly advised of her rights as a witness.⁴⁹ W04421 confirmed that the contents of her recorded 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.⁵⁰

25. Further, during the SPO interview, W04421 had an opportunity to review her prior statements, including those tendered herein as part of the W04421 Rule 154 Statement, which were taken in a language understood by the witness.⁵¹ W04421

³⁹ See, generally Indictment, KSC-BC-2020-06/F00999/A01, paras 16-57, 59-61, 71, [REDACTED], 96-98, 107, 136-138, [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ For an individualised assessment of reliability, see Annex 2.

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ See Annex 2. W04421's prior statements were taken in the [REDACTED] language.

confirmed that the written materials were her statements and, where applicable, recognised her signature on the statements.⁵² She confirmed that she provided the statements in a truthful manner and to the best of her recollection.⁵³ She was given an opportunity to clarify or make corrections to her prior statements.⁵⁴ Further, as the contents of the statements were discussed in the SPO interview, those statements form an integral part thereof.

26. *Suitable for Rule 154 Admission.* W04421's Proposed Evidence satisfies the requirements of Rule 154: W04421 will be (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) able to attest that the Rule 154 Statements accurately reflect her evidence and are an accurate reflection of what she would say again, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

27. Rule 154 admission for W04421's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04421's evidence for 2 hours.⁵⁵ In addition to reducing court time spent on direct examination, admitting W04421's evidence pursuant to this Rule is more efficient for this witness than requiring solely *viva voce* testimony, as the witness has given multiple statements and *viva voce* testimony would be repetitive. Admission of prior statements pursuant to Rule 154 will allow the SPO to forgo expending time on repetitive questions about the witness's experiences and knowledge of exhibits where the topics and exhibits have been discussed by the witness previously in the tendered statements. Furthermore, Rule 154 admission avoids the needless expenditure of time

⁵² In respect of [REDACTED], *see* [REDACTED]. In respect of [REDACTED], *see* [REDACTED].

⁵³ In respect of [REDACTED], *see* [REDACTED]. In respect of [REDACTED], *see* [REDACTED]. In respect of [REDACTED], *see* [REDACTED].

⁵⁴ In respect of [REDACTED], *see* [REDACTED]. In respect of [REDACTED], *see* [REDACTED] and [REDACTED]. In respect of [REDACTED], *see* [REDACTED] and [REDACTED]. In respect of [REDACTED], *see* [REDACTED].

⁵⁵ *See* SPO First Witnesses, KSC-BC-2020-06/F01243/A01.

to clarify prior statements, as the SPO interview contains clarifications to her prior statements.⁵⁶ Rule 154 admission incorporates the clarifications and eliminates the need to expend court time on these matters.

28. *The Associated Exhibit is admissible.* The Associated Exhibit forming part of W04421's Proposed Evidence in Annex 2—[REDACTED]—should be admitted as it is used and explained in W04421's evidence. The Associated Exhibit is integral to the Rule 154 Statements as it was discussed and reviewed therein.⁵⁷

C. W04355

29. *Relevance.* [REDACTED]. [REDACTED]. [REDACTED].

30. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

31. [REDACTED]. [REDACTED].

32. W04355's evidence is thus relevant to the charged crimes in the Indictment.⁵⁸

33. *Authenticity and Reliability.* W04355's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of the witness's SPO interviews [REDACTED].⁵⁹ These statements bear sufficient indicia of reliability.⁶⁰ They are audio-video recorded SPO interviews, which include details such as the date, time, place and attendees.⁶¹ The interviews were conducted with the assistance of an interpreter in a language understood by the witness.⁶² W04355 was duly advised of his rights as a witness.⁶³ W04355 confirmed that the contents of his recorded statement are true and accurate, that his statement was given voluntarily without any threats,

⁵⁶ In respect of [REDACTED], see [REDACTED]. In respect of [REDACTED], see [REDACTED] and [REDACTED]. In respect of [REDACTED], see [REDACTED] and [REDACTED]. In respect of [REDACTED], see [REDACTED].

⁵⁷ See Annex 2.

⁵⁸ See, generally Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED].

⁵⁹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁶⁰ For an individualised assessment of reliability, see Annex 3.

⁶¹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁶² [REDACTED]; [REDACTED].

⁶³ [REDACTED]; [REDACTED].

force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.⁶⁴

34. *Suitable for Rule 154 Admission.* W04355's Proposed Evidence satisfies the requirements of Rule 154: W04355 will be (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

35. Rule 154 admission for W04355's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04355's evidence for 1 hour.⁶⁵ [REDACTED].

36. *The Associated Exhibit is admissible.* The Associated Exhibit forming part of W04355's Proposed Evidence in Annex 3 should be admitted as it is used and explained in W04355's evidence. The Associated Exhibit contains a number of photographs, [REDACTED]. The Associated Exhibit is integral to the Rule 154 Statement as the photos were discussed and reviewed therein.⁶⁶

D. W02161

37. *Relevance.* During [REDACTED], W02161 worked with the [REDACTED], including as [REDACTED]. In her various capacities with [REDACTED], W02161 [REDACTED]. She therefore had knowledge of the KLA's forcible evictions and intimidation of Serbs and other ethnic minorities, and attempts by the KLA to gain control in Kosovo.

38. [REDACTED]. [REDACTED]. These experiences and others form the foundation of her knowledge regarding the treatment of individuals identified as

⁶⁴ [REDACTED].

⁶⁵ See SPO First Witnesses, KSC-BC-2020-06/F01243/A01.

⁶⁶ See Annex 3.

‘collaborators’ by the KLA. Accordingly, W02161’s evidence is relevant to multiple charged crimes in the Indictment,⁶⁷ as well as to the knowledge and contributions of various JCE members.

39. *Authenticity and Reliability.* W02161’s Rule 154 Statement is *prima facie* authentic and reliable. It consists of her (i) SITF statement,⁶⁸ (ii) SPO statement,⁶⁹ (iii) [REDACTED],⁷⁰ (iv) [REDACTED],⁷¹ (v) [REDACTED],⁷² and (vi) [REDACTED].⁷³

40. W02161’s audio-recorded SITF interview was conducted in a language the witness understood⁷⁴ and contains verifiable personal and general details.⁷⁵ Each page is signed or initialled by the witness, recording clerk, and SITF Prosecutor.⁷⁶ The witness, [REDACTED],⁷⁷ acknowledged that she understood her rights and obligations, including the obligation to tell the truth.⁷⁸ She declared that she had no objections to the contents of the statement and that she was not threatened, forced, or given promises or guarantees for her testimony.⁷⁹ She also confirmed that her statement was true and accurate,⁸⁰ which she re-confirmed in her subsequent SPO interview.⁸¹ Finally, she supplemented the contents of her SITF statement in her SPO interview, which makes her SITF statement an integral part of her SPO statement.⁸²

⁶⁷ See, generally Indictment, KSC-BC-2020-06/F00999/A01, paras 16-57, 59-61, [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED]; [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED]. See also [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² See, for example, [REDACTED].

41. W02161's SPO statement is *prima facie* authentic and reliable. The date and place of the interview are clearly indicated⁸³ and all attendees signed the statement.⁸⁴ The witness was duly informed of her rights and obligations⁸⁵ and confirmed that the contents of her recorded statement were true and accurate to the best of her knowledge, that her statement was given voluntarily without any threats, force, or guarantees, and that she had no objections to the manner in which the statement was taken.⁸⁶

42. *Suitable for Rule 154 Admission.* W02161's Proposed Evidence satisfies the requirements of Rule 154: W02161 will be (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) able to attest that her Rule 154 Statement accurately reflects her evidence and is an accurate reflection of what she would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

43. Rule 154 admission for W02161's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony from W02161 for 3.5 hours⁸⁷ on essential matters that highlight, clarify or explain certain aspects of her evidence, including [REDACTED]. In addition to reducing court time spent on direct examination, admitting W02161's evidence pursuant to this Rule is more efficient than requiring *viva voce* testimony, as it reduces repetition and promotes clarity.⁸⁸ Admission of the Proposed Evidence incorporates previous clarifications and corrections and obviates the need to ask questions about topics and exhibits already discussed by W02161.

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ See SPO First Witnesses, KSC-BC-2020-06/F01243/A01.

⁸⁸ As detailed above, W02161 has already been given an opportunity to make clarifications and corrections to her prior statements and used the SPO Statement to elaborate upon them further.

44. *The Associated Exhibits are admissible.* W02161's Associated Exhibits forming part of the Proposed Evidence in Annex 4 should be admitted as they are used and explained in W02161's evidence. The Associated Exhibits include [REDACTED], of which she has personal knowledge. The Associated Exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.⁸⁹

E. W01236

45. *Relevance.* W01236 is a [REDACTED] who resided in [REDACTED] in 1998. On or about [REDACTED] 1998, armed KLA soldiers stopped W01236 [REDACTED]. [REDACTED] W01236 was taken to a KLA barracks compound in Jabllanicë/Jablanica, where he was detained until [REDACTED] 1998.

46. At the barracks, W01236 frequently saw Lahi BRAHIMAJ and Nazmi BRAHIMAJ, whom other soldiers referred to as 'Commander' and 'Deputy Commander'. They and other KLA members accused W01236 of being a spy and beat him regularly. During his detention, W01236 was given inadequate food, water and accommodation and was not allowed family visits [REDACTED].

47. He witnessed the mistreatment of other detainees at Jabllanicë/Jablanica. [REDACTED]. Following the beatings, he did not see [REDACTED] again. Later during his detention, [REDACTED] were brought to W01236's cell. They were severely beaten and [REDACTED]. W01236 also saw [REDACTED], who KLA members accused of being a spy, and a man named [REDACTED], detained and in poor condition. After the two men [REDACTED], they were brutally beaten [REDACTED].

48. [REDACTED], W01236 was summonsed to KLA headquarters in [REDACTED]. W01236 continues to suffer the consequences of his mistreatment.

⁸⁹ See Annex 4.

49. W01236's evidence is therefore relevant to all counts charged in the Indictment.⁹⁰

50. *Authenticity and Reliability.* W01236's Proposed Evidence is *prima facie* authentic and reliable. The W01236 Rule 154 Statement is comprised of (i) a transcript of W01236's SPO interview⁹¹ and (ii) [REDACTED].⁹² Each statement bears sufficient indicia of reliability.⁹³

51. The transcript of W01236's SPO interview is a verbatim record of the corresponding audio-video recording; its authenticity and reliability can therefore be easily verified.⁹⁴ The transcript includes details such as the date, time, place and attendees.⁹⁵ The interview was conducted with the assistance of an SPO interpreter in a language understood by the witness.⁹⁶ During the interview, W01236 was duly advised of his rights as a witness.⁹⁷ W01236 confirmed that his statement is true and accurate; that it 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.⁹⁸

52. *Suitable for Rule 154 Admission.* W01236's Proposed Evidence satisfies the requirements of Rule 154. W01236 will be (i) present in court; (ii) available for cross-examination and any questioning by the Panel; and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and what he would say if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

53. Rule 154 admission for W01236's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief

⁹⁰ See, generally Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 63, 96-98, 100, [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ For an individualised assessment of reliability, see Annex 5.

⁹⁴ [REDACTED].

⁹⁵ [REDACTED], p.1.

⁹⁶ [REDACTED], pp.1-2.

⁹⁷ [REDACTED], pp.2-3.

⁹⁸ [REDACTED], pp.9-10.

oral testimony on essential matters, including to highlight, clarify, or explain certain aspects of W01236's evidence, for 2 hours.⁹⁹ W01236 [REDACTED] will be available to testify in person about: (i) the detention and mistreatment of several detainees at the Jabllanicë/Jablanica barracks compound, including [REDACTED]; and (ii) the commission of certain such crimes by, among others, Lahi BRAHIMAJ, a founding member of the General Staff and a JCE member named in the Indictment.¹⁰⁰

54. In addition to reducing court time spent on direct examination, admitting W01236's evidence pursuant to this Rule is more efficient than requiring *viva voce* testimony, as it reduces repetition and promotes clarity. The fact [REDACTED] further reduces the amount of time needed to clarify potential inconsistencies in W01236's testimony.

55. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of W01236's Proposed Evidence in Annex 5 should be admitted as they are used and explained in W01236's evidence. They include a number of photographs of the building where W01236 was detained, as well as copies of [REDACTED]. Furthermore, a map illustrates where W01236 was initially stopped before his arrest, as well as the route he took on or about [REDACTED] 1998. The Associated Exhibits are integral to the Rule 154 Statements as they were discussed and reviewed therein.¹⁰¹

F. W04337

56. *Relevance.* W04337 is an ethnic Kosovo Albanian who, in 1998, worked as a farmer [REDACTED]. In 1998, [REDACTED]. Subsequently, in mid-August 1998, he was taken from his home by KLA soldiers and detained in [REDACTED] for about a month.

57. In [REDACTED], he was questioned by [REDACTED] and other KLA members, including about his collaboration with Serbia, verbally abused and

⁹⁹ See SPO First Witnesses, KSC-BC-2020-06/F01243/A01.

¹⁰⁰ See Indictment, KSC-BC-2020-06/F00999/A01, paras 15, 35, 63, 100.

¹⁰¹ See Annex 5.

threatened. He was mistreated and beaten multiple times by [REDACTED] and other KLA members. He also observed other detainees being beaten and in a weakened condition. [REDACTED]. [REDACTED].

58. During his detention, W04337 was not provided with an adequate supply of food, water, and appropriate accommodation; there was a lack of medical assistance. The injuries W04337 suffered as a result of his mistreatment and the beatings have had a long-lasting negative impact on his health and well-being.

59. W04337's evidence is thus relevant to the charged crimes in the Indictment.¹⁰²

60. *Authenticity and Reliability.* W04337's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of: (i) W04337's SPO interview;¹⁰³ (ii) W04337's SPO Record of Statement;¹⁰⁴ (iii) [REDACTED];¹⁰⁵ (iv) [REDACTED];¹⁰⁶ (v) [REDACTED];¹⁰⁷ (vi) [REDACTED];¹⁰⁸ and (vii) [REDACTED].¹⁰⁹

61. Each statement bears sufficient indicia of reliability.¹¹⁰ W04337's SPO interview was audio-video recorded, with a record thereof being produced in statement form. The statement was read back to W04337 during an audio-video recorded SPO interview, recorded in a verbatim transcript. The SPO interview is therefore authentic and reliable. The documents include details such as the date, time, place and attendees.¹¹¹ The interviews were conducted with the assistance of an interpreter in a language understood by the witness.¹¹² W04337 was duly advised of his rights as a witness.¹¹³ W04337 confirmed that the contents of his recorded statement are true and

¹⁰² See, generally Indictment, KSC-BC-2020-06/F00999/A01, paras 16-57, [REDACTED], 136-137.

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

¹⁰⁵ [REDACTED].

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ [REDACTED].

¹¹⁰ For an individualized assessment of reliability, see Annex 6.

¹¹¹ [REDACTED].

¹¹² [REDACTED].

¹¹³ [REDACTED].

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.¹¹⁴ During his SPO interview, [REDACTED].¹¹⁵

62. *Suitable for Rule 154 Admission.* W04337's Proposed Evidence satisfies the requirements of Rule 154: W04337 will be: (i) present in court; (ii) available for cross-examination and any questioning by the Panel; and (iii) able to attest that the W04337 Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

63. Such admission will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04337's evidence for 3 hours.¹¹⁶ In addition to reducing court time spent on direct examination, admitting W04337's evidence pursuant to this Rule is more efficient than requiring *viva voce* testimony, as it reduces repetition and promotes clarity. Furthermore, it reduces the time required to clarify prior statements.¹¹⁷ W04337's Rule 154 Statement incorporates those clarifications and corrections and eliminates the need to expend court time on the same matters.

64. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of W04337's Proposed Evidence in Annex 6 should be admitted as they are used and explained in W04337's evidence. The Associated Exhibits, which are photo line-ups, are integral to the Rule 154 Statement as they were discussed and reviewed therein.¹¹⁸

G. W03165

65. *Relevance.* W03165 is [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ See SPO First Witnesses, KSC-BC-2020-06/F01243/A01.

¹¹⁷ In respect of [REDACTED], see [REDACTED].

¹¹⁸ See Annex 6.

66. [REDACTED]. [REDACTED]. [REDACTED].

67. [REDACTED]. On the road, he saw KLA [REDACTED]. [REDACTED] wearing uniforms and [REDACTED] had a radio. After leaving [REDACTED], W03165 went [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. W03165 subsequently went to the KLA headquarters [REDACTED] to ask about [REDACTED]. When he arrived, W03165 asked [REDACTED] and was told that [REDACTED].

68. [REDACTED]. W03165's evidence is thus relevant to the charges in the Indictment.¹¹⁹

69. *Authenticity and Reliability.* W03165's Proposed Evidence is *prima facie* authentic and reliable. The W03165 Rule 154 Statement is comprised of W03165's [REDACTED].¹²⁰ The statement bears sufficient indicia of reliability.¹²¹ [REDACTED] W03165 had the opportunity to review and amend his prior statement [REDACTED]. [REDACTED] his statement [REDACTED] read back to him by a certified interpreter in a language he understood.¹²²

70. *Suitable for Rule 154 Admission.* W03165's Proposed Evidence satisfies the requirements of Rule 154: W03165 will be (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

71. Rule 154 admission for W03165's Proposed Evidence will reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of

¹¹⁹ See, generally Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-60.

¹²⁰ [REDACTED]. [REDACTED].

¹²¹ For an individualized assessment of reliability, see Annex 7.

¹²² [REDACTED].

W03165's evidence for 2 hours.¹²³ In addition to reducing court time spent on direct examination, admitting W03165's evidence pursuant to this Rule is more efficient than requiring *viva voce* testimony, as it reduces repetition and promotes clarity. Admission of the Proposed Evidence incorporates those clarifications and corrections and eliminates the need to expend court time on these matters.¹²⁴

72. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of the Proposed Evidence should be admitted as they are used and explained in W03165's evidence. The Associated Exhibits include [REDACTED]. The Associated Exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein, as detailed in Annex 7.¹²⁵

IV. CLASSIFICATION

73. This submission is filed as public.

74. The Annexes are confidential in order to give effect to protective measures and applicable contact restrictions, and considering that the identities of these witnesses are not public at this time. If admitted, and following the relevant witness's testimonies, the SPO will submit public redacted versions of those exhibits proposed for admission under seal, seek reclassification, and/or provide related justifications, where no redactions would adequately give effect to the witness's protective measures.

V. RELIEF REQUESTED

75. For the foregoing reasons, the SPO respectfully requests that the Trial Panel admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court.

¹²³ See SPO First Witnesses, KSC-BC-2020-06/F01243/A01.

¹²⁴ W03165 has already been given an opportunity to make clarifications and corrections to his prior statement.[REDACTED].

¹²⁵ See Annex 7.

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Alex Whiting

Acting Specialist Prosecutor

Friday, 31 March 2023

At The Hague, the Netherlands.