



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153 with confidential Annexes 1-7'

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I. INTRODUCTION

1. Pursuant to the Decision,¹ Article 37 of the Law,² and Rules 137-138, 141(1) and 153 of the Rules,³ the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,⁴ together with the associated exhibits,⁵ of the following witnesses: W01237,⁶ W04594,⁷ W04592,⁸ W04872,⁹ W04871,¹⁰ W04673,¹¹ and W04362¹² (collectively, 'Rule 153 Statements').¹³

2. The Rule 153 Statements and associated exhibits of the witnesses addressed below (collectively, the 'Proposed Evidence') meet the requirements of the Rule, are relevant, authentic and reliable and have probative value, which is not outweighed by any prejudice.¹⁴ Admission is therefore in the interests of justice.

¹ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, ('Decision'), para.51 (encouraging 'Parties and participants to consider making effective use of Rules 153, 154 and 155, to the greatest extent possible'). Unless otherwise stated, all references to Kosovo Specialist Chambers ('KSC') filings are to this case.

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.

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 153 Statement'.

⁵ See Annexes 1-7. The Rule 153 Statement and the associated exhibits for each witness are the 'Proposed Evidence'.

⁶ [REDACTED]; 101326-TR-ET Part 1 RED; 101326-TR-ET Part 2 RED2; 101326-TR-ET Part 3 ('W01237 Rule 153 Statement').

⁷ U007-9712-U007-9717; U016-2063-U016-2063; IT-04-84bis P00051 Confidential; IT-04-84bis P00050; 091401-TR-ET Part 1; 091401-TR-ET Part 2; 091401-TR-ET Part 3 ('W04594 Rule 153 Statement'). As indicated below, the SPO notes that it has modified the mode of testimony of W04594 to Rule 153.

⁸ 091693-TR-ET Part 1 RED; 091693-TR-ET Part 2; SITF00070403-SITF00070407; U009-0932-U009-0937 ('W04592 Rule 153 Statement').

⁹ [REDACTED] ('W04872 Rule 153 Statement').

¹⁰ [REDACTED] ('W04871 Rule 153 Statement').

¹¹ 082118-TR-ET Part 1 RED; 082118-TR-ET Part 2 RED; SPOE00122496-00122509 RED; SPOE00038138-SPOE00038146 RED ('W04673 Rule 153 Statement').

¹² 065559-TR-ET Part 1 RED3; 065559-TR-ET Part 2 RED3; 065559-TR-ET Part 3 RED3 ('W04362 Rule 153 Statement').

¹³ An extension of 6000 words was granted. Decision on Specialist Prosecutor's Request for Extension of Word Limit to file Rule 153 Motion, KSC-BC-2020-06/F01651, 7 July 2023.

¹⁴ Rules, Rules 137-138, 153. 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 ('*Mustafa* Decision'), paras 21, 22, 32.

3. Attached to this motion are seven annexes, one for each Rule 153 witness addressed in this motion. Each annex contains a table identifying the statement(s) that collectively comprise the proposed Rule 153 Statement for that witness. In addition, where applicable, the annexes contain a second table identifying the associated exhibits tendered for admission for each witness.

II. BACKGROUND

4. The SPO has filed this motion pursuant to the Decision.¹⁵ As instructed by the Panel, the SPO and Defence have agreed upon a procedure and thereafter have engaged in *inter partes* correspondence with a view to identifying witnesses whose evidence could be tendered by agreement pursuant to Rule 153.¹⁶ All four Defence teams have agreed to the admission of the evidence of W04594 and W04871 pursuant to Rule 153 (with no need to appear for cross-examination). Three Defence teams have further agreed to admission under Rule 153 of the evidence of W04673 and W04592, while Thaçi has conditioned his agreement for W04673, as discussed herein.¹⁷ For W01237, all Defence teams have agreed to Rule 153 admission, subject to particular conditions, which are further discussed herein.¹⁸ For W04362 and W04872, there is no agreement concerning admission pursuant to Rule 153.

5. The SPO notes that following *inter partes* discussions with the Defence, and in line with its undertaking to re-assess how to best present and streamline its case and further considering the evolution of the proceedings, it has agreed to defer its submissions for two additional witnesses until the completion of the testimony of two

¹⁵ Decision, KSC-BC-2020-06/F01226/A01, paras 51, 73.

¹⁶ Decision, KSC-BC-2020-06/F01226/A01, para.39. The SPO identified ten witnesses, whose evidence concerns primarily Llapashticë/Lapaštica, Jabllanicë/Jablanica, Drenoc/Drenovac. The SPO received timely responses (Email from VESELI Defence (on behalf of the VESELI, SELIMI, and KRASNIQI Defence teams) to SPO dated 1 June 2023 at 16.59; Email from THAÇI Defence to SPO dated 1 June 2023 at 16.06).

¹⁷ SELIMI, VESELI and KRASNIQI have agreed to both witnesses. THAÇI does not agree for W04592 and conditioned agreement for W04673 on additional conditions, discussed herein at para.78.

¹⁸ See para.29.

in-court witnesses.¹⁹ At this time the SPO tenders for admission the Proposed Evidence of the seven witnesses that are the subject of this motion.²⁰

III. APPLICABLE LAW

6. Rule 153 allows for the admission of evidence in writing in lieu of oral testimony, provided that the evidence does not concern the acts and conduct of the Accused and provided that the Panel is satisfied that the procedural requisites of Rule 153(2) are met. A non-exhaustive set of factors found in Rule 153(1)(a)-(b) serve to guide the Panel when deciding on the admissibility of the evidence.²¹

7. The phrase ‘acts and conduct’—which should be accorded its ordinary meaning, in light of the Prosecution’s case—refers to the personal actions and omissions of the Accused, and exclusively to those actions and omissions of the Accused which are described in the charges brought against him, or which are otherwise relied upon to establish his criminal responsibility.²² Such expression does

¹⁹ All Defence teams requested deferral for W04812 and W04814 until completion of W04811 and W04423. All Defence teams agreed to provide their views shortly following testimony. For completeness, the SPO notes that the Defence teams did not agree for W04732.

²⁰ Notwithstanding the absence of agreement for all proposed witnesses, the Rule 153 requirements are met for each witness and requiring them to appear for cross-examination is unnecessary. *See also* Rules, Rule 153(3) which states that if the Panel decides to require the witness to appear for cross-examination, Rule 154 shall apply. Five witnesses concern Jabllanicë/Jablanica, while the remaining two pertain to Llapashticë/Lapaštica and Drenoc/Drenovac.

²¹ *See generally Specialist Prosecutor v. Shala*, Decision on the submission and admissibility of non-oral evidence, KSC-BC-2020-04/F00461, 17 March 2023, para.33.

²² *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.19, citing International Criminal Court (‘ICC’), Trial Chamber IX, *The Prosecutor v. Ongwen*, ICC-02/04-01/15-596-Red, Decision on the Prosecution’s Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016 (‘*Ongwen* Decision’), paras 11-12; International Criminal Tribunal for the former Yugoslavia (‘ICTY’), *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92bis(C), 7 June 2002 (‘*Galić* Decision’), paras 9-10, relying on *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92bis, 21 March 2002 (‘*Milošević* Decision’), 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 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.’).

not encompass the actions and omissions of others which are attributable to the Accused under the modes of liability charged by the SPO.²³

8. The standard admissibility criteria in Rules 137 and 138(1) apply to evidence tendered under Rule 153.²⁴ 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.²⁵ Potential inconsistencies, inaccuracies or contradictions in a Rule 153 witness's evidence and with other evidence does not render evidence unreliable or *per se* unsuitable for Rule 153 admission.²⁶ Corroboration need not extend to each and every aspect or detail of a

²³ *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.19, citing *Ongwen* Decision, paras 11-12; *Galić* Decision, para.10; *Milošević* Decision, para.22. See Extraordinary Chambers in the Courts of Cambodia ('ECCC'), Trial Chamber, Case File No.002/19-09-2007/ECCC/TC, Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, 15 August 2013, para.19 ('the "acts and conduct" standard adopted...applies only to a statement or transcript that, "on its face and taken by itself", goes to proof of the personal acts and conduct of the Accused as charged. To interpret this standard to exclude statements and transcripts going to proof of matters other than the personal acts and conduct of the Accused as charged – for example, proof of "pivotal" issues in the Co-Prosecutor's case, "live" matters in dispute or the acts and conduct of organisations and bodies to which the Accused belonged, persons with whom he was associated or "proximate" subordinates – "would effectively denude [this standard of] any real utility."'); See also ICC, Appeals Chamber, *Prosecutor v. Al Hassan*, ICC-01/12-01/18 OA4, Judgment 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", 13 May 2022, ('*Al Hassan* Decision'), paras 3, 54, (the ICC Appeals Chamber—relying on the *Galić* Decision—states that what constitutes evidence going to proof of the acts and conduct of the accused 'may depend upon the nature of the charges in each case').

²⁴ *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, paras 22, 32. See similarly ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92bis (Witnesses for Sarajevo Municipality), 15 October 2009 ('*Karadžić* Decision'), para.4 (the evidence of a witness, to be admitted in written form in lieu of his or her oral evidence, must satisfy the fundamental requirements for admission of evidence, namely the evidence must be relevant and have probative value and its probative value must not be substantially outweighed by the need to ensure a fair trial); See also Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023 ('Rule 154 Decision'), para.12.

²⁵ Indicia of reliability and authenticity for statements and transcripts are contained in the annexes.

²⁶ See e.g. ICTY, *Prosecutor v. Gotovina*, IT-06-90-T, Decision on Prosecution's Third Motion for Admission of Evidence Pursuant to Rule 92bis, 5 March 2009, para.9 (the Chamber considered that minor inconsistencies with other evidence represented 'an acceptable lack of circumstantial awareness' which did not render a proposed Rule 92 bis statement 'unreliable' or otherwise unsuitable for admission); Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.64; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the

witness's evidence in order for it to be admitted under Rule 153.²⁷ Rule 153 evidence may be relevant to the underlying events and also to evaluate the credibility of other witnesses who testify on the same events.²⁸

9. Like witness statements, transcripts of prior testimony are appropriate for admission in writing as they are inherently authentic and reliable, often video-recorded, verbatim records, which include all questions, answers and clarifications of witnesses, who in addition testified under oath, and were subject to cross-examination, in institutions with high standards of due process.²⁹

10. Exhibits used with the witness in the tendered written evidence are appropriate for admission when they are used or explained by a witness and are an integral part of the statement or testimony.³⁰ Admission is subject to the general requirements of Rule 138.³¹

Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para.44 (where the Panel considers that under Rule 139(6), 'minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and his or her prior statements have not been regarded as discrediting such evidence'); ICTY, *Prosecutor v. Karadžić*, IT-95-9/18-T, Public Redacted Version of Judgment Issued on 24 March 2016, 24 March 2016, para.12 (where the Chamber states that '[i]nsignificant discrepancies between the evidence of different witnesses, or between the evidence of a particular witness in court and his prior statements, in general have not been regarded as discrediting such evidence').

²⁷ See, generally, ICTY, *Prosecutor v. Milutinović*, IT-05-87-PT, Decision on Prosecution's Rule 92 bis Motion, 4 July 2006, para.13 (where the Chamber states that 'there is no requirement that written evidence proffered pursuant to Rule 92 bis corroborate... the evidence of *viva voce* witnesses' and that 'corroborative evidence may be preferred' for the purposes of Rule 92 bis, 'but a preference is not a requirement').

²⁸ *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.33.

²⁹ Rule 154 Decision, KSC-BC-2020-06/F01380, para.101; ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Appeals Judgment, 4 December 2012, fn.1633; ICTY, *Prosecutor v. Prlić et al*, IT-04-74-T, Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rules 92 bis and quater of the Rules, 27 October 2006, para.10; The Special Court for Sierra Leone ('SCSL'), *Prosecutor v. Taylor*, Trial Chamber II, SCSL-03-1-T, Decision on Public with Confidential Annexes C to E Prosecution Motion for the Admission of the Prior Trial Transcripts of Witnesses TF1-021 and TF1-083 Pursuant to Rule 92quater, 5 February 2009, para.17; cf. ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, paras 26-28.

³⁰ See *Prosecutor v. Mustafa*, Decision on the submission and the admissibility of evidence, KSC-BC-2020-05/F00169, 25 August 2021 ('*Mustafa* Decision on the admissibility of evidence'), para.29, fn.27 (where the Panel states that 'the term "written statement" and "transcript" also includes annexes or other documents associated with the written statement/transcript, which are used or explained by the witness and which, as such, are an integral part of the testimony itself'.), referring to *Ongwen* Decision, para.10; see similarly Rule 154 Decision, KSC-BC-2020-06/F01380, para.24.

³¹ See similarly Rule 154 Decision, KSC-BC-2020-06/F01380, para.25.

11. While the decision to admit evidence under Rule 153 is discretionary,³² chambers of similarly situated courts have concluded in respect of similar rules governing the admission of witness evidence in written form, that the rule ‘identifies a particular situation in which, once the provisions of the Rule are satisfied, and where the material has probative value [...] it is, in principle, in the interests of justice to admit the evidence in written form’.³³ Put simply, where prior written evidence is relevant to proof of matters other than the acts and conduct of the Accused as charged and otherwise satisfies the general requirements for admissibility of evidence, it is in the interests of justice and expeditious proceedings that such evidence be admitted.³⁴

12. The use of Rules 153, 154 and 155 is also consistent with the Law, which recognises the admissibility of evidence from other entities that preceded the KSC’s establishment and outlines the eligibility requirements.³⁵

IV. SUBMISSIONS

13. The Proposed Evidence of each of the witnesses should be admitted as it (i) is relevant to the allegations in the Indictment, (ii) is *prima facie* reliable and contains sufficient indicia of authenticity, (iii) has probative value³⁶ which – considering

³² See *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.21 and fn.26.

³³ See International Criminal Tribunal for Rwanda (‘ICTR’), *The Prosecutor v. Nizeyimana*, ICTR-00-55C-AR73.2, Decision on Prosecutor’s Interlocutory Appeal of Decision not to Admit Marcel Gatsinzi’s Statement into Evidence Pursuant to Rule 92bis, 8 March 2011, para.24, referring to *Galić* Decision, para.12.

³⁴ ECCC, Trial Chamber, 002/19-09-2007/ECCC/TC, Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, 15 August 2013, para.17; See *Ongwen* Decision, para.16 (The Chamber considers that, within the context of Rule 68(2)(b) of the Rules, ‘interest of justice’ are better served by the introduction in writing of a prior recorded testimony when such instruction allows, *inter alia*, to safeguard the expeditiousness of the proceedings – which is a recognised right of the accused).

³⁵ Law, Art. 37. See also Law, Art.40(2); Rule 154 Decision, KSC-BC-2020-06/F01380, para.12.

³⁶ Since the interviews are relevant, authentic, and reliable, they also have probative value. The probative value of a document is determined by two primary factors: (i) the *prima facie* reliability of the tendered evidence; and (ii) the measure by which that evidence is likely to influence the determination of a particular issue in dispute in the case. See *Prosecutor v. Mustafa*, Public Redacted Version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material, KSC-BC-2020-05/F00281/RED, 13 December 2021, para.13.

available counterbalancing factors and opportunities by the Defence to challenge the evidence³⁷ – is not outweighed by its prejudicial effect, and (iv) meets the requirements of Rule 153.

14. Rule 153, which derives from the statutory scheme of similarly situated courts,³⁸ serves an essential purpose—facilitating efficient and effective presentation of evidence, thereby expediting proceedings and preserving the rights of the Accused.³⁹ As recognised by the KSC, Rule 153 operates where it is not necessary for witnesses to give testimony in person bearing in mind the imperative for streamlined presentation of evidence and fairness.⁴⁰ Admission of the Proposed Evidence upon satisfaction of the admissibility criteria serves a critical function by enabling the SPO to lead evidence which constitutes compelling evidence of the commission of serious international crimes as charged and present its case-in-chief in an efficient and expeditious manner, without compromising the fairness of the proceedings or the

³⁷ Relevant factors include whether the evidence is approached with caution, whether the interview was audio-video recorded, 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 European Court of Human Rights ('ECtHR'), Grand Chamber, *Schatschaschwili v. Germany*, 9154/10, Judgment, 15 December 2015, paras 126-131.

³⁸ See ICTY Rule 92bis, Special Tribunal for Lebanon ('STL') Rule 155, SCSL Rule 92bis, International Residual Mechanism for Criminal Tribunals ('IRMCT') Rule 110 and ICC Rule 68(2)(b).

³⁹ According to the jurisprudence of the Kosovo Specialist Chambers and of similarly situated courts, Rule 153—together with Rules 154 and 155—or the corresponding provisions before the other courts are a useful 'tool to expedite and streamline the proceedings' and its use is encouraged. See *Mustafa* Decision on the admissibility of evidence, KSC-BC-2020-05/F00169, para.29 and ICC, Trial Chamber V, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-685, Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, 16 October 2020, ('*Yekatom and Ngaïssona* Decision'), para.26 (Rule 68 of the Rules is widely acknowledged as a useful tool to expedite and streamline the proceedings and its use therefore encouraged). See also *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, paras 21, 27, 34. In particular, the current corresponding provision in the ICC Rules—Rule 68—has resulted from an amendment adopted by the Assembly of States Parties which integrated the original provision by adding instances when prior recorded testimony may be introduced in the absence of a witness and had the explicit purpose 'to reduce the length of ICC proceedings and streamline evidence presentation'. See ICC, Assembly of States Parties, Working Group of Lessons Learnt: Second report of the Court to the Assembly of States Parties, 20-28 November 2013, ICC-ASP/12/37/Add.1, Annex II.A, Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony), para.11; ICC, Assembly of States Parties, Resolution ICC-ASP/12/Res.7, pp.52-53; See Decision, KSC-BC-2020-06/F01226/A01, para.51.

⁴⁰ *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.21.

rights of the Accused.⁴¹ When the requirements of the Rule are met, admitting written statements in lieu of testimony saves court-time and spares witnesses the burden of appearing.⁴²

15. While the SPO has made individual assessments and tailored submissions for each witness concerning their suitability for Rule 153 admission, it notes here that none of the Proposed Evidence concerns the acts and conduct of the Accused, as charged in the Indictment.⁴³ All witnesses provide crime-base evidence which is particularly suitable for admission in writing.⁴⁴ No Rule 153(1)(b) factors militating in favour of testifying apply to these witnesses.⁴⁵ The Proposed Evidence will not be relied upon to a sole or decisive extent in reaching a conviction, which further guarantees fairness.⁴⁶ For all witnesses, the Defence is aware of the witness's identity, may investigate the witness, the witness's motives and credibility, and has the opportunity to challenge the Proposed Evidence and put forth its own version of events through its witnesses and documentary evidence.⁴⁷

⁴¹ See ECCC, Trial Chamber, 002/19-09-2007/ECCC/TC, Decision on Co-Prosecutor's Rule 92 Bis Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, 20 June 2012, paras 19 (noting that the *ad hoc* tribunals have accepted the admission of evidence in the form of written statements for mass crimes), 20 (noting that '[i]n the context of trials of mass crimes' the Trial Chamber finds that admission of evidence in the form of written statements or transcripts, without requiring testimony in court, 'strikes an appropriate balance between the Accused's fair trial rights and the efficiency of the proceedings, notably in relation to the expeditiousness of the trial'); See similarly, ECtHR, Grand Chamber, *Marguš v Croatia*, 4455/10, Judgment, 27 May 2014, paras 124-127; ECtHR, Grand Chamber, *Ibrahim and Other v. UK*, 50541/08 et al., Judgment, 13 September 2016, para.252.

⁴² *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.27 (where the Trial Chamber considered that the admission of the evidence in written form, under Rule 153, would 'save court-time and spare the Witness the burden of appearing'); *Al Hassan* Decision, paras 4 and 31 (the Trial Chamber considered it important to demonstrate how the introduction of [Proposed Evidence] would contribute to judicial economy).

⁴³ Rules, Rule 153(1).

⁴⁴ See e.g. *Karadžić* Decision, paras 8, 10; ICTY, Trial Chamber III, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, 22 August 2008, ('*Lukić & Lukić* Decision'), para.20; *Ongwen* Decision, para.7. See also *Al Hassan* Decision, para.55.

⁴⁵ Rules, Rule 153(1)(b).

⁴⁶ Rules, Rule 140(4)(a).

⁴⁷ *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.27; ICTY, Appeals Chamber, *Prosecutor v. Martić*, IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, ('*Martić* Decision'), para.15; IRMCT, Trial Chamber, *Prosecutor*

16. The Proposed Evidence satisfies the procedural requirements of Rule 153(2). The Panel has previously heard oral submissions by the SPO concerning the requirements under Rule 153(2) in respect of transcripts of prior evidence,⁴⁸ which were not challenged by the Defence. The Rule, as written, permits admission of transcripts under Rule 153 and does not require a signature on transcripts. The wording reflects the practical reality of recorded statements—as transcripts are generated from an audio-video recording, they are not physically signed by the witness, and are, by nature, inherently reliable and authentic.⁴⁹ They contain similar information as that found in a written statement, for example the date, time, place and attendees, thereby satisfying the requirements which serve as procedural safeguards in the Rule.

17. Further, the SPO notes that while transcripts of interviews and testimony need not be signed to be admitted as they are not written statements and contain ample indicia of reliability and authenticity, the DVDs of recorded SPO interviews which contain the recordings are signed by the witness and SPO prosecutor and/or investigator in the ordinary course, at the end of the interview.⁵⁰ Rule 153(2) does allow for submissions concerning the suitability of a written statement for admission even if, in exceptional circumstances, a written statement has not been signed by the witness. The written statements tendered herein are signed by the witnesses.

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, (*‘Stanišić and Simatović Decision’*), para.13; IRMCT, Trial Chamber, *Prosecutor v. Kabuga*, MICT-13-38-PT, Decision on Prosecution Omnibus Motion for Admission of Evidence pursuant to Rule 112, 11 April 2022 (*‘Kabuga Decision’*), para.21 (stating that the accused ‘will also have the opportunity to challenge the evidence through the cross-examination of other witnesses called by the Prosecution and through the presentation of Defence evidence’). For the avoidance of doubt, the submissions in this paragraph apply to all witnesses but are not repeated in each section to minimise repetition.

⁴⁸ Transcript, 16 December 2022, pp.1733-1734.

⁴⁹ See para.9 above.

⁵⁰ The signed DVD, which is contained within a signed and sealed evidence bag, can be made available for inspection as necessary. The SPO interview transcripts for W04362, W04673, W04592 and W04594 are those from an interview in which a DVD containing the audio/video recording was signed and placed in a signed and sealed evidence bag. In respect of W01237, see fn.87.

18. As detailed below, and in the accompanying annexes, the Proposed Evidence fulfils the requirements of admissibility under Rule 138. In this respect, the associated exhibits are an integral part of the Rule 153 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 153 Statements and corroborate that evidence.

A. JABLLANICË/JABLANICA WITNESSES

19. Five witnesses provide evidence relevant to the Jabllanicë/Jablanica detention site. As set out in more detail below, their evidence corroborates and complements: (i) the evidence of Rule 154⁵¹ and Rule 155⁵² witnesses; (ii) documentary evidence; and (iii) noticed adjudicated facts.⁵³ Considered altogether, this evidence and the relevant facts constitute an interconnected and compelling account of the circumstances in which the charged victims were abducted, detained, mistreated, and in some cases, killed or disappeared.

20. For example, Rule 154 witnesses W01236, [REDACTED], and W04448, among others, provide firsthand, eyewitness evidence of the violence, mistreatment, and inhumane conditions at the Jabllanicë/Jablanica detention site. In addition to directly corroborating such evidence, the proposed Rule 153 witnesses – two spouses, two parents, and a doctor – provide complementary evidence concerning the background, abduction, disappearance, and/or death of their spouses, children, and patients, and

⁵¹ For example, W01236, [REDACTED], W04448, [REDACTED].

⁵² W04589; W04835.

⁵³ See Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023, ('Adjudicated Facts'), pp.75-102 (Facts 298, 300-365).

the impact of such crimes. The Panel should not be deprived of any part of this account in considering the charges related to Jabllanicë/Jablanica,⁵⁴ which are disputed.⁵⁵

1. W01237

21. *Relevance.* W01237 is [REDACTED], who was mistreated and detained by the KLA in Jabllanicë/Jablanica.⁵⁶ '[REDACTED]', KLA members threatened Jah, tied him up, put him in the trunk of a car, and took him to the detention centre in Jabllanicë/Jablanica.⁵⁷ [REDACTED].⁵⁸

22. W01237 [REDACTED] visited Jah BUSHATI [REDACTED] while he was detained in Jabllanicë/Jablanica.⁵⁹ [REDACTED].⁶⁰ During [REDACTED] visits, [REDACTED] saw that Jah had been beaten, as his face was swollen and bruised.⁶¹

23. After two months in Jabllanicë/Jablanica, the KLA sent Jah to the front.⁶² After a further two months, Jah was injured and brought to a clinic in Jabllanicë/Jablanica.⁶³ [REDACTED].⁶⁴ Jah BUSHATI told W01237 about his detention, describing the beatings and treatment of detainees.⁶⁵

⁵⁴ The Panel has previously noted that it 'should be provided with all relevant evidence pertaining to any [material] facts so as to enable it to perform its fact-finding functions, in particular in respect of facts that are in dispute between the parties'. See Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534, 17 May 2023, para.26; Decision on Joint Defence Request for Certification to Appeal Decisions F01534 and F01536, KSC-BC-2020-06/F01614, 16 June 2023, para.33.

⁵⁵ Rule 153 admission for W04592 and W04594 would be unnecessary if the Defence confirmed that it did not intend to challenge certain, related adjudicated facts. See paras 42, 53 below. The SPO requested the Defence to confirm before 7 July 2023 which judicially noticed adjudicated facts it will not seek to rebut. See Email from SPO to all Defence teams dated 22 June 2023, 15.10. In that context, the SPO invites the Defence to take into account the submissions herein.

⁵⁶ [REDACTED].

⁵⁷ [REDACTED]; 101326-TR-ET Part 2 RED2, p.7.

⁵⁸ [REDACTED]; 101326-TR-ET Part 2 RED2, pp.6, 10-11.

⁵⁹ [REDACTED]; 101326-TR-ET Part 2 RED2, pp.16-17.

⁶⁰ [REDACTED]; 101326-TR-ET Part 2 RED2, p.17.

⁶¹ [REDACTED]; 101326-TR-ET Part 2 RED2, p.17.

⁶² [REDACTED]; 101326-TR-ET Part 2 RED2, pp.22-23.

⁶³ [REDACTED]; 101326-TR-ET Part 3, p.6.

⁶⁴ [REDACTED]; 101326-TR-ET Part 3, p.6.

⁶⁵ [REDACTED]; 101326-TR-ET Part 3, pp.6-7, 11-15; [REDACTED].

24. [REDACTED].⁶⁶ In July 1999, Jah BUSHATI was abducted a second time by the KLA.⁶⁷ [REDACTED].⁶⁸ [REDACTED],⁶⁹ [REDACTED].⁷⁰ [REDACTED].⁷¹ Faton MEHMETAJ said that he had ordered Geg LLESHI to arrest Jah [REDACTED].⁷² W01237 has not seen Jah since.⁷³

25. W01237's evidence is thus relevant to the charged crimes in the Indictment.⁷⁴

26. *Authenticity and Reliability.* W01237's Proposed Evidence is *prima facie* authentic and reliable. The W01237 Rule 153 Statement is comprised of (i) W01237's 2020 SPO interview;⁷⁵ and (ii) [REDACTED],⁷⁶ of which (iii) [REDACTED].⁷⁷ Each tendered statement, which together form the Rule 153 Statement, bears sufficient indicia of reliability.⁷⁸

27. W01237's audio-video recorded SPO interview, as recorded in verbatim transcripts, is authentic and reliable. The interview was conducted with the assistance of an interpreter in a language understood by the witness.⁷⁹ W01237 was duly advised of [REDACTED] rights as a witness.⁸⁰ The transcripts include details such as the date, time, and attendees.⁸¹ W01237 confirmed that the contents of [REDACTED] recorded statement are true and accurate, that [REDACTED] statement was given voluntarily

⁶⁶ [REDACTED]; 101326-TR-ET Part 3, pp.15-16.

⁶⁷ [REDACTED]; 101326-TR-ET Part 3, p.20.

⁶⁸ [REDACTED]; 101326-TR-ET Part 3, p.21.

⁶⁹ [REDACTED]; 101326-TR-ET Part 3, p.21.

⁷⁰ [REDACTED]; 101326-TR-ET Part 3, p.21.

⁷¹ [REDACTED]; 101326-TR-ET Part 3, p.21.

⁷² [REDACTED]; 101326-TR-ET Part 3, p.21.

⁷³ [REDACTED]; 101326-TR-ET Part 3, p.29.

⁷⁴ *See, generally,* Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, ('Indictment'), paras 16-31, 59-61, 63, 96-98, 100, 136-137; Annex 3 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), paras 283-302.

⁷⁵ 101326-TR-ET Part 1 RED; 101326-TR-ET Part 2 RED2; 101326-TR-ET Part 3.

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ For an individualised assessment of reliability, *see* Annex 1.

⁷⁹ 101326-TR-ET Part 1 RED, p.2.

⁸⁰ 101326-TR-ET Part 1 RED, pp.4-5.

⁸¹ 101326-TR-ET Part 1 RED, pp.1, 2.

without any threats, force, or guarantees, and that [REDACTED] had no objections to the manner or process by which the statement was taken.⁸²

28. During [REDACTED] SPO interview, W01237 reviewed the contents of [REDACTED] statement, which was taken by a duly empowered investigator, and orally translated into a language understood by the witness by [REDACTED] certified interpreter.⁸³ The statement contains a witness acknowledgement and interpreter certification, is signed by the witness and is initialled on all pages.⁸⁴ In addition to being clarified and confirmed during [REDACTED] SPO interview, W01237's [REDACTED] statement forms part of [REDACTED], which is recorded in a verbatim transcript, [REDACTED].⁸⁵ [REDACTED].⁸⁶

29. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1) and its probative value is not outweighed by any prejudice.⁸⁷ The Defence does not object to the admission of W01237's evidence provided SPOE00298511-00298515⁸⁸ (an OSCE Missing Person form relating to the disappearance of [REDACTED]) is also admitted. The SPO has no objection to admission of this document if the Defence wishes to tender it.

⁸² 101326-TR-ET Part 3, pp.29-30.

⁸³ 101326-TR-ET Part 1 RED, pp.7-8; [REDACTED].

⁸⁴ [REDACTED]. *See also* [REDACTED] 101326-TR-ET Part 1 RED, pp.7-8.

⁸⁵ [REDACTED]. *See also* 101326-TR-ET Part 1 RED, pp.8-9.

⁸⁶ [REDACTED].

⁸⁷ While the SPO maintains its position that the transcript of an SPO interview need not be signed to be admissible pursuant to Rule 153, it notes for completeness of the record that the DVD containing the recording of this interview was not signed by the witness, due to the manner in which the interview was conducted. The July 2020 interview was conducted remotely with W01237 in a third country with representatives of that country present. The SPO has not tendered the *procès-verbale* prepared by domestic authorities as the content is duplicative of the tendered SPO interview. The SPO does not object if the Panel or Defence wish to admit the *procès-verbale* (077757-077768), which is signed by the relevant authorities and interpreter, to further verify the authenticity and reliability of the Proposed Evidence.

⁸⁸ The Pre-Trial Judge previously relieved the SPO of its disclosure obligations in relation to the Rule 107 redactions in SPOE00298511-00298515. *See* Eleventh Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00559, 5 November 2021, Strictly Confidential and *Ex Parte*, paras 418-421 (considering, *inter alia*, that the incident is discussed across W01237's evidence and the redactions therefore did not cause prejudice), 436, 486(f).

30. W01237's Rule 153 Statement corroborates and complements the evidence of, *inter alia*, W04448⁸⁹ and noticed adjudicated facts.⁹⁰ It provides additional details of Jah BUSHATI's detention and mistreatment at Jabllanicë/Jablanica in spring 1998, accusations against him, the circumstances of his second abduction in July 1999, and the impact of the crimes [REDACTED]. The Rule 153 Statement is relatively limited in length⁹¹ and its different parts confirm and clarify one another, and are therefore not unduly repetitive.⁹²

31. Multiple Rule 153(1)(a) factors weigh in favour of admitting the Proposed Evidence pursuant to Rule 153. As noted above, W01237's evidence is cumulative of other witness evidence concerning charges in the Indictment related to Jabllanicë/Jablanica. Such evidence includes that of W04448, whom the Accused will be able to confront through cross-examination.⁹³ [REDACTED].⁹⁴ In addition to increasing efficiency and streamlining the proceedings, admitting the Proposed Evidence under Rule 153 will spare W01237 the burden of appearing and recounting difficult events. It also avoids unnecessary expense, reduces the risk of victim re-traumatisation, and minimises other inconvenience or disruption to the witness.

32. Given that W01237 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will be able to confront, the imperative of a fair and expeditious trial warrants the admission of [REDACTED] evidence in written form, without cross-examination.

⁸⁹ See, for example, [REDACTED].

⁹⁰ Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 306-308.

⁹¹ The [REDACTED] Statement is 5 pages, including the cover and acknowledgment pages ([REDACTED]), the SPO interview totals 64 pages, and the [REDACTED] total 17 pages ([REDACTED]). The remaining portions of [REDACTED], which are relevant to a full assessment of the witness's evidence and credibility.

⁹² W01237's [REDACTED] statement (SPOE00189988-00189989) is not tendered as it provides limited additional information; however, the SPO would not object if tendered by the Defence.

⁹³ See Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595, 9 June 2023, Confidential, paras 92-98.

⁹⁴ [REDACTED].

33. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of the Proposed Evidence in Annex 1—namely three photographs of the Jabllanicë/Jablanica detention site, marked and discussed by W01237—should be admitted as they are an inseparable and indispensable part of W01237's evidence, in that they are used and explained by the witness.⁹⁵ The Associated Exhibits are integral to [REDACTED] evidence and the Rule 153 Statement would be less comprehensible or have lesser probative value without their admission. The Associated Exhibits also fulfil the requirements of admissibility under Rule 138(1) and provide context to and illustrate the evidence contained in the Rule 153 Statement.

2. W04594

34. *Relevance.* W04594 is the father of Pal KRASNIQI,⁹⁶ a murder and enforced disappearance victim identified in the Indictment.⁹⁷ In July 1998, W04594 and his family lived in Pejë/Peć.⁹⁸ On 10 July 1998, Pal KRASNIQI set off with a friend, Mahir DEMAJ, to join the KLA at the headquarters in Jabllanicë/Jablanica.⁹⁹ On 11 July 1998, Pal KRASNIQI and Mahir DEMAJ were apprehended at a Serbian checkpoint.¹⁰⁰ They were beaten and taken to Klinë/Klina.¹⁰¹ Pal called his father,¹⁰² who told him to join the KLA as planned.¹⁰³ W04594 did not see his son again.¹⁰⁴

35. Later, W04594 learned from [REDACTED] that Pal had been detained with him at the KLA headquarters in Jabllanicë/Jablanica.¹⁰⁵ [REDACTED] informed W04594 that

⁹⁵ See Annex 1.

⁹⁶ U007-9712-U007-9717, para.3; IT-04-84bis P00051 Confidential, T.4768.

⁹⁷ Indictment, KSC-BC-2020-06/F00999/A01, paras 63, 144, 175, Schedule B #7, Schedule C #3.

⁹⁸ U007-9712-U007-9717, para.3; IT-04-84bis P00051 Confidential, T.4768.

⁹⁹ U007-9712-U007-9717, para.3; IT-04-84bis P00051 Confidential, T.4768-4770, 4474.

¹⁰⁰ U007-9712-U007-9717, para.5; IT-04-84bis P00051 Confidential, T.4770, 4807, 4829-4830.

¹⁰¹ U007-9712-U007-9717, para.5; IT-04-84bis P00051 Confidential, T.4773, 4807, 4829-4830.

¹⁰² U007-9712-U007-9717, para.6; IT-04-84bis P00051 Confidential, T.4806-4807, 4829-4830.

¹⁰³ U007-9712-U007-9717, para.7; IT-04-84bis P00051 Confidential, T.4771.

¹⁰⁴ IT-04-84bis P00051 Confidential, T.4772.

¹⁰⁵ U007-9712-U007-9717, para.18; 091401-TR-ET Part 2, pp.11-13.

Pal had been imprisoned and beaten because they suspected him of having been sent by the Serbians to spy.¹⁰⁶

36. During and after the war, W04594 and others searched for Pal KRASNIQI, making enquiries at Jabllanicë/Jablanica and with soldiers and commanders, such as Alush AGUSHI; they received conflicting or no information.¹⁰⁷

37. W04594's evidence is thus relevant to the charged crimes in the Indictment.¹⁰⁸

38. *Authenticity and Reliability.* W04594's Proposed Evidence is *prima facie* authentic and reliable. The W04594 Rule 153 Statement is comprised of (i) W04594's 2020 SPO interview;¹⁰⁹ (ii) his 2007 ICTY testimony;¹¹⁰ (iii) his 2004 ICTY statement;¹¹¹ and (iv) an ICTY correction sheet.¹¹² Each statement bears sufficient indicia of reliability.¹¹³

39. W04594's audio-video recorded SPO interview, as recorded in verbatim transcripts,¹¹⁴ is authentic and reliable. The interview was conducted with the assistance of an interpreter in a language understood by the witness.¹¹⁵ W04594 was duly advised of his rights as a witness.¹¹⁶ The transcripts include the date, time, and attendees.¹¹⁷ W04594 confirmed that the contents of his recorded 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.¹¹⁸

¹⁰⁶ U007-9712-U007-9717, para.18; 091401-TR-ET Part 2, pp.11-13; 091401-TR-ET Part 3, pp.1-2.

¹⁰⁷ IT-04-84bis P00051 Confidential, T.4780, 4810-4811, 4822-4825; 091401-TR-ET Part 2, pp.8-9; U007-9712-U007-9717, paras 13-15; U016-2063-U016-2063.

¹⁰⁸ *See, generally*, Indictment, KSC-BC-2020-06/F00999/A01, paras 57-60, 63, 96-98, 100, 136-138, 144, 175; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 283-302.

¹⁰⁹ 091401-TR-ET Part 1, 091401-TR-ET Part 2, 091401-TR-ET Part 3.

¹¹⁰ IT-04-84bis P00051 Confidential.

¹¹¹ U007-9712-U007-9717.

¹¹² U016-2063-U016-2063.

¹¹³ For an individualised assessment of reliability, *see* Annex 2.

¹¹⁴ 091401-TR-ET Part 1, p.1.

¹¹⁵ 091401-TR-ET Part 1, pp.1-2.

¹¹⁶ 091401-TR-ET Part 1, pp.2-3.

¹¹⁷ 091401-TR-ET Part 1, p.1; 091401-TR-ET Part 2, p.1; 091401-TR-ET Part 3, pp.1, 4.

¹¹⁸ 091401-TR-ET Part 3, pp.3-4.

40. During his SPO interview, W04594 confirmed his signature and discussed the contents of his 2004 ICTY statement, which was taken by a duly empowered investigator, and orally translated into a language understood by the witness by an ICTY Registry certified interpreter.¹¹⁹ The statement contains a signed witness acknowledgement and interpreter certification,¹²⁰ is signed by the witness,¹²¹ and initialled on all pages by all participants.¹²² The ICTY correction sheet, which relates to his statement, is dated and signed by the witness.¹²³ Finally, W04594's 2007 ICTY testimony is audio/video-recorded and provided as a verbatim transcript. W04594 took a solemn declaration and was cross-examined.¹²⁴

41. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1) and its probative value is not outweighed by any prejudice.

42. The SPO initially intended to call W04594 pursuant to Rule 154, with one hour for examination;¹²⁵ however, upon further consideration, including in light of related adjudicated facts,¹²⁶ it determined that his evidence was suitable for admission pursuant to Rule 153.¹²⁷ The Defence does not object to the admission of W04594's evidence pursuant to Rule 153. If all Defence teams confirm that they will not challenge the related adjudicated facts,¹²⁸ which address the same matters upon which W04594 provided evidence to the SPO and ICTY, then the admission of W04594's Proposed Evidence would be unnecessary. In the absence of such confirmation, the Proposed Evidence should be admitted pursuant to Rule 153, so that it is available for

¹¹⁹ 091401-TR-ET Part 2, pp.5-6.

¹²⁰ U007-9712-U007-9717, pp.4-5.

¹²¹ U007-9712-U007-9717, p.1.

¹²² U007-9712-U007-9717.

¹²³ U016-2063-U016-2063.

¹²⁴ IT-04-84bis P00051 Confidential. *See also* 091401-TR-ET Part 2, pp.4-5.

¹²⁵ *See* KSC-BC-2020-06/F01291/A05, #227.

¹²⁶ *See* Prosecution motion for judicial notice of adjudicated facts, KSC-BC-2020-06/F01330, 1 March 2023, ('Adjudicated Facts Motion'), para.15; Transcript, 20 June 2023, p.5252.

¹²⁷ *See* KSC-BC-2020-06/F01594/A01, #227.

¹²⁸ Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 330-332, 358-360.

the SPO to rely upon and the Panel to consider, *inter alia*, in light of any rebuttal evidence presented by the Defence.¹²⁹

43. The Rule 153 Statement is relatively limited in length¹³⁰ and its different parts confirm, complement, and clarify one another, and are therefore not unduly repetitive. Multiple Rule 153(1)(a) factors weigh in favour of admitting the Proposed Evidence pursuant to Rule 153. W04594's evidence is largely cumulative to other witness evidence concerning charges in the Indictment related to Jabllanicë/Jablanica.¹³¹ His evidence is corroborated by witnesses whom the Accused will be able to confront through cross-examination.¹³² W04594's evidence has been tested through cross-examination by accused in prior ICTY proceedings, including Lahi BRAHIMAJ, who is a named JCE member in this case and alleged to have personally participated in Pal KRASNIQI's detention and mistreatment.¹³³ In addition to increasing efficiency and streamlining the proceedings, admitting the Proposed Evidence under Rule 153 will spare W04594 the burden of appearing and recounting difficult events. It also avoids unnecessary expense, reduces the risk of victim re-traumatisation, and minimises other inconvenience or disruption to W04594.

44. Given that W04594 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will be able to confront, the imperative of a fair and expeditious trial warrants the admission of his evidence in written form, without cross-examination.

¹²⁹ Adjudicated Facts Motion, KSC-BC-2020-06/F01330, para.16 and the sources cited therein; Transcript, 20 June 2023, pp.5252-5253.

¹³⁰ The 2007 correction is one paragraph (U016-2063-U016-2063), the 2004 statement is 6 pages, including the cover and acknowledgment/certification pages (U007-9712-U007-9717), the SPO interview transcripts total 21 pages, and the direct and redirect examinations during the ICTY testimony total less than 40 pages (IT-04-84bis P00051 Confidential, pp.4767-4803, 4834-4837). The remaining portions of the ICTY testimony consist of (in addition to procedural matters) questioning by the court and cross-examination, which are relevant to a full assessment of the witness's evidence and credibility.

¹³¹ See e.g. W04448; [REDACTED]; W04589; W04835.

¹³² See e.g. W04448, [REDACTED].

¹³³ IT-04-84bis P00051 Confidential, T.4804-4834.

45. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of the Proposed Evidence in Annex 2—namely a marked photograph and the victim identification card for Pal KRASNIQI—should be admitted as an inseparable and indispensable part of W04594’s evidence as they were used and discussed by the witness.¹³⁴ His Rule 153 Statement would be less comprehensible or have lesser probative value without their admission. The Associated Exhibits also fulfil the requirements of admissibility under Rule 138(1) and provide context and corroborate W04594’s account.

3. W04592

46. *Relevance.* W04592 is a retired surgeon who worked in a field hospital in Irznić/Irznj from June until August 1998.¹³⁵ The hospital was under the authority of the KLA Dukjagini Operational Zone.¹³⁶ On occasion, KLA members came to the hospital and requested that certain alleged collaborators not be treated.¹³⁷

47. In summer 1998, a patient with kidney failure was brought to the hospital.¹³⁸ He had a swollen face and was in critical condition.¹³⁹ His body was deformed and bruised as result of violent injuries.¹⁴⁰ The patient died at the hospital.¹⁴¹ W04592 later deduced that it was Skender KUQI.¹⁴²

48. W04592’s evidence is thus relevant to charged crimes in the Indictment.¹⁴³

¹³⁴ For an individualised assessment of reliability, *see* Annex 2.

¹³⁵ U009-0932-U009-0937, para.9; SITF00070403-SITF00070407, p.1.

¹³⁶ U009-0932-U009-0937, para.10.

¹³⁷ U009-0932-U009-0937, para.10.

¹³⁸ SITF00070403-SITF00070407, p.1.

¹³⁹ U009-0932-U009-0937, para.11.

¹⁴⁰ SITF00070403-SITF00070407, p.1.

¹⁴¹ U009-0932-U009-0937, para.11; SITF00070403-SITF00070407, p.2; 091693-TR-ET Part 2, p.25.

¹⁴² U009-0932-U009-0937, para.11.

¹⁴³ *See, inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 32, 36, 59-61, 63, 96-98, 100, 136-138, 142; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 6 June 2023, paras 2, 5-6, 10, 191, 290-293 and 297-299.

49. *Authenticity and Reliability.* The Proposed Evidence is *prima facie* authentic and reliable.¹⁴⁴ The Rule 153 Statement consists of: (i) W04592's audio-video recorded SPO interview;¹⁴⁵ (ii) W04592's UNMIK statement,¹⁴⁶ and (iii) W04592's ICTY statement.¹⁴⁷

50. W04592's SPO interview is recorded in a verbatim transcript and was conducted with the assistance of an interpreter in a language understood by the witness.¹⁴⁸ W04592 was duly advised of his rights as a witness.¹⁴⁹ The transcripts include details such as the date, time, place and attendees.¹⁵⁰ W04592 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 it was taken.¹⁵¹

51. During his SPO interview, W04592 reviewed his prior UNMIK¹⁵² and ICTY¹⁵³ statements. W04592 confirmed they were his statements and recognised his signature.¹⁵⁴ He verified that he provided the statements in a truthful manner and to the best of his recollection,¹⁵⁵ and for each, was given an opportunity to clarify or make corrections.¹⁵⁶ Both bear sufficient indicia of reliability and authenticity on their face as each was taken by a duly empowered investigator, in a language understood by the witness, and contain a witness acknowledgement with the witness having signed or initialled all pages.¹⁵⁷

¹⁴⁴ For an individualised assessment of reliability, *see* Annex 3.

¹⁴⁵ 091693-TR-ET Part 1 RED and 091693-TR-ET Part 2.

¹⁴⁶ SITF00070403-SITF00070407.

¹⁴⁷ U009-0932-U009-0937.

¹⁴⁸ 091693-TR-ET Part 1 RED, pp.1-3.

¹⁴⁹ 091693-TR-ET Part 1 RED, p.3.

¹⁵⁰ 091693-TR-ET Part 1 RED, p.1.

¹⁵¹ 091693-TR-ET Part 2, pp.27-28.

¹⁵² 091693-TR-ET Part 1 RED, pp.6-9; 091693-TR-ET Part 2, p.25-27.

¹⁵³ 091693-TR-ET Part 1 RED, pp.9-10; 091693-TR-ET Part 2, pp.1-25.

¹⁵⁴ 091693-TR-ET Part 1 RED, pp.7, 9-10.

¹⁵⁵ 091693-TR-ET Part 1 RED, p.7; 091693-TR-ET Part 2, pp.1-2.

¹⁵⁶ 091693-TR-ET Part 1 RED, pp.8-9; 091693-TR-ET Part 2, pp.3-27.

¹⁵⁷ SITF00070403-SITF00070407, pp.3-4; U009-0932-U009-0937, para.14; p.6.

52. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1) and its probative value is not outweighed by any prejudice. Three Defence teams agreed to Rule 153 admission.

53. While also relevant to proof of other matters, the SPO primarily intends to rely on W04592's evidence concerning the circumstances and cause of Skender KUQI's death. Adjudicated Fact 356 concerns the fact and cause of Skender KUQI's death.¹⁵⁸ Accordingly, if all Defence teams were to confirm that they will not challenge this fact, then the admission of W04592's Proposed Evidence would be unnecessary. Absent such confirmation, the Proposed Evidence should be admitted pursuant to Rule 153, so that it is available for the SPO to rely upon and the Panel to consider, *inter alia*, in light of any rebuttal evidence presented by the Defence.¹⁵⁹

54. The Rule 153 Statement is limited in length¹⁶⁰ and its different parts confirm, complement, and clarify one another, and are therefore not unduly repetitive. Multiple Rule 153(1)(a) factors weigh in favour of Rule 153 admission. W04592's evidence is largely cumulative of other witness and documentary evidence concerning Skender KUQI.¹⁶¹ His evidence is corroborated by witnesses whom the Accused will be able to confront through cross-examination.¹⁶² The Proposed Evidence was recorded in a manner which enables the Parties and Panel to assess his demeanour and credibility. The introduction of W04592's evidence in writing will save court-time and unnecessary expense, and spare the witness unnecessary inconvenience and disruption.

55. Given that W04592 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will

¹⁵⁸ Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 356.

¹⁵⁹ Adjudicated Facts Motion, para.16 and the sources cited therein; Transcript, 20 June 2023, pp.5252-5253.

¹⁶⁰ The UNMIK statement is two pages (SITF00070403-SITF00070407 contains English and Albanian), the ICTY statement is six pages, including the cover and acknowledgment/certification pages (U009-0932-U009-0937), and the SPO interview is 38 pages.

¹⁶¹ See e.g. [REDACTED], W04835, W04448, [REDACTED], IT-04-84bis P00488, 103108-103132.

¹⁶² See e.g. [REDACTED], W04448, [REDACTED].

be able to confront, the imperative of a fair and expeditious trial warrants the admission of his evidence in written form, without cross-examination.

4. W04872

56. *Relevance.* W04872 is [REDACTED].¹⁶³ On 13 June 1998, [REDACTED] left his home to go to work, driving his blue Opel Kadett, and dressed in civilian clothes.¹⁶⁴ [REDACTED].¹⁶⁵ Upon hearing this, [REDACTED] began inquiring about Nenad REMIŠTAR's whereabouts.¹⁶⁶ About twenty days after Nenad's disappearance, [REDACTED] heard that a Catholic Albanian was kidnapped together with Nenad and both were imprisoned in Jabllanicë/Jablanica.¹⁶⁷ While [REDACTED] heard different stories about [REDACTED] disappearance over time, as of the date of [REDACTED] statement, W04872 had received no conclusive information concerning his fate.¹⁶⁸

57. W04872's evidence is thus relevant to charged crimes in the Indictment.¹⁶⁹

58. *Authenticity and Reliability.* The Proposed Evidence is *prima facie* authentic and reliable.¹⁷⁰ The Rule 153 Statement consists of W04872's [REDACTED] witness statement,¹⁷¹ which was translated into a language understood by the witness with the assistance of a certified interpreter and [REDACTED].¹⁷² The statement contains signatures by the witness and authorised officials.¹⁷³ W04872 declared that the contents of [REDACTED] written statement were true and correct to the best of

¹⁶³ [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ [REDACTED].

¹⁶⁸ [REDACTED].

¹⁶⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 63, 96-98, 100, 136-138, 143; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 6 June 2023, paras 283-296.

¹⁷⁰ For an individualised assessment of reliability, see Annex 4.

¹⁷¹ [REDACTED].

¹⁷² [REDACTED].

¹⁷³ [REDACTED]; *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.20 (the Panel noted that the statement strengthens the probative value of the evidence when it is signed by the person who records and conducts the questioning).

[REDACTED] knowledge and belief and [REDACTED] voluntarily signed a witness declaration.¹⁷⁴ The statement includes details such as the date, place and attendees.¹⁷⁵

59. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1). Admitting the Proposed Evidence is not prejudicial to or inconsistent with the rights of the Accused.¹⁷⁶ W04872's Rule 153 Statement is brief. It corroborates and complements the evidence of, *inter alia*, [REDACTED]¹⁷⁷ and noticed adjudicated facts.¹⁷⁸ It provides additional details concerning Nenad REMIŠTAR's abduction and disappearance, and [REDACTED] efforts to locate him.¹⁷⁹

60. Admitting the Proposed Evidence is in the interests of justice and judicial economy, and spares the witness from the unnecessary burden of appearing and recounting painful events. Other Rule 153(1)(a) factors weigh in favour of admitting the Proposed Evidence pursuant to Rule 153, including that [REDACTED] evidence is cumulative and corroborative of other witnesses and documentary evidence.¹⁸⁰ Given that W04872 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will be able to confront, the imperative of a fair and expeditious trial warrants the admission of [REDACTED] evidence in written form, without cross-examination.

5. W04871

61. *Relevance.* In [REDACTED] 1998, W04871 lived in [REDACTED].¹⁸¹ [REDACTED] was stopped and interrogated by a group of armed KLA soldiers

¹⁷⁴ [REDACTED].

¹⁷⁵ [REDACTED].

¹⁷⁶ *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.21; Rules, Rule 153(1).

¹⁷⁷ *See, for example*, [REDACTED].

¹⁷⁸ Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 323-329.

¹⁷⁹ In particular, further to [REDACTED]'s evidence and the relevant adjudicated facts, W04872 confirms that [REDACTED] was still missing as of the date of [REDACTED] statement, and provides further details concerning efforts to discover his fate.

¹⁸⁰ *See, for example*, 101835-101849, p.6. *See e.g.* [REDACTED], W04448, [REDACTED], and W04871.

¹⁸¹ [REDACTED].

[REDACTED].¹⁸² [REDACTED].¹⁸³ [REDACTED] later, W04871 visited [REDACTED] in the yard of a KLA compound in Jabllanicë/Jablanica.¹⁸⁴ He was much thinner and in bad health.¹⁸⁵ Afterwards, a KLA commander in a black uniform indicated that [REDACTED] would be released [REDACTED].¹⁸⁶ [REDACTED], he had injuries all over his body.¹⁸⁷ [REDACTED] told W04871 that he was regularly beaten while in custody.¹⁸⁸

62. W04871's evidence is thus relevant to charged crimes in the Indictment.¹⁸⁹

63. *Authenticity and reliability.* The Proposed Evidence is *prima facie* authentic and reliable.¹⁹⁰ The Proposed Evidence comprises W04871's [REDACTED],¹⁹¹ which includes [REDACTED] statement¹⁹² [REDACTED].¹⁹³ W04871's [REDACTED] was audio-video recorded and transcribed.¹⁹⁴ There is an indication of the date, time, and case number, and the participants are identified.¹⁹⁵ [REDACTED].¹⁹⁶ W04871's [REDACTED] was taken by a duly empowered investigator, and orally translated, by [REDACTED] certified interpreter, into a language understood by the witness.¹⁹⁷ The statement contains a witness acknowledgement and interpreter certification and the witness has affixed [REDACTED] signature/initials to all pages.¹⁹⁸ W04871 affirmed

¹⁸² [REDACTED].

¹⁸³ [REDACTED].

¹⁸⁴ [REDACTED].

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 63, 96-98, 100, 136-137; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 290-295.

¹⁹⁰ For an individualised assessment of reliability, see Annex 5.

¹⁹¹ [REDACTED].

¹⁹² [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ [REDACTED].

that [REDACTED] made the statement voluntarily, without any threats, force or inducements.¹⁹⁹ [REDACTED].²⁰⁰

64. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1) and its probative value is not outweighed by any prejudice. The Defence do not object to Rule 153 admission. The witness's Rule 153 Statement is limited in length²⁰¹ and the [REDACTED] Statement forms part of and was clarified, supplemented, and [REDACTED]. It corroborates and complements the evidence of, *inter alia*, [REDACTED]²⁰² and noticed adjudicated facts.²⁰³ It provides additional details concerning [REDACTED]'s detention and mistreatment, W04871's visit to the Jabllanicë/Jablanica detention facility, and the impact of the crimes.

65. Multiple Rule 153(1)(a) factors weigh in favour of admitting the Proposed Evidence pursuant to Rule 153 and ensure fairness. W04871's evidence is cumulative to other witness evidence concerning the detention and mistreatment of [REDACTED]. Indeed, [REDACTED].²⁰⁴ [REDACTED].²⁰⁵

66. In addition to increasing efficiency and streamlining the proceedings, admitting the Proposed Evidence under Rule 153 will spare W04871 the burden of appearing and recounting difficult events. It also avoids unnecessary expense, reduces the risk of victim re-traumatisation, and minimises other inconvenience or disruption to the witness. Given that W04871 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will be able to confront, the imperative of a fair and expeditious trial warrants the admission of [REDACTED] evidence in written form, without cross-examination.

¹⁹⁹ [REDACTED].

²⁰⁰ [REDACTED].

²⁰¹ [REDACTED] Statement is 6 pages, including cover and acknowledgement/certification pages, and the [REDACTED] totalled less than 19 pages ([REDACTED]). The remaining 20 pages consist [REDACTED] which is important for a full assessment of the witness's evidence and credibility.

²⁰² *See, for example*, [REDACTED].

²⁰³ Adjudicated Facts, KSC-BC-2020-06/F01534/A01, *inter alia*, [REDACTED].

²⁰⁴ [REDACTED].

²⁰⁵ [REDACTED].

67. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of the Proposed Evidence in Annex 5 – namely a [REDACTED] and a photograph of the Jabllanicë/Jablanica detention compound – should be admitted as they were used and discussed and are integral to understanding [REDACTED] evidence. The Associated Exhibits, respectively, link the witness's [REDACTED] to W04871, and corroborate and illustrate [REDACTED] evidence. They therefore also satisfy the requirements of Rule 138.

B. LLAPASHTICË/LAPAŠTICA AND DRENOC/DRENOVAC WITNESSES

1. W04673

68. *Relevance.* W04673 is a family member of deceased [REDACTED] and was present at the family home when he [REDACTED].²⁰⁶ [REDACTED] saw him leave and after two days, W04673 went to Llapashtice/Lapaštica [REDACTED] to find out what had happened to him.²⁰⁷ W04673 was denied visitation on that occasion and during 3 or 4 subsequent attempts.²⁰⁸

69. At Llapashtice/Lapaštica, W04673 asked to speak to [REDACTED] about [REDACTED] relative but [REDACTED] request was refused.²⁰⁹ [REDACTED] then heard that [REDACTED] had been moved to a KLA location in [REDACTED].²¹⁰ W04673 went to [REDACTED].²¹¹ [REDACTED] learned that [REDACTED] was killed [REDACTED].²¹² [REDACTED] learned that [REDACTED].²¹³ W04673 was told that [REDACTED].²¹⁴

²⁰⁶ SPOE00038138-SPOE00038146 RED, pp.7-8; SPOE00122496-00122509 RED, p.2.

²⁰⁷ SPOE00122496-00122509 RED, p.2.

²⁰⁸ 082118-TR-ET Part 1 RED, p.14; SPOE00038138-SPOE00038146 RED, pp.6-7; SPOE00122496-00122509 RED, pp.2-3.

²⁰⁹ SPOE00038138-SPOE00038146 RED, p.7.

²¹⁰ SPOE00038138-SPOE00038146 RED, p.2; SPOE00122496-00122509 RED, p.4.

²¹¹ SPOE00038138-SPOE00038146 RED, p.2; SPOE00122496-00122509 RED, p.4.

²¹² SPOE00038138-SPOE00038146 RED, pp.3, 6, 8-9; SPOE00122496-00122509 RED, pp.4-5, 11.

²¹³ SPOE00038138-SPOE00038146 RED, pp.3, 7.

²¹⁴ SPOE00038138-SPOE00038146 RED, pp.3, 5.

70. [REDACTED].²¹⁵ [REDACTED].²¹⁶ W04673 was unable to exhume [REDACTED].²¹⁷ [REDACTED].²¹⁸ W04673 recognised the body as that of [REDACTED].²¹⁹

71. W04673's evidence is thus relevant to charged crimes in the Indictment²²⁰ and to the credibility of other witnesses who will testify on the same events.²²¹

72. *Authenticity and Reliability.* The Proposed Evidence is *prima facie* authentic and reliable.²²² The Rule 153 Statement is comprised of: (i) W04673's audio-video recorded SPO interview,²²³ (ii) W04673's statement [REDACTED],²²⁴ and (iii) W04673's statement [REDACTED].²²⁵

73. W04673's audio-video recorded SPO interview is recorded in a verbatim transcript and was conducted with the assistance of an interpreter in a language understood by the witness.²²⁶ W04673 was duly advised of [REDACTED] rights as a witness.²²⁷ The transcripts include details such as the date, time, and attendees.²²⁸ W04673 confirmed that the contents of [REDACTED] statement were true and accurate, that [REDACTED] statement was given voluntarily without any threats, force, or guarantees, and that [REDACTED] had no objections to the manner or process by which the statement was taken.²²⁹

²¹⁵ SPOE00122496-00122509 RED, pp.5-7.

²¹⁶ SPOE00038138-SPOE00038146 RED, p.4.

²¹⁷ SPOE00038138-SPOE00038146 RED, pp.4-5

²¹⁸ SPOE00038138-SPOE00038146 RED, p.5; SPOE00122496-00122509 RED, pp.5-7.

²¹⁹ SPOE00038138-SPOE00038146 RED, pp.5, 7; SPOE00122496-00122509 RED, p.6.

²²⁰ *See, inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 71, [REDACTED], 96-98, 107, 136-138, [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 425-432, [REDACTED].

²²¹ *E.g.* [REDACTED].

²²² For an individualised assessment of reliability, *see* Annex 6.

²²³ 082118-TR-ET Part 1 RED; 082118-TR-ET Part 2 RED.

²²⁴ SPOE00122496-00122509 RED.

²²⁵ SPOE00038138-SPOE00038146 RED.

²²⁶ 082118-TR-ET Part 1 RED, pp.1-2.

²²⁷ 082118-TR-ET Part 1 RED, pp.2-3.

²²⁸ 082118-TR-ET Part 1 RED, pp.1-2.

²²⁹ 082118-TR-ET Part 2 RED, pp.9-11.

74. W04673's statement [REDACTED].²³⁰ There is an indication of the date, time [REDACTED].²³¹ W04673 took a solemn declaration²³² [REDACTED].²³³ The statement contains the signature of the witness (on each page), [REDACTED].²³⁴ Further, W04673 confirmed the accuracy and truthfulness of this record during [REDACTED] SPO interview.²³⁵

75. [REDACTED].²³⁶ There is an indication of the date, time, [REDACTED].²³⁷ W04673 took a solemn declaration [REDACTED].²³⁸ [REDACTED].²³⁹ Further, W04673 confirmed the accuracy and truthfulness of this record during [REDACTED] SPO interview.²⁴⁰

76. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1) and its probative value is not outweighed by any prejudice. Multiple Rule 153(1)(a) factors weigh in favour of admitting the Proposed Evidence pursuant to Rule 153. W04673's evidence is largely cumulative to other witness and documentary evidence concerning civilians detained at KLA-run detention sites in Llapashtice/Lapaštica and Potok.²⁴¹ [REDACTED] evidence is corroborated by witnesses whom the Accused will be able to effectively confront through cross-examination.²⁴² The Proposed Evidence was recorded in a manner that would enable the Parties and Panel to assess the witness's demeanour and credibility. The introduction of W04673's evidence in writing will save court-time and spare the

²³⁰ SPOE00122496-00122509 RED, p.1.

²³¹ SPOE00122496-00122509 RED, p.1.

²³² SPOE00122496-00122509 RED, pp.1-2.

²³³ SPOE00123717-00123719 RED, pp.1-14.

²³⁴ SPOE00123717-00123719 RED, p.14.

²³⁵ 082118-TR-ET Part 1 RED, pp.6-13.

²³⁶ SPOE00038138-SPOE00038146 RED.

²³⁷ SPOE00038138-SPOE00038146 RED, pp.1-2.

²³⁸ SPOE00038138-SPOE00038146 RED, pp.2, 8-9.

²³⁹ SPOE00038138-SPOE00038146 RED, p.9.

²⁴⁰ 082118-TR-ET Part 1 RED, pp.13-14.

²⁴¹ See e.g. [REDACTED].

²⁴² See e.g. [REDACTED].

witness the burden of appearing and needlessly recounting painful experiences and thus risking retraumatisation.

77. In this regard, each statement comprising the Rule 153 Statement has a different focus or purpose; admission of the complete Rule 153 Statement is therefore not unduly repetitive or unnecessary. W04673's SPO interview provides an overview useful to all of [REDACTED] statements. [REDACTED].

78. While three Defence teams agreed to Rule 153 admission, Thaçi responded in *inter partes* correspondence that they agree subject to the SPO agreeing that:²⁴³

[REDACTED].

The SPO does not agree to either condition. First, to the extent that it is a live issue in the case that [REDACTED], and bearing in mind that there is contradictory evidence on the record before the Panel,²⁴⁴ the SPO considers that it is for the Panel to assign weight to the evidence, taken as whole, and make determinations as to the relevant facts and issues at the end of the case and based on the totality of the evidence.²⁴⁵ Second, the statement that the Thaçi Defence makes concerning W04763's evidence on who killed [REDACTED] relative is a misrepresentation of [REDACTED] evidence. [REDACTED] stated that [REDACTED].²⁴⁶ [REDACTED] has not provided evidence that the KLA was not responsible for his killing. In addition, and contrary to the proposed condition, the SPO reiterates that it is not what one witness may believe, or not believe, that delineates the confines of the SPO's case or dictates the future findings of the Panel.

79. Given that W04673 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will

²⁴³ The Thaçi Defence provided the following cites: [REDACTED].

²⁴⁴ Transcript (Trial Proceedings), 20 April 2023, pp.3288-3289, 3298-3299, 3307-3341, 3358-3373, 3379-3383; 066544-TR-ET Part 1 RED, pp.15-20; 066544-TR-ET Part 2 RED, pp.8-9; SPOE00087077-00087141 RED, p.12; SPOE00119571-00119588 RED2, pp.8-9; SPOE00122496-00122509 RED, pp.7-8; SITF00240121-00240127 RED, p.SITF00240125.

²⁴⁵ See *Mustafa* Decision, KSC-BC-2020-05/F00286/RED, para.33.

²⁴⁶ [REDACTED].

be able to confront, the imperative of a fair and expeditious trial warrants the admission of [REDACTED] evidence in written form, without cross-examination.

2. W04362

80. *Relevance.* W04362 is a Kosovar-Albanian who lived with his family in [REDACTED] in 1998.²⁴⁷ One morning, he travelled to the area of [REDACTED] with charged murder victim [REDACTED].²⁴⁸ On the way, they were stopped by uniformed KLA soldiers.²⁴⁹ They followed the soldiers to a house, where the soldiers started interrogating and threatening them.²⁵⁰ W04362 was interrogated by two persons, who accused him of being a Serbian spy.²⁵¹ [REDACTED] was also interrogated separately, in the same manner.²⁵² At the end of the day, the KLA took them to another location by car.²⁵³ They arrived in a new house, and slept in separate rooms.²⁵⁴ Over the next few days, they were interrogated again and more vigorously.²⁵⁵ Soldiers wearing black uniforms with KLA insignia questioned them.²⁵⁶ W04362 was slapped and kicked,²⁵⁷ and asked again if he had any connection with the Serbs.²⁵⁸ W04362 described in detail his place of detention, which was near a fountain in the village.²⁵⁹ Other people were detained there, including [REDACTED], and a man from [REDACTED] in the same room as W04362.²⁶⁰ On the third day, he was taken to a third house, where he was interrogated by another soldier, and beaten up.²⁶¹ He was released the following

²⁴⁷ [REDACTED].

²⁴⁸ [REDACTED].

²⁴⁹ [REDACTED].

²⁵⁰ [REDACTED].

²⁵¹ [REDACTED].

²⁵² [REDACTED].

²⁵³ [REDACTED].

²⁵⁴ [REDACTED].

²⁵⁵ [REDACTED].

²⁵⁶ [REDACTED].

²⁵⁷ [REDACTED].

²⁵⁸ [REDACTED].

²⁵⁹ [REDACTED].

²⁶⁰ [REDACTED].

²⁶¹ [REDACTED].

day.²⁶² When he left, [REDACTED] was still in detention.²⁶³ W04362 learned later on that he was detained in [REDACTED].²⁶⁴ He also heard during his detention about commander [REDACTED] and commander [REDACTED] being present.²⁶⁵

81. After coming back home, it took him a few days to recover from the stress of detention and the beating.²⁶⁶ He was afraid to stay in [REDACTED], and feared being called a spy, so he went to [REDACTED] to hide.²⁶⁷ Two or three months later, the witness [REDACTED].²⁶⁸ [REDACTED].²⁶⁹

82. W04362's evidence is thus relevant to charged crimes in the Indictment²⁷⁰ and to the credibility of other witnesses who will testify as to what occurred at the charged [REDACTED] detention site.²⁷¹

83. *Authenticity and Reliability.* The Proposed Evidence is *prima facie* authentic and reliable.²⁷² The Rule 153 Statement consists of W04362's audio-video recorded SPO interview.²⁷³ It is recorded in a verbatim transcript and was conducted with the assistance of an interpreter in a language understood by the witness.²⁷⁴ W04362 was duly advised of his rights as a witness.²⁷⁵ The transcripts include details such as the date, time, place and attendees.²⁷⁶ W04362 confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily without any threats,

²⁶² [REDACTED].

²⁶³ [REDACTED].

²⁶⁴ [REDACTED].

²⁶⁵ [REDACTED].

²⁶⁶ [REDACTED].

²⁶⁷ [REDACTED]; [REDACTED].

²⁶⁸ [REDACTED].

²⁶⁹ [REDACTED].

²⁷⁰ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 6 June 2023, paras [REDACTED].

²⁷¹ E.g. [REDACTED].

²⁷² For an individualised assessment of reliability, see Annex 7.

²⁷³ [REDACTED].

²⁷⁴ [REDACTED].

²⁷⁵ [REDACTED].

²⁷⁶ [REDACTED].

force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.²⁷⁷

84. *Suitable for Rule 153 Admission.* The Proposed Evidence satisfies the requirements of Rule 153(1) and its probative value is not outweighed by any prejudice. W04362's evidence is largely cumulative to other witness and documentary evidence concerning the [REDACTED] detention site, and the fate of those detained.²⁷⁸ His evidence is corroborated by witnesses whom the Accused will be able to cross-examine.²⁷⁹ Admission of W04362's evidence in writing will save court-time and spare the witness the burden of appearing.

85. Given that W04362 provides crime-base evidence, which is of limited scope or nature and is largely cumulative and corroborative of evidence which the Defence will be able to confront, the imperative of a fair and expeditious trial warrants the admission of his evidence in written form, without cross-examination.

86. *The Associated Exhibits are admissible.* The Associated Exhibits—a map and W04362's drawings²⁸⁰—should be admitted as an inseparable and indispensable part of W04362's evidence as they were used and discussed. His evidence would be less comprehensible or have lesser probative value without their admission. Furthermore, the Associated Exhibits provide context to the Rule 153 Statement.

V. CLASSIFICATION

87. This submission is filed as confidential as it contains information concerning witnesses with protective measures. The Annexes are confidential in order to give effect to protective measures and applicable contact restrictions, and considering that the identities of these witnesses are not public at this time.

²⁷⁷ [REDACTED].

²⁷⁸ See e.g. fn.271; [REDACTED]; [REDACTED].

²⁷⁹ See e.g. fn.271.

²⁸⁰ [REDACTED].

VI. RELIEF REQUESTED

88. For the foregoing reasons, the SPO respectfully requests that the Trial Panel admit the Proposed Evidence pursuant to Rule 153.

Word Count: 11,812

\signed\

Alex Whiting

Acting Specialist Prosecutor

Friday, 7 July 2023

At The Hague, the Netherlands.