



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:** Specialist Prosecutor's Office

**Date:** 26 February 2024

**Language:** English

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**Public Redacted Version of 'Prosecution fourth motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-7'**

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## I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,<sup>1</sup> and Rules 137-138 and 155 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,<sup>3</sup> together with associated exhibits and/or other written records where applicable,<sup>4</sup> of six witnesses: W00067,<sup>5</sup> W00083,<sup>6</sup> W00900,<sup>7</sup> W04358,<sup>8</sup> W01504<sup>9</sup> and W01914<sup>10</sup> (collectively, 'Rule 155 Witnesses').

2. The Proposed Evidence should be admitted because: (i) the Rule 155 Witnesses are unavailable;<sup>11</sup> and (ii) the Proposed Evidence is relevant, authentic, reliable, and has probative value, which is not outweighed by any prejudice.<sup>12</sup> As these admissibility criteria are satisfied, admission is in the interests of justice.<sup>13</sup>

3. Attached to this Motion are seven Annexes. Annexes 1-6, one for each of the Rule 155 Witnesses, contain a table identifying the Proposed Evidence for that witness, which includes the Rule 155 Statement<sup>14</sup> and, where applicable, tendered associated

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article(s)' are to the Law, unless otherwise specified.

<sup>2</sup> 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.

<sup>3</sup> The account of each witness tendered for admission is the 'Rule 155 Statement'.

<sup>4</sup> See Annexes 1-6. The Rule 155 Statements and, where applicable, associated exhibits/other written records for each witness are the 'Proposed Evidence.'

<sup>5</sup> See Annex 1, items 1-3.

<sup>6</sup> See Annex 2, items 1-5

<sup>7</sup> See Annex 3, items 1-4.

<sup>8</sup> See Annex 4, items 1-8.

<sup>9</sup> See Annex 5, items 1-4.

<sup>10</sup> See Annex 6, items 1-4, 6-8.

<sup>11</sup> Rule 155(1)(a).

<sup>12</sup> Rules 137-138, 155(1)(b).

<sup>13</sup> The applicable law has been set out in prior submissions and decisions in this case. See e.g. Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential ('First Decision'), paras 10-19.

<sup>14</sup> As indicated in the Annexes, where an audio-video recording exists, the SPO also tenders it along with the relevant written statement pursuant to the Trial Panel's fourth oral order of 15 January 2024, Transcript, 15 January 2024, p.11022. See also Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023 ('Third Decision'), para.65(e); Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, Confidential ('Second Decision'), para.97(d).

exhibits and/or other written records.<sup>15</sup> Annex 7 contains the documents supporting the unavailability of the Rule 155 Witnesses.

## II. SUBMISSIONS

4. Witnesses W00067 and W00900 are unavailable since they are deceased, as confirmed by the supporting proof of death documents presented in Annex 7. W00083, W04358, W01504 and W01914 are unavailable because they are not fit to testify due to health reasons.<sup>16</sup> Accordingly, Rule 155(1)(a) is satisfied and the Proposed Evidence should be admitted as it also satisfies the admissibility criteria under Rules 137-138 and 155(1)(b).

5. The application for W01504 was originally included in a Rule 154 motion.<sup>17</sup> However, after the Rule 154 motion was filed, the SPO received further information regarding W01504's health, and thus filed a request for the Panel to defer their decision on the admission of the witness's evidence.<sup>18</sup> Having received WPSO's assessment of the witness's fitness to testify, the SPO now proposes W01504's evidence to be admitted under Rule 155.

6. Considering available counterbalancing factors and the ability of the Defence to challenge the Proposed Evidence,<sup>19</sup> there is the opportunity for a fair and proper assessment. At the end of the trial, and in considering the weight to be assigned, relevant factors include whether – as here – the statement of an unavailable witness corroborates or is corroborated by: (i) statements of other witnesses about the same events; (ii) documentary evidence; (iii) evidence of the Accused's involvement in

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<sup>15</sup> For each item, the Annexes provide a description, date of the document, relevant ERNs, and indicia of reliability. *See* First Decision, KSC-BC-2020-06/F01603, paras 63-64, 101 (setting out indicia of authenticity and reliability).

<sup>16</sup> *See* paras 24, 39, 49, 58 *below*.

<sup>17</sup> Prosecution motion for admission of evidence of Witnesses W03832, W03880, W04769, W03724, W00072, W01504, W02153, W04368, W04566, and W04586 pursuant to Rule 154, KSC-BC-2020-06/F01625, 23 June 2023, Confidential, paras 64-71.

<sup>18</sup> Prosecution request concerning items related to W03832 and Rule 154 application for W01504, KSC-BC-2020-06/F01673, 14 July 2023, Confidential, paras 1, 3.

<sup>19</sup> *See* ECtHR, *Schatschaschwili v. Germany* [GC], 9154/10, Judgment, 15 December 2015 ('*Schatschaschwili* Judgment'), paras 126-131.

similar acts; and (iv) evidence of a consistent pattern of conduct.<sup>20</sup> Further, the Proposed Evidence also complements noticed adjudicated facts relating to, *inter alia*, [REDACTED], and Klečkë/Klečka,<sup>21</sup> which either independently or together with complementary evidence, including of unavailable witnesses, are sufficient to ground a conviction.<sup>22</sup>

7. More generally, evidence going to proof of the Accused's acts and conduct is admissible under Rule 155.<sup>23</sup> Even where the Defence suggests that certain evidence is uncorroborated, it should not be excluded at the point of a Rule 155 decision, but should instead be considered at the end of trial in light of the entire evidentiary record.<sup>24</sup> Similarly, the absence of a fair opportunity for the Defence to confront evidence tendered through Rule 155 does not bar its admission but is a factor that goes to the assessment of the weight of this evidence.<sup>25</sup> Cross-examination is not an absolute right and Rule 140(4)(a) does not govern questions related to the admission of evidence.<sup>26</sup> Discrepancies and contradictions between accounts of the same and/or

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<sup>20</sup> See e.g. ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Judgement, 30 January 2015, para.104; *Schatschaschwili* Judgment, para.128.

<sup>21</sup> Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023, Confidential ('Adjudicated Facts'), pp.[REDACTED], 155-159.

<sup>22</sup> See e.g. IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgement, 20 March 2019, para.49, fn.1206.

<sup>23</sup> First Decision, KSC-BC-2020-06/F01603, paras 15, 116; Second Decision, KSC-BC-2020-06/F01864, para.41; Third Decision, KSC-BC-2020-06/F02013, para.54 .

<sup>24</sup> First Decision, KSC-BC-2020-06/F01603, paras 86, 88, 137; Second Decision, KSC-BC-2020-06/F01864, 17 October 2023, para.46; Third Decision, KSC-BC-2020-06/F02013, para.33. See, similarly, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, paras 52-53, 62. For purposes of considering the reliability of the statement, as well as of other corroborative evidence, the whole statement should be admitted, including any specific allegations contained therein (even those that go to the acts and conduct of the Accused) that are not corroborated. See e.g. ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*, 3 February 2009, para.31; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Redacted Version of "Decision on Behalf of Drago Nikolić Seeking Admission of Evidence Pursuant to Rule 92 *quater*", 19 February 2009, paras 47-50.

<sup>25</sup> Second Decision, KSC-BC-2020-06/F01864, 17 October 2023, para.11.

<sup>25</sup> Second Decision, KSC-BC-2020-06/F01864, 17 October 2023, para.11; Third Decision, KSC-BC-2020-06/F02013, para.30.

<sup>26</sup> Second Decision, KSC-BC-2020-06/F01864, 17 October 2023, para.72.

different witnesses are matters pertaining to the weight of the evidence, and do not *per se* render the evidence inadmissible.<sup>27</sup>

#### A. RAHOVEC/ORAHOVAC AND MALISHEVE/MALIŠEVO

8. The evidence of W00067 is relevant to prove the charges in the Indictment related to Malishevë/Mališevo.<sup>28</sup> W00083's evidence 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.<sup>29</sup> In this respect, W00083's sons are murder victims identified in the Indictment.<sup>30</sup>

9. The evidence of W00900 is relevant to prove the charges in the Indictment related to June 1999 events in and around Rahovec/Orahovac.<sup>31</sup>

#### 1. W00067

10. *Relevance.* W00067, a Serbian woman – now deceased<sup>32</sup> – was living in Rahovec/Orahovac in 1998. On 17 July 1998, W00067 and her family drove back from a holiday in Serbia.<sup>33</sup> As the family's car entered Rahovec/Orahovac, a large number of armed KLA members stopped them.<sup>34</sup> The KLA put W00067's husband and son in the family car and drove them towards Malisheve/Mališevo.<sup>35</sup> W00067, her sister-in-law and grandson were detained, first in a warehouse in Rahovec/Orahovac,<sup>36</sup> and

<sup>27</sup> Second Decision, KSC-BC-2020-06/F01864, 17 October 2023, paras 83, 92; Third Decision, KSC-BC-2020-06/F02013, paras 13, 27, 51, 55.

<sup>28</sup> See Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras 59-61, 67, 96-98, 103, 136-138, 153-154; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), paras 368-383.

<sup>29</sup> See, Indictment, KSC-BC-2020-06/F00999/A01, paras 22, 32-57, 59-61, 67, 96-98, 103, 136, 138, 154; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 368-383.

<sup>30</sup> Indictment, KSC-BC-2020-06/F00999/A01, p.64 (victims 10.2 and 10.3).

<sup>31</sup> Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 78-79, 96-98, 169-170; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 637-644 .

<sup>32</sup> Annex 7, item 1: 114386-114387-ET.

<sup>33</sup> Annex 1 item 1: K019-5141-K019-5146 RED2, p.2; item 2: SITF00062645-SITF00062667-ET RED, p.6.

<sup>34</sup> K019-5141-K019-5146 RED2, p.2; SITF00062645-SITF00062667-ET RED, p.7.

<sup>35</sup> K019-5141-K019-5146 RED2, p.2.

<sup>36</sup> K019-5141-K019-5146 RED2, p.2.

later in the former police station building in Malishevë/Mališevo.<sup>37</sup> W00067 saw the family car parked outside.<sup>38</sup> They spent ten days in a room on the first floor of this building.<sup>39</sup> W00092's wife, sister and daughter were also detained in that room.<sup>40</sup> W00067 could hear screaming and crying coming from below.<sup>41</sup> W00067 learned that her husband and son were detained there.<sup>42</sup>

11. During her detention, [REDACTED].<sup>43</sup> On one occasion, a man whom the guards called Jakup KRASNIQI came to the room where W00067 was detained.<sup>44</sup>

12. After about ten days, as Serbian forces attacked Malishevë/Mališevo, W00067, her sister-in-law and her baby were put on a bus, which also had other women and children along with some Serbian men with their hands tied and heads down.<sup>45</sup> Among the detainees on the bus, W00067 recognised Spasa BURDIĆ and Pedrag BURDIĆ from Opertusë/Opertuša, Đorde DORIĆ and Krsta STANOJEVIĆ from Rahovec/Orahovac, and members of the KOSTIĆ family from Reti/Retmilje.<sup>46</sup>

13. W00067's husband and son were not on the bus and W00067 never saw them again.<sup>47</sup> At some point, the bus broke down and W00067 and the other women and children were taken to a house in a village identified as Jabllanicë/Jablanica, where they were kept for around four nights.<sup>48</sup> They were moved to another location and released the following day between Pristinë/Priština and Gjakovë/Đakovica.<sup>49</sup>

14. *Authenticity and reliability.* The Proposed Evidence (Rule 155 Statement and Associated Exhibit) for W00067 is listed in Annex 1. W00067's ICTY statement, dated

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<sup>37</sup> K019-5141-K019-5146 RED2, pp.2-3.

<sup>38</sup> SITF00062645-SITF00062667-ET RED, p.10.

<sup>39</sup> K019-5141-K019-5146 RED2, p.3.

<sup>40</sup> SITF00062645-SITF00062667-ET RED, p.8.

<sup>41</sup> K019-5141-K019-5146 RED2, p.3; SITF00062645-SITF00062667-ET RED, p.10.

<sup>42</sup> K019-5141-K019-5146 RED2, p.3; SITF00062645-SITF00062667-ET RED p.10.

<sup>43</sup> K019-5141-K019-5146 RED2, p.3; SITF00062645-SITF00062667-ET RED, pp.9, 11.

<sup>44</sup> K019-5141-K019-5146 RED2, p.3; SITF00062645-SITF00062667-ET RED, pp.15-16.

<sup>45</sup> K019-5141-K019-5146 RED2, p.3; SITF00062645-SITF00062667-ET RED, pp.12-13.

<sup>46</sup> K019-5141-K019-5146 RED2, p.3.

<sup>47</sup> SITF00062645-SITF00062667-ET RED, pp.11, 14, 18.

<sup>48</sup> K019-5141-K019-5146 RED2, p.3; SITF00062645-SITF00062667-ET RED, pp.11, 13.

<sup>49</sup> K019-5141-K019-5146 RED2, p.4.

2 December 2000, was conducted with an interpreter understood by the witness.<sup>50</sup> The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.<sup>51</sup> W00067 confirmed that the contents of her statement are true and accurate, and that her statement was given voluntarily.<sup>52</sup> Further, in her UNMIK interview, dated 10 June 2006, W00067 confirmed the authenticity of her ICTY statement, which therefore forms an integral part of the UNMIK interview.<sup>53</sup> During that interview, W00067 was duly advised of her rights and obligations as a witness,<sup>54</sup> and confirmed that she had no objections to the manner or process by which the statement was taken.<sup>55</sup>

15. Annex 1 also lists one exhibit associated to the Rule 155 statement: a photo line-up shown to the witness during the UNMIK interview.<sup>56</sup> This document should be admitted as an inseparable and indispensable part of the Rule 155 statement, which would be less comprehensible or have lesser probative value without such exhibit.

16. *Fairness.* The probative value of W00067's Proposed Evidence is not outweighed by any prejudice. While this evidence goes, *inter alia*, to proof of acts and conduct of Jakup KRASNIQI, the Rule 155 conditions are met.<sup>57</sup> 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;<sup>58</sup> (ii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of several years – that enables the Parties and Panel to assess the witness's demeanour and credibility; and (iii) is consistent with, and

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<sup>50</sup> K019-5141-K019-5146 RED2, p.6.

<sup>51</sup> K019-5141-K019-5146 RED2, p.1.

<sup>52</sup> K019-5141-K019-5146 RED2, p.5.

<sup>53</sup> SITF00062645-SITF00062667-ET RED, p.22.

<sup>54</sup> SITF00062645-SITF00062667-ET RED, p.2.

<sup>55</sup> SITF00062645-SITF00062667-ET RED, p.22.

<sup>56</sup> See Annex 1, item 3.

<sup>57</sup> See Rule 155(5); First Decision, KSC-BC-2020-06/F01603, para.15.

<sup>58</sup> Rule 140(4)(a).

corroborated by documentary evidence<sup>59</sup> and the statement of other witnesses in the case,<sup>60</sup> some of whom have been and will be available for cross-examination.<sup>61</sup>

## 2. W00083

17. *Relevance.* W00083 is a Kosovar-Serb woman who lived in Reti/Retimlje in 1998.<sup>62</sup> In the night of 17 July 1998, W00083 was home with her sons (Todor and Lazar KOSTIĆ), when the KLA attacked the village.<sup>63</sup> During the attack, W00083's brother-in-law, Andjelko KOSTIĆ, was killed by KLA soldiers.<sup>64</sup> In the morning of 18 July 1998, Simić SREĆKO, from Opterusë/Opterusuša, was sent by the KLA soldiers to demand that the Reti/Retimlje villagers surrender their weapons in exchange for releasing Opterusë/Opterusuša villagers.<sup>65</sup> After the villagers complied, uniformed KLA soldiers searched the houses and ordered all Serb men, including W00083's sons, to get on a blue truck.<sup>66</sup> W00083 saw the truck driving in the direction of Opterusë/Opterusuša.<sup>67</sup> W00083, together with all the Serb women and Stanoje KOSTIĆ, an ailing man, were driven by three armed men halfway to Zoçishtës/Zočişte.<sup>68</sup> The women continued walking until Zoçishtës/Zočişte and hid in the monastery.<sup>69</sup>

<sup>59</sup> See e.g. SITF00200250-00200296 RED; 019297-019303, pp. 019301-019303; SITF00200297-00200356 RED; SPOE00068507-00068514, pp. SPOE00068512-POE00068514; P00247; P00235; K046-3790-K046-3989, p. K046-3898

<sup>60</sup> See e.g. W04278, W03780, W04577, W02153, W00092, W00498 and W02303; 059666-TR-ET Part 1 RED, p.20, Part 2 RED, pp.15, 32-33, Part 3 RED, pp.2-7; 054769-TR-ET Part 1 RED2, p.9, Part 3 RED2, pp.2-3, Part 4 RED, pp.9,14; 054129-054138 RED2, pp.054131-054133, 054136; 106438-TR-ET Part 10 Revised RED2, p.4; 0106-8151-0106-8166, pp.0106-8158-0106-8159, 0106-8161; K020-8456-K020-8464 RED2, p.K020-8459; 000152-TR-ET RED; 061376-TR-ET Part 1 RED, p.9.

<sup>61</sup> See e.g. W02153 (testified on 18 and 19 July 2023), W04278, W03780, W04577, W00092 and W00498.

<sup>62</sup> Annex 2, item 1: 000516-TR-ET Part 1 RED, p.8; item 2: U000-0077-U000-0090 RED, p.1; item 3: SPOE00193614-00193638 RED, p.4.

<sup>63</sup> 000516-TR-ET Part 1 RED, p.8; SPOE00193614-00193638 RED, pp.8-9.

<sup>64</sup> 000516-TR-ET Part 1 RED, p.10; U000-0077-U000-0090 RED, p.2; SPOE00193614-00193638 RED, p.8.

<sup>65</sup> 000516-TR-ET Part 1 RED, pp.11, 13; U000-0077-U000-0090 RED, p.3; SPOE00193614-00193638 RED, p.9.

<sup>66</sup> 000516-TR-ET Part 1 RED, pp.22, 26; U000-0077-U000-0090 RED, p.3; SPOE00193614-00193638 RED, pp.10-11.

<sup>67</sup> 000516-TR-ET Part 2 RED, pp.10-11; U000-0077-U000-0090 RED, p.3; SPOE00193614-00193638 RED, p.14.

<sup>68</sup> 000516-TR-ET Part 2 RED, p.8; SPOE00193614-00193638 RED, p.14.

<sup>69</sup> 000516-TR-ET Part 2 RED, p.13; U000-0077-U000-0090 RED, p.3; SPOE00193614-00193638 RED, p.17.

18. Women from Opterusë/Opteruša, including W00072, arrived during that night and told them that their village had also been attacked.<sup>70</sup> W00072 carried with her a letter from the KLA demanding Zoçishtës/Zoçište villagers to surrender their weapons.<sup>71</sup> On the fourth day, the KLA attacked the monastery and ordered everyone to get into a bus.<sup>72</sup> They were driven to a school, where they were detained for a night and released the following day to the ICRC.<sup>73</sup> W00083's sons remains were found in Volljakë/Volujak in 2004.<sup>74</sup>

19. *Authenticity and reliability.* W00083's Proposed Evidence, with an individualised explanation of the circumstances militating in favour of their *prima facie* reliability, is listed in Annex 2. W00083's SITF interview – as audio/video recorded and transcribed – was conducted with an interpreter understood by the witness,<sup>75</sup> who was duly advised of her rights and obligations.<sup>76</sup> The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.<sup>77</sup> W00083 confirmed that the contents of her statement are true and accurate, that her statement was given voluntarily, and that she had no objections to the manner or process by which the statement was taken.<sup>78</sup>

20. Other related records include ICTY and UNMIK statements of the witness. W00083's ICTY statement, dated 7 August 2001, records the date, time and place of the interview, as well as all persons present.<sup>79</sup> W00083 confirmed the truth and accuracy of the contents of the statement, and that it was given voluntarily.<sup>80</sup> W00083's

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<sup>70</sup> 000516-TR-ET Part 2 RED, p.14; SPOE00193614-00193638 RED, p.17.

<sup>71</sup> 000516-TR-ET Part 2 RED, p.14; SPOE00193614-00193638 RED, p.17.

<sup>72</sup> 000516-TR-ET Part 2 RED, pp.19--21; SPOE00193614-00193638 RED, p.18.

<sup>73</sup> 000516-TR-ET Part 2 RED, pp.-23-24; SPOE00193614-00193638 RED, pp.19-20, 22.

<sup>74</sup> 000516-TR-ET Part 2 RED, pp.27, 29.

<sup>75</sup> 000516-TR-ET Part 1 RED, p.1; 000516b.

<sup>76</sup> 000516-TR-ET Part 1 RED, pp.1-2; 000516b.

<sup>77</sup> 000516-TR-ET Part 1 RED, p.1, Part 2 RED, p.1 and Part 3, p.1; 000516b.

<sup>78</sup> 000516-TR-ET Part 3, pp.2-3; 000516b.

<sup>79</sup> U000-0077-U000-0090 RED, p.1.

<sup>80</sup> U000-0077-U000-0090 RED, p.5.

UNMIK interview,<sup>81</sup> dated 10 December 2005, records the date, time and place of the interview, as well as all persons present.<sup>82</sup> W00083 was duly advised of her rights and obligations as a witness,<sup>83</sup> and confirmed that she had no objections to the manner or process by which the statement was taken.<sup>84</sup>

21. The consistency of the Proposed Evidence – considered together and with corroborating evidence – further demonstrates its reliability. While W00083’s statements overlap in certain respects, they corroborate and permit a full assessment of this deceased witness’s evidence and credibility.<sup>85</sup>

22. *Associated Exhibit.* Annex 2 also lists one exhibit associated to the Rule 155 Statement.<sup>86</sup> The exhibit should be admitted as an inseparable and indispensable part of the Rule 155 Statement, which would be less comprehensible or have lesser probative value without the associated document.

23. *Fairness.* The probative value of W00083’s Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence: (i) may not be relied upon to a sole or decisive extent in reaching a conviction; (ii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of more than 10 years – that enables the Parties and Panel to assess the witness’s demeanour and credibility; and (iii) is consistent with, and corroborated by

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<sup>81</sup> In the context of W00083’s information on Jakup KRASNIQI in this statement (pp.12-13, 24), the SPO is not in possession of the photo lineup used by UNMIK.

<sup>82</sup> SPOE00193614-00193638 RED, p.1.

<sup>83</sup> SPOE00193614-00193638 RED, p.2.

<sup>84</sup> SPOE00193614-00193638 RED, p.25.

<sup>85</sup> First Decision, KSC-BC-2020-06/F01603, paras 93, 98.

<sup>86</sup> See Annex 2, item 5.

documentary evidence<sup>87</sup> and the statement of other witnesses in the case,<sup>88</sup> some of who will be available for cross-examination.<sup>89</sup>

24. *Unavailability.* W00083 is unavailable<sup>90</sup> as her health condition effectively prevents her from testifying orally.<sup>91</sup> In particular, both the WPSO assessment and corroborative information from the witness's family revealing memory issues and a state of confusion, indicate a mental state which is incompatible with testifying.<sup>92</sup>

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<sup>87</sup> SITF00202352-00202370 RED; SITF00202368-SITF00202370-ET; SITF00062883-SITF00062887 RED; SPOE00068643-00068651; SITF00202487-00202505 RED; SITF00202505-SITF00202505-ET; P00067\_ET, p. 4; U001-7877-U001-7877-ET; U002-4585-U002-4586; K046-3790-K046-3989, p. K046-3800; SPOE00193407-00193416; IT-04-84 P00006, p.30; ET U000-5031-U000-5032.

<sup>88</sup> See e.g. W04748, W00072, W00716; W00100 and W02303; 083088-TR-ET Part 2 Revised RED, pp.4, 9; 005300-TR-ET RED, pp.19, 22, 25-26; 004724-TR-ET Part 1 RED, pp.17-20, Part 2, pp.1, 3, 9; U002-4871-U002-4878 RED; 061376-TR ET Part 1 RED, pp.15-23, Part 2 pp.1-2, 13-16.

<sup>89</sup> See e.g. W04748 and W00072.

<sup>90</sup> See also KSC-BC-2020-06/ F01539 and F01539/A01. This filing is strictly confidential and *ex parte* and consistent with the submissions therein by the filing participant, the SPO does not object to reclassification as confidential. Since the filing is based on information which is in line with the information referred to in this Rule 155 application, the Defence is in a position to meaningfully respond to this request.

<sup>91</sup> See First 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 (where the Chamber found that the witness was unable to testify orally due to Parkinson's disease, with severe symptoms); ICTY, *Prosecutor v. Hadžić*, IT -95-5118-T, Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits pursuant to Rule 92 *quater*, 30 November 2009, para.5; ICTY, *Prosecutor v Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater* and Prosecution Motion for the Admission of the Evidence of GH-083 Pursuant to rule 92 *quater*, 9 May 2013, paras 23, 29, 41, 95, 101; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-1588-Red, Trial Chamber X, Public redacted version of Decision on the introduction into evidence of P0570'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.

<sup>92</sup> See Annex 7, item 2: 119095-119095 and 119096-119096 RED.

### 3. W00900

25. *Relevance.* W00900, a Serb, now deceased,<sup>93</sup> was living in Rahovec/Orahovac village with her family up until October 1999.<sup>94</sup> The DEDIĆs first interacted with Ismet TARA on or around 16-17 June 1999, when the latter came to their home accompanied by four uniformed KLA soldiers demanding, on behalf of the KLA, the handover of the keys to their apartment.<sup>95</sup> On or around 18 June 1999, Boban DEDIĆ was abducted by the KLA, on the day that his parents, Predrag DEDIĆ and W00900, decided to leave town.<sup>96</sup> While they were having difficulty starting the car outside the '18 November' factory occupied by the KLA, four uniformed, armed KLA soldiers<sup>97</sup> came in a car and told Boban DEDIĆ to come with them to the police station, adding that they would bring him back in 15 minutes.<sup>98</sup>

26. On the same day, W00900 reported the case to a German KFOR patrol,<sup>99</sup> and Predrag DEDIĆ went to the KLA police station, located next to the Fire Department building, demanding the release of his son.<sup>100</sup> Predrag DEDIĆ was himself briefly locked in a room and was released only after KFOR's intervention.<sup>101</sup> Ismet TARA himself assured W00900 that she should not worry and that her son would be released the next day.<sup>102</sup> Predrag DEDIĆ and W00900 met TARA again the next day but were

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<sup>93</sup> Annex 7, item 3: 112208-112209-ET RED.

<sup>94</sup> Annex 3, item 1: K020-8261-K0208-8267 RED2, pp.2, 6; item 2: 009862-TR-ET Part 1 RED2, pp.8-9.

<sup>95</sup> K020-8261-K0208-8267 RED2, p.3. *See also* U000-0009-U000-0016 RED2, p.4; 007631-TR-ET Part 3 RED, p.14; 007631-TR-ET Part 4, p.5; SITF40010159-40010164-ET Revised RED, p.2; 083217-TR-ET Part 11 Revised RED, p.7.

<sup>96</sup> 009862-TR-ET Part 1 RED2, p.16.

<sup>97</sup> K020-8261-K0208-8267 RED2, p.4; 009862-TR-ET Part 2, p.10. *See also* U000-0009-U000-0016 RED2, p.5; 007623-007630 RED2, p.6.

<sup>98</sup> K020-8261-K0208-8267 RED2, p.4; 009862-TR-ET Part 2, pp.10–12; *see also* U000-0009-U000-0016 RED2, p.5; 007623-007630 RED2, p.6; SITF40010159-40010164-ET Revised RED, p.3.

<sup>99</sup> 009862-TR-ET Part 2, pp.12-13. *See also* U000-0009-U000-0016 RED2, p.6.

<sup>100</sup> K020-8261-K020-8267 RED2, p.5; 009862-TR-ET Part 2, pp.16, 24. *See also* U000-0009-U000-0016 RED2, p.6.

<sup>101</sup> 009862-TR-ET Part 2, p.16. *See also* U000-0009-U000-0016 RED2, p.6; 007631-TR-ET Part 3 RED, p.5; 007631-TR-ET Part 4, pp.29–30; 007623-007630 RED, p.7.

<sup>102</sup> K020-8261-K020-8267 RED2, p.5. *See also* 007631-TR-ET Part 4, p.34.

told that he did not know what had happened to Boban, claiming that gangs from Albania had joined the KLA.<sup>103</sup> Boban DEDIĆ was never seen again.<sup>104</sup>

27. *Authenticity and reliability.* W00900's Proposed Evidence, with an individualised explanation of circumstances militating for their *prima facie* reliability, is listed in Annex 3. W00900's audio-video recorded interview<sup>105</sup> – as recorded in a verbatim transcript – was conducted by the SITF on 28 January 2014 with an interpreter understood by the witness and with W00900 duly advised of her rights and obligations as a witness.<sup>106</sup> The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.<sup>107</sup> Additionally, W00900 confirmed that the contents of her statement are true and accurate, that her statement was given voluntarily without any threats, force, or guarantees, and that she had no objections to the manner or process by which the statement was taken.<sup>108</sup> One related record, a SITF Investigator's Report,<sup>109</sup> is discussed in the SITF interview and was confirmed by the witness,<sup>110</sup> thus constituting an integral part thereof.

28. During the ICTY interview, taken on 10 August 2001 by a duly empowered investigator, and orally translated into a language understood by the witness by an ICTY certified interpreter, W00900 confirmed that she was providing the statement voluntarily and that no one threatened or coerced her to do so. The statement contains a witness acknowledgement and interpreter certification, is signed by the witness and initialled on all pages.<sup>111</sup>

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<sup>103</sup> K020-8261-K020-8267 RED2, p.2. *See also* 007631-TR-ET Part 4, pp.35–36; 083217-TR-ET Part 11 Revised RED, p.9.

<sup>104</sup> K020-8261-K020-8267 RED2, p.2; 009862-TR-ET Part 2, p.33. *See also* U000-0009-U000-0016 RED2, p.6; 007631-TR-ET Part 6, p.3; SITF40010159-40010164-ET Revised RED, p.3.

<sup>105</sup> Annex 3, item 4: 009862b Part 1 RED, Part 2.

<sup>106</sup> 009862-TR-ET Part 1 RED2, pp.2-3; and 009857-009861-ET Revised RED (Annex 3, item 3).

<sup>107</sup> 009862-TR-ET Part 1 RED2, p.1; 009857-009861-ET Revised RED.

<sup>108</sup> 009862-TR-ET Part 2, p.38; 009857-009861-ET Revised RED.

<sup>109</sup> 009857-009861-ET Revised RED.

<sup>110</sup> 009862-TR-ET- Part 1 RED2, pp.2-3.

<sup>111</sup> *See* U002-4871-U002-4878 RED.

29. *Fairness.* The probative value of W00900's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of nearly 15 years – that enables the Parties and Panel to assess the witness's demeanour and credibility; and (iv) is consistent with, and corroborated by, statements of other witnesses in the case,<sup>112</sup> who testified in court and were available for cross-examination by the Defence, and other testimonial and documentary evidence.<sup>113</sup>

B. [REDACTED]

30. The evidence of W04358 is relevant to prove the charges in the Indictment related to [REDACTED].<sup>114</sup>

**4. W04358**

31. *Relevance.* In 1998, W04358 lived with his family in [REDACTED], and worked as [REDACTED].<sup>115</sup> On or about [REDACTED], W04358 learned [REDACTED] that one of their sons had been arrested by KLA soldiers, and went towards [REDACTED] the next day to look for his son.<sup>116</sup> W04358 was arrested by KLA soldiers at a checkpoint and taken to [REDACTED] where he was detained [REDACTED].<sup>117</sup> He was questioned by KLA members, who alleged that his son was a collaborator and

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<sup>112</sup> See particularly statements of witnesses W00208 and W04745.

<sup>113</sup> See, for example, U000-0009-U000-0016 RED2; SITF40010159-40010164-ET Revised RED; 007631-TR-ET Part 1 RED2, Part 2 RED2, Part 3 RED, Part 4, Part 5 RED; 0206-2089-0206-2095; 0351-5084-0351-5384, p.111.

<sup>114</sup> See Indictment, KSC-BC-2020-06/F00999/A01, [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>115</sup> Annex 4, item 2: 059671-TR-ET Part 1 RED2, p.7.

<sup>116</sup> 059671-TR-ET Part 1 RED2, pp.19-20; Annex 4, item 3: SITF00181066-00181123, p.SITF00181077.

<sup>117</sup> 059671-TR-ET Part 1 RED2, pp.20-21.

had paid a sum of money to have his passport renewed by Serb authorities.<sup>118</sup> W04358 was severely beaten and also saw [REDACTED] who was beaten up.<sup>119</sup>

32. A few days after his release, W04358 went again to inquire about his son with the KLA in [REDACTED]. He was arrested and taken to the same building in [REDACTED], where he was detained [REDACTED] and beaten until he lost consciousness.<sup>120</sup> W04358 also saw [REDACTED] being beaten and kicked by KLA members.<sup>121</sup> On one occasion, W04358 was taken out of the building, where he saw [REDACTED], as well as [REDACTED], and [REDACTED]. They all had visible injuries and were covered in blood.<sup>122</sup>

33. After W04358's release, [REDACTED] went to the KLA in [REDACTED] many times looking for their son, [REDACTED]. W04358 learned [REDACTED] that their son looked like he had been beaten [REDACTED]. This was the last time their son was seen alive.<sup>123</sup>

34. *Authenticity and reliability.* The Proposed Evidence for W04358 (Rule 155 Statement and Associated Exhibits) is listed in Annex 4 to this application. W04358's audio-video recorded SPO interview was conducted by the SPO [REDACTED] with an interpreter understood by the witness.<sup>124</sup> W04358 was duly advised of his rights and obligations as a witness.<sup>125</sup> W04358 confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily, and that he had no objections to the manner or process by which the statement was taken.<sup>126</sup>

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<sup>118</sup> 059671-TR-ET Part 1 RED2, pp.8-9, 19; 059671-TR-ET Part 2 RED2, pp.6-7, 23.

<sup>119</sup> 059671-TR-ET Part 1 RED2, p.21; 059671-TR-ET Part 2 RED2, pp.4-6.

<sup>120</sup> 059671-TR-ET Part 1 RED2, pp.22-25; 059671-TR-ET Part 2 RED2, pp.13-15, 18-19; SITF00181066-00181123, pp.SITF00181078, SITF00181085.

<sup>121</sup> 059671-TR-ET Part 1 RED2, pp.23-24; 059671-TR-ET Part 2 RED2, pp.4-5, 20-21; SPOE00125605-00125617, pp.SPOE00125610-SPOE00125611; SITF00181066-00181123, p.SITF00181086.

<sup>122</sup> 059671-TR-ET Part 1 RED2, pp.24-25; 059671-TR-ET Part 2 RED2, pp.24-26, 28-30; SITF00181066-00181123, p.SITF00181080.

<sup>123</sup> 059671-TR-ET Part 1 RED2, pp.25-27; SITF00181066-00181123, pp.SITF00181078, SITF00181087.

<sup>124</sup> 059671-TR-ET Part 1 RED2, p.2.

<sup>125</sup> 059671-TR-ET Part 1 RED2, pp.3-4.

<sup>126</sup> 059671-TR-ET Part 3 RED2, pp.11-12.

35. [REDACTED].<sup>127</sup> He was duly advised of his rights and obligations as a witness.<sup>128</sup> During his SPO interview, W04358 confirmed that he provided truthful information [REDACTED].<sup>129</sup>

36. [REDACTED] includes details such as [REDACTED], the date, time and place of the interview, the names and roles of the persons present, as well as the signatures [REDACTED].<sup>130</sup> [REDACTED], W04358 confirmed that his [REDACTED] was truthful and correct,<sup>131</sup> and that the statement was translated to him and he understood it before signing it.<sup>132</sup>

37. *Associated Exhibits.* The Associated Exhibits – photos of victims and suspects [REDACTED]<sup>133</sup> - forming part of the Rule 155 Statement, and included in Annex 4, are an inseparable and indispensable part of W04358's evidence. Two of the Associated Exhibits are already admitted into evidence; the third one should be admitted too as the Rule 155 Statement would be less comprehensible or have lesser probative value without it.<sup>134</sup>

38. *Fairness.* The probative value of W04358's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – [REDACTED] – that enables the Parties and Panel to assess the witness's demeanour and credibility; and (iv) is consistent with, and corroborated by, statements of other witnesses in the case,<sup>135</sup> who

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<sup>127</sup> SITF00181066-00181123, pp.SITF00181066-SITF00181067, SITF00181075; Annex 4, item 4: SITF00181124-00181156, pp.SITF00181124-SITF00181125.

<sup>128</sup> SITF00181066-00181123, p.SITF00181075.

<sup>129</sup> 059671-TR-ET Part 1 RED2, pp.6-7.

<sup>130</sup> Annex 4, item 5: SPOE00125605-00125617, pp.SPOE00125605, SPOE00125609, SPOE00125617.

<sup>131</sup> SITF00181066-00181123, p.SITF00181077.

<sup>132</sup> SITF00181124-00181156, p.SITF00181128.

<sup>133</sup> See Annex 4, items 6-8. Items 6 and 8 are already in evidence.

<sup>134</sup> See Annex 4, item 7.

<sup>135</sup> See particularly statements of witnesses [REDACTED].

were or will be available for cross-examination by the Defence, and other testimonial and documentary evidence.<sup>136</sup>

39. *Unavailability.* W04358 is unavailable<sup>137</sup> as his health condition effectively prevents him from testifying orally.<sup>138</sup> [REDACTED]. When visited by SPO staff members [REDACTED], he was in a hospital bed [REDACTED].<sup>139</sup> Any phone contact or meaningful communication with W04358 is not feasible due to his ill-health. W04358's medical records from 2022 indicate the severity of W04358's ill-health resulting in significantly impaired communication abilities.<sup>140</sup>

### C. [REDACTED]

40. The evidence of W01504 is relevant to prove the charges in the Indictment related to [REDACTED].<sup>141</sup>

## 5. W01504

41. *Relevance.* W01504 is [REDACTED], who worked as [REDACTED].<sup>142</sup> During the night of [REDACTED], W01504 and [REDACTED] were abducted from their house by KLA members and taken to a village where they were forced into the cellar of a small building.<sup>143</sup> The following morning, KLA soldiers brought them to the [REDACTED] detention centre. W01504 and [REDACTED] were held in [REDACTED], together with other prisoners, including [REDACTED].<sup>144</sup>

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<sup>136</sup> See e.g. SPOE00125979-00126002, SPOE00068624-00068634, and SPOE00073399-00073428.

<sup>137</sup> See also KSC-BC-2020-06/F01635 and F01635/A01, 30 June 2023, Strictly Confidential and *Ex Parte*. This filing is strictly confidential and *ex parte* and consistent with the submissions therein by the filing participant, the SPO does not object to reclassification as confidential. The underlying documentation is relied upon in this Rule 155 application and available to the Defence in Confidential Annex 7; the Defence is therefore in a position to meaningfully respond to this request.

<sup>138</sup> See fn. 91 above.

<sup>139</sup> See Annex 7, item 4: 119145-119145 RED.

<sup>140</sup> Annex 7, item 4: 110606-110610-ET RED and 110614-110614-ET RED.

<sup>141</sup> Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>142</sup> See Annex 5, item 4: [REDACTED], p.2.

<sup>143</sup> See Annex 5, item 4: [REDACTED], pp.3-5; item 3: SPOE00110375-00110386 RED2, pp.SPOE00110376-SPOE0011077.

<sup>144</sup> [REDACTED], pp.6, 9-10; SPOE00110375-00110386 RED2, pp.SPOE00110377-SPOE0011078.

42. W01504 described that prisoners were chained and their conditions [REDACTED] very poor.<sup>145</sup> In the course of his detention, W01504 was beaten at least twice every day and night, and personally witnessed the beatings of other prisoners, including [REDACTED].<sup>146</sup> When the prisoners received food, they could rarely eat because of the blood and injuries.<sup>147</sup>

43. W01504 identified several KLA members, including [REDACTED].<sup>148</sup> He also [REDACTED], [REDACTED], [REDACTED], including approximately two days after W01504's arrival [REDACTED]. On that occasion, [REDACTED] entered the cowshed with another soldier in KLA uniform and interrogated [REDACTED]. On another occasion, [REDACTED].<sup>149</sup>

44. W01504 and [REDACTED] were released on or around [REDACTED]. Before their release, W01504 was asked to sign a declaration that he would not divulge what he had seen or heard in [REDACTED]. [REDACTED].<sup>150</sup>

45. *Authenticity and reliability.* The Proposed Evidence listed in Annex 5 is *prima facie* authentic and reliable. The Rule 155 Statement is comprised of: (i) W01504's SPO interview;<sup>151</sup> (ii) [REDACTED];<sup>152</sup> and (iii) [REDACTED].<sup>153</sup> Each statement bears sufficient indicia of reliability.<sup>154</sup> W01504's transcripts of the audio-video recorded SPO interview include details such as the date, time, place and attendees,<sup>155</sup> and was conducted with the assistance of an interpreter in a language understood by the

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<sup>145</sup> [REDACTED], p.6.

<sup>146</sup> [REDACTED], pp.6, 9-12; SPOE00110375-00110386 RED2, p.SPOE00110378; 054060-TR-ET Part 2 RED2, p.4; 054060-TR-ET Part 3 RED2, pp.23-24.

<sup>147</sup> [REDACTED],p.6.

<sup>148</sup> [REDACTED], pp.4, 7-9; SPOE00110375-00110386 RED2, pp.SPOE00110376-SPOE0011077; 054060-TR-ET Part 1 RED2, pp.9-10; 054060-TR-ET Part 3 RED2, pp.18-20.

<sup>149</sup> [REDACTED], p.12; 054060-TR-ET Part 3 RED2, pp.2-9.

<sup>150</sup> [REDACTED], p.13; SPOE00110375-00110386 RED2, p.SPOE00110378.

<sup>151</sup> Annex 5, item 2: 054060-TR-ET Part 1 RED2, Part 2, Part 3 RED2, and Part 4.

<sup>152</sup> Annex 5, item 3: SPOE00110375-00110386 RED2.

<sup>153</sup> Annex 5, item 4: [REDACTED].

<sup>154</sup> See also Annex 5.

<sup>155</sup> 054060-TR-ET Part 1 RED2, Part 2, Part 3 RED2, Part 4, p.1.

witness.<sup>156</sup> W01504 was duly advised of his rights as a witness,<sup>157</sup> confirmed that the contents of his recorded statement are true and accurate, that his statement was given voluntarily, and that he had no objections to the manner or process by which the statement was taken.<sup>158</sup>

46. Further, during the SPO interview, W01504 had an opportunity to review his prior statements, including those tendered herein as Rule 155 Statement, which were taken in a language understood by the witness.<sup>159</sup> W01504 confirmed that the written materials were his statements and, where applicable, recognised his signature.<sup>160</sup> He confirmed that he provided the statements in a truthful manner and that there are no mistakes in his statements.<sup>161</sup> For each statement, he was given an opportunity to clarify or make corrections.<sup>162</sup> Further, as the contents of the statements were discussed in the SPO interview, these statements form an integral part thereof.<sup>163</sup>

47. *Associated Exhibits.* The Associated Exhibits – [REDACTED], both incorporated in his Rule 155 Statement<sup>164</sup> – should be admitted as they are an inseparable and indispensable part of W01504's evidence. The Rule 155 Statement would be less comprehensible and have lesser probative value without the admission of the associated exhibits.

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<sup>156</sup> 054060-TR-ET Part 1 RED2, p.2.

<sup>157</sup> 054060-TR-ET Part 1 RED2, p.2.

<sup>158</sup> 054060-TR-ET Part 3 RED2, p.25.

<sup>159</sup> W01504's prior statements were taken in the Albanian language.

<sup>160</sup> In respect of SPOE00110375-00110386 RED2, see 054060-TR-ET Part 1 RED2, pp. 5-7 (W01504 confirmed [REDACTED]). In respect [REDACTED], see 054060-TR-ET Part 1 RED2, pp. 7-8 (W01504 confirmed his signature on the statement given [REDACTED]).

<sup>161</sup> In respect of [REDACTED], see 054060-TR-ET Part 1 RED2, p.10 (W01504 confirmed that there are no mistakes in his statement).

<sup>162</sup> In respect of SPOE00110375-00110386 RED2, see 054060-TR-ET Part 1 RED2, pp. 5-7 and also in 054060-TR-ET Part 3 RED2, pp. 14-16, 18, 21-22 (W01504 was given the opportunity to clarify or make corrections with regards to SPOE00110375-00110386 RED). In respect of [REDACTED], see 054060-TR-ET Part 1 RED2, pp. 5, 7-12; 054060-TR-ET Part 2, pp. 1-6 and in 054060-TR-ET Part 3 RED2, pp. 3-4, 7-8, 23-24 (W01504 was given the opportunity to clarify or make corrections with regards to [REDACTED]).

<sup>163</sup> 054060-TR-ET Part 1 RED2, Part 2, Part 3 RED2, Part 4.

<sup>164</sup> See Annex 5, items 3-4.

48. *Fairness.* The probative value of the Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence: (i) may not be relied upon to a sole or decisive extent in reaching a conviction; (ii) was recorded in a manner – including [REDACTED] at different times – that enables the Parties and Panel to assess the witness’s demeanour and credibility; and (iii) is consistent with, and corroborated by, *inter alia*, documentary evidence and statements of other witnesses in the case.<sup>165</sup>

49. *Unavailability.* W01504 is unavailable<sup>166</sup> as his health condition effectively prevents him from testifying orally.<sup>167</sup> Already in 2018, the witness’s SPO interview had to be interrupted due to health issues linked to [REDACTED] suffered by the witness.<sup>168</sup> His health issues have since worsened to the extent he is no longer fit to testify; W01504 [REDACTED].<sup>169</sup>

#### D. KLEÇKË/KLEČKA

50. The evidence of W01914 is relevant to prove the charges in the Indictment related to the events in Kleçkë/Klečka in [REDACTED].<sup>170</sup>

### 6. W01914

51. *Relevance.* On [REDACTED], W01914 and [REDACTED], went to [REDACTED].<sup>171</sup> They encountered KLA soldiers<sup>172</sup> who arrested and held them at gunpoint until a KLA commander arrived.<sup>173</sup> The KLA commander ordered the KLA

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<sup>165</sup> See e.g. [REDACTED].

<sup>166</sup> See also KSC-BC-2020-06/F02097 and F02097/A03, 1 February 2024, Strictly Confidential and *Ex Parte*. This filing is strictly confidential and *ex parte* and consistent with the submissions therein by the filing participant, the SPO does not object to reclassification as confidential. Since the filing is based on the same information referred to in this application, the Defence is in a position to meaningfully respond to this request.

<sup>167</sup> See fn. 91 above.

<sup>168</sup> 054060-TR-ET Part 4, p.1.

<sup>169</sup> See Annex 7, item 5: 111207-111207.

<sup>170</sup> Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 78-79, 96-98, 115-116, 136-138, 161-165; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 488-500, 504.

<sup>171</sup> See Annex 6, item 1: 064727-TR Part 1 Revised-ET RED, p.10; item 3: SPOE00078820-00078851 RED2, p.SPOE00078822.

<sup>172</sup> 064727-TR Part 1 Revised-ET RED, p.11; SPOE00078820-00078851 RED2, p.SPOE00078822.

<sup>173</sup> 064727-TR Part 1 Revised-ET RED, pp.13-14; SPOE00078820-00078851 RED2, p.SPOE00078822.

soldiers to move [REDACTED] to a nearby location, where they were both severely beaten by KLA soldiers.<sup>174</sup>

52. KLA soldiers blindfolded [REDACTED], and transferred them by vehicle uphill to the KLA detention facility in Klečkë/Klečka.<sup>175</sup> There, [REDACTED] were at times separated, and W01914 was interrogated by KLA soldiers.<sup>176</sup> During their detention, [REDACTED] suffered severe beatings by KLA soldiers,<sup>177</sup> which resulted in W01914 becoming temporarily unconscious,<sup>178</sup> [REDACTED].<sup>179</sup> [REDACTED].<sup>180</sup> [REDACTED].<sup>181</sup>

53. [REDACTED].<sup>182</sup> [REDACTED].<sup>183</sup> [REDACTED].<sup>184</sup> [REDACTED].<sup>185</sup> [REDACTED].<sup>186</sup>

54. *Authenticity and reliability.* The Proposed Evidence for W01914 is listed in Annex 6 to this application. W01914's audio-video recorded SPO interview was conducted on 12 September 2019 with an interpreter understood by the witness.<sup>187</sup> The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.<sup>188</sup> W01914 was duly advised of his rights and obligations as a witness,<sup>189</sup>

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<sup>174</sup> 064727-TR Part 1 Revised-ET RED, p.15; SPOE00078820-00078851 RED2, p.SPOE00078823.

<sup>175</sup> 064727-TR Part 1 Revised-ET RED, pp.15-20; Part 5 Revised-ET, pp.1-2; 064728-064729, p.064728; SPOE00072812-00072812 (photo no.220); SPOE00072818-SPOE00072818 (photo no.226); SPOE00072822-00072822 (photo no.230); SPOE00072846-00072846; SPOE00078820-00078851 RED2, p.SPOE00078823.

<sup>176</sup> 064727-TR Part 2 Revised-ET, pp.1-6; SPOE00078820-00078851 RED2, pp.SPOE00078823-SPOE00078824.

<sup>177</sup> 064727-TR Part 2 Revised-ET, pp.4-10; Part 3 Revised-ET, p.2; SPOE00078820-00078851 RED2, p.SPOE00078824.

<sup>178</sup> 064727-TR Part 2 Revised-ET, pp.8,10; SPOE00078820-00078851 RED2, p.SPOE00078824.

<sup>179</sup> 064727-TR Part 3 Revised-ET, pp.4, 6; SPOE00078820-00078851 RED2, p.SPOE00078824.

<sup>180</sup> 064727-TR Part 3 Revised-ET, p.4; SPOE00078820-00078851 RED2, p.SPOE00078825.

<sup>181</sup> 064727-TR Part 3 Revised-ET, pp.8-9; SPOE00078820-00078851 RED2, pp.SPOE00078825, SPOE00078827.

<sup>182</sup> 064727-TR Part 3 Revised-ET, p.10; SPOE00078820-00078851 RED2, p.SPOE00078825.

<sup>183</sup> 064727-TR Part 3 Revised-ET, pp.11-12; SPOE00078820-00078851 RED2, p.SPOE00078825.

<sup>184</sup> 064727-TR Part 3 Revised-ET, pp.12-13; SPOE00078820-00078851 RED2, p.SPOE00078825.

<sup>185</sup> 064727-TR Part 3 Revised-ET, p.13; SPOE00078820-00078851 RED2, p.SPOE00078826.

<sup>186</sup> 064727-TR Part 3 Revised-ET, pp.14-15; SPOE00078820-00078851 RED2, p.SPOE00078826.

<sup>187</sup> 064727-TR Part 1 Revised-ET RED, p.2.

<sup>188</sup> 064727-TR Part 1 Revised-ET RED, p.1.

<sup>189</sup> 064727-TR Part 1 Revised-ET RED, pp.2-3.

and confirmed that the contents of his statement are true and accurate, that his statement was given voluntarily and that he had no objections to the manner or process by which the statement was taken.<sup>190</sup>

55. Further, during the SPO interview, W01914 confirmed his signature on, and discussed the contents of, [REDACTED],<sup>191</sup> and orally translated into a language understood by the witness by an interpreter.<sup>192</sup> [REDACTED] contains a witness acknowledgement, interpreter certification, is signed by the witness and initialled on all pages.<sup>193</sup>

56. *Associated Exhibits.* Annex 6 also lists the exhibits associated to the Rule 155 Statement, including their relevance. The associated exhibits include: a sketch drawn by W01914 during the SPO interview depicting the detention facility in Klečkë/Klečka;<sup>194</sup> and photographs depicting the detention facility in Klečkë/Klečka.<sup>195</sup> They should be admitted as an inseparable and indispensable part of the Rule 155 Statement, which would be less comprehensible or have lesser probative value without such exhibits.

57. *Fairness.* The probative value of W01914's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence (i) does not go to proof of the acts and conduct of the Accused;<sup>196</sup> (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner [REDACTED] that enables the Parties and Panel to assess the witness's demeanour and credibility; and (iv) is consistent with, and corroborated by, statements of other witnesses in the case,<sup>197</sup> some

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<sup>190</sup> 064727-TR Part 5 Revised-ET, pp.7-8.

<sup>191</sup> 064727-TR Part 1 Revised-ET RED, p.6; SPOE00078820-00078851 RED2, pp.SPOE00078820-SPOE00078830.

<sup>192</sup> 064727-TR Part 1 Revised-ET RED, p.6; SPOE00078820-00078851 RED2, p.SPOE00078830.

<sup>193</sup> See Annex 6, item 3.

<sup>194</sup> See Annex 6, item 4, p.064728.

<sup>195</sup> See Annex 6, items 6, 7, 8.

<sup>196</sup> [REDACTED].

<sup>197</sup> See particularly statements of witnesses W04264, W04752, W04067, W04839, W04147, W02153.

of whom will be available for cross-examination by the Defence, and other testimonial and documentary evidence.<sup>198</sup>

58. *Unavailability.* W01914 is unavailable<sup>199</sup> as his health condition effectively prevents him from testifying orally. He suffers from serious health issues that render him unfit, as evidenced by W01914's own account,<sup>200</sup> and medical records.<sup>201</sup>

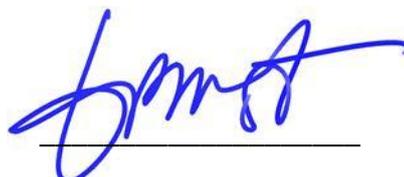
### III. CLASSIFICATION

59. This motion and the Annexes are confidential as they contain information concerning witnesses with protective measures and/or whose identities are not public at this time. A public redacted version of the motion will be filed.

### IV. RELIEF REQUESTED

60. For the foregoing reasons, the SPO requests that the Trial Panel admit the Proposed Evidence as identified in Annexes 1-6.

**Word Count: 7,672**



Kimberly P. West

Specialist Prosecutor

Monday, 26 February 2024

At The Hague, the Netherlands.

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<sup>198</sup> See, e.g., 0189-0855-0189-0857-ET Revised; 077493-077494.

<sup>199</sup> See also KSC-BC-2020-06/F02097 and F02097/A02, 1 February 2024, Strictly Confidential and *Ex Parte*. This filing is strictly confidential and *ex parte* and consistent with the submissions therein by the filing participant, the SPO does not object to reclassification as confidential. Since relevant medical records are available to the Defence in Confidential Annex 7, the Defence is in a position to meaningfully respond to this request.

<sup>200</sup> [REDACTED].

<sup>201</sup> See Annex 7, item 6: 119134-119134 RED and 111210-111211-ET.