



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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I. INTRODUCTION

1. Pursuant to the Decision,¹ Articles 37 and 40 of the Law,² and Rule 155 of the Rules,³ the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,⁴ together with associated exhibits and/or other written records where applicable,⁵ of 6 deceased witnesses: W00716,⁶ W01994,⁷ W04239,⁸ W04379,⁹ W01718,¹⁰ and W02087;¹¹ and one incapacitated witness: W03821¹² (collectively, 'Rule 155 Witnesses').

2. The Proposed Evidence should be admitted because: (i) the Rule 155 Witnesses are unavailable;¹³ (ii) the Proposed Evidence is relevant, authentic and reliable and has probative value, which is not outweighed by any prejudice.¹⁴ Admission is therefore in the interests of justice.

3. Section III of this Motion presents submissions related to the Rule 155 requirements in relation to each of the seven Rule 155 Witnesses, organised by relevant areas. Attached to this Motion are eight Annexes. Annexes 1-7, one for each of the Rule 155 Witnesses, contain a table identifying the Proposed Evidence, which

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

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to the Law, unless otherwise specified. Certain of the statements and associated exhibits or records are admissible pursuant to Article 37, as they were in prior criminal proceedings or investigations.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules of Procedure and Evidence.

⁴ The account of each witness tendered for admission is the 'Rule 155 Statement'.

⁵ See Annexes 1-8. The Rule 155 Statements and, where applicable, associated exhibits/other written records for each witness are the 'Proposed Evidence.'

⁶ See Annex 1, items no.1-3.

⁷ See Annex 2, items no.1-3.

⁸ See Annex 4, item no.1.

⁹ See Annex 5, item no.1.

¹⁰ See Annex 6, item no.1.

¹¹ See Annex 7, items no.1-2.

¹² See Annex 3, items no.1-2.

¹³ Rule 155(1)(a).

¹⁴ Rules 137-138, 155(1)(b).

includes the tendered Rule 155 Statement and, where applicable, associated exhibits and/or other written records tendered for admission. Annex 8 contains the documents supporting the unavailability of the Rule 155 Witnesses.

II. APPLICABLE LAW

4. Rule 155(1) allows a Panel to admit the evidence of a person in the form of a written statement, transcript, or other written record, provided that the Panel is satisfied (i) of the person's unavailability or inability to testify orally, and (ii) that the statement, written record or transcript is *prima facie* reliable, having regard to the circumstances in which it was made, recorded, and maintained.¹⁵

5. Evidence admitted pursuant to Rule 155 must satisfy the standard admissibility criteria provided for in Rules 137 and 138(1).¹⁶ This means that the requirements for relevance, authenticity and probative value of the evidence, as well as the condition that any prejudicial effect should not outweigh the probative value of the evidence, must be met.¹⁷

6. In assessing the *prima facie* reliability of the evidence, the Panel is not obliged to consider factors that go beyond formal requirements,¹⁸ such as the circumstances in which the evidence was taken, recorded and maintained.¹⁹ Even if the Panel were to find that any given indicia of reliability or authenticity were missing, the Panel should still admit the Proposed Evidence and consider its weight in light of the entire evidentiary record.²⁰

¹⁵ See Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023 ('First Rule 155 Decision'), para.10.

¹⁶ See, generally, First Rule 155 Decision, KSC-BC-2020-06/F01603, para.12.

¹⁷ Indicia of reliability for the Proposed Evidence are detailed in Annexes 1-7 to this Motion.

¹⁸ *Specialist Prosecutor v. Mustafa*, Decision on the Prosecution application for the admission of prior statements of witness W04648 and related documents, KSC-BC-2020-05/F00235, 15 October 2021 ('*Mustafa* Rule 155 Decision'), para.10.

¹⁹ *Mustafa* Rule 155 Decision, KSC-BC-2020-05/F00235, para.10.

²⁰ ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater* and Prosecution Motion for the Admission of the Evidence of GH-083 pursuant to Rule 92 *quarter* ('*Hadžić* Decision'), 9 May 2013, para.17 and the sources cited therein. See also European Court of Human Rights ('ECtHR'), *Schatschaschwili v. Germany* [GC], 9154/10,

7. In addition to assessments of the reliability of written statements,²¹ similarly-situated courts have found that transcripts of prior testimony are appropriate for admission in writing as they are inherently authentic and reliable, often audio and/or video-recorded, verbatim records, which include all questions, answers and clarifications of witnesses, who in addition testified under oath, and were subject to cross-examination.²² Many of the same indicia of reliability and authenticity apply to transcripts of interviews. Further, documents used with the witnesses in the tendered evidence are appropriate for admission as associated exhibits when they are used or explained by a witness and are an integral part of the statement or testimony.²³

8. Rule 155(1) does not preclude the admission of evidence which goes to the acts and conduct of an accused.²⁴ The fact that evidence goes to proof of the acts and conduct of an accused²⁵ is merely a factor that the Panel *may* choose to take into

Judgement, 15 December 2015 ('*Schatschaschwili* Judgement'), para.126 (concerning the consideration of the reliability of evidence in light of other available evidence).

²¹ See, generally, First Rule 155 Decision, KSC-BC-2020-06/F01603, para.14.

²² See e.g. International Criminal Tribunal for the Former Yugoslavia ('ICTY'), *Prosecutor v. Prlić et al*, IT-04-74-T, Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rules 92 *bis* and *quarter* of the Rules, 27 October 2006, para.10; Special Court for Sierra Leone ('SCSL'), *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Public with Confidential Annexes C to E Prosecution Motion for Admission of the Prior Trial Transcripts of Witnesses TF1-021 and TF1-083 Pursuant to Rule 92*quater*, 5 February 2009, para.17.

²³ See, generally, First Rule 155 Decision, KSC-BC-2020-06/F01603, para.17.

²⁴ See Rule 155(5); First Rule 155 Decision, KSC-BC-2020-06/F01603, paras 15, 90, 116, 159, 203, 217.

²⁵ The phrase 'acts and conduct of the Accused' should be accorded its ordinary meaning, and thus refers to the personal actions and omissions of the Accused which are described in the charges brought against them. 'Acts and conduct of the Accused' refer to the acts and conduct 'as charged in the indictment'. See First Rule 155 Decision, KSC-BC-2020-06/F01603, paras 16, 159; Decision on Thaçi Defence Motion Regarding the Preservation of Evidence, KSC-BC-2020-06/F01250, 2 February 2023, ('Decision on the Preservation of Evidence'), para.31. Cf Annex 1 to Submission of Confirmed Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022 ('Indictment'). See also *Prosecutor v. Mustafa*, Public redacted version of Decision on the Prosecution application pursuant to Rule 153 of the Rules, KSC-BC-2020-05/F00286/RED, 17 December 2021, para.19, citing International Criminal Court ('ICC'), *Prosecutor v. Ongwen*, ICC-02/04-01/15-596-Red, Trial Chamber IX, Public Redacted Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, paras 11-12; ICTY, Appeals Chamber, *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92bis(C), 7 June 2002, paras 9-10, relying in fn.28 on *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92bis(C), 21 March 2002, para.22 ('The phrase "acts and conduct of the accused" in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and

account when deciding on the admission of the statement; it is not a determinative factor which would necessarily preclude the admission of such statement.²⁶ Similarly, evidence that goes to the acts and conducts of subordinates of the Accused is admissible.²⁷

9. The use of Rule 155 is consistent with the Law, which recognises the admissibility of evidence from other entities that preceded the KSC's establishment and outlines the eligibility requirements for such evidence.²⁸ Below, additional factors and considerations regarding the admissibility of the Proposed Evidence are incorporated, where relevant.

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

²⁶ Rule 155(5); First Rule 155 Decision, KSC-BC-2020-06/F01603, para.217; Decision on the Preservation of Evidence, KSC-BC-2020-06/F01250, para.31. See also ICTY, *Prosecutor v. Lukić et al*, IT-98-32/1-A, Judgement, 4 December 2012, para.565; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning Into Evidence, 23 November 2007, para.48; ICTY, *Prosecutor v. Martić*, IT-95-11-T, Decision on Defence Motion to exclude testimony of Witness Milan Babić ('*Martić Decision*'), 9 June 2006, para.67, upheld by the Appeals Chamber in *Prosecutor v. Martić*, IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber's Decision on the Evidence of Milan Babić ('*Martić Appeal Decision*'), 14 September 2006, para.20; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, 20 November 2015, paras 13, 37-38; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18 OA4, Judgement on the appeal of the Prosecution against Trial Chamber X's "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules" ('*Al Hassan Decision*'), 13 May 2022, paras 2-3, 60; International Residual Mechanism for Criminal Tribunals, *Prosecutor v. Stanišić and Simatović*, MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of Milan Babić pursuant to Rule 112, 17 January 2018, paras 5-7, 13-14; Special Tribunal for Lebanon ('STL'), *Prosecutor v. Merhi and Oneissi*, STL-11-01/A-2/AC, Appeal Judgement, 10 March 2022, paras 195-196; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision Admitting into Evidence the Audio Recordings and Transcripts of the Prosecution Interview of Mr Wissam Al-Hassan (Witness PRH680) Under Rule 158 and Three Related Documents under Rule 154, 20 October 2017, para.84.

²⁷ See ICC, *Said Decision*, paras 10, 17-21; ICC, *Al Hassan Decision*, para.54.

²⁸ Law, Art. 37. See also Law, Art.40(2).

III. SUBMISSIONS

10. The Proposed Evidence of the Rule 155 Witnesses should be admitted as it (i) is relevant to the allegations in the Indictment,²⁹ (ii) is *prima facie* reliable and contains sufficient indicia of authenticity,³⁰ (iii) has probative value³¹ that is not outweighed by its prejudicial effect, and (iv) meets the requirements of Rule 155.

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

12. Considering available counterbalancing factors and opportunities by the Defence to challenge the evidence,³² there is the opportunity for a fair and proper assessment of the Proposed Evidence and, in turn, the probative value thereof is not outweighed by any prejudice. Provided that the admissibility criteria under the Law

²⁹ For an indication of the relevant Indictment paragraphs, *see below* paras 15, 33, 40, 45, 50.

³⁰ For each item, the Annexes provide a description, date of the document, relevant ERNs, and indicia of reliability. Indicia of reliability include the circumstances in which the evidence was obtained and recorded, including any oath or acknowledgement of truth, signature, presence of a qualified interpreter, and whether it has been subject to cross-examination. Admission of evidence does not require definitive proof of reliability or credibility of the evidence, but rather a showing of *prima facie* reliability on the basis of sufficient indicia, *see* First Rule 155 Decision, KSC-BC-2020-06/F01603, paras 63-64, 101.

³¹ Since the Proposed Evidence is relevant, authentic, and reliable, it also has probative value. The probative value of a document is determined by two primary factors: (i) the *prima facie* reliability of the tendered evidence; and (ii) the measure by which that evidence is likely to influence the determination of a particular issue in dispute in the case. *See Specialist Prosecutor v. Mustafa*, Public Redacted Version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material, KSC-BC-2020-05/F00281RED, 13 December 2021, para.13.

³² Relevant factors include whether the evidence is approached with caution, availability of corroborative evidence (including witness and documentary evidence), and the opportunity for the Defence to give its own version of the events, investigate the witness and his/her motives, and cast doubts on the credibility of the absent witness (for example, pointing to any incoherence or inconsistency). *See Schatschaschwili* Judgement, paras 126-131. *See also*, on the importance of corroboration of the evidence, ICTY, *Martić* Decision, para.67, upheld by the Appeals Chamber in *Martić* Appeal Decision, para.20.

and Rules are satisfied, it is essential that the Prosecution has the opportunity to rely upon – and the Panel, consider – the Proposed Evidence, which constitutes compelling evidence of the commission of serious international crimes as charged in this case.³³

13. In addition to satisfying the requirements of Rules 137, 138, and 155(1)(b), the Proposed Evidence satisfies the requirements of Rule 155(1)(a) for Witnesses W00716, W01994, W04239, W04379, W01718 and W02087, who are unavailable since they are deceased, as confirmed by the supporting proof of death documents presented in Annex 8.³⁴ Witness W03821 is unavailable because he is not fit to testify due to health reasons.³⁵

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

A. RAHOVEC/ORAHOVAC

15. The evidence of W00716 and W01994 is relevant to prove the charges in the Indictment related to the July 1998 events in and around Rahovec/Orahovac, which are connected to, *inter alia*, the Malishevë/Mališevo crimes site.³⁶ In this respect, W01994's husband is a murder victim identified in the Indictment.³⁷

³³ See, similarly, ECtHR, *Marguš v Croatia* [GC], 4455/10, Judgement, 27 May 2014, paras 124-127; ECtHR, *Ibrahim and Others v. UK* [GC], 50541/08 et al., Judgement, 13 September 2016 ('*Ibrahim* Judgement'), para.252.

³⁴ See Annex 8, items no.1-2, 4-7.

³⁵ See Annex 8, item no.3. See also para.39 below.

³⁶ See, generally, Indictment, KSC-BC-2020-06/F00999/A01, paras 22, 32-57, 59-61, 67, 96-98, 103, 136, 138, 154. The following paragraphs in the Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief with strictly confidential and ex parte Annex 1 and confidential Annexes 2-3, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief') are relevant to W00716 and W01994's evidence: paras 368-383.

³⁷ Indictment, KSC-BC-2020-06/F00999/A01, p.65 (victim 11.1).

1. W00716

16. *Relevance.* From 1992 to 1998, W00716,³⁸ a Kosovo Serb,³⁹ now deceased,⁴⁰ resided in Sveti Vračı Monastery, Zoçishtës/Zoçište.⁴¹ W00716 left Zoçishtës/Zoçište on 21 July 1998 after he was taken out of the monastery as a prisoner by KLA soldiers.⁴² W00716 returned to the demolished monastery, only left in ruins in June 2000.⁴³

17. On 21 July 1998 at 04.50 in the morning, a mine flew near W00716's window but it did not explode.⁴⁴ About ten minutes later, automatic gunfire started and RPG bombs and rifle grenades landed on the monastery.⁴⁵ W00716 heard whizzing, shooting, bullets, and deafening noise from the shooting.⁴⁶ A massive explosion went off and the mine hit the monastery.⁴⁷ At the time of the attack, there were about 35 monks and refugees ('the group') in the monastery.⁴⁸ The refugees had come 3 or 4 days before the attack because their homes in Reti/Retimlje had been raided by KLA troops.⁴⁹

18. At around 12.00, the same day, W00716 and the group were called to walk out of the monastery by the KLA.⁵⁰ There were at least 50 armed men, mostly in camouflage clothes, carrying automatic rifles.⁵¹ The group was then transported to Zoçishtës/Zoçište, loaded onto a bus, driven in the direction of Reqan/Reçane, and

³⁸ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.8 (lines 24-25) and p.9 (line 2).

³⁹ See Annex 1, item no.3: U002-4810-U002-4818, p.U0024810.

⁴⁰ See Annex 8, item no.1: 112106-112107-ET.

⁴¹ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.8 (lines 24-25) and p.9 (line 2); item no.3: U002-4810-U002-4818, p.U0024811.

⁴² See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.8 (lines 24-25) and p.9 (line 2).

⁴³ See Annex 1, item no. 1: 004724-TR-ET Part 1 RED, p.9 (lines 3-5); 004724-TR-ET Part 2, p.13 (lines 16-21).

⁴⁴ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.15 (lines 16-23).

⁴⁵ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.15 (lines 25-26) and p.16 (line 2).

⁴⁶ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.16 (lines 2-4).

⁴⁷ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.16 (lines 6-7).

⁴⁸ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.17 (lines 8-11); item no.3: U002-4810-U002-4818, p.U0024812.

⁴⁹ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.17 (lines 14-20).

⁵⁰ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.19 (lines 22-25).

⁵¹ See Annex 1, item no.1: 004724-TR-ET Part 1 RED, p.20 (lines 11-16).

finally brought to an elementary school in Semetishtë/Semetište ('the school').⁵² At the school, W00716 was interrogated several times by a KLA commander.⁵³ Other monks were also interrogated.⁵⁴ One person in the group was blindfolded, taken to a prison camp, and was heavily beaten.⁵⁵ The group was handed over to the ICRC the next day and transported to Graçanicë/Gračanica.⁵⁶

19. *Authenticity and Reliability.* The Proposed Evidence for W00716, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed in Confidential Annex 1.

20. W00716's SITF interview is recorded in an audio-video format and a verbatim transcript.⁵⁷ W00716's statements were taken by duly empowered SITF and ICTY investigators on 16 July 2013 and 2 October 2001 in the presence of interpreters understood by the witness.⁵⁸ Both statements indicate the date, time, and place of the interview and contain the witness's details.⁵⁹ As recorded in the ICTY statement, W00716 confirmed his signature⁶⁰ and that the contents of his statements were true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.⁶¹ Similarly, the witness confirmed all of this on camera during the SITF interview.⁶²

21. The transcript of W00716's 2007 testimony heard before the District Court in Belgrade in 2007 corroborates the two abovementioned statements of the witness,

⁵² See Annex 1, item no.1: 004724-TR-ET Part 2, p.1 (lines 10-20) and p.2 (lines 13-14).

⁵³ See Annex 1, item no.3: U002-4810-U002-4818, p.U0024814.

⁵⁴ See Annex 1, item no.3: U002-4810-U002-4818, p.U0024814.

⁵⁵ See Annex 1, item no.3: U002-4810-U002-4818, p.U0024815; item no.2: SITF00063311-SITF00063318-ET, pp.SITF00063314, SITF00063316.

⁵⁶ See Annex 1, item no.1: 004724-TR-ET Part 2, p.3 (lines 17-25).

⁵⁷ See Annex 1, item no.1: 004724-TR-ET Part 1, pp.1-2.

⁵⁸ See Annex 1, items no.1 and 3.

⁵⁹ See Annex 1, item no.1: 004724-TR-ET Part 1, pp.1-2; U002-4810-U002-4818, p.U0024810.

⁶⁰ See Annex 1, item no.3: U002-4810-U002-4818, p.U0024818.

⁶¹ See Annex 1, item no.3: U002-4810-U002-4818, p.U0024811; see also item no.1: 004724-TR-ET Part 1, pp.5, 6, and 004724-TR-ET Part 3, p.15.

⁶² See Annex 1, item no.1: 004724-TR-ET Part 1, pp.1-2.

reinforcing the truthfulness of the witness's statements,⁶³ and permitting a full assessment of this deceased witness's evidence and credibility. The consistency of the Proposed Evidence – considered together and with corroborating evidence⁶⁴ – further demonstrates its reliability.

22. *Fairness.* The probative value of W00716's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence does not go to the proof of the acts and conduct of the Accused⁶⁵ and was recorded in a manner – including by different law enforcement bodies and at different times over the course of many years – that enables the Parties and Panel to assess the witness's demeanour and credibility.⁶⁶ W00716's statements are consistent with, and corroborated by the statements of other witnesses in the case,⁶⁷ who will be available for cross-examination by the Defence, and other testimonial and documentary evidence.⁶⁸ The Defence is aware of the witness's identity, may investigate the witness, his motives and

⁶³ See Annex 1, item no.2: SITF00063311-SITF00063318-ET.

⁶⁴ See para.22 below.

⁶⁵ Cf. Rule 155(5).

⁶⁶ In this respect, the SITF interview – during which the witness affirmed and discussed the other relevant statements – was audio-video recorded.

⁶⁷ See especially W00072: 005300-TR-ET, pp.19-20, 22-28; and 041400-TR-ET Part 1, pp.5-7 (W00072 gives evidence that Serb women were put in a truck and driven by KLA soldiers to Zoçishtës/Zoçište; that the monastery was attacked by KLA; that KLA soldiers ordered all Serbs to get into a bus and drove them toward Semetishtë/Semetište; that civilians were detained there for one night, in the local school building, where they were guarded at all times by KLA soldiers).

⁶⁸ See e.g. W00083: 000516-TR-ET Part 2, pp.18-26 (W00083 confirms that W00716 was a monk from Zoçište, that he was interrogated by the KLA and all detainees were searched; that the monastery was attacked by the KLA on 21 July 1998; that KLA soldiers ordered all Serbs to get into a bus and drove them toward Semetishte; that civilians were detained there for one night, in the local school building, where they were guarded at all times by KLA soldiers; that detainees were released on the 22 July 1998 to the ICRC; that women, elderly, sick people, as well as monks and elderly had sought protection in the monastery); W00100: 030947-030949 RED, p.030947; 026115-026116-ET Revised RED, p.026115; 30972-030978-ET RED, pp.030973-030974; 030961-030971-ET RED, pp.030963-030965; U002-4871-U002-4878 RED, pp.U0024872, U0024874-U0024876 (W00100 gives evidence that the village of Retimlje was attacked on 17-21 July 1998 and that they were driven to the village of Zociste where they were hiding in the monastery and taken to an abandoned school building, where monks were interrogated. The day after they were taken to the school they were released by the Red Cross). See also U001-7877-U001-7877-ET (this report describes an attack by KLA in the village of Zaqisht and Hoqë on 21 July 1998); 0188-9195-0188-9216 (this report relates to the looting and destruction of the Monastery between 10 June and 19 September 1999); SITF00413220-00413243, p.SITF00413228 (confirms that W00716 was released to the ICRC).

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

23. In sum, the probative value of W00716's Proposed Evidence is not outweighed by any prejudice to the Defence.

2. W01994

24. *Relevance.* W01994, a Serb civilian, now deceased,⁶⁹ worked as a cleaning lady at the medical centre in Rahovec/Orahovac in July 1998.⁷⁰ On the evening of 17 July 1998, the medical centre was attacked by KLA forces leading the personnel to remain in the building until the morning of 19 July 1998.⁷¹

25. At gunpoint, W01994 was told that if Dr. Aleksandar STANOJEVIĆ⁷² did not come out, W01994 would be killed.⁷³ W01994 was pushed and mistreated by KLA soldiers.⁷⁴ W01994 saw Dr. Aleksandar STANOJEVIĆ and Duško PATRONGIĆ, a technician, being abducted as part of the attack.⁷⁵ Aleksandar STANOJEVIĆ had his hands tied.⁷⁶

26. W01994 noted that people were tortured and there were signs of blood.⁷⁷ Armed KLA soldiers were shooting in the surrounding areas and were moving inside and outside of the medical centre.⁷⁸ Dorde DORIĆ was interrogated, beaten and hit with rifle sticks.⁷⁹ W01994 could hear him moaning.⁸⁰ The following day, upon an

⁶⁹ See Annex 8, item no.2: 112191-112192-ET.

⁷⁰ See Annex 2, item no.1: SPOE00193670-00193671 RED, p.SPOE00193670; item no.3: K019-5134-K019-5140, p.K0195135.

⁷¹ See Annex 2, item no.1: SPOE00193670-00193671 RED, p.SPOE00193670.

⁷² See Annex 2, item no.2: SPOE00200060-00200061 RED, p.SPOE00200060.

⁷³ See Annex 2, item no.1: SPOE00193670-00193671 RED, p.SPOE00193670; item no.2: SPOE00200060-00200061 RED, p.SPOE00200060; item no.3: K019-5134-K019-5140, p.K0195135.

⁷⁴ See Annex 2, item no.2: SPOE00200060-00200061 RED, p.SPOE00200060.

⁷⁵ See Annex 2, item no.1: SPOE00193670-00193671 RED, p.SPOE00193670; item no.3: K019-5134-K019-5140, p.K0195135.

⁷⁶ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195135.

⁷⁷ See Annex 2, item no.1: SPOE00193670-00193671 RED, p.SPOE00193671.

⁷⁸ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195136.

⁷⁹ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195136.

⁸⁰ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195136.

attempt to escape, W01994 was stopped and told to go back or else she would get killed.⁸¹ W01994 was kept in the medical centre together with others.⁸² Dorde DORIĆ was taken away.⁸³

27. On the morning of 19 July 1998, W01994 heard the voice of her husband, Krsta STANOJEVIĆ, in the building.⁸⁴ Shortly after, the KLA released the personnel at the Rahovec/Orahovac medical centre.⁸⁵ W01994's husband and Dorde DORIĆ were not amongst the released persons. W01994 never saw her husband again.⁸⁶

28. *Authenticity and Reliability.* The Proposed Evidence for W01994, with an individualised explanation of the circumstances establishing *prima facie* reliability, is listed in Confidential Annex 2. W01994's ICTY statement was taken by a duly empowered investigator on 3 December 2000, and translated into a language understood by the witness, by an interpreter duly certified by the ICTY Registry.⁸⁷ The statement included a witness acknowledgement and interpreter certification, was signed by the witness and initialled on all pages.⁸⁸ W01994 confirmed that the content of her statement was true to the best of her knowledge and recollection.⁸⁹

29. The statement given by W01994 on 25 October 2005 was taken by a duly empowered investigator of United Nations Mission in Kosovo ('UNMIK') under the framework of a criminal investigation.⁹⁰ W01994 was informed of her rights and obligations, and the statement was read to her in her native language. The UNMIK statement uses an official template, which indicated date, time and place of the statement. It also included W01994's personal details.⁹¹

⁸¹ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195136.

⁸² See Annex 2, item no.3: K019-5134-K019-5140, p.K0195136.

⁸³ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195137.

⁸⁴ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195137.

⁸⁵ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195137.

⁸⁶ See Annex 2, item no.3: K019-5134-K019-5140, pp.K0195137-K0195138.

⁸⁷ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195140.

⁸⁸ See Annex 2, item no.3: K019-5134-K019-5140, pp.K0195134- K0195140.

⁸⁹ See Annex 2, item no.3: K019-5134-K019-5140, p.K0195139.

⁹⁰ See Annex 2, item no.1: SPOE00193670-00193671 RED.

⁹¹ See Annex 2, item no.1: SPOE00193670-00193671 RED, p.SPOE00193670.

30. An interview with the War Crimes Documentation Project⁹² also corroborates W01994's ICTY and UNMIK statement and therefore reaffirms the truthfulness of the witness's statements. The consistency of the Proposed Evidence – considered together and with corroborating evidence⁹³ – further demonstrates its reliability.

31. *Fairness.* The probative value of the Proposed Evidence for W01994 is not outweighed by any prejudice. Indeed, this evidence does not go to the proof of the acts and conduct of the Accused.⁹⁴ The Rule 155 Statement of W01994 is consistent with, and corroborated by, statements of other witnesses,⁹⁵ some of whom will be available for cross-examination by the Defence, and other materials.⁹⁶ Further, the Defence knows W01994's identity and may investigate W01994, including her motives and credibility. The Defence may also challenge the Proposed Evidence at trial and put forward its own version of events.

32. In sum, the probative value of W01994's written evidence is not outweighed by any prejudice to the Defence.

B. QIREZ/ĆIREZ AND BAICË/BANJICA

33. The evidence of W03821 is relevant to prove the charges in the Indictment related to Qirez/Ćirez and Baicë/Banjica in September 1998.⁹⁷

⁹² See Annex 2, item no.2: SPOE00200060-00200061 RED.

⁹³ See para.31 *below*.

⁹⁴ Cf. Rule 155(5).

⁹⁵ See, *in particular*, statement of W02257: 076249-TR-ET Part 1 RED, pp.24-38; 076249-TR-ET Part 2 RED, pp.1-18; 076249-TR-ET Part 3 RED, pp.18-20, 27-29; 036953-036955 RED, pp.036953-036955; K020-8235-K020-8243, pp.K0208235-K0208243. See also W00092: SITF00306707-00306714 RED2; pp.SITF00306707-SITF00306714; SITF00320364-00320378 RED, p.SITF00320374; SPOE00301778-00381786 RED, pp. SPOE00116981-SPOE00116982; U002-4573-U002-4574 RED, pp.U0024573-U0024574; K020-8456-K020-8464 RED, p.K020-8459-K020-8460, and SPOE00193955-00193957 RED, pp.SPOE00193955-SPOE00193956 ([REDACTED]. [REDACTED]). See also: W00067: SPOE00194062-00194084 RED2, p.SPOE00194074; W02303: 061376-TR-ET Part 1 RED, p.12; K019-5141-K019-5146 RED, pp. K019-5143.

⁹⁶ SITF00312746-00312876 RED, pp.SITF00312748-SITF00312876; SITF00318658-00318661; SITF00318712-00318713; SPOE00201900-00201901, pp.SPOE00201900-SPOE00201901; L001-1098-L001-1102, pp.L0011098-L0011102; SPOE00199699-00199709, pp.K0208391-K0208401; SPOE00197205-00197209, p.SPOE00197206; SPOE00197197-00197204 RED; SPOE00068711-00068728.

⁹⁷ See Indictment, KSC-BC-2020-06/F00999/A01, paras 20, 46, 76, 110-111 and Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 112, 458-468.

3. W03821

34. *Relevance.* W03821 was the [REDACTED] in [REDACTED]. In September 1998, he made a humanitarian visit as part of a delegation to sites in Drenicë/Drenica including Qirez/Ćirez.⁹⁸ He was arrested and detained before being transferred to Baicë/Banjica where he was beaten and interrogated and then released.⁹⁹ The delegation members were detained by KLA soldiers including Sabit GECI, Hashim THAÇI and Rexhep SELIMI. W03821 and other members of the delegation were taken to a school classroom in Baicë/Banjica and were beaten.¹⁰⁰ Sahit JASHARI and Sabit GECI came into the classroom.¹⁰¹ The delegation members were kept in the school and were told to write statements about who they were before being questioned one-by-one by Sabit GECI and Hashim THAÇI.¹⁰² On 22 September 1998, W03821 and the other detainees were driven away from the school by the Serb offensive in Drenicë/Drenica.¹⁰³ The detainees were brought to Krasmiroc/Krasmirovac and stayed in a guestroom there. In the evening, Hashim THAÇI told them they were free to go.¹⁰⁴ W03821 explained that the events affected him mentally and physically.¹⁰⁵

35. *Authenticity and reliability.* The Proposed Evidence for W03821, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed in Confidential Annex 3.

36. The official record of W03821's [REDACTED] testimony [REDACTED] includes details such as [REDACTED], date and time of the interview, names and roles of the persons present, the witness's personal data, as well as the signatures of the witness (and his initials on all pages), the interpreter, [REDACTED].¹⁰⁶ In addition, the

⁹⁸ See Annex 3, item no.1: 034318-034362 RED2, p.3.

⁹⁹ See Annex 3, item no.1: 034318-034362 RED2, p.7.

¹⁰⁰ See Annex 3, item no.1: 034318-034362 RED2, p.7.

¹⁰¹ See Annex 3, item no.1: 034318-034362 RED2, p.7.

¹⁰² See Annex 3, item no.1: 034318-034362 RED2, pp.8-9.

¹⁰³ See Annex 3, item no.1: 034318-034362 RED2, pp.9-10.

¹⁰⁴ See Annex 3, item no.1: 034318-034362 RED2, p.10.

¹⁰⁵ See Annex 3, item no.2: [REDACTED], p.19.

¹⁰⁶ See Annex 3, item no.1: 034318-034362 RED2, pp.1-13.

witness was informed of his rights and obligations at the beginning of the interview.¹⁰⁷ During [REDACTED], W03821 confirmed the accuracy of the content of this statement.¹⁰⁸

37. W03821 was interviewed [REDACTED] with an interpreter.¹⁰⁹ The records of the interview include an audio-video record and a verbatim transcript indicating the date, time, and place of the interview, as well as all persons present.¹¹⁰ W03821 was advised of his rights and obligations as a witness,¹¹¹ and he confirmed that the contents of his statement were true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.¹¹²

38. *Fairness.* The probative value of the Proposed Evidence pertaining to W03821 is not outweighed by any prejudice. While this evidence goes to proof of the acts and conduct of the Accused Hashim THAÇI and Rexhep SELIMI, as it relates to their personal participation in the treatment of Opponents on the ground,¹¹³ it is admissible because Rule 155's conditions are met.¹¹⁴ In this case, the probative value of the Proposed Evidence is not outweighed by undue prejudice because the evidence (i) may not be relied upon to a sole or decisive extent in reaching a conviction;¹¹⁵ (ii) is consistent with, and corroborated by, statements of other witnesses in the case,¹¹⁶ who will be available for cross-examination by the Defence, and other testimonial and

¹⁰⁷ See Annex 3, item no.1: 034318-034362 RED2, pp.1-2.

¹⁰⁸ See Annex 3, item no.2: [REDACTED], pp.3-8

¹⁰⁹ See Annex 3, item no.2: [REDACTED], p.1.

¹¹⁰ See Annex 3, item no.2: [REDACTED], pp.1-2.

¹¹¹ See Annex 3, item no.2: [REDACTED], pp.2-3.

¹¹² See Annex 3, item no.2: [REDACTED], pp.20-21.

¹¹³ See Indictment, KSC-BC-2020-06/F00999/A01, para.46, and Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 112, 459-468.

¹¹⁴ See Rule 155(5); First Rule 155 Decision, KSC-BC-2020-06/F01603, para.15.

¹¹⁵ Rule 140(4)(a).

¹¹⁶ See statements of W03825, [REDACTED] and [REDACTED]. These witnesses provide evidence about the involvement of THAÇI and/or SELIMI in the Qirez/Ćirez and Baicë/Banjica events. See KSC-BC-2020-06/F01594/A01, pp.198-202.

documentary evidence;¹¹⁷ and (iii) the Defence is aware of the witness's identity, may investigate the witness, including motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

39. *Unavailability pursuant to Rule 155(1)*. W03821 is unavailable¹¹⁸ as his health condition effectively prevents him from testifying orally.¹¹⁹ In particular, his medical records highlight, *inter alia*, [REDACTED].¹²⁰

C. LIKOC/LIKOVAC

40. The evidence of W04239 is relevant to prove the charges in the Indictment related to Likoc/Likovac.¹²¹

4. W04239

41. *Relevance*. W04239, a Kosovar-Albanian, now deceased,¹²² was living unemployed in the village of Polac/Poljance in the municipality of Drenas/Glogovac.¹²³ On 1 October 1998, three men wearing KLA uniforms, identified as Hasan KODRA, Skender KODRA and an individual with the surname

¹¹⁷ See, in particular, P00158_ET (043805-043805-ET Revised 1); 034172-034173; 034157-034158-ET.

¹¹⁸ See also [REDACTED]. [REDACTED].

¹¹⁹ See First Rule 155 Decision, KSC-BC-2020-06/F01603, para.123; Decision on Thaçi, Veseli & Krasniqi Defence Request for Certification to Appeal the 'Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155', KSC-BC-2020-06/F01671, 13 July 2023, paras 18-19. See also ICTY, *Prosecutor v. Gotovina et al.*, IT -06-90-T, Decision on the Admission of Statements of Four Witnesses pursuant to Rule 92 *quater*, 24 July 2008, para.16; ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on the Admission of Statements of Two Witnesses and Associated Documents pursuant to Rule 92 *quater*, 16 January 2009, paras 8, 10; ICTY, *Prosecutor v. Karažić*, IT-95-5/18-T, Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits pursuant to Rule 92 *quater*, 30 November 2009, para.5; ICTY, *Hadžić* Decision, paras 23, 29, 41, 95, 101; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18, Trial Chamber X, Public redacted version of Decision on the introduction into evidence of P-0570's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 11 August 2021, paras 18-20; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision Admitting Witness PRH437's Statements Under Rule 158 and Granting Protective Measures, 28 February 2017, paras 12-14.

¹²⁰ See Annex 8, item no.3: 106342-106344 RED2.

¹²¹ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61 and Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 273-282.

¹²² See Annex 8, item no.4: 108472-108474 RED.

¹²³ See Annex 4, item no.1: SITF00370905-00370916 RED, p.3.

LUSHTAKU, entered his house and told him the KLA commander Ilaz KODRA wanted to speak to him.¹²⁴ W04239 was forced into a white Lada vehicle and driven to the village of Prekaz.¹²⁵ In Prekaz, W04239 was taken to the house of Nebi KODRA and kept chained in a cellar.¹²⁶ During several days, W04239 was kept in a basement and was beaten by various people, including Musa VELIQI, Fadil KODRA, and Nuredin LUSHTAKU.¹²⁷ The witness was also attacked with an axe and with knives.¹²⁸

42. On the night of 5 October 1998, W04239 was transported to the mountains near Skenderaj/Srbica where he was beaten until unconscious.¹²⁹ W04239 woke up and found himself covered in branches and leaves that were set on fire, then he escaped but was caught again and placed in a car.¹³⁰ W04239 was transported to the local headquarters in Likoc/Likovac where he was put in a corridor for a few hours with other detainees tied up.¹³¹ He recognised Sami LUSHTAKU, Ramadan GASHI and Sahit JASHARI. During the night, W04239 overheard a call from Gani GECI and Fadil GECI in the radio that ordered his release.¹³² W04239 was released but threatened to not disclose what he saw.¹³³ W04239 suffered broken ribs, wounds and bruises as result of the beatings.¹³⁴

43. *Authenticity and reliability.* The Proposed Evidence for W04239, with an explanation of circumstances militating for *prima facie* reliability, is listed in Confidential Annex 4. The record of the witness interview is an official record which bears the case number, date, time and place of the interview, names and roles of the

¹²⁴ See Annex 4 item no.1: SITF00370905-00370916 RED, p.3.

¹²⁵ See Annex 4, item no.1: SITF00370905-00370916 RED, p.3.

¹²⁶ See Annex 4, item no.1: SITF00370905-00370916 RED, p.3.

¹²⁷ See Annex 4, item no.1: SITF00370905-00370916 RED, p.3.

¹²⁸ See Annex 4, item no.1: SITF00370905-00370916 RED, p.3.

¹²⁹ See Annex 4, item no.1: SITF00370905-00370916 RED, p.4.

¹³⁰ See Annex 4, item no.1: SITF00370905-00370916 RED, p.4.

¹³¹ See Annex 4, item no.1: SITF00370905-00370916 RED, p.4.

¹³² See Annex 4, item no.1: SITF00370905-00370916 RED, p.5.

¹³³ See Annex 4, item no.1: SITF00370905-00370916 RED, p.5.

¹³⁴ See Annex 4, item no.1: SITF00370905-00370916 RED, p.5.

persons present, witness details and relevant signatures.¹³⁵ The statement contains a witness acknowledgement and interpreter certification, and is signed by the witness.¹³⁶

44. *Fairness.* The probative value of the written statement pertaining to W04239 is not outweighed by any prejudice. Indeed, this evidence does not go to proof of the acts and conduct of the Accused, and is consistent with, and corroborated by, statements of other witnesses in the case,¹³⁷ who will be available for cross-examination by the Defence. Further, the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the written statements at trial and put forwards its own version of events.

D. KUKËS, ALBANIA

45. The evidence of W04379 is relevant to prove the charges in the Indictment related to Kukës, Albania.¹³⁸

5. W04379

46. *Relevance.* W04379, a Kosovo Albanian, now deceased,¹³⁹ was the owner of the Kukës Metal Factory site during the indictment period.¹⁴⁰ A few days after the NATO bombardment commenced, W04379 was approached by KLA Commander Ruzhdi SARAMATI who asked if the KLA could use the Factory.¹⁴¹ W04379 handed over the keys and left the KLA in control of the site, where immediately hundreds of KLA soldiers began to occupy the premises.¹⁴² The Kukës Metal Factory quickly became a

¹³⁵ See Annex 4, item no.1: SITF00370905-00370916 RED, pp.2, 6.

¹³⁶ See Annex 4, item no.1: SITF00370905-00370916 RED, pp.5-6

¹³⁷ See, in particular, statement of [REDACTED].

¹³⁸ See Indictment, KSC-BC-2020-06/F00999/A01, paras 32-57, 59-61, 82, 88, 96-98, 119-120, 138, 167 and Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 558-569.

¹³⁹ See Annex 8, item no.5: 113294-113294 RED.

¹⁴⁰ See Annex 5, item no.1: 060124-TR-ET Part 1 Revised RED, pp.5-6.

¹⁴¹ See Annex 5, item no.1: 060124-TR-ET Part 1 Revised RED, pp.14-19.

¹⁴² See Annex 5, item no.1: 060124-TR-ET Part 1 Revised RED, pp.16, 29-30.

recruitment and mobilisation center for the KLA with various warehouses, offices, temporary medical staff and food supplies.¹⁴³

47. *Authenticity and reliability.* The Proposed Evidence for W04379, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed in Confidential Annex 5. The statement given by W04379 was taken by the Albanian law enforcement authorities in the presence of the SPO.¹⁴⁴ It is transcribed from the official audio-video recording, states the date, time and place of the interview and provides the witness's personal details. The witness was informed of his rights and obligations at the beginning of the interview and he gave his statement voluntarily and freely.¹⁴⁵ The consistency of the Proposed Evidence – considered together and with corroborating evidence¹⁴⁶ and relevant adjudicated facts¹⁴⁷ – further demonstrates its reliability.

48. *Fairness.* The probative value of W04379's Proposed Evidence is not outweighed by any prejudice. The evidence concerning the Accused is limited to a mention of Hashim THAÇI visiting the soldiers at the Kukës Metal Factory on his way to Tirana together with Fatmir LIMAJ, on an unspecified period during the war.¹⁴⁸ However, this evidence concerning the Accused does not undermine the admissibility of the Proposed Evidence under Rule 155.¹⁴⁹ In this respect, the Proposed Evidence: (i) does not concern the direct involvement of the Accused in any crime; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) is consistent with,

¹⁴³ See Annex 5, item no.1: 060124-TR-ET Part 1 Revised RED, pp.37-38, 44-46; 060124-TR-ET Part 2 Revised RED3, pp.16, 110-111.

¹⁴⁴ As the transcript of the audio-recorded interview is the most complete and accurate record, the SPO has not tendered the *procès-verbal* prepared by the Albanian authorities (065396-065408-ET RED3 and 065396-065408 RED3). However, the SPO does not object to its admission in addition to the interview transcripts, if requested by the Defence or preferred by the Panel.

¹⁴⁵ See Annex 5, Indicia of Reliability for item no.1.

¹⁴⁶ See para.48 below.

¹⁴⁷ See e.g. KSC-BC-2020-06/F01534/A01, Facts 611-612. The witness's evidence corroborates and complements other evidence and noticed adjudicated facts, insofar as it provides additional detail concerning the establishment and functioning of the site.

¹⁴⁸ 060124-TR-ET Part 2 Revised RED3, pp.158-165.

¹⁴⁹ See Rule 155(5).

and corroborated by, other witnesses in the case,¹⁵⁰ some of whom will be available for cross-examination by the Defence; and (iv) the Defence is aware of the witness's identity, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

49. In sum, for all of the reasons discussed above, the probative value of W04379's written evidence outweighs any prejudice which may arise for the Defence by its admission in writing.

E. PRIZREN

50. The evidence of W01718 and W02087 is relevant to prove the charges in the Indictment related to Prizren.¹⁵¹

6. W01718

51. *Relevance.* W01718, an ethnic Serb, now deceased,¹⁵² resided in Prizren in 1999.¹⁵³ On or around 16 June 1999, he was forcibly taken by KLA members, as they realised he was of Serb ethnicity.¹⁵⁴ He was told he had to 'pay' for voting for Milošević and was driven to the MUP Building.¹⁵⁵ There he was guarded by KLA members who interrogated other Serbs and beat them.¹⁵⁶ He verified that other Serbs were held with him, including Srecko LNU and FNU OGNJANOVIĆ.¹⁵⁷ W01718 was beaten 'every hour' including with a truncheon, fists, and was also kicked, leaving his body black and blue.¹⁵⁸ In addition, he was hit on the head with a gun, which caused bleeding¹⁵⁹

¹⁵⁰ See e.g. [REDACTED] (083219-TR-ET Part 8 RED2, pp.6-10); [REDACTED] (082892-TR-AT-ET Part 6 RED, pp.7-9; 082892-TR-AT-ET Part 9, p.5).

¹⁵¹ See Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 32-57, 59-61, 87-90, 96-98, 125-128, 138 and Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 627-629.

¹⁵² See Annex 8, item no.6: 112117-112118-ET RED.

¹⁵³ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.1.

¹⁵⁴ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.1.

¹⁵⁵ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.1.

¹⁵⁶ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.2.

¹⁵⁷ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.2.

¹⁵⁸ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.2.

¹⁵⁹ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.2.

and witnessed violence against other detainees, including having teeth removed with pliers.¹⁶⁰ W01718 was released when KFOR raided the MUP Building.¹⁶¹

52. *Authenticity and reliability.* W01718's Proposed Evidence, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed in Confidential Annex 6. W01718's UNMIK Statement was taken by a duly empowered UNMIK officer, and appears on the UNMIK witness statement form with an official logo indicating the date, time and attendees.¹⁶² The statement contains W01718's personal details and signatures of W01718 and the UNMIK officer.¹⁶³

53. *Fairness.* The probative value of the Proposed Evidence pertaining to W01718 is not outweighed by any prejudice. W01718's Proposed Evidence (i) does not go to proof of the acts and conduct of the accused¹⁶⁴ as charged in the Indictment; (ii) will not be relied on to a sole or decisive extent in reaching a conviction;¹⁶⁵ (iii) is consistent with, and corroborated by, documentary evidence¹⁶⁶ and statements of other witnesses in the case,¹⁶⁷ including those who will be available for cross-examination by the Defence;¹⁶⁸ and (iv) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and may put forward its own version of events.

7. W02087

54. *Relevance.* In mid-June 1999, W02087 – an ethnic Serb living near Prizren, now deceased¹⁶⁹ – was stopped in a residential building by two armed Albanians and

¹⁶⁰ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.2.

¹⁶¹ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.2.

¹⁶² See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.1.

¹⁶³ See Annex 6, item no.1: SITF00034172-SITF00034176 RED2, p.3.

¹⁶⁴ Rule 155(5).

¹⁶⁵ Rule 140(4)(a).

¹⁶⁶ See e.g. 013435-013436; 072507-03; 072507-01; 054010-03; 011795-06; 050084-01; 072508-01; U002-4992-U002-4995; V000-4004-1-A; 068357-01; 072507-02, and SITF00189121-SITF0018940-ET Revised RED2.

¹⁶⁷ See, in particular, statement of W02677, W02087, [REDACTED], [REDACTED], W02517, [REDACTED], W01143, W01448, [REDACTED], [REDACTED], [REDACTED], W02540, W02586, [REDACTED], W02549, W04765 and W02087.

¹⁶⁸ It is anticipated that W02677, W02540, W02586, [REDACTED], [REDACTED], W02475, [REDACTED], W04765 and [REDACTED] will appear in-court.

¹⁶⁹ See Annex 8, item no.7: 112182-112183-ET RED.

beaten before being driven to the Prizren MUP building.¹⁷⁰ At the MUP Building, his belongings were confiscated and he was handcuffed.¹⁷¹ He heard the sound of beatings and observed persons with weapons.¹⁷² He recognised another detainee, Janko JANKOVIĆ, who stated that he had been beaten.¹⁷³

55. In the evening, W02087 was driven to a private home in Tusus, where he was detained in a garage with other detainees, including several persons he knew by name: Srečko JAKŠIĆ, Vojo STOJANOVIĆ, Gojko AKŠIĆ and 'Tisa'.¹⁷⁴ Other detainees included two Muslims from Nebregoste, a Muslim from Ilidza, two Roma persons and a Catholic who W02087 recognised from his work.¹⁷⁵ The garage was poorly lit and the detainees received inadequate food.¹⁷⁶ The witness was handcuffed, interrogated and beaten by armed KLA members.¹⁷⁷ During his detention in Tusus, he heard other detainees being beaten and was aware of their injuries and mistreatment.¹⁷⁸ After seven days of detention in the garage, W02087 was released by the KLA, and was told by a KLA member he knew that he should thank Ekrem REXHA aka Drini for his release.¹⁷⁹

56. *Authenticity and reliability.* W02087's Proposed Evidence, comprised of (i) his concise SITF interview, and (ii) his one page Serbian police statement, is listed in Confidential Annex 7 with an individualised explanation of *prima facie* reliability.

¹⁷⁰ See Annex 7, item no.1: 025792-TR-ET RED3, pp.4-6; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

¹⁷¹ See Annex 7, item no.1: 025792-TR-ET RED3, p.6; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

¹⁷² See Annex 7, item no.1: 025792-TR-ET RED3, pp.10-11; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

¹⁷³ See Annex 7, item no.1: 025792-TR-ET RED3, p.11; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

¹⁷⁴ See Annex 7, item no.1: 025792-TR-ET RED3, pp.6-8, 11-13; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

¹⁷⁵ See Annex 7, item no.1: 025792-TR-ET RED3, pp.7-9.

¹⁷⁶ See Annex 7, item no.1: 025792-TR-ET RED3, pp.15, 18.

¹⁷⁷ See Annex 7, item no.1: 025792-TR-ET RED3, p. 6-7, 9, 15-18.

¹⁷⁸ See Annex 7, item no.1: 025792-TR-ET RED3, p.6-7, 14, 18-19; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

¹⁷⁹ See Annex 7, item no.1: 025792-TR-ET RED3, p.19-20; item no.2: SITF00256222-SITF00256222-ET RED2, p.1.

57. W02087's audio-video recorded SITF interview – as recorded in a verbatim transcript – was taken by a duly empowered investigator and prosecutor, and translated into a language understood by the witness.¹⁸⁰ During the interview, W02087 was duly advised of his rights and obligations as a witness.¹⁸¹ The date, time, and attendees of the interview are reflected in the record.¹⁸² W02087 confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.¹⁸³ During his SITF interview, W02087's one page prior statement given to the Serbian authorities in 2002, also tendered,¹⁸⁴ was read back to him, discussed and authenticated.¹⁸⁵ He confirmed his signature¹⁸⁶ and provided clarifications.¹⁸⁷

58. *Fairness.* The probative value of the Proposed Evidence pertaining to W02087 is not outweighed by any prejudice. His evidence (i) does not go to proof of the acts and conduct of the accused as charged in the Indictment, (ii) may not be relied on to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner that enables the Parties and the Panel to assess the witness's credibility; (iv) is consistent with, and corroborated by, documentary evidence,¹⁸⁸ and statements of other

¹⁸⁰ See Annex 7, item no.1: 025792-TR-ET RED3, p.1.

¹⁸¹ See Annex 7, item no.1: 025792-TR-ET RED3, p.2.

¹⁸² See Annex 7, item no.1: 025792-TR-ET RED3, p.1.

¹⁸³ See Annex 7, item no.1: 025792-TR-ET RED3, p.35.

¹⁸⁴ He also signed a copy of the Serbian original, which is the version tendered in Annex 7, item no.2.

¹⁸⁵ See Annex 7, item no.2: SITF00256222-SITF00256222-ET RED2.

¹⁸⁶ See Annex 7, item no.1: 025792-TR-ET RED3, p.4.

¹⁸⁷ See Annex 7, item no.1: 025792-TR-ET RED3, pp.4-35.

¹⁸⁸ See e.g. 013435-013436; 013445-013447; 016912-016913; SITF00189121-SITF0018940-ET Revised RED2, concerning the KLA presence at the MUP Building and detention of individuals at the MUP Building, including as identified by W02087.

witnesses in the case,¹⁸⁹ who will be available for cross-examination by the Defence;¹⁹⁰ and (v) the Defence is aware of the witness's identity, may investigate the witness, his motives and credibility, and has the opportunity to challenge the Proposed Evidence at trial and put forward its own version of events.

IV. CLASSIFICATION

59. This Motion is filed as confidential as it contains information concerning witnesses with protective measures and/or whose identities are not public at this time. For the same reason, the Annexes are confidential. The SPO will file a public redacted version of this filing in due course.

V. RELIEF REQUESTED

60. For the foregoing reasons, the SPO respectfully requests that the Trial Panel admit the Proposed Evidence as identified in Annexes 1-7.

Word Count: 8320



Alex Whiting

Acting Specialist Prosecutor

Thursday, 20 July 2023

At The Hague, the Netherlands.

¹⁸⁹ See, in particular, the statements of [REDACTED], [REDACTED], [REDACTED], [REDACTED], W01143, W01718. In addition, W02677, [REDACTED], [REDACTED], W02517, [REDACTED], W01448, [REDACTED], [REDACTED], [REDACTED], W02540, W02586, [REDACTED], W02549, W04765, W02087, as well as W01143 and W01718, named by the witness, provide evidence about detention at the MUP Building during the same period that W02087 was detained.

¹⁹⁰ In-court testimony is expected from other Tusus detainees including [REDACTED], [REDACTED], W01978, and [REDACTED] and it is expected that W02540, W02586, W02677, [REDACTED], [REDACTED], W02475, [REDACTED], W04765 and W02951 will be called in relation to the detentions at the MUP Building.