



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 6 April 2023

Language: English

Classification: Public

Corrected version of
Public redacted version of Reparation Order against Salih Mustafa

With 4 Annexes strictly confidential and *ex parte*

To be notified to:

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Government of Kosovo

Prime Minister

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TRIAL PANEL I (Panel) hereby renders this Reparation Order against Salih Mustafa (Mr Mustafa).

I. PROCEDURAL BACKGROUND

1. On 19 June 2020, the Specialist Prosecutor's Office (SPO) submitted the indictment against Mr Mustafa as confirmed by the Pre-Trial Judge (Confirmed Indictment).¹
2. On 7 May 2021, the Pre-Trial Judge transmitted the case file to the Panel.²
3. On 20 May 2021, the Panel issued the "Decision on the appointment of expert(s)" (Appointment of Experts Decision), in which it ordered the Victims' Participation Office (VPO) to submit, by 4 June 2021, a list of three relevant experts who were available on short notice in order to prepare a report clarifying whether the national courts in Kosovo offered a realistic avenue for the victims of the crimes in this case to claim reparations and, in case reparations would be granted by judgments issued by those courts, to have such judgments enforced.³ The Panel also ordered the Defence

¹ KSC-BC-2020-05, F00011/A01, Specialist Prosecutor, *Indictment*, 19 June 2020, confidential. A public redacted version was filed on 28 September 2020, [F00019/A01](#); F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Salih Mustafa* (Confirmation Decision), 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were filed on 5 October 2020, F00008/CONF/RED and [F00008/RED](#), respectively.

² KSC-BC-2020-05, F00119, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 7 May 2021, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

³ KSC-BC-2020-05, F00124, Trial Panel I, [Decision on the appointment of expert\(s\)](#), 20 May 2021, public, paras 20, 22 and 24(a). The filing was notified on 21 May 2021.

for Mr Mustafa (Defence) and Victims' Counsel to submit their observations, if any, within ten days of the notification of the filing by the VPO.⁴

4. On 4 June 2021, the Registrar submitted the "Registry Submission Pursuant to the Decision on the Appointment of Expert(s)", in which the VPO identified three experts who "sufficiently meet the requirements" set out in the Appointment of Experts Decision.⁵

5. On 14 June 2021, Victims' Counsel submitted the "Victims' Counsel Submission on the Decision on the appointment of expert(s)", including a number of questions to be addressed by any appointed expert(s).⁶ The Defence did not submit any observations.

6. On 25 June 2021, the Panel issued the "Second decision on the appointment of expert(s)", ordering the VPO to submit, by 21 July 2021, a list of further relevant experts from outside of Kosovo who were available on short notice to prepare the report referred to in the Appointment of Experts Decision.⁷ The Panel also ordered the Defence and Victims' Counsel to submit their observations, if any, on the VPO's submissions by 20 August 2021.⁸

⁴ [Appointment of Experts Decision](#), para. 24(b).

⁵ KSC-BC-2020-05, F00132, Registrar, *Registry Submission Pursuant to the Decision on the Appointment of Expert(s)*, 4 June 2021, public, with Annexes 1-3, confidential and *ex parte*.

⁶ KSC-BC-2020-05, F00134, Victims' Counsel, [Victims' Counsel Submission on the Decision on the appointment of expert\(s\)](#), 14 June 2021, public.

⁷ KSC-BC-2020-05, F00140, Trial Panel I, *Second decision on the appointment of expert(s)* (Second Appointment of Experts Decision), 25 June 2021, public, paras 9-10, 12(a). A public redacted version was filed on the same day, [F00140/RED](#).

⁸ [Second Appointment of Experts Decision](#), para. 12(b).

7. On 12 July 2021, the Panel issued the “Decision on victims’ procedural rights during trial”.⁹
8. On 21 July 2021, the Registrar submitted the “Registry Submission Pursuant to the Second Decision on the Appointment of Expert(s)”, in which the VPO identified three further relevant experts for the Panel’s consideration.¹⁰
9. On 19 August 2021, Victims’ Counsel submitted the “Victims’ Counsel Submission on the Second Decision on the appointment of expert(s)”,¹¹ including a list of questions for the consideration of the expert(s).¹² The Defence did not submit any observations.
10. On 3 September 2021, the Panel issued the “Third decision on the appointment of experts” (Third Appointment of Experts Decision), appointing three individuals as experts in the present case and instructing them to “endeavour to submit a joint report” on certain topics identified by the Panel by 22 November 2021.¹³
11. On 15 September 2021, the trial commenced with the opening statements of the SPO and Victims’ Counsel.¹⁴

⁹ KSC-BC-2020-05, F00152, Trial Panel I, [Decision on victims’ procedural rights during trial](#) (Decision on Victims’ Rights), 12 July 2021, public.

¹⁰ KSC-BC-2020-05, F00157, Registrar, *Registry Submission Pursuant to the Second Decision on the Appointment of Expert(s)*, 21 July 2021, confidential, with Annexes 1-4, confidential and *ex parte*. A public redacted version of the main filing was submitted on 10 September 2021, [F00157/RED](#).

¹¹ KSC-BC-2020-05, F00166, Victims’ Counsel, [Victims’ Counsel Submission on the Second Decision on the appointment of expert\(s\)](#) (Victims Second Submission), 19 August 2021, public, with [Annex 1](#), public.

¹² [Annex 1](#) to Victims Second Submission.

¹³ KSC-BC-2020-05, F00184, Trial Panel I, *Third decision on the appointment of expert(s)*, 3 September 2021, public. A public redacted version was filed on the same day, [F00184/RED](#).

¹⁴ KSC-BC-2020-05, F00138, Trial Panel I, [Decision setting the date for the commencement of the trial and related matter](#), 18 June 2021, public; [T. 15 September 2021](#), public.

12. Nine (9) victims were admitted to participate in the proceedings. Five (5) were admitted by the Pre-Trial Judge on 30 April 2020 and four (4) by the Panel on 21 May 2021.¹⁵ Subsequently, the Panel [REDACTED] terminated his status as participating victim in the proceedings.¹⁶

13. On 15 September 2021, the SPO and Victims' Counsel made their opening statements.¹⁷ In her opening statement, Victims' Counsel, *inter alia*, requested the Panel to refrain from referring the victims she represents to civil litigation in Kosovo courts.¹⁸

14. From 20 September 2021 to 4 February 2022, the SPO presented its case.¹⁹

15. On 20 September 2021, the Panel rejected a Victims' Counsel request for reconsideration²⁰ of the Third Appointment of Experts Decision.²¹

16. On 18 October 2021, Victims' Counsel submitted the "Victims' Counsel Submission on Reparations", reiterating her request for the Panel not to refer victims

¹⁵ KSC-BC-2020-05, F00105, Pre-Trial Judge, *Second Decision on Victims' Participation* (Second Victims Participation Decision), 30 April 2021, confidential. A public redacted version was filed on the same day, [F00105/RED](#). F00126, Trial Panel I, *Third decision on victims' participation* (Third Victims Participation Decision), 21 May 2021, confidential. A public redacted version was filed on the same day, [F00126/RED](#).

¹⁶ [REDACTED].

¹⁷ [T. 15 September 2021](#), public.

¹⁸ [T. 15 September 2021](#), public, p. 345, line 5 to p. 373, line 19.

¹⁹ [T. 20 September 2021](#), public; KSC-BC-2020-05, F00308, Specialist Prosecutor, *Prosecution Notice of the Closing of its Case pursuant to Rule 129*, 4 February 2022, public.

²⁰ KSC-BC-2020-05, F00190, Victims' Counsel, *Victims' Counsel motion for reconsideration of the Third decision on the appointment of expert(s)* (Reconsideration Request), 7 September 2021, public. The Defence did not respond to the Reconsideration Request.

²¹ KSC-BC-2020-05, F00209, Trial Panel I, *Decision on Victims' Counsel request for reconsideration of the third decision on the appointment of expert(s)*, 20 September 2021, public.

to civil litigation in Kosovo courts but, instead, to include a decision on damage, loss, and injury in its trial judgment.²²

17. On 17 December 2021, having benefited from an extension of time,²³ the Registrar transmitted²⁴ the Appointed Experts' respective reports to the Panel (First Report,²⁵ Second Report,²⁶ and Third Report,²⁷ respectively, and collectively "Expert Reports").

18. On 20 January 2022, upon Victims' Counsel's request,²⁸ the Panel extended the time limit for any Defence and Victims' Counsel submissions on the Expert Reports to 25 January 2022.²⁹

19. On 21 January 2022, the Panel issued the "Second decision on the conduct of the proceedings", *inter alia*, ordering Victims' Counsel to file by 11 February 2022 a list of proposed (expert) witnesses to be called by the Panel and relevant non-oral material

²² KSC-BC-2020-05, F00239, Victims' Counsel, [Victims' Counsel Submission on Reparations](#) (Victims' Counsel First Submissions on Reparations), 18 October 2021, public.

²³ KSC-BC-2020-05, F00260, Trial Panel I, *Decision on requests for extension of time limit to submit expert report(s) and related submissions*, 19 November 2021, confidential. A public redacted version was filed on the same day, [F00260/RED](#); F00252, Registry, *Request for Extension of Time Limit to Submit Expert Report(s)*, 15 November 2021, confidential. A public redacted version was filed on 17 November 2021, [F00252/RED](#); F00259, Victims' Counsel, [Victims' Counsel response to Request for Extension of Time Limit to Submit Expert Report\(s\) dated 15 November 2021 \(F00252\)](#), 18 November 2021, public.

²⁴ KSC-BC-2020-05, F00287, Registrar, [Transmission of Expert Reports with four confidential and two public Annexes](#), 17 December 2021, public, with Annexes 1, 3, 5-6, confidential. Public redacted versions of Annexes 1 (see [Annexe 2](#)) and 3 (see [Annex 4](#)) were filed on the same day. Public redacted version of [Annexe 6](#) was filed on 14 January 2022.

²⁵ [REDACTED]

²⁶ [REDACTED]

²⁷ [REDACTED]

²⁸ KSC-BC-2020-05, F00291, Victims' Counsel, [Victims' Counsel motion for extension of time limit to file her submissions on the experts reports](#), 20 January 2022, public.

²⁹ KSC-BC-2020-05, F00292, Trial Panel I, *Decision on motion for extension of time limit for submissions on expert reports*, 20 January 2022, confidential. A public redacted version was filed on the same day, [F00292/RED](#).

she wishes the Panel to order the submission of related to the establishment of the truth.³⁰

20. On 24 January 2022, Victims' Counsel, *inter alia*, requested the Panel to appoint an expert to medically assess the physical and psychological damage suffered by three of the direct victims in the present case (Victims' Counsel Request to Appoint a Medical Expert).³¹

21. Also on 24 January 2022, Victims' Counsel³² and the Defence³³ filed their respective submissions on the Expert Reports.

22. On 4 February 2022, the Panel issued the "Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information" (Article 22(9) Decision) in which it ruled that in case of a conviction, it will not refer victims to civil litigation in Kosovo courts pursuant to Article 22(9) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rule 167 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules), but will issue a Reparation Order pursuant to Articles 22(8) and

³⁰ KSC-BC-2020-05, F00296, Trial Panel I, [Second decision on the conduct of the proceedings](#), 21 January 2022, public, para. 21(g).

³¹ KSC-BC-2020-05, F00297, Victims' Counsel, *Victims' Counsel request pursuant to the Second decision on the conduct of the proceedings dated 21 January 2022*, 24 January 2022, confidential. A public redacted version was filed the same day, [F00297/RED](#).

³² KSC-BC-2020-05, F00298, Victims' Counsel, *Victims' Counsel Observations on the Expert Reports regarding a Referral of Reparations Proceedings to National Courts in Kosovo*, 24 January 2022, confidential. A public redacted version was filed on the same day, [F00298/RED](#).

³³ KSC-BC-2020-05, F00299, Defence, [Defence submission regarding Reports of Appointed Experts](#), 24 January 2022, public.

44(6) of the Law.³⁴ The Panel further requested the Ministry of Justice of Kosovo to provide, by Wednesday, 16 March 2022, information pertaining to the possibility for victims of crimes under the jurisdiction of the Kosovo Specialist Chambers (KSC) to apply for compensation under reparation mechanisms available, or to be established, in Kosovo, in case of a conviction of Mr Mustafa and the issuance of a Reparation Order by the Panel, and should Mr Mustafa be unable to pay reparations ordered by the Panel.³⁵

23. On 1 March 2022, Victims' Counsel filed her submissions pursuant to the third decision on the conduct of the proceedings.³⁶

24. On 8 and 9 March 2022, a Defence preparation conference and a Victims' status conference were held.³⁷

³⁴ KSC-BC-2020-05, F00310, Trial Panel I, *Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information*, 4 February 2022, confidential, para. 50(b). A public redacted version was filed on the same day, [F00310/RED](#).

³⁵ [Article 22\(9\) Decision](#), paras 47, 50(f).

³⁶ KSC-BC-2020-05, F00334, Victims' Counsel, [Victims' Counsel submissions pursuant to the Third decision on the conduct of the proceedings](#), 1 March 2022, public (reclassified as public pursuant to CRSPD96 of 3 February 2023), with Annexes 1 and 2, strictly confidential and *ex parte*. On 18 March 2022, pursuant to Oral Order of 9 March 2022, Victims' Counsel submitted a strictly confidential redacted version of Annex 1 to [Victims' Counsel submissions pursuant to the Third decision on the conduct of the proceedings](#) (see F00349, Victims' Counsel, [Victims' Counsel's Submission of a strictly confidential, redacted version of Annex 1 to Filing 334 \(F334 01\) pursuant to the Trial Panel's Oral Order of 9 March 2022](#), 18 March 2022 (reclassified as public pursuant to CRSPD96 of 3 February 2023), public, with Annex 1 (Annex 1 to Victims' Counsel 18 March 2022 Submission), strictly confidential).

³⁷ KSC-BC-2020-05, F00318, Trial Panel I, [Third decision on the conduct of the proceedings, 9 February 2022](#), public, paras 14, 16(c); [T. 8 March 2022](#), public; [T. 9 March 2022](#), public.

25. On 9 March 2022, following Victims' Counsel Request to Appoint a Medical Expert, the Panel appointed, by oral order, a medical expert to examine V08/05, V09/05, and V10/05 (Oral Order of 9 March 2022).³⁸

26. On 14 March 2022, in compliance with the Article 22(9) Decision, the Ministry of Justice of Kosovo provided its submissions on reparation mechanisms available, or to be established, in Kosovo.³⁹

27. On 21 March 2022, Victims' Counsel presented her evidence.⁴⁰

28. On the same day, by oral order, the Panel granted Victims' Counsel's request for reconsideration of the Oral Order of 9 March 2022,⁴¹ and appointed the Instituut voor Mensenrechten en Medisch Onderzoek (iMMO) to medically assess the physical and psychological damage and injuries suffered by V08/05, V09/05, and V10/05, as a result of the alleged torture, cruel treatment, and arbitrary detention to which they were subjected, and to prepare a medical report accordingly by 13 May 2022 (Oral Order of 21 March 2022).⁴²

29. From 22 March to 26 May 2022, the Defence presented its case.⁴³

³⁸ [T. 9 March 2022](#), public, p. 2520, line 21 to p. 2521, line 1.

³⁹ KSC-BC-2020-05, F00344, Ministry of Justice of Kosovo, [Response to your document KSC-BC-2020-05](#) (Ministry of Justice of Kosovo First Response), 14 March 2022, public.

⁴⁰ [T. 21 March 2022](#), public.

⁴¹ KSC-BC-2020-05, F00346, Victims' Counsel, *Victims' Counsel request for clarification and reconsideration regarding the Oral Order of 9 March 2022 to appoint a medical expert to examine Victims 08/05, 09/05 and 10/05 and submissions*, 18 March 2022, confidential. A public redacted version was filed on 27 January 2023, [F00346/RED](#).

⁴² [T. 21 March 2022](#), public, p. 2533, line 12 to p. 2534, line 4.

⁴³ [T. 22 March 2022](#), public; KSC-BC-2020-05, F00421, Specialist Counsel, [Defence Rule 131 Notice to close the Defence case](#), 26 May 2022, public.

30. On 23 March 2022, the Panel requested, by oral order, Victims' Counsel to propose by 22 April 2022, one or more experts in order to assist it in assessing the financial compensation for the material damage allegedly suffered by the direct victims.⁴⁴

31. On 25 March 2022, Victims' Counsel filed the "Victims' Counsel Submission pursuant to the Response of the Ministry of Justice of Kosovo on compensation and Request to seek further clarification".⁴⁵

32. On 31 March 2022, Victims' Counsel submitted the "Victims' Counsel report pursuant to the Oral Order of 21 March 2022", in which she informed the Panel, *inter alia*, that iMMO scheduled the examinations of V08/05 and V09/05 for April 2022 and that it was not be feasible to carry out an in-person examination of V10/05 due to his weak physical health.⁴⁶

33. On 11 April 2022, the Panel requested, by oral order, Victims' Counsel to indicate how she envisaged to proceed should it not be possible for iMMO to examine all three witnesses in time for the report due on 13 May 2022 (Oral Order of 11 April 2022).⁴⁷

34. On 21 April 2022, upon order of the Panel,⁴⁸ Victims' Counsel filed the "Victims' Counsel Submission on an Expert for the Calculation of Material Damage".⁴⁹

⁴⁴ [T. 23 March 2022](#), public, p. 2601, line 20 to p. 2602, line 7.

⁴⁵ KSC-BC-2020-05, F00365, Victims' Counsel, [Victims' Counsel Submission pursuant to the Response of the Ministry of Justice of Kosovo on compensation and Request to seek further clarification](#), 25 March 2022, public.

⁴⁶ KSC-BC-2020-05, F00370, Victims' Counsel, *Victims' Counsel report pursuant to the Oral Order of 21 March 2022* (Victims' Counsel 31 March 2022 Report), 31 March 2022, strictly confidential and *ex parte*, paras 3, 6, 7-9.

⁴⁷ T. 11 April 2022, confidential, p. 3405, lines 3-9.

⁴⁸ [T. 23 March 2022](#), public, p. 2601, line 20 to p. 2602, line 7.

⁴⁹ KSC-BC-2020-05, F00392, Victims' Counsel, [Victims' Counsel Submission on an Expert for the Calculation of Material Damage](#), 21 April 2022, public.

35. On 25 April 2022, the Panel issued the “Order requesting the Ministry of Justice of Kosovo to provide further submissions” on reparation mechanisms available, or to be established, in Kosovo.⁵⁰

36. On 25 April 2022, upon order of the Panel,⁵¹ Victims Counsel submitted the curriculum vitae of the proposed expert for the calculation of material damage.⁵²

37. On 28 April 2022, Victims’ Counsel filed the “Victims’ Counsel second report pursuant to the Oral Order of 21 March 2022 and response to the Oral Order of 11 April 2022”.⁵³

38. On 6 May 2022, the Panel issued the “Decision on extension of time limit for submission of medical reports and requesting further observations” (Decision of 6 May 2022).⁵⁴

39. On 12 May 2022, the Ministry of Justice of Kosovo provided its further submissions on reparation mechanisms available, or to be established, in Kosovo.⁵⁵

⁵⁰ KSC-BC-2020-05, F00396, Trial Panel I, [Order requesting the Ministry of Justice of Kosovo to provide further submissions](#) (Further Order to the Ministry of Justice of Kosovo), 25 April 2022, public.

⁵¹ [T. 22 April 2022](#), public, p. 4010, lines 11-16.

⁵² KSC-BC-2020, F00397, Victims’ Counsel, [Victims’ Counsel submission of the CV of the proposed expert, pursuant to the Trial Panel’s Order of 22 April 2022](#), 25 April 2022, public, with [Annex 1](#), public.

⁵³ KSC-BC-2020-05, F00398, Victims’ Counsel, *Victims’ Counsel second report pursuant to the Oral Order of 21 March 2022 and response to the Oral Order of 11 April 2022* (Victims’ Counsel 28 April 2022 Report), 28 April 2022, confidential. A public redacted version was filed on 21 May 2022, [F00398/RED](#).

⁵⁴ KSC-BC-2020-05, F00403, Trial Panel I, *Decision on extension of time limit for submission of medical reports and requesting further observations*, 6 May 2022, confidential. A public redacted version was filed on the same day, [F00403/RED](#).

⁵⁵ KSC-BC-2020-05, F00407, Ministry of Justice of Kosovo, *Response to your document KSC-BC-2020-05*, 12 May 2022, public. The translation in English was filed on 13 May 2022, [F00407/eng](#) (Ministry of Justice of Kosovo Second Response).

40. On 23 May 2022, pursuant to the Decision of 6 May 2022 and upon order of the Panel,⁵⁶ Victims' Counsel submitted the "Victims' Counsel further observations on reparations matters".⁵⁷

41. On 24 May 2022, Victims' Counsel filed the "Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05"⁵⁸ (iMMO Expert Report on V08/05⁵⁹ and iMMO Expert Report on V09/05, and together, iMMO Expert Reports).⁶⁰

42. On 1 June 2022, the Panel rendered the "Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings" (Decision appointing a financial expert).⁶¹ The Panel ordered Victims' Counsel: (i) to submit observations on the report to be prepared by the appointed financial expert; and (ii) to formulate on behalf of the participating victims requests for reparations, no later than seven days upon submissions of said report.⁶² The Panel further invited the

⁵⁶ [T. 22 April 2022](#), public, p. 4010, lines 11-16.

⁵⁷ KSC-BC-2020-05, F00415, Victims' Counsel, *Victims' Counsel further observations on reparations matters* (Victims' Counsel Second Submissions on Reparations), 23 May 2022, confidential. A public redacted version was filed on 27 January 2023, [F00415/RED](#).

⁵⁸ KSC-BC-2020-05, F00417, Victims' Counsel, *Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, public, with two Annexes, strictly confidential.

⁵⁹ F00417/A01, Annex 1 to Victims' Counsel, *Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, strictly confidential (containing the medical report pertaining to V08/05).

⁶⁰ F00417/A02, Annex 2 to Victims' Counsel, *Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, strictly confidential (containing the medical report pertaining to V09/05).

⁶¹ KSC-BC-2020-05, F00425, Trial Panel I, [Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings](#), 1 June 2022, public.

⁶² [Decision appointing a financial expert](#), paras 11 and 13(e).

Defence, if it so wished, to respond to Victims' observations and requests for reparations within seven days therefrom.⁶³

43. On 20 June 2022, the Panel closed the evidentiary proceedings, pursuant to Rule 134(a) of the Rules, and ordered the Parties and Victims' Counsel to submit their Final Trial Briefs and statement on the impact of the crimes on the participating victims by 21 July 2022.⁶⁴

44. On 23 June 2022, Victims' Counsel filed the "Victims' Counsel's Submission of report pertaining to economic loss",⁶⁵ in accordance with the Decision appointing a financial expert, which contains the report prepared by the financial expert appointed by the Panel to calculate the material damages and economic loss suffered by Victims 08/05, 09/05, and 10/05 (Lerz Report).⁶⁶

45. On 30 June 2022, Victims' Counsel filed the "Corrected Version of Victims' Counsel specified and consolidated reparations request" (Victims' Counsel Reparations Request).⁶⁷

⁶³ [Decision appointing a financial expert](#), paras 11 and 13(f).

⁶⁴ KSC-BC-2020-05, F00439, Trial Panel I, [Decision on the closing of the evidentiary proceedings and related matters](#) (Evidentiary Proceedings Decision), 20 June 2022, public, para. 25(a), (c).

⁶⁵ KSC-BC-2020-05, F00440, Victims' Counsel, [Victims' Counsel's Submission of report pertaining to economic loss](#), 23 June 2022, public, with Annex 1, confidential.

⁶⁶ KSC-BC-2020-05, F00440/A01, Annex 1 to *Victims' Counsel's Submission of report pertaining to economic loss*, 23 June 2022, confidential. A public version was filed on 30 January 2023, [F00503/A01](#). A lesser redacted public version was filed on 20 March 2023, [F00513/A01](#).

⁶⁷ KSC-BC-2020-05, F00444, Victims' Counsel, *Victims' Counsel specified and consolidated reparations request*, 30 June 2022, strictly confidential. A corrected confidential version was filed on 4 July 2022, F00444/COR. A public redacted version was filed on 27 January 2023, [F00444/COR/RED](#). A lesser redacted public version was filed on 20 March 2023, [F00444/COR/RED2](#).

46. On 20 July 2022, Victims' Counsel filed the "Victims' Counsel statement on the impact of the crimes on the participating victims" (Impact Statement).⁶⁸

47. On 21 July 2022, the Parties submitted their Final Trial Briefs.⁶⁹

48. On 13 September 2022, Victims' Counsel submitted her responses to the Panel's questions⁷⁰ pertaining to the determination of reparations.⁷¹

49. On 13, 14, and 15 September 2022, the hearing on the closing statements was held,⁷² upon which the Presiding Judge closed the case on 15 September 2022.⁷³

50. On 16 December 2022, the Panel pronounced in open court the trial judgment against Mr Mustafa,⁷⁴ convicting him for war crimes and sentencing him to 26 years

⁶⁸ KSC-BC-2020-05, F00456, Victims' Counsel, *Victims' Counsel statement on the impact of the crimes on the participating victims*, 20 July 2022, strictly confidential. A corrected version was filed on 26 January 2023, F00456/COR. A public redacted version was filed on 27 January 2023, [F00456/COR/RED](#). A lesser public redacted version was filed on 20 March 2023, [F00456/COR/RED2](#).

⁶⁹ KSC-BC-2020-05, F00457/COR, Specialist Counsel, *Corrected Version of the Defense Final Trial Brief*, 21 July 2022, public, with [Annex 1](#), public (reclassified as public pursuant to CRSPD96 of 3 February 2023); F00459/COR, Specialist Prosecutor, *Corrected version of 'Prosecution Final Trial Brief pursuant to Rule 134(b)'*, 21 July 2022 (corrected version was filed on 22 July 2022), public, with Annex 1, confidential, and Annex 2, public.

⁷⁰ KSC-BC-2020-05, F00468, Trial Panel, *Decision setting the agenda for the hearing on the closing statements and related matters*, 31 August 2022, confidential, paras 15-20, 21(b). A public redacted version was filed on the same day, [F00468/RED](#) (Closing Statements Hearings Agenda).

⁷¹ KSC-BC-2020-05, F00475, Victims' Counsel, *Victims' Counsel response to Decision dated 31 August 2022* (Victims' Counsel Further Information on Reparations), 13 September 2022, confidential. A public redacted version was filed on 27 January 2023, [F00475/RED](#). A lesser public redacted version was filed on 20 March 2023, [F00475/RED2](#).

⁷² [T. 13 September 2022](#), public; [T. 14 September 2022](#), public; [T. 15 September 2022](#), public. See also [Evidentiary Proceedings Decision](#), para. 22; [Closing Statements Hearings Agenda](#), para. 7.

⁷³ [T. 15 September 2022](#), public, p. 4859, line 15.

⁷⁴ [T. 16 December 2022](#), public.

of imprisonment (Trial Judgment).⁷⁵ The Panel indicated that it would subsequently issue a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law, and retained, to that effect, the necessary jurisdiction.⁷⁶

51. On 27 January and 20 March 2023, respectively, pursuant to the Panel's orders,⁷⁷ Victims' Counsel filed submissions on: (i) the reclassification of certain filings and/or submissions of public redacted versions of filings;⁷⁸ and (ii) the application of redactions to certain filings.⁷⁹

II. SCOPE OF THE CASE

52. The Panel recalls that, as established in the Trial Judgment, the crimes in this case were committed between approximately 1 April 1999 and the end of April 1999, in the context of and associated with a non-international armed conflict between, on one side, the *Ushtria Çlirimtare e Kosovës*, known in English as the Kosovo Liberation Army

⁷⁵ KSC-BC-2020-05, F00494, Trial Panel I, *Trial Judgment*, 16 December 2022, confidential. A public redacted version was filed on 19 January 2023, [F00494/RED](#), and a corrected public redacted version was filed on 24 January 2023, [F00494/RED/COR](#).

⁷⁶ [Trial Judgment](#), paras 762, 831.

⁷⁷ KSC-BC-2020-05, F00492, Trial Panel I, [Order for submissions on the reclassification of filings and/or submission of public and/or confidential redacted versions of filings](#), 15 December 2022, public; F00512, Trial Panel I, [Order for submissions on the application of redactions in filings F00444/COR/RED, F00456/COR/RED, F00475/RED and F00503/A01](#), 14 March 2023, public.

⁷⁸ KSC-BC-2020-05, F00502, Victims' Counsel, [Victims' Counsel submissions on the reclassification of certain filings and/or submissions of public redacted versions of filings, pursuant to the Trial Panel's order dated 15 December 2022 \(F00492\)](#), 27 January 2023, public (reclassified as public pursuant to CRSPD96 of 3 February 2023).

⁷⁹ KSC-BC-2020-05, F00514, Victims' Counsel, [Victims' Counsel submissions on the application of redactions to filings F00444-CORRED, F00456-CORRED, F00475-RED and F00503-A01, pursuant to the Trial Panel's order dated 14 March 2023 \(F00512\)](#), 20 March 2023, confidential. A public redacted version was filed on the same day, [F00514/RED](#).

(KLA), and, on the other, forces of the Federal Republic of Yugoslavia and the Republic of Serbia, including units of the Yugoslav Army, police and other units of the Ministry of Internal Affairs, and other groups fighting on behalf of the Federal Republic of Yugoslavia and the Republic of Serbia, which occurred in 1998-1999.⁸⁰

53. Within this context, the Panel found that, in his capacity as the commander of the BIA Guerrilla unit (BIA), a unit within the Llap Operational Zone of the KLA, Mr Mustafa, a Kosovar national, born on 1 January 1972 in Prishtinë/Priština, Kosovo, played a central role in a system of illegal detentions and tortures at a compound in Zllash/Zlaš, Kosovo. This compound was referred to as the Zllash/Zlaš Detention Compound (ZDC) and was used by the BIA as a detention and interrogation site.⁸¹

54. Mr Mustafa, together with his BIA subordinates, as part of a joint criminal enterprise (basic form) deprived of their liberty at least six individuals without providing them with basic guarantees and held them in inhumane and degrading conditions of detention. Moreover, Mr Mustafa, together with his BIA subordinates, routinely psychologically and physically assaulted the detainees. Mr Mustafa also ordered his BIA subordinates to torture the detainees and denied them medical care despite their mistreatment and injuries. Mr Mustafa further personally tortured two detainees, thereby providing a model or incentive for his BIA subordinates to perform similar actions against the other detainees at the ZDC.⁸²

⁸⁰ Trial Judgment, paras 700 *et seq.*

⁸¹ Trial Judgment, paras 22, 334-345, 378, 729-732, 742-757, 814, 821.

⁸² Trial Judgment, paras 495-588, 584-588, 652-653, 674-679, 729-732, 742-752.

55. Throughout their time in detention, the detainees were interrogated, accused of being spies, traitors, thieves, liars, or collaborating with Serbs. They were intimidated and made to express support for the KLA. The purpose of these brutal mistreatments was to obtain information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds.⁸³

56. While the detainees were eventually released on or around 19 April 1999, in light of the impending Serbian offensive, Mr Mustafa never released nor evacuated two of the detainees, namely [REDACTED] ([REDACTED] or Murder Victim) and [REDACTED], who remained in detention while Mr Mustafa and his BIA subordinates left the ZDC.⁸⁴

57. The Murder Victim was killed between on or around 19 April 1999 and around the end of April 1999, as a result of the combination between the severe mistreatment inflicted by Mr Mustafa's BIA subordinates who detained him for almost three weeks, causing serious bodily harm, the denial of medical aid by Mr Mustafa's BIA subordinates, and gunshot wounds caused by bullets.⁸⁵

58. The Panel found that Mr Mustafa directly and personally mistreated two detainees. With regard to the remainder of the crimes, Mr Mustafa together with his BIA subordinates and other KLA members, shared the common purpose to detain and mistreat the detainees under BIA's custody at the ZDC, and to detain, mistreat and ultimately kill the Murder Victim. Accordingly, the Panel convicted Mr Mustafa of

⁸³ Trial Judgment, paras 587, 684-685.

⁸⁴ Trial Judgment, para. 750.

⁸⁵ Trial Judgment, para. 754.

three counts of war crimes, namely arbitrary detention, torture, and murder, and sentenced him to twenty-six (26) years of imprisonment, with credit for the time served at the KSC detention facilities since 24 September 2020.⁸⁶

III. APPLICABLE LAW AND PRINCIPLES ON REPARATIONS

A. RELEVANT LEGAL TEXTS AND INSTRUMENTS

59. The Panel notes Articles 6(1) and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),⁸⁷ Articles 2(3) and 14(1) of the International Covenant on Civil and political Rights (ICCPR),⁸⁸ Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁸⁹ Articles 22 and 54 of the Constitution of the Republic of Kosovo (Constitution and Kosovo, respectively), Articles 3, 22, 23, 34(1), 43, 44(6) and 53 of the Law and Rules 80, 159(5) and 168 of the Rules.

60. The Panel notes in particular that Article 22(3) of the Law, first sentence, provides that “[a] [v]ictim’s personal interest and rights in the criminal proceedings before the Specialist Chambers are notification, acknowledgement and *reparation*” [emphasis added].

⁸⁶ Trial Judgment, paras 830-831.

⁸⁷ [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), as amended by Protocols Nos. 11, 14, and 15, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 4 November 1950, ETS 5.

⁸⁸ [International Covenant on Civil and Political Rights](#), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁸⁹ [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

61. Pursuant to Article 22(8) of the Law, “[i]n the event that a Trial Panel or Court of Appeals Panel of the Specialist Chambers adjudges an accused guilty of a crime, it may make an order directly against that accused specifying appropriate reparation to, or in respect of, Victims collectively or individually”.

62. The Panel further notes that it may only make a reparation order against a convicted person, pursuant to Article 22(8) of the Law, after having decided on the scope and extent of harm suffered by the victims in the case at hand pursuant to Article 22(7) of the Law and Rule 168 of the Rules. Likewise, as required in Article 22(7) of the Law, first sentence, the decision on the scope and extent of harm presupposes that the Panel “[...] state[s] the principles on which it is acting”. Thus, prior to making a reparation order against a convicted person, the Panel ought to set out the principles relating to reparations and determine the scope and extent of harm suffered by the victims in the case at bar.

63. In addition, the Panel notes that at the KSC, like at the International Criminal Court (ICC), a system of reparations is foreseen within the context of criminal proceedings.⁹⁰ The Panel notes in this respect that Article 22 of the Law and Rule 168 of the Rules mirror to some extent the wording of the relevant provisions on reparations in the legal texts of the ICC.⁹¹ For that reason, the Panel finds it appropriate

⁹⁰ In fact, the ICC was the first international criminal jurisdiction to introduce a reparation system under which victims of crimes within the jurisdiction of the ICC can claim reparations from those convicted by the ICC.

⁹¹ Compare Article 22(7) and (8) of the Law and Rule 168 of the Rules with Article 75(1) and (2) of the Rome Statute of the International Criminal Court ([Rome Statute of the International Criminal Court](#), 17 July 1998 (last amended 2010), United Nations, Treaty Series, vol. 2187, No. 38544) and Rule 97 of the [Rules of Procedure and Evidence of the International Criminal Court](#).

to take guidance from the case-law of the ICC, including for formulating the principles relating to reparations.

64. Other international instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁹² (Declaration of Basic Principles of Justice) and the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁹³ (UN Basic Principles on Reparations) and significant human rights reports, also provide guidance to the Panel in establishing the principles relating to reparations.

65. Lastly, the Panel will be guided by the jurisprudence of regional human rights courts – such as the European Court of Human Rights and Fundamental Freedoms (ECtHR) and the Inter-American Court of Human Rights (IACtHR), while noting the differences between such courts and the reparations system at the KSC, given their substantial contribution in furthering the right of individuals to an effective remedy and to reparations.

B. PRINCIPLES ON REPARATIONS: OVERVIEW

66. At the outset, the Panel wishes to stress that redress and reparations for victims of serious violations of human rights and international humanitarian law are an

⁹² United Nations General Assembly, A/RES/40/34, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), 29 November 1985.

⁹³ United Nations General Assembly, A/RES/60/147, [United Nations Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), 16 December 2005.

imperative demand of justice. The Panel wishes further to emphasise that, in its view, the objective of reparations at the KSC is not solely to punish the convicted person as foreseen in Article 44(6) of the Law; rather it serves to acknowledge and to repair, to the extent possible, the harm caused to the victims.⁹⁴

67. The principles on reparations are general concepts that together constitute the legal framework which will guide the Panel when determining the scope and extent of harm suffered by the victims in the case at bar, the scope of the convicted person's liability for reparations, and the reparations to be awarded to the victims.⁹⁵

68. As a general principle, reparations at the KSC ought to be victim-centred.⁹⁶ This means that victims' interests, needs, views and concerns ought to drive the decision-making process in all matters related to reparations.

69. In this respect, the KSC shall give due consideration to the victims and properly involve them in the proceedings in accordance with Article 22(11) of the Law, to ensure that their rights to truth, justice, and reparations are respected and enforced.⁹⁷

70. Victims should be able to participate throughout the reparation proceedings and receive adequate support in order to make their participation substantive and

⁹⁴ See also Article 38(1)(1.3) of the Criminal Code of Kosovo, 14 January 2019, Code No. 06/L-074 stating that one of the purposes of punishment is "to provide compensation to victims or the community for losses or damages caused by the criminal conduct".

⁹⁵ Similarly, ICC, *Prosecutor v Lubanga*, ICC-01/04-01/06-3129-AnxA, Appeals Chamber, [Order for Reparations \(amended\)](#) (Lubanga AC Amended Reparations Order), 3 March 2015, public, para. 5.

⁹⁶ Similarly, ICC, *Prosecutor v Ntaganda*, ICC-01/04-02/06-2659, Trial Chamber VI, [Reparations Order](#) (Ntaganda TC Reparations Order), 8 March 2021, public, para. 45.

⁹⁷ Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 45 and references therein.

effective.⁹⁸ In this context, timely and effective outreach action aimed at informing victims about reparations is critical.⁹⁹

71. All victims are to enjoy a fair and equal treatment as regards reparations. They shall have equal access to information relating to their right to reparations and to assistance from the KSC.¹⁰⁰ Yet, during the implementation and execution of the reparations awarded by the Panel, priority may need to be given to certain victims, who are in a particularly vulnerable situation or who require urgent assistance.¹⁰¹

72. The KSC shall treat victims with humanity, and their dignity and human rights shall be respected.¹⁰² To this end, the KSC shall implement appropriate protective measures to ensure the victims' safety, physical, and psychological well-being, dignity and privacy,¹⁰³ including during the implementation and execution of reparation orders.

73. Interactions with victims should proceed with caution, avoiding re-traumatisation, and managing their expectations sensitively.¹⁰⁴

74. Victims should receive reasonable, appropriate, and prompt reparations.¹⁰⁵ The reparations process, including the implementation and execution of a reparation

⁹⁸ See KSC-BC-2020-05, F00055, Pre-Trial Judge, [Framework Decision on Victims' Participation](#) (Victims' Participation Framework Decision), 27 November 2020, public, para. 16.

⁹⁹ See [Victims' Participation Framework Decision](#), para. 16.

¹⁰⁰ See [Victims' Participation Framework Decision](#), para. 16. See Article 22(3) of the Law (victim's personal interest and rights in the criminal proceedings before the KSC include notification).

¹⁰¹ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 19.

¹⁰² [UN Basic Principles on Reparations](#), para. 10.

¹⁰³ Article 23 of the Law and Rule 80 of the Rules. See also [Victims' Participation Framework Decision](#), paras 44-45.

¹⁰⁴ Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 49.

¹⁰⁵ Article 22(3) and (8) of the Law; [UN Basic Principles on Reparations](#), paras 2, 11, 14-15.

order, should be as expeditious as possible and avoid unnecessarily protracted, complex, and expensive litigation.¹⁰⁶

75. The reparation award ought to be proportional to the harm caused, in the specific circumstances of the case.¹⁰⁷

76. Reparations shall be granted to victims without adverse distinction on the grounds of sex, gender identity, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth, marital, or other status.¹⁰⁸

77. Moreover, reparations shall avoid replicating discriminatory practices or structures that predated the commission of the crimes, and which prevented equal opportunities to victims.¹⁰⁹ The KSC should avoid further stigmatisation of the victims and reinforcing discrimination by their families and communities.¹¹⁰ In particular reparations awards must avoid creating tensions, jealousy, or animosity among affected communities and between cohabiting groups.¹¹¹

78. Reparations are voluntary and the informed consent of the recipient is necessary prior to any award of reparations.¹¹²

¹⁰⁶ Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 89.

¹⁰⁷ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 45.

¹⁰⁸ Article 24 of the Constitution; [UN Basic Principles on Reparations](#), para. 25.

¹⁰⁹ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 17; [Ntaganda TC Reparations Order](#), para. 44.

¹¹⁰ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 17; [Ntaganda TC Reparations Order](#), para. 44.

¹¹¹ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 17; [Ntaganda TC Reparations Order](#), para. 44.

¹¹² Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 30.

79. Nothing in these principles shall prejudice or be inconsistent with the rights of the accused or convicted person to fair and expeditious proceedings.¹¹³ Moreover, the accused or the convicted person, as the case may be, must be afforded the time and opportunity to respond and/or make submissions on reparations.

80. During all stages of reparations and in particular during the implementation and execution of reparation orders, all entities and persons in Kosovo have the obligation to cooperate fully with the KSC.¹¹⁴

81. Finally, reparations awarded pursuant to a reparation order do not exonerate Kosovo from its separate obligations, under domestic law or international treaties, to provide reparations to its citizens.¹¹⁵

C. BENEFICIARIES OF REPARATIONS

82. The Panel notes that the Pre-Trial Judge ruled on the criteria to be met for victims to be admitted in the proceedings pursuant to Article 22(1) of the Law.¹¹⁶ The Panel sees no reason to depart from this jurisprudence for the purpose of reparations, noting however the different standard of proof to be met by victims for reparations.¹¹⁷ Consequently, the Panel incorporates the applicable law and criteria previously set by way of reference and will only briefly discuss them here.

¹¹³ See Articles 21 and 22(7) of the Law.

¹¹⁴ Article 53(1) and (2) of the Law read in conjunction with Article 44(6) of the Law.

¹¹⁵ See Article 54 of the Constitution. See also Article 22(2) of the Law.

¹¹⁶ [Victims' Participation Framework Decision](#), paras 27, 29, 31-38. [Second Victims Participation Decision](#), para. 32. See [Third Victims Participation Decision](#), para. 18 and references therein.

¹¹⁷ See paragraphs 100 *et seq* below.

83. In order to be eligible for reparations, victims need to meet the following criteria:

- i. the victim is a natural person;
- ii. the crime from which the harm arises must be one of which the person was convicted;
- iii. the victim has personally suffered harm; and
- iv. the harm was the direct result of a crime of which the person was convicted.¹¹⁸

84. Victims must thus fulfil the same criteria as to be admitted in the proceedings except that the harm suffered arises as a result of “a crime of which the person was convicted” instead of a “crime in the indictment”.¹¹⁹

85. In relation to the harm having been suffered personally by the victim, the Panel recalls that this denotes a requirement that the harm is suffered *by* the victim, *i.e.* his or her physical or mental well-being or economic situation is affected.¹²⁰ This may include harm suffered by victims subjected to the acts of the perpetrator(s) (direct victims).¹²¹

86. Harm suffered by one victim as a result of one or more crimes of which the person was convicted can give rise to harm suffered by other victims. This may include harm suffered by individuals in a close personal relationship with the direct

¹¹⁸ For the purpose of this Reparation Order, only victims admitted to participate in the proceedings in this case will be considered.

¹¹⁹ See [Victims' Participation Framework Decision](#), para. 27(b) and (c).

¹²⁰ See [Victims' Participation Framework Decision](#), para. 33 and references therein.

¹²¹ See [Victims' Participation Framework Decision](#), para. 33 and references therein.

victim killed or injured by the perpetrator(s) (indirect victims).¹²² Immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim.¹²³

87. The Panel wishes to stress that demonstrating the existence of a “close personal relationship” with the direct victim is one way in which indirect victims can prove they have suffered personal harm and that the harm resulted from the crimes of which the person was convicted. The Panel also considers that indirect victims could encompass those who suffered harm in intervening to assist victims in distress or to prevent victimisation.¹²⁴

88. In the event that a victim who was found eligible for reparations dies before receiving the reparations awarded, the victim’s descendants or successors shall be equally entitled to the reparations awarded.¹²⁵

D. HARM

1. Concept and Types of Harm

89. The concept of harm captures “any damage, loss and injury”.¹²⁶

¹²² See [Victims’ Participation Framework Decision](#), para. 33 and references therein.

¹²³ See [Second Victims Participation Decision](#), para. 32 and references therein.

¹²⁴ [Declaration of Basic Principles of Justice](#), para. 2: “The term ‘victim’ also includes [...] persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation”.

¹²⁵ Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 40 and references therein.

¹²⁶ See Article 22(7) of the Law.

90. The Law and the Rules identify three types of harm: physical, mental, and material.¹²⁷ The Panel incorporates by way of reference the definitions set out by the Pre-Trial Judge regarding the types of harm¹²⁸ and will only expand upon them here if deemed applicable.

91. In this regard, the Panel wishes to highlight that victims of serious violations of human rights and international humanitarian law, such as torture, will often suffer from long-term consequences going beyond an immediate physical, mental, or material harm. This manifests into lost opportunities, including those relating to employment, education, and social benefits.¹²⁹ International courts also mention the concept of damage to a life plan or project of life.¹³⁰ In general terms, damage to a life plan or project of life recognises the fact that the life of the victim and/or his or her family members is interrupted or disrupted as a result of the crimes committed against them.¹³¹ More specifically, it refers to the lack of full self-realization of a person, who, considering his or her vocation, aptitudes, circumstances, potential and aspirations, may have reasonably expected to realise certain things in life.¹³² It is expressed in the

¹²⁷ Article 22(1) of the Law; Rule 2 of the Rules; [Third Victims Participation Decision](#), para. 19; [Second Victims Participation Decision](#), para. 33.

¹²⁸ [Victims' Participation Framework Decision](#), paras 32-36.

¹²⁹ See ICC, [Lubanga AC Amended Reparations Order](#), para. 40(d) and footnote number 23 and references therein.

¹³⁰ See ICC, *Prosecutor v Lubanga*, ICC-01/04-01/06-3466-Red, Appeals Chamber, [Public Redacted version of Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'](#) (Lubanga AC Judgment on Decision setting Liability), 18 July 2019, para. 38 and references therein; [Ntaganda TC Reparations Order](#), paras 71-72.

¹³¹ See IACtHR, *Case of Tibi v Ecuador*, [Judgment](#) (Preliminary objections, merits, reparations and costs) (*Case of Tibi v Ecuador*), 7 September 2004, Series C No. 114, paras 245-248.

¹³² IACtHR, *Case of Álvarez Ramos v Venezuela*, [Judgment](#) (Preliminary Objection, Merits, Reparations, and Costs) 30 August 2019, Series C No. 380, para. 225 and references therein.

expectations of personal, professional, and family development, which are possible under normal conditions.¹³³ Such damage implies loss or severe diminution of prospects for development, in a manner that is irreparable or reparable only with great difficulty.¹³⁴

92. The Panel is also of the view that harm may be transgenerational, *i.e.* when social violence is passed on from ascendants to descendants with traumatic consequences for the latter.¹³⁵

2. Causation

93. The Panel recalls that, pursuant to Article 22(1) of the Law and Rule 2 of the Rules, “[a] Victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a *direct result of* a crime within the jurisdiction of the Specialist Chambers” [emphasis added]. It notes that neither the Law nor the Rules

¹³³ IACtHR, [Case of Tibi v Ecuador](#), para. 245.

¹³⁴ IACtHR, [Case of Loayza-Tamayo v. Peru](#), [Judgment](#) (Reparations and Costs) (*Case of Loayza-Tamayo v. Peru*), 27 November 1998, Series C No. 42, para. 150. Although the IACtHR declined to assess this type of harm in [Case of Loayza-Tamayo v Peru](#), it has assessed it in later cases and has repaired it through compensation (*Case of the Dos Erres Massacre v Guatemala*, [Judgment](#) (Preliminary Objection, Merits, Reparations and Costs), 24 November 2009, Series C No. 211, paras 284, 293, and *Case of Mejía Idrovo v Ecuador*, [Judgment](#) (Preliminary Objections, Merits, Reparations, and Costs), 5 July 2011, Serie C No. 228, para. 134) or other modalities of reparations (IACtHR, *Case of Cantoral Benavides v Peru*, [Judgment](#) (Reparations and Costs), 3 December 2001, Series C No. 88, para. 80).

¹³⁵ See ICC, *Prosecutor v Katanga*, ICC-01/04-01/07-3728-tENG, Trial Chamber II, [Order for Reparations pursuant to Article 75 of the Statute](#) (*Katanga TC Reparations Order*), 24 March 2017 (English translation filed on 17 August 2017), public, paras 323-324, with one public annex and one confidential annex, para. 132; *Prosecutor v Katanga*, ICC-01/04-01/07-3804-Red-tENG, Trial Chamber II, [Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018](#), 19 July 2018, para. 10; [Ntaganda TC Reparations Order](#), para. 73.

define the precise requirements of the causal link between the crime and the relevant harm for the purposes of reparations.

94. In the view of the Panel, the causal link between the crime and the harm for the purposes of reparations is to be determined in light of the specificities of a case.¹³⁶

95. As for factual causation, the Panel adopts the “but/for” relationship between the crime and the harm, which means that but for the crime(s) committed by the convicted person, the harm would not have occurred.¹³⁷

96. As regards proximate cause or legal cause, the Panel endorses the Pre-Trial Judge’s conclusion in the context of victims’ participation, namely that the harm is the direct result of the crime:

where, in the circumstances prevailing at the relevant place and time and taking in consideration the personal situation of the victim, the acts or omissions of the perpetrator(s) would most likely bring about that harm, as viewed by an objective observer.¹³⁸

97. The Panel further finds that the crime does not have to be the only cause of the harm suffered, but it must have contributed thereto.¹³⁹

¹³⁶ Similarly ICC, *Prosecutor v Lubanga*, ICC-01/04-01/06-3129, Appeals Chamber, [Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012](#), (*Lubanga AC Judgment on Principles of Reparations*), 3 March 2015, public, with two public annexes, para. 80.

¹³⁷ Similarly, [Lubanga AC Amended Reparations Order](#), para. 59.

¹³⁸ [Victims’ Participation Framework Decision](#), para. 38.

¹³⁹ Similarly, ICC, ICC, *Prosecutor v Bemba*, ICC-01/05-01/08-320, Pre-Trial Chamber III, [Fourth Decision on Victims’ Participation](#), 12 December 2008, public, para. 77: “[...] the incidents forming the factual basis of the alleged crime(s) must not have played a substantial part or be the predominant cause as long as they have, at least in part, as viewed *ex post* by an objective observer, contributed to the harm allegedly suffered”. Thus, the Panel does not subscribe to the Pre-Trial Judge’s conclusion that the crime must have *significantly* contributed to the harm (see [Second Victims Participation Decision](#), para. 37).

98. Concerning indirect victims, applicants must show that the harm they suffered was the result of the harm suffered by the direct victim.¹⁴⁰ That being said, for mental harm, emotional suffering (such as grief, sorrow, bereavement or distress) of an indirect victim as a result of the death or grave injury of a direct victim shall be presumed, provided that the close relationship between them is sufficiently established.¹⁴¹

3. Burden and Standard of Proof

99. Victims seeking reparations must provide sufficient proof of: their identity as a natural person; the scope and extent of harm suffered; and the causal link between the crime for which a conviction has followed and the harm suffered.

100. Unlike for the participation of victims in the proceedings,¹⁴² the Law and the Rules do not specify the standard of proof applicable to reparations. In the view of the Panel, what the ‘appropriate’ standard of proof is and what is ‘sufficient’ for the purposes of meeting the burden of proof, will depend upon the specific circumstances of the case.

101. In this regard, taking into consideration that reparations are fundamentally different from trial proceedings, where the guilt of the accused must be proven beyond reasonable doubt, a less exacting standard of proof than the one applicable during trial should apply.¹⁴³ In the same vein, the Panel is of the view that the “*prima*

¹⁴⁰ [Second Victims Participation Decision](#), para. 37 and references therein. *See* paragraphs 86-87 above.

¹⁴¹ [Second Victims Participation Decision](#), para. 35. Concerning “close personal relationship”, *see* paragraph 86 above.

¹⁴² *See* Rule 113(4) of the Rules.

¹⁴³ *Similarly*, ICC, [Lubanga AC Judgment on Principles of Reparations](#), para. 81.

facie” standard of proof¹⁴⁴ applied by the Pre-Trial Judge or the Panel, as the case may be, to assess the information and supporting material submitted by individuals with a view to participate in the proceedings, is not appropriate, considering the convicted person’s obligations arising from a reparation order.

102. Accordingly, considering the practice before the ICC, the Panel adopts the “balance of probabilities” test as the appropriate standard of proof for the purpose of reparations. This standard of proof means that the victim must show that it is more probable than not that he or she suffered harm as a consequence of one of the crimes of which Mr Mustafa was convicted.¹⁴⁵

103. Furthermore, in line with the practice before the ICC,¹⁴⁶ the Panel is of the view that certain harms may be presumed, once a victim has demonstrated, on the balance of probabilities, to be a victim of the crimes of which the convicted person was convicted, and that it may rely upon circumstantial evidence when a victim lacks direct proof.¹⁴⁷ However, when resorting to presumptions, the Panel must respect the rights of the victims as well as of the convicted person.¹⁴⁸

¹⁴⁴ See Rule 113(4) of the Rules. “*Prima facie*” means “at first sight; on the face of it; as it appears at first without investigation” ([Victims’ Participation Framework Decision](#), para. 28 and footnote number 28).

¹⁴⁵ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 65; [Katanga TC Reparations Order](#), paras 46-51 and references therein.

¹⁴⁶ Similarly, ICC, [Katanga TC Reparations Order](#), paras 57-61 and references therein. See also ICC, *Prosecutor v Lubanga*, ICC-01/04-01/06-3379-Red-Corr-tENG, Trial Chamber II, [Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”](#) (Lubanga TC Decision setting Liability), 21 December 2017 (English translation filed on 5 July 2018), public, paras 180, 185, with two public annexes and one confidential annex.

¹⁴⁷ Similarly, ICC, [Katanga TC Reparations Order](#), paras 57-61 and references therein.

¹⁴⁸ See also ICC, *Prosecutor v Katanga*, ICC-01/04-01/07-3778-Red, Appeals Chamber, [Public redacted version of Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for](#)

E. TYPES AND MODALITIES OF REPARATIONS¹⁴⁹

104. Pursuant to Articles 22(8), and 44(6) of the Law and Rule 168(1) of the Rules, reparations may be awarded to victims “collectively or individually”. In the Panel’s opinion, these two types of reparations are not mutually exclusive and can be awarded concurrently.¹⁵⁰

105. Reparations can be described as individual when the ensuing benefit is afforded directly to a victim to repair the harm suffered as a consequence of the crimes for which the accused was convicted; they confer upon the victim a benefit to which she or he is exclusively entitled.¹⁵¹ Individual reparations should be awarded in a way that avoids creating or adding tensions and divisions within the relevant communities.¹⁵²

106. Collective reparations can refer to their nature (type of goods or services distributed or mode of their distribution) or their recipients (communities or groups).¹⁵³ They differ from individual reparations in that they benefit a group or category of persons who have suffered a shared harm.¹⁵⁴ Collective reparations may address the harm the victims suffered on an individual or a collective basis.¹⁵⁵

Reparations pursuant to Article 75 of the Statute” (Katanga AC Judgment on Reparations Order), 8 March 2018, public, paras 4, 75.

¹⁴⁹ As to the distinction between ‘types’ and ‘modalities’ of reparations, see ICC, [Katanga TC Reparations Order](#), paras 265-295 (as for types), 296-305 (as for modalities).

¹⁵⁰ Similarly, ICC, [Katanga TC Reparations Order](#), paras 256, 283.

¹⁵¹ Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 79 and references therein.

¹⁵² Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 33.

¹⁵³ Similarly, ICC, [Katanga TC Reparations Order](#), para. 273 and references therein.

¹⁵⁴ Similarly, ICC, [Katanga TC Reparations Order](#), para. 275; see also ICC, *Prosecutor v Al Mahdi*, ICC-01/12-01/15-236, Trial Chamber VIII, [Reparations Order](#) (*Al Mahdi* Reparations Order), 17 August 2017, public, paras 59, 67.

¹⁵⁵ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 33.

107. Article 44(6) of the Law sets out only two modalities of reparations, namely restitution and compensation. The Panel notes that the UN Basic Principles on Reparations provide for the following additional modalities of reparations which have been endorsed by the ICC in the context of a convicted person's liability for reparations: rehabilitation and satisfaction.¹⁵⁶ The Panel is of the view that these modalities of reparations are also available before the KSC.¹⁵⁷

108. Reparations may also have a symbolic, preventative, or transformative value,¹⁵⁸ and may assist in promoting reconciliation between the victims of the crime, the affected communities, and the convicted person.¹⁵⁹

109. Restitution is defined as measures which strive to re-establish, as much as possible, the life of the victim prior to the violations, including a return to one's family, home, previous employment, providing continuing education, or the returning of lost or stolen property.¹⁶⁰ This modality of reparations may not always be sufficient or appropriate.¹⁶¹

¹⁵⁶ See [UN Basic Principles on Reparations](#), paras 18-22. See also ICC, [Lubanga AC Amended Reparations Order](#), paras 34-42. See further Article 14 of the CAT, which refers to the right to "full rehabilitation" for victims of torture.

¹⁵⁷ The Panel recalls that the UN Basic Principles on Reparations are reflective of customary international law, and therefore applicable before the KSC in accordance with Article 3(2)(d) of the Law.

¹⁵⁸ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 34; [Ntaganda TC Reparations Order](#), para. 82.

¹⁵⁹ Similarly, ICC, [Al Mahdi TC Reparations Order](#), para. 28; [Lubanga AC Amended Reparations Order](#), para. 71.

¹⁶⁰ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 35 referring [UN Basic Principles on Reparations](#), para. 19.

¹⁶¹ See IACtHR, *Case of Aloeboetoe et al. v Suriname*, [Judgment](#) (Reparations and Costs), 10 September 1993, Series C No. 15, para. 49. See also IACtHR, *Case of Atala Riffo and daughters v Chile*, [Judgment](#) (Merits, Reparations, and Costs), 24 February 2012, Series C No. 239, para. 241; Chambre africaine extraordinaire

110. Compensation is usually the award of monetary funds as payment for the damages suffered.¹⁶² In certain cases it takes the form of a “substitute remedy” given that it cannot return a family member who has been killed or restore the physical capacities of a person who has been injured.¹⁶³ It can apply to both pecuniary and non-pecuniary damages.

111. Rehabilitation measures may include medical care, economic development, social assistance, or legal services.¹⁶⁴

112. Satisfaction may consist of measures that acknowledge the violations of international human rights law or serious violations of international humanitarian law. It may include, for instance, a public apology from the perpetrators of the violence, together with acknowledgement of the facts and acceptance of responsibility, full and public disclosure of the truth to the extent that it does not cause new harm to the victims and their families or threatens the safety of witnesses and victims, or commemorations and tributes to the victims.¹⁶⁵

d’assises d’appel, Situation en République du Tchad, *Le Procureur Général c Hissein Habré*, [Arrêt](#), 27 April 2017, para. 842.

¹⁶² Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 40; [Al Mahdi TC Reparations Order](#), para. 47.

¹⁶³ African Court on Human and Peoples’ Rights, [Comparative Study on the Law and Practice of Reparations for Human Rights Violations](#), September 2019, p. 51 (last accessed on 10 January 2023).

¹⁶⁴ See [UN Basic Principles on Reparations](#), para. 21. Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 42; [Al Mahdi TC Reparations Order](#), para. 48; [Ntaganda TC Reparations Order](#), para. 87.

¹⁶⁵ See [UN Basic Principles on Reparations](#), para. 22. Similarly, ICC, [Ntaganda TC Reparations Order](#), paras 88, 210.

F. CONVICTED PERSON'S LIABILITY FOR REPARATIONS

113. Reparations at the KSC must reflect the context from which they arise, namely a legal system whereby individual criminal responsibility for crimes under the Law is established.¹⁶⁶ Accordingly, a reparation order shall not go beyond the crimes of which the convicted person was held liable and shall be issued in all circumstances against the convicted person.¹⁶⁷

114. The convicted person's liability for reparations must be proportional to the harm caused, in the specific circumstances of the case.¹⁶⁸

115. In determining the amount of the convicted person's liability for reparations, the primary consideration should be the scope and extent of the harm suffered by the victims.¹⁶⁹

116. The responsibility of other persons, organisations, or State responsibility is irrelevant to determine the convicted person's liability for reparations.¹⁷⁰

117. Likewise, the convicted person's indigence is irrelevant to this determination.¹⁷¹ Indeed, the indigence of the convicted person at the time of the issuance of the

¹⁶⁶ Similarly, ICC, [Katanga TC Reparations Order](#), para. 17.

¹⁶⁷ Article 22(8) of the Law provides that: "In the event that a Trial Panel or Court of Appeals Panel of the Specialist Chambers adjudges an accused guilty of a crime, it may make an order *directly* against that accused" [emphasis added]. See also Rule 168 of the Rules which is titled "Order for Reparations Against the Convicted Person".

¹⁶⁸ Similarly, ICC, [Lubanga AC Amended Reparations Order](#), para. 21.

¹⁶⁹ Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 98.

¹⁷⁰ Similarly, ICC, [Katanga AC Judgment on Reparations Order](#), paras 6, 178.

¹⁷¹ Similarly, ICC, [Lubanga AC Judgment on Principles of Reparations](#), para. 70.

reparations order is neither an obstacle to the imposition of liability for reparations,¹⁷² nor does it give the convicted person any right to benefit from reduced liability.¹⁷³ In fact, the reparation order can be enforced against the convicted person when the monitoring of the financial situation reveals that the person has the means to comply with the order.¹⁷⁴ Whilst the convicted person's financial circumstances may affect the way in which reparations are implemented and executed, enforcement constitutes a separate matter that goes beyond the setting of the convicted person's liability for reparations.

IV. EVIDENCE BEFORE THE PANEL AND THE PANEL'S APPROACH TO THE ASSESSMENT OF THE REQUEST FOR REPARATIONS

118. In determining whether the victims have demonstrated the existence of the harm alleged and the causal nexus between the harm and the crimes of which Mr Mustafa was convicted, the Panel will consider: (i) the Victims' Counsel Reparations Request submitted on behalf of the applicants; (ii) the decisions admitting the applicants as participating victims;¹⁷⁵ (iii) [REDACTED];¹⁷⁶ (iv) [REDACTED];¹⁷⁷ (v) the Impact

¹⁷² Similarly, ICC, [Lubanga AC Judgment on Principles of Reparations](#), paras 103-104; [Katanga AC Judgment on Reparations Order](#), para. 189.

¹⁷³ Similarly, [Katanga AC Judgment on Reparations Order](#), para. 190.

¹⁷⁴ Similarly, ICC, [Lubanga AC Judgment on Principles of Reparations](#), para. 104; [Katanga AC Judgment on Reparations Order](#), para. 189.

¹⁷⁵ [Second Victims Participation Decision](#); [Third Victims Participation Decision](#).

¹⁷⁶ [REDACTED]. [REDACTED]. [REDACTED].

¹⁷⁷ See [REDACTED].

Statement; (vi) the iMMO Expert Reports called into evidence by the Panel;¹⁷⁸ and (vii) the Lerz Report submitted during the proceedings by Victims' Counsel.¹⁷⁹

119. The Panel wishes to stress that it is bound by the factual and legal findings made in the Trial Judgment, which led to the conviction and sentencing of Mr Mustafa. It will therefore rely on any relevant findings made therein, [REDACTED].

120. The Panel will not rely on information or supporting material that is manifestly non-authentic.¹⁸⁰ In relation to expert reports, the Panel considers factors such as the established competence of the experts in their field of expertise, the methodologies used, the extent to which the findings are consistent with other evidence, and the general reliability of the expert's evidence.¹⁸¹

121. The Panel's assessment of the request for reparations against those criteria is undertaken on a balance of probabilities, considering the intrinsic coherence of the entire request, including supporting documentation, relevant findings in the Trial Judgment, and all relevant circumstances.¹⁸²

122. The Panel will in this regard consider any difficulties victims may have faced in gathering and producing information, such as medical, financial, and employment

¹⁷⁸ Trial Judgment, para. 30 referring to KSC-BC-2020-05, F00430, Trial Panel I, *Decision under Rules 132 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers on evidence called by the Panel*, 3 June 2022, confidential, paras 8-9, 13(a). A public redacted version was filed on the same day, [F00430/RED](#). The Defence did not challenge the qualifications of the experts or the iMMO Expert Reports.

¹⁷⁹ The Defence did not challenge the qualifications of the expert or the Lerz Report.

¹⁸⁰ Similarly, [Third Victims Participation Decision](#), para. 14 and references therein.

¹⁸¹ Trial Judgment, para. 41.

¹⁸² Similarly, [Third Victims Participation Decision](#), para. 14 and references therein.

records, including due to the passage of time since the crimes were committed.¹⁸³ The Panel will also consider the fact that victims may have refrained from disclosing to others what they experienced at the ZDC, including as a result of the climate of fear and intimidation in Kosovo against persons who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members.¹⁸⁴ In the absence of any documentation, a victim's coherent and credible account may be accepted as sufficient evidence to support a request for reparations on a balance of probabilities.¹⁸⁵

123. The Panel will also, where it sees fit, proceed on presumptions, once a victim has proved, on a balance of probabilities, to be a victim of the crimes for which Mr Mustafa was convicted, or rely on circumstantial evidence.¹⁸⁶

124. Finally, the Panel notes that, although afforded the opportunity throughout the proceedings to do so, the Defence did not make any submissions as regards the various Victims' Counsel's observations and submissions on reparations, Victims' Counsel Request for Reparations, or the Lerz and iMMO Reports.¹⁸⁷ In this regard, the Panel notes that it has been the constant position of the Defence in this case that due

¹⁸³ See paragraph 100 above. Similarly, ICC, [Katanga TC Reparations Order](#), para. 60; [Lubanga TC Decision setting Liability](#), para. 61.

¹⁸⁴ See Trial Judgment, paras 50-57 and references therein.

¹⁸⁵ Similarly, Trial Judgment, para. 43 ("In line with Rule 139(3) of the Rules, it is within the Panel's discretion to consider whether a single piece of evidence or the sum of several pieces of evidence suffice to prove a specific fact"). Similarly, ICC, [Ntaganda TC Reparations Order](#), para. 139.

¹⁸⁶ See paragraph 103 above.

¹⁸⁷ The Defence only presented submissions on the Expert Reports pertaining to the litigation as to whether in case of a conviction it was appropriate to refer the victims to civil litigation in Kosovo courts pursuant to Article 22(9) of the Law and Rule 167 of the Rules (see paragraph 21 above).

to the denial by Mr Mustafa of any wrongdoing, no reparations to victims ought to be made by him.¹⁸⁸

V. SCOPE AND EXTENT OF HARM

A. SUBMISSIONS

125. Victims' Counsel submitted a request for reparations on behalf of eight (8) participating victims (together, Victims).¹⁸⁹

126. Victims' Counsel avers that V08/05, V09/05, and V10/05 (together, Direct Victims) all suffered physical, mental, and material harm as result of the war crimes of arbitrary detention and torture committed by Mr Mustafa against them.¹⁹⁰ In addition, Victims' Counsel submits that damage done to the life plan or project must be considered *vis-à-vis* the Direct Victims, given that they all experienced harm that has had a life-altering character.¹⁹¹

127. Victims' Counsel further contends that V05/05, V06/05, V11/05, V12/05 and V13/05 (together, Indirect Victims) all suffered long-lasting mental harm as a result of the war crimes of arbitrary arrest, torture, and murder committed by Mr Mustafa against their family member, with whom they all had a close relationship.¹⁹²

¹⁸⁸ [T. 15 September 2022](#), public, p. 4856, lines 11-19.

¹⁸⁹ [Victims' Counsel Reparations Request](#), paras 8, 49.

¹⁹⁰ [Victims' Counsel Reparations Request](#), paras 9, 36-48; Impact Statement, [REDACTED]; [Victims' Counsel Further Information on Reparations](#), paras 2-6.

¹⁹¹ [Victims' Counsel Reparations Request](#), paras 13, 58. Concerning the impact of the crimes on the lives of the Direct Victims, *see also* Impact Statement, [REDACTED].

¹⁹² [Victims' Counsel Reparations Request](#), paras 49-50, 55, 57; Impact Statement, [REDACTED]; [Victims' Counsel Further Information on Reparations](#), para. 3.

128. The Defence did not file any observations in response to the Victims' Counsel Reparations Request.

129. The Panel will proceed in this section with the analysis of the Victims' Counsel Reparations Request to determine the scope and extent of harm suffered by the Victims.

B. IDENTITY AS A NATURAL PERSON

130. The Panel notes that the Victims were admitted to the proceedings as participating victims and provided, in that context, supporting official documentation regarding their identity as natural persons.¹⁹³ Having reviewed the supporting documentation provided in the application for admission as a victim participating in the proceedings against the requisite standard at this stage of the proceedings, the Panel finds that each Victim has established on a balance of probabilities his or her identity as a natural person.¹⁹⁴

¹⁹³ [Second Victims Participation Decision](#), paras 26, 29, 39 (for V05/05, V06/05, V08/05, and V09/05); [Third Victims Participation Decision](#), paras 12, 15, 26 (for V10/05, V11/05, V12/05, and V13/05).

¹⁹⁴ The Panel notes that this determination was already made in the [Second Victims Participation Decision](#) and [Third Victims Participation Decision](#), albeit at a lower threshold ([Second Victims Participation Decision](#), para. 26; [Third Victims Participation Decision](#), para. 12). The Panel recalls that the Pre-Trial Judge or the Panel, as the case may be, assesses the information and supporting material submitted by individuals with a view to participate in the proceedings on a *prima facie* basis (see Rule 113(4)), which means "at first sight; on the face of it; as it appears at first without investigation" ([Victims' Participation Framework Decision](#), para. 28 and footnote number 14).

C. HARM SUFFERED BY THE VICTIMS

1. Harm Suffered by the Direct Victims

a) V09/05

131. At the outset, the Panel relies on the findings made in the Trial Judgment establishing beyond reasonable doubt that V09/05 was arbitrarily detained and tortured at the ZDC by Mr Mustafa and his BIA subordinates and suffered physical and mental harm as a result.¹⁹⁵ The Panel also recalls that [REDACTED].¹⁹⁶

132. For physical and mental harm, the Panel relies on the findings made in the Trial Judgment, [REDACTED],¹⁹⁷ any supporting documentation provided, and the conclusions of the iMMO Expert Report on V09/05.

133. **Physical harm.** [REDACTED], V09/05 was kicked, punched, hit [REDACTED] until he lost consciousness.¹⁹⁸ He was held in inhuman and degrading conditions,¹⁹⁹ in an isolated location.²⁰⁰ He was mistreated almost daily throughout his time in detention:²⁰¹ he was hit [REDACTED]; burnt with a hot iron [REDACTED]; [REDACTED].²⁰²

¹⁹⁵ Trial Judgment, [REDACTED].

¹⁹⁶ Trial Judgment, [REDACTED].

¹⁹⁷ Trial Judgment, para. [REDACTED].

¹⁹⁸ Trial Judgment, [REDACTED].

¹⁹⁹ Trial Judgment, paras 501-525. *See* Impact Statement, [REDACTED].

²⁰⁰ Trial Judgment, paras 810-811.

²⁰¹ Trial Judgment, [REDACTED]. *See* Impact Statement, [REDACTED].

²⁰² Trial Judgment, [REDACTED]. *See* Impact Statement, [REDACTED].

134. As a result of his time in detention at the ZDC, V09/05 sustained multiple [REDACTED] injuries, burns, cuts [REDACTED].²⁰³ He suffered from an infection [REDACTED].²⁰⁴ To this day, he suffers from headaches and pain [REDACTED], [REDACTED]²⁰⁵ [REDACTED]²⁰⁶ [REDACTED] as a result of the ill-treatment experienced.²⁰⁷ [REDACTED].²⁰⁸ [REDACTED].²⁰⁹

135. **Mental harm.** [REDACTED].²¹⁰ V09/05 was not informed of the reasons for his deprivation of liberty,²¹¹ he did not know for how long that detention would last, and was unable to contact or communicate with the outside world, including with his family.²¹²

136. While detained at the ZDC, V09/05 could hear his co-detainees being mistreated and saw the injuries inflicted on them, and the state they were in when they were brought back to the barn: bruised, bloodied, or unconscious.²¹³ [REDACTED].²¹⁴ As a result, he could not sleep and lived in constant fear that he could be next to be

²⁰³ Trial Judgment, [REDACTED].

²⁰⁴ [REDACTED]. See Impact Statement, [REDACTED].

²⁰⁵ Trial Judgment, [REDACTED]. iMMO Expert Report on V09/05, [REDACTED]. See Impact Statement, [REDACTED].

²⁰⁶ Trial Judgment, [REDACTED]. iMMO Expert Report on V09/05, [REDACTED]. See Impact Statement, [REDACTED].

²⁰⁷ [REDACTED]; iMMO Expert Report on V09/05, [REDACTED]. See Impact Statement, [REDACTED].

²⁰⁸ iMMO Expert Report on V09/05, pp. 12, 22-25.

²⁰⁹ [REDACTED].

²¹⁰ Trial Judgment, [REDACTED].

²¹¹ Trial Judgment, [REDACTED], 532.

²¹² Trial Judgment, para. 810.

²¹³ Trial Judgment, paras 530-531.

²¹⁴ Trial Judgment, [REDACTED].

mistreated.²¹⁵ This caused immense psychological strain.²¹⁶ [REDACTED].
[REDACTED].²¹⁷ [REDACTED].²¹⁸

137. V09/05 suffers from depression, has difficulty sleeping and experiences nightmares, flashbacks, and intrusive memories of the torture.²¹⁹ These symptoms of post-traumatic stress disorder (nightmares and intrusive memories) derive from the violence he experienced while detained.²²⁰ His memories of the alleged events are triggered when he hears someone scream and he also gets terrified when he sees people who look like the men who tortured him or people who wear black uniforms. He is continually on guard.²²¹ V09/05 still hears the threats and screaming of the BIA men, [REDACTED].²²² [REDACTED],²²³ [REDACTED].²²⁴ [REDACTED].²²⁵ His family life was affected by what he suffered in Zllash/Zlaš [REDACTED].²²⁶ [REDACTED].²²⁷ In this regard, V09/05 suffered a damage to his life plan, as the crimes for which Mr Mustafa was convicted affected his personal and family development.

²¹⁵ Trial Judgment, paras 530-531.

²¹⁶ Impact Statement, [REDACTED]. Trial Judgment, para. 530.

²¹⁷ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²¹⁸ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²¹⁹ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²²⁰ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²²¹ iMMO Expert Report on V09/05, [REDACTED].

²²² iMMO Expert Report on V09/05, [REDACTED]. See also [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²²³ [REDACTED]. See Impact Statement, [REDACTED].

²²⁴ [REDACTED]. iMMO Expert Report on V09/05, [REDACTED]. See Impact Statement, [REDACTED].

²²⁵ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²²⁶ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²²⁷ Trial Judgment, [REDACTED].

138. In addition, the Panel observes that V09/05 was not able to discuss his time in detention at the ZDC with any other victims as they refused to do so out of what he believes is fear; furthermore, he felt unable to tell a doctor the true cause of his injuries.²²⁸ In the view of the Panel, this is the consequence of a social stigma which – as regards the Direct Victims and the other ZDC detainees – originated at the ZDC when Mr Mustafa and his BIA subordinates labelled the Direct Victims and the other ZDC detainees as “collaborators” and “traitors”. The Panel recalls more specifically that, while arbitrarily detained and tortured at the ZDC, the Direct Victims and other detained persons were accused by Mr Mustafa and his BIA subordinates of being spies, traitors, thieves, liars, or of collaborating with Serbs.²²⁹ It further recalls that the torture inflicted upon them was also politically motivated.²³⁰ [REDACTED].²³¹ [REDACTED].²³²

139. Considering the above, the Panel finds that, in the specific case of V09/05, by arbitrarily detaining him and branding him as a “collaborator”, Mr Mustafa, as part of a joint criminal enterprise with other BIA members, set him apart from his community and, in doing so, contributed to V09/05’s sense of isolation, social stigma, and feelings of insecurity, which he experiences to this day, and as a result of which he was not afforded the opportunity to process his trauma or learn to develop better coping skills²³³ or have his suffering acknowledged by his peers.

²²⁸ See Impact Statement, [REDACTED].

²²⁹ Trial Judgment, para. 579 [REDACTED].

²³⁰ Trial Judgment, para. 580 [REDACTED].

²³¹ Trial Judgment, [REDACTED].

²³² iMMO Expert Report on V09/05, [REDACTED].

²³³ See Impact Statement, [REDACTED].

140. **Material harm.** Victims' Counsel argues that V09/05 suffered a damage to his life plan²³⁴ in that his experience at the ZDC has been entirely life-altering and, to a large extent, has destroyed any positive prospects in his life.²³⁵ She submits that, had the crimes not occurred, "it is a well-founded expectation that [V09/05] would have had the capacity to pursue an average career path".²³⁶ [REDACTED] after his release from the ZDC, although his health started to improve, the pain and anxiety he experienced made it difficult to function [REDACTED].²³⁷

141. The Panel considers that intense psychological trauma, anguish, and pain, such as suffered by V09/05, may not only lead to developing physical and mental conditions, but may/will also affect an individual's capabilities to function within society. For instance, it will impact a victim's capacity to gain full employment and regular income. It will further alter an individual's life plan, by interrupting personal, family, and professional development.²³⁸

142. In the case at hand, the Panel is of the view that, had the arbitrary detention and torture not occurred, [REDACTED], V09/05 would have most likely than not been able to pursue "an average career path" [REDACTED].²³⁹ The Panel is also persuaded that the crimes of which Mr Mustafa was convicted, while not the only cause, contributed to V09/05's inability to pursue a career [REDACTED].²⁴⁰

²³⁴ See [Victims' Counsel Reparations Request](#), paras 13, [REDACTED] and 58.

²³⁵ See Victims' Counsel Reparations Request, [REDACTED].

²³⁶ Impact Statement, [REDACTED].

²³⁷ iMMO Expert Report on V09/05, [REDACTED]. See also iMMO Expert Report on V09/05, [REDACTED].

²³⁸ See paragraph 91 above. Similarly, IACtHR, [Case of Tibi v Ecuador](#), paras 244-246.

²³⁹ See paragraph 95 above as to factual causation.

²⁴⁰ See paragraph 96 above as to legal causation.

143. Thus, it finds that V09/05 incurred a loss of earnings and a damage to his life plan, to the extent that he was deprived of the opportunity to pursue an “average career path”.

144. **Conclusion.** In the Panel’s view, V09/05 has provided proof to the requisite standard of the harm outlined above as well as the causal link between said harm and the crimes of which Mr Mustafa was convicted.

145. In light of the foregoing, the Panel finds that V09/05 experienced physical and mental harm with long-term consequences, as well as material harm, as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.

b) V08/05

146. At the outset, the Panel relies on the findings made in the Trial Judgment establishing beyond reasonable doubt that V08/05 was arbitrarily detained and tortured at the ZDC by Mr Mustafa and other BIA members and suffered physical and mental harm as a result.²⁴¹ The Panel also recalls that [REDACTED].²⁴²

147. For physical and mental harm, the Panel relies on the findings made in the Trial Judgment, [REDACTED],²⁴³ any supporting documentation provided, and on the conclusions of the iMMO Expert Report on V08/05.

148. **Physical harm.** V08/05 was held at the ZDC in inhuman and degrading conditions.²⁴⁴ He was taken for interrogation [REDACTED] he was questioned by two

²⁴¹ Trial Judgment, [REDACTED].

²⁴² Trial Judgment, [REDACTED].

²⁴³ Trial Judgment, [REDACTED]; [REDACTED].

²⁴⁴ Trial Judgment, paras 501-525.

BIA soldiers. Then, V08/05 [REDACTED] was hit [REDACTED], leaving him in pain and bruised [REDACTED].²⁴⁵ After his release, [REDACTED], V08/05 was able to observe the black bruises [REDACTED].²⁴⁶ He did not seek medical assistance.²⁴⁷

149. V08/05 [REDACTED] does not have any physical symptoms or scars from the mistreatment suffered during his detention.²⁴⁸

150. Considering the above, the Panel finds that V08/05 suffered physical harm albeit with no long-lasting consequences.

151. **Mental harm.** V08/05 was not informed of the reasons for his deprivation of liberty,²⁴⁹ he did not know for how long that detention would last, and was unable to contact or communicate with the outside world, including with his family.²⁵⁰

152. Like V09/05, V08/05 witnessed the brutal mistreatment inflicted on his co-detainees. [REDACTED].²⁵¹ V08/05 has carried this fear to this day.²⁵² He struggled sleeping [REDACTED].²⁵³ The atmosphere of constant fear was further heightened by the fact that he was not informed of the reasons for the deprivation of his liberty: [REDACTED].²⁵⁴

²⁴⁵ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²⁴⁶ [REDACTED].

²⁴⁷ [REDACTED].

²⁴⁸ See iMMO Expert Report on V08/05, [REDACTED]; see also [REDACTED].

²⁴⁹ Trial Judgment, paras [REDACTED], 532.

²⁵⁰ Trial Judgment, paras [REDACTED], 810.

²⁵¹ Trial Judgment, paras [REDACTED], 530-531. See Impact Statement, [REDACTED].

²⁵² [REDACTED].

²⁵³ iMMO Expert Report on V09/05, [REDACTED]. See Impact Statement, [REDACTED].

²⁵⁴ [REDACTED]. Trial Judgment, para. 532. See Impact Statement, [REDACTED].

153. V08/05 displays symptoms of post-traumatic stress disorder, such as flashbacks [REDACTED], nightmares [REDACTED], as well as avoidance and mistrust of others.²⁵⁵ V08/05 still becomes nervous, tired, and fatigued, as a result of his time at the ZDC.²⁵⁶ The symptoms of post-traumatic stress disorder started after his release from the ZDC. V08/05 currently no longer suffers from nightmares.²⁵⁷

154. V08/05 also experienced disruption in his personal relationships and family life: [REDACTED].²⁵⁸ Like V09/05, V08/05 suffered a damage to his life plan, as the crimes for which Mr Mustafa was convicted affected his personal and family development.

155. In addition, the Panel observes that, like the other detainees at the ZDC,²⁵⁹ V08/05 was accused of being a spy, a liar, and of collaborating with Serbs.²⁶⁰ [REDACTED].²⁶¹ [REDACTED].²⁶² The Panel is of the view that, by arbitrarily detaining and labelling V08/05 as a “collaborator”, Mr Mustafa, as part of a joint criminal enterprise with other BIA members, set him apart from his community and, in doing so, contributed to V08/05’s feelings of insecurity, which continues to this day, and, especially his fear to speak out about what happened to him at the ZDC or seek accountability for those

²⁵⁵ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED]. iMMO Expert Report on V08/05, [REDACTED]. See also iMMO Expert Report on V08/05, [REDACTED]. [REDACTED].

²⁵⁶ Impact Statement, [REDACTED]. [REDACTED].

²⁵⁷ iMMO Expert Report on V08/05, [REDACTED].

²⁵⁸ Trial Judgment, paras [REDACTED], 801. See Impact Statement, [REDACTED].

²⁵⁹ See paragraph 138 above.

²⁶⁰ Trial judgment, [REDACTED].

²⁶¹ Trial Judgment, [REDACTED].

²⁶² Trial Judgment, [REDACTED].

events.²⁶³ Further, V08/05 was never afforded the space to process the trauma ensuing from his time at the ZDC.

156. **Material harm.** While V08/05 was able to secure employment [REDACTED],²⁶⁴ the Panel considers that, had he not been detained and tortured at the ZDC, and considering the intense mental trauma experienced by V08/05 as a result²⁶⁵ [REDACTED],²⁶⁶ he would have been able to develop his career and achieve a promotion to a higher position due to better performance than what was possible as a result of the crimes.²⁶⁷ The Panel is also persuaded that the crimes of which Mr Mustafa was convicted, while not the only cause, contributed to V08/05's limited professional development or lack thereof.²⁶⁸ Therefore, as argued by Victims' Counsel,²⁶⁹ the Panel finds that, in terms of material harm, V08/05 has incurred a loss of income as well as a damage to his life plan, to the extent that his ability to grow his career was hampered.

157. **Conclusion.** In the Panel's view, V08/05 has provided proof to the requisite standard of the harm outlined above as well as the causal link between said harm and the crimes of which Mr Mustafa was convicted.

158. In light of the foregoing, the Panel finds that V08/05 experienced: physical harm with no long-lasting consequences, mental harm with long-term consequences, and

²⁶³ [REDACTED]. [REDACTED]. *See also* Impact Statement, [REDACTED].

²⁶⁴ Victims' Counsel Reparations Request, [REDACTED].

²⁶⁵ *See also* paragraph 141 above.

²⁶⁶ *See* Impact Statement, [REDACTED]; iMMO Expert Report on V08/05, [REDACTED].

²⁶⁷ *See* Victims' Counsel Reparations Request, [REDACTED]; Lerz Report, [REDACTED]. *See* paragraph 95 above as to factual causation.

²⁶⁸ *See* Victims' Counsel Reparations Request, [REDACTED]. *See* paragraph 96 above as to legal causation.

²⁶⁹ *See* paragraph 126 above.

material harm, as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.

c)V10/05

159. At the outset, the Panel relies on the findings made in the Trial Judgment establishing beyond reasonable doubt that V10/05 was arbitrarily detained and tortured at the ZDC by Mr Mustafa and his BIA subordinates and suffered physical and mental harm as a result.²⁷⁰ The Panel also recalls that [REDACTED].²⁷¹

160. For physical and mental harm, the Panel relies on the findings made in the Trial Judgment, [REDACTED],²⁷² any supporting documentation provided. The Panel notes that a medical examination of V10/05 [REDACTED] was not possible [REDACTED].²⁷³ The Panel also considers the Victims' Counsel's submissions concerning the difficulties she faced in obtaining medical records.²⁷⁴ In particular, she contended that [REDACTED].²⁷⁵

161. **Physical harm.** [REDACTED] V10/05 [REDACTED] beaten up by several BIA members [REDACTED].²⁷⁶ He was kicked and hit [REDACTED].²⁷⁷ Like his co-

²⁷⁰ Trial Judgment, [REDACTED].

²⁷¹ Trial Judgment, [REDACTED].

²⁷² Trial Judgment, [REDACTED]; [REDACTED].

²⁷³ [REDACTED]; [Victims' Counsel 28 April 2022 Report](#), para. 11; and [Decision of 6 May 2022](#), para. 11.

²⁷⁴ [Victims' Counsel Second Submissions on Reparations](#), para. 12. *See also* [REDACTED].

²⁷⁵ [Victims' Counsel Second Submissions on Reparations](#), para. 12.

²⁷⁶ Trial Judgment, [REDACTED]. *See* Impact Statement, [REDACTED].

²⁷⁷ Trial Judgment, [REDACTED]. *See* Impact Statement, [REDACTED].

detainees, V10/05 was held in inhuman and degrading conditions.²⁷⁸ [REDACTED].²⁷⁹ [REDACTED].²⁸⁰ [REDACTED].²⁸¹ [REDACTED].²⁸²

162. V10/05 sustained [REDACTED].²⁸³ [REDACTED].²⁸⁴ [REDACTED] he is not fully recovered to this day [REDACTED],²⁸⁵ [REDACTED].²⁸⁶ [REDACTED].²⁸⁷

163. **Mental harm.** Like his co-detainees, V10/05 was not informed of the reasons for his deprivation of liberty,²⁸⁸ he did not know for how long that detention would last, and was unable to contact or communicate with the outside world, including with his family.²⁸⁹

164. During the detention at the ZDC, V10/05 was subjected to [REDACTED].²⁹⁰ [REDACTED]. [REDACTED].²⁹¹ [REDACTED].²⁹² Throughout his time in detention, V10/05 [REDACTED].²⁹³ Like his co-detainees, he was unable to sleep, terrified by the

²⁷⁸ See Trial Judgment, paras 501-525. See Impact Statement, [REDACTED].

²⁷⁹ Trial Judgment, [REDACTED].

²⁸⁰ Trial Judgment, paras [REDACTED]. See Impact Statement, [REDACTED].

²⁸¹ Trial Judgment, [REDACTED].

²⁸² Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²⁸³ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²⁸⁴ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²⁸⁵ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

²⁸⁶ Impact Statement, [REDACTED].

²⁸⁷ Impact Statement, [REDACTED].

²⁸⁸ Trial Judgment, [REDACTED], 532.

²⁸⁹ Trial Judgment, paras [REDACTED], 810.

²⁹⁰ Impact Statement, [REDACTED].

²⁹¹ Trial Judgment, [REDACTED].

²⁹² Trial Judgment, [REDACTED].

²⁹³ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED].

sounds of others screaming and being beaten, and due to the constant fear that he could be next to be mistreated.²⁹⁴ [REDACTED].²⁹⁵

165. V10/05 has difficulties sleeping and experiences nightmares.²⁹⁶ The ill-treatments endured at the ZDC [REDACTED].²⁹⁷

166. In addition, the Panel observes that, in the aftermath of the crimes, V10/05 did not feel comfortable telling medical professionals about the true cause of his injuries.²⁹⁸ Like for V09/05, this reveals in the view of the Panel a social stigma that is rooted in how Mr Mustafa and his BIA subordinates treated the Direct Victims and other ZDC detainees. [REDACTED] he was accused of collaborating with Serbs and of being a spy.²⁹⁹ The Panel considers that by arbitrarily detaining and branding V10/05 as a “collaborator” during his detention in Zilash/Zlaš, Mr Mustafa, as part of a joint criminal enterprise with other BIA members, set him apart from his community and, in doing so, contributed to V10/05’s inability to openly seek help to heal his trauma ensuing from his time being detained at the ZDC, reveal what happened to him at the ZDC to his peers, or have that suffering acknowledged.

²⁹⁴ Trial Judgment, para. 530. *See* Impact Statement, [REDACTED].

²⁹⁵ Trial Judgment, [REDACTED].

²⁹⁶ Trial Judgment, [REDACTED].

²⁹⁷ Impact Statement, [REDACTED]. [REDACTED]; [REDACTED].

²⁹⁸ Trial Judgment, [REDACTED]. *See* Impact Statement, [REDACTED].

²⁹⁹ Trial Judgment, [REDACTED].

167. **Material harm.** V10/05 was not able to return to his former occupation³⁰⁰ as result of the injuries sustained while detained at the ZDC, [REDACTED].³⁰¹ [REDACTED].³⁰² [REDACTED].³⁰³

168. The Panel finds that, had the arbitrary detention and torture not occurred, and, as a result, had he not sustained the physical and mental injuries described above,³⁰⁴ V10/05 would have most likely than not been able to return to his former occupation [REDACTED].³⁰⁵ The Panel is also persuaded that the crimes of which Mr Mustafa was convicted contributed to V10/05's [REDACTED].³⁰⁶

169. Therefore, as argued by Victims' Counsel,³⁰⁷ the Panel finds that, in terms of material harm, V10/05 has incurred a loss of income and damage to his life plan, to the extent that he was no longer able to undertake [REDACTED] as he used to do [REDACTED].

170. **Conclusion.** In the Panel's view, V10/05 has provided proof to the requisite standard of the harm outlined above as well as the causal link between said harm and the crimes of which Mr Mustafa was convicted.

³⁰⁰ [REDACTED].

³⁰¹ Trial Judgment, [REDACTED]. See Impact Statement, [REDACTED]. [REDACTED].

³⁰² See Impact Statement, [REDACTED].

³⁰³ See Impact Statement, [REDACTED]. [REDACTED].

³⁰⁴ See also paragraph 141 above.

³⁰⁵ See paragraph 95 above as to factual causation.

³⁰⁶ See paragraph 96 above as to legal causation.

³⁰⁷ See paragraph 126 above.

171. In light of the foregoing, the Panel finds that V10/05 experienced physical and mental harm with long-term consequences, and material harm, as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.

2. Harm Suffered by the Indirect Victims

172. At the outset, the Panel refers to the facts related to the murder of [REDACTED], as articulated in the Trial Judgment, establishing that he was arbitrarily detained and tortured, at the ZDC, and subsequently killed as a result of the combination between the severe mistreatment inflicted by Mr Mustafa's BIA subordinates who detained him for almost three weeks, causing serious bodily harm; the denial of medical aid by Mr Mustafa's BIA subordinates, and gunshot wounds caused by bullets.³⁰⁸

173. The Panel further refers to [REDACTED] in the Trial Judgment. The Panel found [REDACTED].³⁰⁹

174. The Panel recalls that immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim but other family members (or non-family members) having a special bond of affection with or dependence on the direct victim may also be considered to be in a close relationship therewith.³¹⁰ Moreover, concerning mental harm, emotional suffering (such as grief, sorrow, bereavement or distress) of an indirect victim as a result of the death or grave

³⁰⁸ Trial Judgment, paras 639, 689-695, 758-758, 831.

³⁰⁹ Trial Judgment, [REDACTED].

³¹⁰ See [Third Victims Participation Decision](#), para. 18 and references therein.

injury of a direct victim, will be presumed, provided that the close relationship between them is sufficiently established.³¹¹

175. The Indirect Victims have provided material supporting kinship with the Murder Victim.³¹² [REDACTED].³¹³ [REDACTED]³¹⁴ [REDACTED],³¹⁵ [REDACTED].

176. V06/05 [REDACTED], V11/05 [REDACTED], V12/05 [REDACTED]³¹⁶ [REDACTED] V05/05 [REDACTED]³¹⁷ [REDACTED] the Murder Victim's arbitrary arrest, detention, and subsequent murder, as well as the circumstances surrounding it, had a devastating impact on the entire family,³¹⁸ [REDACTED]:³¹⁹

[REDACTED].³²⁰

177. V06/05 was profoundly affected by and changed as a result of the murder of [REDACTED].³²¹ V06/05 suffers from headaches, anxiety, and stress,³²² [REDACTED]:³²³

³¹¹ See [Third Victims Participation Decision](#), para. 21 and references therein.

³¹² See [Second Victims Participation Decision](#), para. 26; [Third Victims Participation Decision](#), para. 12. The Panel notes that the determination as to kinship was already made in the [Second Victims Participation Decision](#) and [Third Victims Participation Decision](#), albeit at a lower threshold (See Rule 113(4) of the Rules, [Third Victims Participation Decision](#), para. 12).

³¹³ See [REDACTED].

³¹⁴ [REDACTED].

³¹⁵ [REDACTED].

³¹⁶ Trial Judgment, [REDACTED].

³¹⁷ [REDACTED]. [REDACTED].

³¹⁸ See [REDACTED].

³¹⁹ [REDACTED].

³²⁰ [REDACTED]. Impact Statement, [REDACTED].

³²¹ [REDACTED]. Impact Statement, [REDACTED].

³²² [REDACTED]. Impact Statement, [REDACTED].

³²³ [REDACTED]. Impact Statement, [REDACTED].

[REDACTED].³²⁴

178. As outlined below,³²⁵ some of the Indirect Victims [REDACTED]. They described the sorrow, distress, and horror they felt at the time, and how that pain and suffering has followed them throughout their lives.

179. V11/05 indicated that [REDACTED].³²⁶ Since that time, he has experienced nightmares and suffers from insomnia,³²⁷ [REDACTED]³²⁸ [REDACTED].³²⁹ The Murder Victim's death has had a continuous impact on his life.³³⁰

180. The life of V12/05, [REDACTED],³³¹ was completely changed as a result of the murder of [REDACTED]; he was deeply affected by it.³³² V12/05 is [REDACTED],³³³ has difficulties to sleep,³³⁴ [REDACTED],³³⁵ and feels exhausted all the time.³³⁶

181. V13/05 described [REDACTED]³³⁷ as very grave for her.³³⁸ Regarding the impact of the murder of [REDACTED], V13/05 indicated that every loss is painful and leaves behind a huge void.³³⁹

³²⁴ [REDACTED]. *See also* [REDACTED].

³²⁵ *See* paragraphs 179-181 below.

³²⁶ [REDACTED]. *See also* [REDACTED]. Impact Statement, [REDACTED].

³²⁷ [REDACTED]. Impact Statement, [REDACTED].

³²⁸ [REDACTED]. Impact Statement, [REDACTED].

³²⁹ [REDACTED]. Impact Statement, [REDACTED].

³³⁰ [REDACTED]. Impact Statement, [REDACTED].

³³¹ [REDACTED]. Impact Statement, [REDACTED].

³³² [REDACTED]. Impact Statement, [REDACTED].

³³³ [REDACTED]. Impact Statement, [REDACTED].

³³⁴ [REDACTED]. Impact Statement, [REDACTED].

³³⁵ [REDACTED]. Impact Statement, [REDACTED].

³³⁶ [REDACTED]. Impact Statement, [REDACTED].

³³⁷ [REDACTED]. Impact Statement, [REDACTED].

³³⁸ [REDACTED]. Impact Statement, [REDACTED].

³³⁹ [REDACTED]. Impact Statement, [REDACTED].

182. The Panel finds that the facts outlined below must also be considered as part of the mental harm suffered by the Indirect Victims, and as testament to the ordeal they have faced from the moment their relative was taken from them.

183. In the aftermath of the Murder Victim's deprivation of liberty, [REDACTED].³⁴⁰ As rightly put by Victims' Counsel, "feelings of grief and horror were preceded by the fear and anguish [over the Murder Victim's] disappearance and the lack of conclusive information and details about his suffering and fate".³⁴¹

184. [REDACTED].³⁴²

185. Moreover, the Indirect Victims have not been able to grieve the loss of their relative [REDACTED] which has made the burden even heavier for them to bear³⁴³ and has hampered their ability to move forward with their lives.³⁴⁴ For instance, [REDACTED],³⁴⁵ [REDACTED].³⁴⁶

186. Furthermore, the Panel notes that [REDACTED] effort to seek justice [REDACTED] has been severely impaired, [REDACTED].³⁴⁷

187. Lastly, the pain and suffering experienced by the family members of the Murder Victim also had an impact on this family's next generation.³⁴⁸

³⁴⁰ Trial Judgment, [REDACTED].

³⁴¹ [Impact Statement](#), para. 66.

³⁴² [REDACTED]. Impact Statement, [REDACTED]. See [REDACTED].

³⁴³ See [REDACTED]. See also, [REDACTED]; [REDACTED]. Trial Judgment, [REDACTED]. Impact Statement, [REDACTED].

³⁴⁴ Impact Statement, [REDACTED].

³⁴⁵ [REDACTED].

³⁴⁶ [REDACTED].

³⁴⁷ Trial Judgment, [REDACTED].

³⁴⁸ Trial Judgment, [REDACTED]. Impact Statement, [REDACTED]. See paragraph 92 above, regarding the concept of transgenerational harm.

188. **Conclusion.** The Panel finds that, V05/05, V06/05, V11/05, V12/05, and V13/05, have provided proof on a balance of probabilities of their kinship with the Murder Victim. Moreover, [REDACTED], V05/05, V06/05, V11/05, V12/05, and V13/05, have provided proof to the requisite standard of the mental harm outlined above, as well as the causal link between said harm and the crimes of which Mr Mustafa was convicted. The Panel therefore does not deem it necessary to resort to presumptions.

189. In light of the foregoing, the Panel finds that V05/05, V06/05, V11/05, V12/05 and V13/05 experienced mental harm as a result of the war crimes of arbitrary detention, torture, and murder of which Mr Mustafa was convicted with regard to the Murder Victim.

VI. REPARATION ORDER AGAINST MR MUSTAFA

190. This order is made directly against Mr Mustafa pursuant to Articles 22(8) and 44(6) of the Law.³⁴⁹

A. BENEFICIARIES OF REPARATIONS AND HARM

191. In the previous section, the Panel set out the scope and extent of the harm suffered by the Victims in this case. As established above,³⁵⁰ V09/05, V08/05, and V10/05 have all suffered physical, mental, and material harm, and V05/05, V06/05, V11/05, V12/05, and V13/05 have all suffered mental harm, as a result of the crimes of which Mr Mustafa was convicted.

³⁴⁹ See paragraph 113 above.

³⁵⁰ See paragraphs 131 *et seq.* above.

B. TYPES AND MODALITIES OF REPARATIONS

1. Submissions

192. Victims' Counsel submits that the prosecution and conviction of the perpetrators of the crimes committed against the Victims, is, in and of itself, part of reparation.³⁵¹ She submits, that, the Victims seek firstly, as part of their right to full and effective reparations, acknowledgment of their suffering and an appropriate criminal sanction in this case.³⁵² She argues in this regard that the KSC is the last hope for the Victims to see justice served for the crimes committed against them.³⁵³

193. Victims' Counsel further submits that Victims seek individual reparations in the form of compensation as "collective forms and [...] of a non-pecuniary character, such as the erection of commemorative statues or educational programmes" are not suitable in the context of this case.³⁵⁴

194. The Defence did not make any observations in response to the Victims' Counsel's submissions.

2. Determination by the Panel

195. In accordance with Article 22(8) of the Law, the Panel will specify below the appropriate reparations.³⁵⁵

³⁵¹ [Victims' Counsel First Submissions on Reparations](#), para. 32.

³⁵² [Victims' Counsel Reparations Request](#), para. 8; [T. 15 September 2022](#), public, p. 4843, lines 8-9.

³⁵³ [T. 15 September 2022](#), public, p. 4843, line 24 to p. 4844, line 1.

³⁵⁴ [Victims' Counsel Reparations Request](#), para. 8. [T. 15 September 2022](#), public, p. 4844, lines 2-9; [T. 15 September 2021](#), p. 370, public, lines 7-13.

³⁵⁵ See paragraphs 104 *et seq.* above.

196. Before doing so, the Panel wishes to stress that the conviction and sentencing in the Trial Judgment constitute already a form of remedy for the Victims which is foreseen under the right of “acknowledgement” in Article 22(3) of the Law. It recalls in this regard that acknowledgment of serious breaches of human rights and international humanitarian law is an important form of remedy for victims.³⁵⁶

197. More specifically in this case, it serves to acknowledge and detail the crimes that harmed the Victims, and hold Mr Mustafa accountable for the serious crimes committed and the harms caused to them.

198. It also gave the opportunity to the Victims – [REDACTED] notwithstanding the climate of fear and intimidation in Kosovo – to be heard, and to demand justice and redress for crimes committed more than two decades ago against them and against their family members who are no longer with them.

199. In this regard, the Panel recalls its findings in the Trial Judgment as to the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the KSC, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members, including Mr Mustafa, against Kosovar Albanians: witnesses are stigmatised as “traitors” or “collaborators”; are unable to speak freely about the events they underwent; are subjected to threats and intimidation; and live in constant fear that something will happen to them or their family.³⁵⁷

³⁵⁶ See [Decision on Victims’ Rights](#), paras 16-17.

³⁵⁷ Trial Judgment, paras 50-57 and references therein.

200. Lastly, the conviction and sentencing in the Trial Judgment contribute to the right for the Victims, and more broadly their families and their communities, to have access to the truth of what happened.³⁵⁸ In this regard, the Victims have expressed the hope that these proceedings shed light on the fact that crimes were committed on all sides, including by some KLA fighters, as happened in this case in Zllash/Zlaš.³⁵⁹

201. As regards the appropriate reparations pursuant to Article 22(8) of the Law, the Panel recalls the type of harms suffered by the Victims³⁶⁰ and the context of the case, namely: the climate of witness intimidation in Kosovo; the need to preserve the anonymity of the Victims *vis-à-vis* the public; and the need to avoid creating tension within the community. Having carefully reviewed the Victims' Counsel's submissions,³⁶¹ the Panel finds that individual reparations in the form of compensation constitute the most appropriate type and modality of reparations in this case. Although "no money will bring back the lost family member [or] can ever repair years of depression, of a life deprived of opportunities to work as before and live a life which allows joy and happiness",³⁶² compensation will provide some measure of financial relief to the Victims.

³⁵⁸ [Decision on Victims' Rights](#), para. 17. See [UN Basic Principles on Reparations](#), paras 22(b), 24; [T. 15 September 2021](#), public, p. 355, line 13 to 356, line 2. See also in relation to purposes of sentencing, Trial Judgment, para. 775.

³⁵⁹ [T. 15 September 2021](#), public, p. 350, line 11 to p. 353, line 10

³⁶⁰ See paragraphs 131-189 above.

³⁶¹ See paragraphs 68, 192-193 above.

³⁶² [T. 15 September 2021](#), public, p. 369, lines 2-5.

C. SCOPE OF MR MUSTAFA'S LIABILITY FOR REPARATIONS

1. Submissions

202. Victims' Counsel submits that any compensation must be proportionate to the gravity of the harm suffered and must consider the circumstances of the case at hand.³⁶³ She suggests that the Panel adopt a three-pronged approach to achieve an equitable assessment of the harm suffered, namely that it take guidance from international case law, consider existing Kosovo legislation, and then combine it with the individual information on harm as provided in the iMMO Reports, the calculations on economic loss in the Lerz Report [REDACTED].³⁶⁴

203. She also contends that while "an award mirroring the calculations provided in the Lerz [Report] would be unprecedented in international case law [...] the extent of individual harm needs to be recognised as each and every individual has to live with the consequences for the rest of their lives".³⁶⁵

204. For V08/05, Victims' Counsel requests: at a minimum €20,000 for material harm; €4,000 for physical harm; and €6,000 for mental harm; for a total of – at a minimum – €30,000.³⁶⁶

³⁶³ [Victims' Counsel Reparations Request](#), para. 9.

³⁶⁴ [Victims' Counsel Reparations Request](#), paras 2, 10, 57.

³⁶⁵ [Victims' Counsel Reparations Request](#), para. 43.

³⁶⁶ [Victims' Counsel Further Information on Reparations](#), para. 6. *See also* Victims' Counsel Reparations Request, [REDACTED]; Impact Statement, [REDACTED].

205. For V09/05, Victims' Counsel requests: at a minimum €50,000 for material harm; €20,000 for physical harm; and €10,000 for mental harm; for a total of – at a minimum – €80,000.³⁶⁷

206. For V10/05, Victims' Counsel requests: at a minimum €30,000 for material harm; €20,000 for physical harm; and €10,000 for mental harm; for a total of – at a minimum – €60,000.³⁶⁸

207. For the Indirect Victims, Victims' Counsel suggests to assess financial compensation based on the evidence provided by the victims as to the impact of the crimes as well as standards emerging from international and national case law, which she discusses in her submissions.³⁶⁹ She requests the following amounts that she deems equitable considering international practice as well as the impact of the loss of the family member and [REDACTED] to the deceased as described by the victims in their testimonies: €10,000 for V05/05, V06/05, and V12/05, €5,000 for V11/05, and €2,000 for V13/05.³⁷⁰

208. The Defence did not make any observations in response to Victims' Counsel's submissions, including as to the Lerz Report.³⁷¹

³⁶⁷ [Victims' Counsel Further Information on Reparations](#), para. 6. *See also* Victims' Counsel Reparations Request, [REDACTED]; Impact Statement, [REDACTED].

³⁶⁸ [Victims' Counsel Further Information on Reparations](#), para. 6. *See also* Victims' Counsel Reparations Request, paras 44-48; Impact Statement, [REDACTED].

³⁶⁹ [Victims' Counsel Second Submissions on Reparations](#), paras 17 *et seq.*; [Victims' Counsel Reparations Request](#), paras 51-56.

³⁷⁰ [Victims' Counsel Reparations Request](#), para. 57.

³⁷¹ *See* paragraph 124 above.

2. Determination by the Panel

a) General considerations

209. At the outset, the Panel considers that Mr Mustafa is liable to repair the harm caused to all Direct and Indirect Victims of the crimes of which he was convicted, regardless of the different modes of liability relied on in the conviction, and regardless of whether others may have also contributed to the harm.³⁷² The Panel also recalls that the indigence of the convicted person at the time of the issuance of the reparation order is neither an obstacle to the imposition of liability for reparations, nor does it give the convicted person any right to benefit from reduced liability.³⁷³

210. Moreover, the Panel recalls the principle that the convicted person's liability for reparations must be proportional to the harm caused.³⁷⁴ In other words, it must reflect the scope and extent of the harm suffered by the victims.³⁷⁵ Thus, in setting the amount of Mr Mustafa's financial liability, the Panel will consider the scope and extent of the harm as established above.

211. Recalling that reparations at the KSC ought to be victim-driven and victim-centred,³⁷⁶ the Panel will primarily rely on the Victims' Counsel Reparations Request and, more specifically, on her submissions as regards the amount of Mr Mustafa's financial liability (and corresponding reparations awards).

³⁷² See paragraph 116 above.

³⁷³ See paragraph 117 above.

³⁷⁴ See paragraph 114 above.

³⁷⁵ See paragraph 115 above.

³⁷⁶ See paragraph 68 above.

212. It will consider in this context any relevant submissions and material produced to assess the scope and extent of harm in financial terms.³⁷⁷ Nevertheless, in the view of the Panel, it is not a requirement to furnish data as to the costs of medical treatments or other harms that are of a financial or patrimonial nature, considering notably: the lapse of more than twenty years since the commission of the crimes; and the fact that victims may not have sought medical treatment for mental harm or did not have the possibility to disclose what they had suffered, due to the climate in Kosovo with regard to victims of crimes allegedly committed by former KLA members or the fear of reprisals.³⁷⁸

213. Furthermore, the Panel will refrain from exceeding the Victims' Counsel Reparations Request when setting the amount of Mr Mustafa's financial liability and corresponding reparations awards, except under exceptional circumstances. This stems from the fact that pursuant to Article 22(7) of the Law, a Trial Panel's power to include, on its own motion, in a trial judgment, a decision on the scope and extent of harm caused to victims, where it is not seized of a request to do so, presupposes the existence of exceptional circumstances.³⁷⁹ In the Panel's view, this means that a Trial

³⁷⁷ The Panel notes that some physical, mental, or material harm may be assessed in financial terms (for instance, medical costs, lost wages, future care costs, and damage to any property) whereas some other harms cannot be clearly quantified in monetary terms or do not lend themselves to precise calculation (such as *pretium doloris*, but also moral harm, for which, according to the ICC, "there is an inherent difficulty in addressing and measuring monetary values for moral harm", see ICC, [Al Mahdi TC Reparations Order](#), para. 129).

³⁷⁸ See paragraph 199 above.

³⁷⁹ Article 22(7) of the Law provides that: "In its judgment, a Trial Panel may, either upon request or on its own motion *in exceptional circumstances*, include a decision on the scope and extent of any damage, loss and injury to, or in respect of, Victims and will state the principles on which it is acting" [emphasis added].

Panel is first and foremost confined to representations made on behalf of the victims and the requests contained therein, provided those are established to the requisite standard. Yet, the Panel is also of the view that a Trial Panel retains a degree of discretion in light of the variety of submissions a Trial Panel may consider when ruling on reparations,³⁸⁰ and given that it may act without any representation and yet award reparations to victims.³⁸¹ Thus, it finds that a Trial Panel may under exceptional circumstances depart from representations made on behalf of the victims and the requests contained therein.

214. Ultimately, by applying judicial discretion, the Panel will set an amount for each type of harm – and the overall amount of Mr Mustafa’s financial liability – that it considers reasonable, in accordance with Article 22(3) of the Law, in the circumstances of the case, and that properly reflects the rights and interests of the victims, bearing in mind the rights of the convicted person.³⁸²

b) International case law

215. Having carefully reviewed Victims’ Counsel’s outline and discussion on international case law,³⁸³ the Panel takes note of the widely diverging amounts awarded, due in part to the different contexts in which the ECtHR, IACtHR, and ICC

³⁸⁰ Article 22(11) of the Law provides that: “Before making a decision under this Article, a Trial Panel *may* invite and shall take account of representations on behalf of the accused, Victims, other interested persons or interested States” [emphasis added]. Rule 168 of the Rules provides that: “[...] a Panel *may* appoint experts to assist it in determining the scope of any damage to, or in respect of victims and to suggest options concerning appropriate individual or collective reparations from the convicted person” [emphasis added].

³⁸¹ See Article 22(7) and (8) of the Law, and Rule 168 of the Rules.

³⁸² Similarly, ICC, [Lubanga AC Judgment on Decision setting Liability](#), para. 108.

³⁸³ [Victims’ Counsel Reparations Request](#), paras 11-25.

operate, and the specific circumstances of the cases concerned. Moreover, as rightly observed by Victims' Counsel,³⁸⁴ whilst international case law may offer guidance as to the type of harms considered, a methodology on how to assess the extent and scope of such harms has yet to emerge. Therefore, the Panel is not in a position to take guidance from international case law to determine the scope of Mr Mustafa's liability for reparations.

c) Kosovo legislation

216. Victims' Counsel contends that although legislation in Kosovo which addresses harm and injuries suffered in the context of the war in Kosovo in 1998-1999 does not recognize the harm suffered by the Victims, it provides, in her view, "a useful baseline for what has been found feasible and fundable within Kosovo".³⁸⁵

217. The Panel concurs with Victims' Counsel that this legislation provides an indication of what is in Kosovo considered a proportionate level of redress for harm resulting from the war in Kosovo in 1998-1999³⁸⁶ – even though these laws do not address the specific harm suffered by the Victims in this case, as the focus of those laws is the harm suffered as a result of the actions of the enemy, *i.e.* the Serb forces.³⁸⁷

218. Having carefully reviewed Victims' Counsel's outline and discussion on such legislation,³⁸⁸ the Panel decides that it will consider the Kosovo legislation – as a

³⁸⁴ [Victims' Counsel Reparations Request](#), para. 24.

³⁸⁵ [Victims' Counsel Reparations Request](#), para. 27.

³⁸⁶ [Victims' Counsel Reparations Request](#), para. 27. Victims' Counsel also submits that "[t]he arrangements in the legislation are conceptualised as reparations by Kosovo civil society organisations" ([Victims' Counsel Reparations Request](#), footnote 41).

³⁸⁷ See footnote number 404 below.

³⁸⁸ [Victims' Counsel Reparations Request](#), paras 27-33.

reference point – in order to set a reparation award that is deemed reasonable in the context of Kosovo.³⁸⁹

219. More specifically, the Panel will consider the following laws: (i) Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Civilian Victims of War and their Families of 8 December 2011³⁹⁰ (Law No. 04/L-054), subsequently amended by Law No. 04/L-172 on Amending and Supplementing the Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Sexual Violence Victims of the War, Civilian Victims and their Families of 20 March 2014³⁹¹ (Law No. 04/L-172), to include victims of sexual violence; and (ii) Law No. 04/L-261 on Kosovo Liberation Army War Veterans of 23 April 2014³⁹² (Law No. 04/L-261), subsequently amended by Law No. 05/L-141 on Amending and Supplementing the Law No. 04/L-261 on Kosovo Liberation Army War Veterans of 14 April 2017³⁹³ (Law No. 05/L-141).

220. The Panel observes that these laws notably regulate the rights and benefits to which veterans and civilians who were harmed in the context of the war in Kosovo in 1998-1999 or participated in the war efforts, as well as family members of deceased or missing KLA members and civilians, are entitled. The benefits available vary pursuant

³⁸⁹ [Victims' Counsel Reparations Request](#), para. 27.

³⁹⁰ [Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Civilian Victims of War and their Families](#), 8 December 2011.

³⁹¹ [Law No. 04/L-172 on Amending and Supplementing the Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Sexual Violence Victims of the War, Civilian Victims and their Families](#), 20 March 2014.

³⁹² [Law No. 04/L-261 on Kosovo Liberation Army War Veterans](#), 23 April 2014.

³⁹³ [Law No. 05/L-141 on Amending and Supplementing the Law No. 04/L-261 on Kosovo Liberation Army War Veterans](#), 14 April 2017.

to the category to which an individual belongs and range from monthly pensions to residential care and assistance, medical and physical rehabilitation, medical services abroad, professional rehabilitation, priority in employment, housing assistance, secondary school and university scholarships, and tax release.³⁹⁴ The entitlements provided for by these laws do not apply retroactively.³⁹⁵

221. The Panel further notes that Law No. 04/L-172, which amended Law No. 04/L-054 to include victims of sexual violence, suggests that Kosovo aspires to provide a support to all the victims harmed during the war in 1998-1999. However, the use of the word “enemy” throughout the text of the legislation appears to exclude the victims participating in this case, since they were harmed by members of the KLA.³⁹⁶

222. Nevertheless, given that this legislation seeks – for all intents and purposes – to repair the harm suffered by individuals during the war in 1998-1999 or support those who participated in the war efforts, the Panel finds the following figures of relative relevance for determining the financial liability of Mr Mustafa for reparations. The Panel will also consider the fact that the beneficiaries under these laws are entitled, in addition to pensions, to other (considerable) aids.³⁹⁷

³⁹⁴ See Articles 5-15 of [Law No. 04/L-054](#) and Articles 6-7 of [Law No. 04/L-172](#); Articles 23-33 of [Law No. 04/L-261](#).

³⁹⁵ See Article 22(2) of [Law No. 04/L-054](#); Article 39(2) of the [Law No. 04/L-261](#).

³⁹⁶ See Article 3(1.7) and (1.12.) of [Law No. 04/L-054](#). See also footnote 404 below. [Victims' Counsel Reparations Request](#), para. 27; [T. 15 September 2021](#), public, p. 349, lines 13-22.

³⁹⁷ See Articles 9-11, 13-14 of [Law No. 04/L-054](#); Articles 6-7 of [Law No. 04/L-172](#); Articles 23-33 of [Law No. 04/L-261](#).

223. Pursuant to Law No. 04/L-054, monthly pensions for a “KLA Invalid”³⁹⁸ range from €255 (with body injury over 31-40%) to €358,50 (with body injury over 80%).³⁹⁹ A simple addition of monthly pension payments for a “KLA Invalid” from January 2012 to January 2023 would amount to a minimum of €33,660.⁴⁰⁰

224. Monthly pensions for a “Civilian invalid of War”⁴⁰¹ range from €96 (with body injury over 40-60%) to €122 (with body injury over 80%).⁴⁰² A simple addition of monthly pension payments for a “Civilian invalid of War” from January 2012 to January 2023 would amount to a minimum of €12,672.⁴⁰³

³⁹⁸ Article 3(1.7.1) of [Law No. 04/L-054](#), as amended by [Law No. 04/L-172](#), provides that a “KLA Invalid” is a “fighter, member and the deported (the imprisoned) of KLA, who has suffered wounds, physical or psychic injuries (damages) or serious diseases during the war or at the prisons or camps of the enemy, during the war period, with the degree of disability at least ten percent (10%)”.

³⁹⁹ See [Annex to Law No. 04/L-054](#). A KLA invalid with invalidity level from 10%-19% is not eligible to a personal invalid pension (Article 10(4) of [Law No. 04/L-054](#)).

⁴⁰⁰ (Calculation $11 \times 12 \times 255$). This figure does not take account of any potential increase or adjustments due to inflation. See also [Victims' Counsel Reparations Request](#), para. 56.

⁴⁰¹ Article 3(1.8) of [Law No. 04/L-054](#) provides that a “Civilian Invalid of War” is a “[...] person, whose organism has been damaged at least 40% due to [sic] wounds received from weapons, disease acquired in the camps or prisons during the recent war in Kosovo, since 27.02.1998 till 20.06.1999, and other persons, whose organism has been damaged at least 40% as a result of explosive devices left after the end of war”.

⁴⁰² See [Annex to Law No. 04/L-054](#).

⁴⁰³ (Calculation: $11 \times 12 \times 96$). This figure does not take account of any potential increase or adjustments due to inflation.

225. Close family members of a civilian victim⁴⁰⁴ are entitled to a monthly family pension of €135 (as well as other benefits).⁴⁰⁵ This means that, from January 2012 to January 2023, close family members of a civilian victim would have received at minimum €17,820, as family pension.⁴⁰⁶

226. Pursuant to Law No. 04/L-261, unemployed veterans⁴⁰⁷ not entitled to benefits under another pension scheme, such as for injuries sustained during the war in Kosovo in 1998-1999,⁴⁰⁸ were eligible to a monthly pension of €170.⁴⁰⁹ A simple

⁴⁰⁴ “Civilian Victim of War” is defined as “the person who has died or got wounded, by the enemy forces from period 27.02.1998 up to 20.06.1999, as well as the persons who have suffered as a consequence of the war within three (3) years after the war ended from explosive devices left out from the war” pursuant to Article 3(1.10) of [Law No. 04/L-054](#). Article 3(1.12) of [Law No. 04/L-054](#) defines “Civilian Hostage of war” as “the civilian person, who during the war has been arrested and imprisoned in enemy camps for at least three (3) days respectively seventy-two (72) hours”. Article 3(1.14) of [Law No. 04/L-054](#) defines “Missing Civilian Person” as a “person whose whereabouts is unknown to his or her family members and who based on reliable information was reported missing during the period between 1 January 1998 and 31 December 2000, as a consequence of the war in Kosovo during 1998-1999”. “Members of close family” is defined as “husband, wife, children, children out of wedlock, the adopted children (foster), parents, stepfather, stepmother, stepchild and extramarital husband/wife” pursuant to Article 3(1.15) of [Law No. 04/L-054](#). Thus, the use of the term “enemy” and [REDACTED] exclude in this case the Direct Victims as well as the Indirect Victims.

⁴⁰⁵ See Article 13 of [Law No. 04/L-054](#) and [Annex to Law No. 04/L-054](#).

⁴⁰⁶ (Calculation: 11x12x135). This figure does not take account of any potential increase or adjustments due to inflation.

⁴⁰⁷ According to Article 3(1.3) of [Law No. 04/L-261](#), a KLA veteran is a “participant in the war for liberation in Kosovo” and includes “KLA war invalid”, “KLA fighter veteran”, “[t]he deported of KLA”, “KLA member”, “participant in war”, and “[m]issing fighter of KLA”. See Articles 16(4) and 18 of [Law No. 04/L-261](#).

⁴⁰⁸ See Article 2(2) of [Law No. 04/L-261](#).

⁴⁰⁹ [Victims’ Counsel Reparations Request](#), para. 28. As mentioned above, [Law No. 04/L-261](#) was subsequently amended by [Law No. 04/L-172](#). Article 16A of [Law No. 04/L-172](#) now defines three categories of veterans:

“1.1. Category One: KLA Fighter Veteran engaged from 1991 until the 5th of March 1998 and has been active until the day the war ended; 1.2. Category Two: KLA Fighter Veteran, engaged in the war after the 5th of March 1998 and has been active until the day the war ended; 1.3. Category Three: KLA

addition of monthly pension payments from April 2014 to January 2023 would amount to €17,850.⁴¹⁰

d) Lerz Report

227. Victims' Counsel submits that the Lerz Report provides a useful assessment of the material harm incurred by the Direct Victims as well of its different dimensions, even though to some extent it is hypothetical.⁴¹¹

228. The Panel recalls that the Lerz Report was prepared by the financial expert appointed by the Panel to calculate the material damages and economic loss suffered by V08/05, V09/05, and V10/05.⁴¹² The Panel notes that the Lerz Report offers a calculation of income loss that corresponds to "rough approximations of the real situations."⁴¹³ The Lerz Report bases its analysis on statistical data of average wages, personal income tax and pension contributions, pension benefits, and social security, in Kosovo, given the lack of information such as salary sheets and employments contracts, and relies "strongly on the starting points as given by the Victim's Counsel [sic]"⁴¹⁴ The Lerz Report indicates that the income loss consists of the sum of the yearly

Fighter Veteran, mobilized in the war after the 31st of March 1999 and has been active until the day the war ended, as well as KLA Fighter Veteran, engaged in the war from 1991, respectively after the 5th of March 1998, but who has not been active until the day the war ended".

A category one veteran is entitled to €250, a category two, to €170, and a category three, to €120.

⁴¹⁰ (Calculation: 105 x 170). This figure does not take account of any potential increase or adjustments due to inflation.

⁴¹¹ [Victims' Counsel Reparations Request](#), para. 35.

⁴¹² [Decision appointing a financial expert](#), paras 7, 13.

⁴¹³ [Lerz Report](#), pp. 4-6.

⁴¹⁴ [Lerz Report](#), pp. 4-12 *See also* [Lerz Report](#), pp. 22-48.

income losses from 2000 to 2022 plus the sum of future income losses capitalised⁴¹⁵ and the yearly income loss is equal to the difference between the calculated incomes “with and without the incident”.⁴¹⁶ If the income is unknown, but expected to be very low, the Lerz Report assumes that it corresponds to a social assistance scheme benefit for a person who is living alone, equal to €60.⁴¹⁷

229. Even though the Lerz Report provides rough estimations of the economic losses incurred by the Direct Victims, the Panel decides that it will consider such report as a reference point in particular for material harm, in order to set an amount – that is reasonable⁴¹⁸ in the context of Kosovo.

230. Concerning V08/05, the Lerz Report states as a starting point that [REDACTED].⁴¹⁹ The specific approach taken to calculate V08/05’s income loss consists of comparing income without incident, [REDACTED], with income after incident, [REDACTED], with the pension age [REDACTED] as the last year of the calculation.⁴²⁰ It points out that while this victim is earning a salary, he might have obtained a promotion due to a better performance than possible after the impact of the incident which, in turn, would have increased his income.⁴²¹ Hence a wage increase of 20% for working in a higher position is assumed.⁴²² It also indicates that the

⁴¹⁵ Three factors are used for the capitalization of future income losses: an estimation of future income growth, the interest rate, and the mortality rate ([Lerz Report](#), pp. 4-6, *see also* [Lerz Report](#), pp. 22-24).

⁴¹⁶ [Lerz Report](#), p. 5.

⁴¹⁷ [Lerz Report](#), p. 11.

⁴¹⁸ Article 22(3) of the Law.

⁴¹⁹ [Lerz Report](#), p. 13.

⁴²⁰ [Lerz Report](#), p. 13.

⁴²¹ [Lerz Report](#), p. 13.

⁴²² [Lerz Report](#), p. 14.

calculation of V08/05's income loss is more approximate than the others because the increase of income in a higher position of 20% can only be an estimation and it is unknown in which year that increase would have taken place.⁴²³ It therefore suggests to place it 2011, *i.e.* in the middle of the period between 2000 and 2022.⁴²⁴ In such a scenario, V08/05's income loss would equal €31,779.⁴²⁵ The Lerz Report also provides the results for every other relevant year (from 2000 to 2022). Income loss ranges from €20,842 to €39,343.⁴²⁶

231. Concerning V09/05, the Lerz Report states as a starting point that [REDACTED] and that income with incident is [REDACTED].⁴²⁷ The specific approach taken to calculate V09/05's income loss consists of comparing income without incident, [REDACTED], with income after incident, [REDACTED], with the pension age [REDACTED] as the last year of the calculation.⁴²⁸ The Lerz Report points out that [REDACTED], it suggests to take into consideration [REDACTED].⁴²⁹ In such a scenario, V09/05's loss of income would amount to €150,703. The Lerz Report also provides the results for every other relevant year ([REDACTED]). Income loss ranges from €89,255 to €211,086.⁴³⁰

⁴²³ Lerz Report, p. 14.

⁴²⁴ Lerz Report, p. 14.

⁴²⁵ Lerz Report, p. 14.

⁴²⁶ Lerz Report, pp. 14-15.

⁴²⁷ Lerz Report, p. 16.

⁴²⁸ Lerz Report, p. 16.

⁴²⁹ Lerz Report, p. 16.

⁴³⁰ Lerz Report, pp. 16-18.

232. Concerning V10/05, the Lerz Report states as a starting point that [REDACTED] and that income with incident is [REDACTED].⁴³¹ The specific approach taken to calculate V10/05's income loss consists of comparing income without incident, [REDACTED], with income after incident, [REDACTED], with the pension age [REDACTED] as the last year of the calculation.⁴³² The Lerz Report points out that V10/05 indicated that [REDACTED].⁴³³ The Lerz Reports submits that [REDACTED]. It further submits that [REDACTED] is not relevant because it is unrelated to the incident [REDACTED].⁴³⁴ The Lerz Report concludes that, based on the aforementioned approach, V10/05's loss of income would equal to €56,716.⁴³⁵

e) Conclusion

233. The Panel notes that whilst Victims' Counsel avers that "[a]ny compensation will have to be proportionate to the gravity of the harm suffered",⁴³⁶ she proposes a breakdown of "minimum" amounts to be awarded to the Victims as compensation, especially with regard to material harm.⁴³⁷ In the view of the Panel, it is unclear whether the position of Victims' Counsel is that these "minimum" sums reflect the gravity of the harm suffered⁴³⁸ and/or the scope and extent of harm suffered by the

⁴³¹ Lerz Report, p. 19.

⁴³² Lerz Report, p. 19.

⁴³³ Lerz Report, p. 19.

⁴³⁴ Lerz Report, p. 19.

⁴³⁵ Lerz Report, p. 20.

⁴³⁶ [Victims' Counsel Reparations Request](#), para. 9.

⁴³⁷ [Victims' Counsel Further Information on Reparations](#), para. 6; *see also* [Victims' Counsel Reparations Request](#), paras 38, 43, 48.

⁴³⁸ [Victims' Counsel Reparations Request](#), para. 9.

victims⁴³⁹ – which ultimately amounts to Mr Mustafa’s financial liability for reparations.

234. Notwithstanding it, the Panel finds that the compensation awards requested by Victims’ Counsel to repair the harm are proportional to the harm suffered by the Victims as well as reasonable as foreseen in Article 22(3) of the Law.

235. More specifically, with respect to V08/05, the Panel recalls that he has not sustained long-standing physical harm as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.⁴⁴⁰ However, he has experienced significant mental harm⁴⁴¹ even though V08/05’s length of detention at the ZDC was substantially shorter than V09/05 and V10/05.⁴⁴² The Panel also recalls that it concluded that V08/05 suffered a damage to his life plan as part of mental harm, as the crimes for which Mr Mustafa was convicted affected his personal and family development.⁴⁴³ Moreover, while V08/05 was able to ensure employment, his career progression was negatively impacted as a result of his time at the ZDC, which in turn affected the level of his income.⁴⁴⁴ According to the Lerz Report, estimations as to V08/05’s income losses range from €20,842 to €39,343.⁴⁴⁵ The Panel further recalls that

⁴³⁹ The Panel recalls that to assist it in determining the scope and extent of damage, loss and injury suffered by the victims, it instructed Victims’ Counsel to indicate what sums of money to be awarded to the Victims to repair each type of harm suffered ([Closing Statements Hearings Agenda](#), para. 18).

⁴⁴⁰ See paragraph 148-150, 158 above.

⁴⁴¹ See paragraphs 151-155, 158 above.

⁴⁴² See Trial Judgment, [REDACTED].

⁴⁴³ See paragraph 154 above.

⁴⁴⁴ See paragraph 156 above.

⁴⁴⁵ See paragraph 230 above.

it has considered in addition to income losses, a damage to his life plan also as part of material harm.⁴⁴⁶

236. With respect to V09/05, the Panel considers that V09/05 has sustained extensive and long-standing physical and mental harm as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.⁴⁴⁷ The Panel also recalls that it concluded that V09/05 suffered a damage to his life plan as part of mental harm, as the crimes for which Mr Mustafa was convicted affected his personal and family development.⁴⁴⁸ Moreover, V09/05, [REDACTED], was deprived of the opportunity to pursue an “average career path”.⁴⁴⁹ According to the Lerz Report, estimations as to V09/05’s income losses range from €89,255 to €211,086.⁴⁵⁰ The Panel further recalls that it has recognised in addition to income losses, a damage to his life plan also as part of material harm.⁴⁵¹

237. With respect to V10/05, the Panel recalls that he has sustained extensive and long-standing physical and mental harm as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.⁴⁵² Moreover, V10/05 was not able to return to his former occupation as a result of the injuries sustained at the ZDC [REDACTED]. According to the Lerz Report, it is estimated that V10/05’s loss of

⁴⁴⁶ See paragraph 156 above.

⁴⁴⁷ See paragraphs 133-139, 145 above.

⁴⁴⁸ See paragraph 137 above.

⁴⁴⁹ See paragraphs 140-145 above.

⁴⁵⁰ See paragraph 231 above.

⁴⁵¹ See paragraph 142-143 above.

⁴⁵² See paragraphs 161-166, 171 above.

income equals to €56,716.⁴⁵³ The Panel further recalls that it has recognised, in addition to income losses, a damage to his life plan also as part of material harm.

238. The Panel further notes that the compensation awards requested by Victims' Counsel for the Direct Victims are within the findings of the Lerz Report and those only reflect estimations of income losses.

239. In the same vein, the Panel considers that these amounts are not disproportionate when compared with the benefits available under Kosovo legislation. The Panel recalls in this regard the minimum levels of pensions identified earlier under Kosovo law, ranging from €12,672 to €33,660, for veterans and civilians who suffered harm in the context of the war in Kosovo in 1998-1999 or participated in the war efforts, and their close family members, as well as the other considerable aids to which they are eligible.⁴⁵⁴

240. As for the Indirect Victims, the Panel considers that the sums requested by Victims' Counsel to repair the harm suffered by these victims are in line with the ones pertaining to the Direct Victims – although they reflect a different type of mental harm. The Panel also considers it appropriate as submitted by Victims' Counsel⁴⁵⁵ to distinguish the Indirect Victims pursuant to [REDACTED] with the Murder Victim.

241. Lastly, the Panel recalls that the Defence did not present specific arguments to challenge the compensation awards requested by Victims' Counsel on behalf of the Victims.⁴⁵⁶

⁴⁵³ See paragraph 232 above.

⁴⁵⁴ See paragraphs 223-225 above.

⁴⁵⁵ See paragraph 207 above.

⁴⁵⁶ See paragraph 124 above.

242. In light of the above, the Panel finds that the sums of €4,000 for physical harm, €6,000 for mental harm, and €20,000 for material harm, for a total of €30,000, reflect the scope and extent of harm suffered by V08/05 and are reasonable as foreseen in Article 22(3) of the Law.

243. Likewise, the Panel finds that the sums of €20,000 for physical harm, €10,000 for mental harm, and €50,000 for material harm, for a total of €80,000, reflect the scope and extent of harm suffered by V09/05 and are reasonable as foreseen in Article 22(3) of the Law.

244. In the same vein, the Panel finds that the sums of €20,000 for physical harm, €10,000 for mental harm, and €30,000 for material harm, for a total of €60,000, reflect the scope and extent of harm suffered by V10/05 and are reasonable as foreseen in Article 22(3) of the Law.

245. Finally, the Panel finds that the sums of €10,000, €5,000 and €2,000 reflect the scope and extent of harm suffered by V05/05, V06/05 and V12/05, and V11/05, and V13/05, respectively, and are reasonable as foreseen in Article 22(3) of the Law.

246. The Panel further recalls that the Defence did not file any observations in response to the Victims' Counsel Reparations Request.

247. Taking all the above considerations into account, considering the scope and extent of the harm suffered by the Direct and Indirect Victims, resolving uncertainties in favour of the convicted person, pondering the need for accuracy of monetary estimates against the objective of awarding reparations promptly, the Panel sets the total reparation award for which Mr Mustafa is liable at €207,000.

248. Accordingly, the Panel orders Mr Mustafa to pay, as compensation for the harm inflicted:

- €30,000 to V08/05;
- €80,000 to V09/05;
- €60,000 to V10/05;
- €10,000 to V05/05, V06/05, and V12/05;
- €5,000 to V11/05; and
- €2,000 to V13/05.

249. Finally, the Panel notes that the present Reparation Order does not go beyond the crimes for which Mr Mustafa was convicted. Moreover, Mr Mustafa was afforded the opportunity to make submissions on the scope and extent of victimhood, the scope of reparations, and the types of reparations to be awarded, but refused to do so.

VII. IMPLEMENTATION AND EXECUTION OF THE REPARATION ORDER

A. MONITORING AND OVERSIGHT

250. The Panel recalls that its jurisdiction in this case will cease with the issuance of this Reparation Order, in line with Article 33(1)(b) of the Law.⁴⁵⁷ It is thus not empowered to monitor and oversee the implementation and execution of the Reparation Order. The Panel notes in this regard that neither the Law nor the Rules

⁴⁵⁷ Article 33(1)(b) of the Law provides that: “The assignments of Trial Panel judge(s) shall elapse on the day a Court of Appeals Panel is constituted to hear an appeal against its judgement or the time period for appeal expires without an appeal being filed, *unless the Trial Panel is concurrently involved in other proceedings, in which case the judges’ assignments shall elapse when those proceedings are completed*” [emphasis added].

specify the body that is to monitor and oversee the implementation and execution of a reparation order.

251. The Panel is also of the view that a judicial body is necessary to monitor and oversee the implementation and execution of this Reparation Order, to ensure an effective and prompt process for the benefit of the Victims. The Panel also foresees that, in the course of the implementation and execution of this Reparation Order, certain issues might arise that require resolution by a judicial body.

252. Considering the above, the Panel invites the President of the KSC, as the person responsible for the judicial administration of the KSC, to assign a judicial authority to monitor and oversee the implementation and execution of this Reparation Order.

253. The Registry, as the organ “responsible for the administration and servicing of the Specialist Chambers and all necessary and affiliated functions” pursuant to Article 34(1) of the Law, will perform any action needed to implement and execute the Reparation Order, as directed in this Reparation Order or, upon the issuance of this Reparation Order, by the judicial authority designated to monitor and oversee the implementation and execution of this Reparation Order.⁴⁵⁸

⁴⁵⁸ In the Panel’s view, this may take the form of receiving and administering money for the benefit of victims, as foreseen in Articles 44(6) and 53(4) and (5) of the Law (*see* paragraph 268 and footnote 496 below).

B. FUNDING

1. By the Convicted Person

254. As held above, Mr Mustafa is liable to pay €207,000 to the Victims, as compensation for the harm inflicted.⁴⁵⁹

255. The Panel notes that [REDACTED],⁴⁶⁰ do not reveal that Mr Mustafa has at this time the means to *fully* comply with this Reparation Order.⁴⁶¹ Yet, the Panel notes that, [REDACTED].⁴⁶² The Panel further notes that [REDACTED].⁴⁶³ The Panel considers that at least part of these assets could potentially be used to execute the Reparation Order – albeit partially, as [REDACTED] would not cover the totality of the compensation award.⁴⁶⁴

256. Accordingly, together with this Reparation Order, the Panel issues a decision and related orders with a view to obtain the necessary information for the judicial authority designated to monitor and oversee the implementation and execution of this Reparation Order, to decide on the appropriate course of action *vis-à-vis* these assets.

⁴⁵⁹ See paragraph 248 above.

⁴⁶⁰ [REDACTED].

⁴⁶¹ [REDACTED].

⁴⁶² [REDACTED].

⁴⁶³ [REDACTED].

⁴⁶⁴ [REDACTED]. In the same vein, the Panel considers that it is not a requirement that the assets from Mr Mustafa, which may be used to execute the reparations awarded by this Panel, be connected to the crimes of which Mr Mustafa was convicted, given that Articles 22(8) and 44(6) of the Law generally provide for the payment of reparations to victims without limiting the assets which may be used for reparations to those which are connected to a crime. This interpretation is in line with the Victims' right to an effective remedy.

The Registrar is to take necessary steps to implement said decision, together with the related orders, annexed to this Reparation Order. [REDACTED].

257. On the basis of the information received, and bearing in mind the rights of Mr Mustafa or those of *bona fide* third parties,⁴⁶⁵ the judicial authority assigned with the matter will be in a position to decide whether to order the payment from [REDACTED] of a sum on a *pro rata* basis to the Victims,⁴⁶⁶ and, in that context, whether to [REDACTED].

258. Considering that, notwithstanding the above, this Reparation Order cannot – at this time – be fully executed by Mr Mustafa, the Panel finds Mr Mustafa partially indigent for the purpose of reparations.

259. Furthermore, given that Mr Mustafa appears – at this time – to be unable to pay the totality of the reparation award, the Panel is of the view that other actors ought to step in to execute it. These will be considered below.⁴⁶⁷ Notwithstanding it, Mr Mustafa remains liable for the totality of the reparation award.⁴⁶⁸ Accordingly, should a State (such as Kosovo) or an institution (such as a trust fund to be created) advance the funds necessary to execute this Reparation Order for the benefit of the victims, this would not relieve Mr Mustafa from his liability and he would still have the obligation to reimburse those funds when the monitoring of his financial situation

⁴⁶⁵ See Article 53(4) of the Law.

⁴⁶⁶ The Panel recalls in this regard the principle that priority may need to be given to certain victims, who are in a particularly vulnerable situation or who require urgent assistance (*see* paragraph 71 above). The Panel notes in this regard Victims' Counsel's submission that [REDACTED] (Victims' Counsel Reparations Request, [REDACTED]).

⁴⁶⁷ See paragraph 260 *et seq.* below.

⁴⁶⁸ See paragraph 117 above.

would reveal that he has the means to comply with the Reparation Order. For that purpose, the judicial authority assigned with monitoring and overseeing the implementation and execution of the Reparation Order may wish [REDACTED] to monitor Mr Mustafa's financial situation on an ongoing basis, with a view to enforce the present Reparation Order.⁴⁶⁹

2. By Kosovo

260. The Panel recalls that it requested the Ministry of Justice of Kosovo to provide specific information pertaining to the possibility for victims of crimes under the jurisdiction of the KSC to benefit from: (i) currently existing victim compensation funds; (ii) or, if not possible, from a newly established fund financed by the budget of Kosovo.⁴⁷⁰

a) Crime Victim Compensation Program

261. The Ministry of Justice of Kosovo informed the Panel that victims of crimes under the jurisdiction of the KSC may be awarded compensation or restitution from the victim compensation program established pursuant to Law No. 05/L-036 on Crime Victim Compensation (Law No. 05/L-036) (Crime Victim Compensation Program),⁴⁷¹ where it has been established that the convicted person is unable to pay the full, or part of, the restitution awarded.⁴⁷² The victim may ask the Panel to forward the

⁴⁶⁹ Similarly, ICC, [Lubanga AC Judgment on Principles of Reparations](#), paras 104 and 115.

⁴⁷⁰ [Article 22\(9\) Decision](#), para. 50(f) and subsequently, [Further Order to the Ministry of Justice of Kosovo](#).

⁴⁷¹ [Ministry of Justice of Kosovo Second Response](#), pp. 1-2, 4. See Article 19(1)(1.26) and 62(1)(1.5) of the Kosovo Procedure Criminal Code of 2012.

⁴⁷² [Ministry of Justice of Kosovo Second Response](#), pp. 1-2.

compensation order to the decision-making body.⁴⁷³ A completed application must be submitted within six months from the entry into force of the final court judgment.⁴⁷⁴

262. The Ministry of Justice of Kosovo further clarified that victims applying for compensation can remain anonymous but only “with regard to persons other than those in charge of processing and executing such compensation claims”.⁴⁷⁵ Lastly, it argued that the Registrar cannot act as the Victims’ “authorised representative” and submit a claim for compensation or restitution on their behalf “in order to avoid any conflict of interest”, but stated that the victim may request the assistance of a victims’ counsel to whom he/she has given a power of attorney for acting on his or her behalf.⁴⁷⁶

263. The Panel notes that Law No. 05/L-036 was abrogated and replaced by Law No. 08/L-109 on Crime Victim Compensation of 2 November 2022 (Law No. 08/L-109).⁴⁷⁷ The Panel notes however that the abovementioned submissions by the Ministry of Justice of Kosovo remain relevant in the context of Law No. 08/L-109.

264. At the outset, the Panel reiterates that it must ensure the protection of the Victims as provided for in Article 23 of the Law throughout the entirety of the judicial process, including the reparations proceedings and the enforcement of any reparation order, irrespective of the forum in which such reparations proceedings, or the enforcement of any reparation order, are conducted.⁴⁷⁸ The Panel recalls in this regard its finding

⁴⁷³ [Ministry of Justice of Kosovo Second Response](#), pp. 1-2.

⁴⁷⁴ [Ministry of Justice of Kosovo Second Response](#), p. 4.

⁴⁷⁵ [Ministry of Justice of Kosovo Second Response](#), p. 2.

⁴⁷⁶ [Ministry of Justice of Kosovo Second Response](#), p. 3; [Ministry of Justice of Kosovo First Response](#), p. 5.

⁴⁷⁷ [Law No. 08/L-109 on Crime Victim Compensation](#), 2 November 2022.

⁴⁷⁸ [Article 22\(9\) Decision](#), para. 38. See Rule 81(1) of the Rules.

as to the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the KSC, and their families.⁴⁷⁹ It also recalls that the Pre-Trial Judge and this Panel ordered protective measures *vis-à-vis* the Victims, namely that their names and any identifying information be withheld from the public.⁴⁸⁰ Lastly, it underlines that the Victims participated in this case under immense pressure and expressed fear as to what could happen to them or their families if their participation became known.⁴⁸¹

265. In these circumstances, disclosing the identity of the Victims to a wider number of individuals, such as to Crime Victim Compensation Commission⁴⁸² and its staff, increases the risk that their identity is revealed – intentionally or unintentionally – to the public, including to individuals with harmful intentions. Yet, the Panel finds that these circumstances – which arise through no fault of their own – cannot preclude the Victims from obtaining reparations.

266. In light of the above, the Panel orders the Registrar, in coordination with Victims' Counsel, to seek compensation from the Crime Victim Compensation Program, on behalf of the Victims, in order to preserve the anonymity of said Victims and to ensure their protection. The Panel wishes to stress that, contrary to the Ministry of Justice of Kosovo's assertion, no conflict of interest arises in this context since the Registry is a neutral organ of the KSC, whose mandate is to administer and service the KSC and

⁴⁷⁹ See paragraph 199 above.

⁴⁸⁰ See [Second Victims Participation Decision](#), para. 54(e)-(f); [Third Victims Participation Decision](#), para. 42(d)-(e).

⁴⁸¹ See paragraph 199 above.

⁴⁸² The Panel notes that pursuant to Articles 3(1.12), 21 and 23 of Law No. 08/L-109, the decision-making body within the Crime Victim Compensation Program is the Crime Victim Compensation Commission.

perform all affiliated functions pursuant to Article 34(1) of the Law. In the performance of this task, the Registrar and Victims' Counsel shall only disclose to the Crime Victim Compensation Commission publicly available information pertaining to the Victims.

267. The Panel requests, in accordance with Article 53(2) of the Law which mandates every natural person, corporation, authority or other entity in Kosovo to comply with any order issued by the KSC, the Crime Victim Compensation Commission to give due consideration to the Victims' claims for compensation, on the basis of the information provided by the Registrar and Victims' Counsel, including the present Reparation Order, in its public redacted version. In this regard, the Panel underlines that the Reparation Order – in its public redacted version – provides the Crime Victim Compensation Commission with the required information in support of the Victims' claims for compensation, such as the Panel's findings: (i) as to the harm suffered by each Victim as a result of the crimes committed by Mr Mustafa; (ii) as to the scope of Mustafa's liability for reparations and the compensation to be awarded to the Victims; and (iii) as to Mr Mustafa's lack of financial means to fully comply with the Reparation Order, *i.e.* his inability – at this time – to pay the full reparation award.

268. If the Crime Victim Compensation Commission were to grant any compensation, such award ought to be transferred to the Registrar in accordance with Article 53(4) and (5) of the Law. In turn, the Registrar ought to disburse the compensation award to the Victims, eventually on a *pro rata* basis.

269. The Registrar is to report to the judicial authority designated to monitor and oversee the implementation and execution of this Reparation Order, on any action taken before the Crime Victim Compensation Program, mindful of the deadline to

apply for compensation to that Program, and no later than two (2) months after this Reparation Order may be implemented.

270. Notwithstanding the above, the Panel is aware that the Victims may not receive the full compensation awarded by the Panel through the convicted person – taking into consideration the available [REDACTED] as explained above – or the Crime Victim Compensation Program – taking into consideration the maximum sums which can be awarded by this program.⁴⁸³ Thus other means of execution need to be considered with a view to implement and execute the present Reparation Order.

b) Establishment of a new reparation mechanism in Kosovo

271. The Ministry of Justice of Kosovo informed the Panel that the establishment of a new fund or programme for the specific purpose of compensating the victims of crimes under the jurisdiction of the KSC would require the Kosovo's legislative body to enact a "special law" such as in the case of the financing of the defence for suspects and accused before the KSC.⁴⁸⁴

⁴⁸³ See in this regard Articles 11-17 of [Law No. 08/L-109](#) which outlines for each harm the maximum sum that can be awarded by the Crime Victim Compensation Commission. In particular, the Panel notes that, in accordance with Article 11 of Law No. 08/L-109, the maximum amount for compensation in case of physical injury or damage to health is €4,000 (four thousand) for severe damages, injuries or illnesses, which can be increased up to €10,000 (ten thousand) in exceptional circumstances, while the maximum amount for compensation in case of mental health impairment caused by a violent crime and mental suffering, including due to the loss of a family member is, in accordance with Articles 12-14 of Law No. 08/L-109, €3,000 (three thousand) for direct or indirect victims. The Panel also notes that pursuant to Article 23(3.1) of [Law No. 08/L-109](#): "The [Crime Victim Compensation Commission] shall at its discretion decide about [...] *exceeding the maximum amounts provided for the specific categories of compensation*, in cases where the documented costs are reasonable" [emphasis added].

⁴⁸⁴ [Ministry of Justice of Kosovo Second Response](#), pp. 3-4, section 4.

272. In this context, the Panel notes that, whereas Kosovo foresaw the need to financially support the defence of suspects and accused before the KSC,⁴⁸⁵ it took no proactive steps to specifically prepare for the need to ensure reparations for victims of crimes under the jurisdiction of the KSC, should a convicted person not have the means to comply with a reparation order.

273. Furthermore, the Panel notes that the legislation in Kosovo which addresses harm and injuries suffered in the context of the war in Kosovo in 1998-1999 does not recognize the harm suffered by all victims during the war in Kosovo, as it refers exclusively to the victims of the enemy forces, therefore introducing a discrimination between the victims of this war.⁴⁸⁶

274. While the Panel has no power to order Kosovo to pay the compensation awarded to the Victims, it finds it important to remind Kosovo of its obligations pertaining to the Victims' right to an effective remedy, as enshrined in Article 54 of the Constitution,

⁴⁸⁵ See [Law No. 05/L-054 on legal protection and financial support for potential accused persons in trials before the Specialist Chambers](#), 3 August 2015 (Law No. 05/L-054); [Administrative Instruction MOJ - No. 08/2022 on the Legal Protection of Persons Potentially Accused of Alleged Crimes in Trials before the Specialist Chambers](#), 29 December 2022 (Kosovo Administrative Instruction related to Law No. 05/L-054). The Panel notes that the financial support provided by the Kosovo to suspects or accused before the KSC to cover the costs of their legal defence is provided at the request of the suspect or accused (*see* Article 6 of the [Kosovo Administrative Instruction related to Law No. 05/L-054](#)) and is not subject to, or dependent on, a determination of indigence of the suspect or accused seeking support. Article 5 of the [Law No. 05/L-054](#) further provides that individuals who are tried before the KSC and are subsequently declared not guilty upon a final decision, may request compensation.

⁴⁸⁶ See paragraphs 216 *et seq.* above.

Articles 6(1) and 13 of the ECHR, Articles 2(3) and 14(1) of the ICCPR, and Article 14 of the CAT.⁴⁸⁷ This comprises also a duty to ensure that such a remedy is enforceable.⁴⁸⁸

275. In this respect, the Panel urges Kosovo to enact the necessary laws and establish a reparation mechanism for the purpose of fully compensating victims of crimes under the jurisdiction of the KSC.⁴⁸⁹ This would ensure, within the legal system of Kosovo, equal treatment⁴⁹⁰ between the victims and the suspects or accused, given that Kosovo legislation already provides for the financial support of the legal defence of suspects and accused before the KSC, without requiring any proof of indigence on the part of the suspects or accused, and even provides for compensation in case of their acquittal,

⁴⁸⁷ See Article 14 of the CAT; Committee against Torture, General Comment No. 3, Implementation of article 14 by States parties, CAT/C/GC/3 (2012), para. 5; [Declaration of Basic Principles of Justice](#), paras 4-5, 12-13; [UN Basic Principles on Reparations](#), para. 16.

⁴⁸⁸ The ECtHR has held that the obligation of States under Article 13 of the ECHR also encompasses a duty to ensure that such a remedy is enforceable, as awarding a remedy without guaranteeing its enforceability would be incompatible with the principle of the rule of law (ECtHR, *Elvira Dmitriyeva v Russia*, nos. 60921/17 and 7202/18, [Judgment](#), 9 September 2019, para. 63; *VK v Croatia*, no. 38380/08, [Judgment](#), 29 April 2013, para. 114; *Kenedi v Hungary*, no. 31475/05, [Judgment](#), 26 August 2009, para. 47; *Kaić and Others v Croatia*, no. 22014/04, [Judgment](#), 17 October 2008, para. 40; *Z and Others v the United Kingdom*, no. 29392/95, [Judgment](#), 10 May 2001, paras 110-111). The United Nations Basic Principles on Reparations also provide that, in case of gross violations of international human rights law and serious violations of international humanitarian law, victims' right to remedies includes, under international law equal and effective access to justice, and adequate, effective and prompt reparation for the harm suffered. More specifically, it provides that States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations. Lastly, it provides that States should provide effective mechanisms for the execution or enforcement of reparation judgments under their national laws ([UN Basic Principles on Reparations](#), paras 11(a)-(b), 16, 17).

⁴⁸⁹ In the same vein, in her opening and closing statements, Victims' Counsel called upon Kosovo and the international community to establish a mechanism that would ensure that victims under the jurisdiction of the KSC are able to realise their right to reparations (See [T. 15 September 2021](#), public, p. 371, lines 2 to p. 372, line 15; [T. 15 September 2022](#), public, p. 4853, line 11 to p. 4855, line 19).

⁴⁹⁰ Article 24 of the Constitution provides that: "All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination".

while nothing is specifically provided for victims of crimes under the jurisdiction of the KSC.⁴⁹¹

276. Crucially, such a new reparation mechanism for those victims ought to be independent, neutral, and free from political considerations. Moreover, it ought to integrate an application process tailored to the challenges facing the KSC, especially measures of protection for the victims applying to such mechanism, including those ordered with regard to victims participating in the proceedings before the KSC.

277. Furthermore, consideration should be given to fund the reparation mechanism through the budget of Kosovo inasmuch as the defence of suspects and accused before the KSC is also financed through said budget.⁴⁹² This equal use of the budget of Kosovo would promote the mandate of the KSC pursuant to Article 1(2) of the Law, as upheld by Kosovo and Members States of the European Union, together with other contributing countries (Canada, Norway, Switzerland, Turkey, and the United States of America), when establishing the KSC and financially supporting its work.⁴⁹³

278. Specifically, consideration may be given to include access to this reparation mechanism to other victims who sufficiently demonstrate that they have suffered harm within the parameters and scope of a case as established in the trial judgment.⁴⁹⁴

⁴⁹¹ See paragraph 272 above.

⁴⁹² See Article 3 of [Law No. 05/L-054](#).

⁴⁹³ See Article 162 of the [Constitution](#) and the Exchange of Letters of 14 April 2014 between the President of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy ([Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo](#), 23 April 2014).

⁴⁹⁴ The Panel recalls in this regards that evidence adduced in the course of the trial established that a large number of individuals were detained at the ZDC in the course of April 1999 (see Trial Judgment, paras 485-494).

This would not however affect the liability of a convicted person as determined by a Trial Panel in a reparation order pursuant to Article 22(8) and 44(6) of the Law.

279. Finally, the Panel recalls that, pursuant to Article 22(2) of the Law, if a victim does not apply to participate in proceedings before the KSC, or has not been accepted as a participant or determined to be a victim under the Law, his or her rights under other laws or through other reparation mechanisms in Kosovo must not be limited.

3. By a Newly Established Trust Fund for Victims at the Initiative of the KSC

280. The Panel wants to emphasize that if victims of crimes under the jurisdiction of the KSC cannot enforce their right to reparations,⁴⁹⁵ this right, enshrined in Article 22(3) of the Law, becomes meaningless.

281. Thus, since Mr Mustafa's present-day assets and the maximum sums that the Crime Victim Compensation Program can or may grant under its current legislation are in any event insufficient to cover the full compensation awarded by the Panel, especially as regards the Direct Victims, the Panel is of the view that a permanent solution should be implemented by Kosovo as suggested in Section VII.B.2(b) of this Reparation Order. The Panel, however, also recommends the establishment of a trust fund for victims of crimes under the jurisdiction of the KSC, at the initiative of the KSC, in case Kosovo fails to uphold its obligations towards victims in a reasonable time through the establishment of a reparation mechanism.

282. The Panel is of the view that this trust fund for victims established at the initiative of the KSC should be administered by the Registrar of the KSC in accordance

⁴⁹⁵ Concerning the right to an effective remedy, *see* paragraph 274 above.

with rules to be adopted.⁴⁹⁶ It should be financially supported above all by Kosovo,⁴⁹⁷ taking into consideration its obligations towards victims as specified above,⁴⁹⁸ as well as other States and donors wishing to support victims.

⁴⁹⁶ The Panel notes that in accordance with Article 34(1) of the Law, the Registrar shall be responsible for the administration and servicing of the KSC and all necessary and affiliated functions. Moreover, in accordance with Article 44(6) of the Law, the Panel may order the convicted person to make restitution or pay compensation to victims, and, pursuant to Article 53(4) and (5), all property, or the proceeds of the sale of real property or the sale of other property shall be transferred to the custody and control of the KSC. Therefore, it is already foreseen in the Law that the Registrar of the KSC may receive and administer money for the benefit of victims.

⁴⁹⁷ See paragraph 277 above.

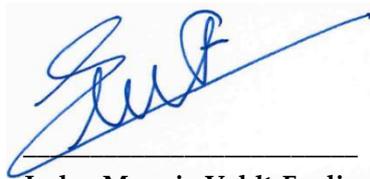
⁴⁹⁸ See paragraph 274 above.

VIII. DISPOSITION

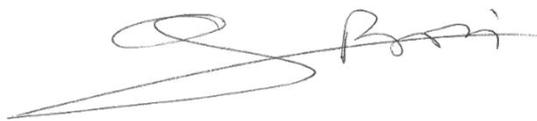
283. For the above-mentioned reasons, the Panel hereby:

- a) **ISSUES** a Reparation Order against Mr Mustafa;
- b) **FINDS** that V08/05, V09/05, V10/05, V05/05, V06/05, V12/05, V11/05 and V13/05 have shown to the standard of proof of balance of probabilities that they are victims of the crimes of which Mr Mustafa was convicted;
- c) **DECIDES**, accordingly, to award reparations to V08/05, V09/05, V10/05, V05/05, V06/05, V12/05, V11/05 and V13/05;
- d) **AWARDS** individual reparations, in the form of compensation;
- e) **SETS** the reparations award for which Mr Mustafa is liable at €207,000;
- f) **ORDERS** Mr Mustafa to pay, within a time-limit to be determined by the judicial authority in charge of monitoring and overseeing the implementation and execution of this Reparation Order, as compensation for the harm inflicted:
 - €30,000 to V08/05;
 - €80,000 to V09/05;
 - €60,000 to V10/05;
 - €10,000 to V05/05, V06/05, and V12/05;
 - €5,000 to V11/05; and
 - €2,000 to V13/05;

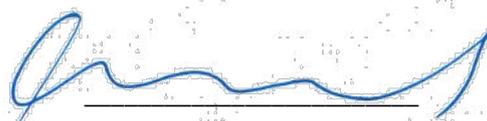
- g) **DECLARES** Mr Mustafa partially indigent for the purpose of the enforcement of this Reparation Order;
- h) **ISSUES** the “Decision ordering the production of records and documents for the purposes of the enforcement of a Reparation Order” and related orders, annexed to this Reparation Order;
- i) **ORDERS** the Registrar to take the necessary steps to implement this Reparation Order as set out in paragraphs 253, 256, 266, and 268-269 above;
- j) **INVITES** the President of the KSC to designate a judicial authority which will be in charge of monitoring and overseeing the implementation and execution of this Reparation Order;
- k) **INVITES** Kosovo to establish a new reparation mechanism for victims of crimes under the jurisdiction of the KSC in order to ensure equality of treatment between suspects or accused and victims before the KSC;
- l) **ORDERS** the Registrar to transmit the present Reparation Order, in its public redacted form, to the Government of Kosovo; and
- m) **RECOMMENDS** the establishment of a trust fund, at the initiative of the KSC, for the benefit of victims of crimes under the jurisdiction of the KSC.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 6 April 2023

At The Hague, the Netherlands.