

In: KSC-BC-2020-06

**The 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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
Counsel for Jakup Krasniqi

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Public Redacted Version of 'Joint Defence Motion for Appointment of *Amicus Curiae* Investigator or for Alternative Relief with Strictly Confidential Annex 1'

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I. INTRODUCTION

1. Pursuant to Articles 39 and 40 of the Law¹ and Rule 48 and 116 of the Rules,² the Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (“the Defence”) hereby requests the Trial Panel to appoint an *amicus* investigator to investigate the allegations contained in a message received by the SPO in relation to W04577 (“W04577 Letter”).³ The allegations contained in the message directly affect, and are potentially fatal to, the credibility of W04577. The identity of the author of the W04577 Letter is in turn indispensable to any investigation into their veracity. However, following a request for protective measures by the SPO,⁴ the Trial Panel has authorized non-standard redactions with respect to the identity of the author of the W04577 Letter.⁵ As a result, the Defence has been deprived of any potential avenues for investigating the allegations contained in that Letter, and of challenging W04577’s credibility on that basis.
2. Therefore, as the Defence is unable to carry out the requisite investigative steps itself owing to the redactions authorized by the Trial Panel, and the SPO is further in a conflict of interest situation as its case against the four Accused rests on, *inter alia*, W04577’s credibility, the Defence requests that an independent investigator be appointed in order to (i) investigate the allegations contained in the Letter; (ii) prepare a report on the outcome of such investigations, and (iii) to

¹ Law No.05/L-053 on SC and SPO, 3 August 2015 (‘Law’). All references to ‘Article’ or ‘Articles’ herein refer to articles of the Law, unless otherwise specified.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’). All references to ‘Rule’ or ‘Rules’ herein refer to the Rules, unless otherwise specified.

³ 116952-116955.

⁴ KSC-BC-2020/06/F01979, Prosecution Request for Protective Measures for One Item Containing Rule 103 Information, 4 December 2023.

⁵ KSC-BC-2020-06/F02020, Decision on the Eighth Prosecution Request for Protective Measures for One Item Containing Rule 103 Information, 18 December 2023.

disclose to the Panel and the Parties any materials obtained thereof that fall under Rules 102-103.

3. In the alternative, the Defence requests that the Trial Panel, pursuant to Articles 39(10) and (13), 40(6)(a) and (e) and Rules 48(2) and 62, order the SPO to investigate that allegation and inform the Defence of the status of such investigations on an ongoing basis, as well as disclose to the Defence any material thus obtained in accordance with its disclosure obligations.
4. Concurrently, the Defence requests that the testimony of W04577 be adjourned until such time as the litigation on the issues raised in the present filing is finalized.

II. SUBMISSIONS

A. Previous *inter partes* communications

5. The Selimi Defence contacted the SPO on 12 January 2024, four days after the disclosure of the W04577 Letter to (i) inquire as to whether the SPO has investigated, or plans to investigate, the allegations set out in the W04577 Letter; (ii) requested that the SPO remove the redactions in order to allow the Defence to carry out its own investigations in line with its professional obligations; and (iii) requested an explanation for the unreasonable delay in the disclosure of Rule 103 evidence of such limited size.⁶
6. On the same day, the SPO responded to the Defence's query and (i) stated it is under no obligation to inform the Defence about investigative steps, if any; (ii) declined to remove the redactions and referred to the Trial Panel's findings in

⁶ Annex 1, Selimi Defence, Email of 12 January 2024 headed "Request for information and the lifting of redactions regarding 116952-116955 RED"

the Impugned Decision; and (iii) contended that in its own view, it acted expeditiously in its review, request and disclosure of the item at issue.⁷

7. The Defence has therefore endeavoured to consult in good faith with the SPO with a view to resolving the matter. However, given that the SPO declined to provide any information as to the whether it intends to carry out any investigations on the matter, and has not disclosed any material since, the Defence hereby seeks recourse to the Trial Panel to preserve the rights of the Accused and ensure that allegations potentially fatal to the credibility of an SPO witness whose evidence is inculpatory for all four Accused do not go uninvestigated.

B. The information contained in the W04577 Letter

8. The information contained in the W04577 Letter, if reliable, is fatal to W04577's credibility as a witness. In short, it provides evidence that W04577 allegedly, in furtherance of his own personal motives, *inter alia* [REDACTED].
9. Owing to the uniqueness of the allegation contained in the W04577 Letter, and the fact that the SPO has not disclosed any additional information in that respect (including whether or not it is interested in pursuing the matter further), the ability of the Defence to investigate that allegation and to challenge the credibility of W04577 on the basis of evidence thus obtained hinges exclusively on the identity of its author. In the absence of that information, the Defence cannot effectively challenge W04577 during cross-examination, as he would be able to simply deny the claims without fear of substantive follow-up questions. In such situation, the Defence, having no additional evidence through which to rebut any such denial, will have to forsake any subsequent cross-examination avenue on that issue. That would not amount to "an adequate and proper

⁷ Annex 1, SPO, Email of 12 January 2024 headed "Request for information and the lifting of redactions regarding 116952-116955 RED"

opportunity” to challenge the testimony of witnesses as required by Article 6 of the ECHR.⁸ Therefore, the redactions as currently applied render the Defence’s right and concomitant responsibility to investigate and challenge the SPO’s evidence essentially nugatory. In order to minimize the prejudice arising from this outcome, an independent investigation is required to ensure that the allegations contained therein do not remain unexplored, and that the Defence is still able to challenge W04577’s credibility on the basis of the materials arising therefrom.

C. Legal basis for the appointment for an *amicus curiae* investigator

10. As determined by the Appeals Panel, the Trial Panel retains broad powers under the Rules in managing the presentation of evidence and questioning of witnesses in order to make them “effective for the ascertainment of the truth”, and it is the Trial Panel’s responsibility to make factual determinations regarding the relevance, credibility and reliability of testimony.⁹ In aim of enabling the discharge of this obligation, the Law and the Rules provide for various avenues by way of which the Trial Panel may ensure that the proceedings are conducted in a manner conducive to the determination of the truth.
11. Pursuant to Article 39 of the Law, the Pre-Trial Judge may, at the request of an Accused, issue such orders as may be necessary for the preparation of his or her defence. It may also issue any other order as may be necessary for the preparation of a fair and expeditious trial. Pursuant to Article 40(6)(a) of the Law, the Trial Panel may exercise any of the powers of the Pre-Trial Judge referred to in Article 39.

⁸ KSC-BC-2020-06/IA028/F00011, Decision on Thaçi, Selimi and Krasniqi Appeal against Oral Order on Trial Panel Questioning, 4 July 2023, para. 48; ECtHR, *Al-Khawaja and Tahery v. United Kingdom*, Application nos 26766/05 and 22228/06, Judgment, 15 December 2011, para. 118.

⁹ KSC-BC-2020-06/IA028/F00011, Decision on Thaçi, Selimi and Krasniqi Appeal against Oral Order on Trial Panel Questioning, 4 July 2023, para. 34.

12. In addition, Rule 48(2) provides that the Trial Panel, either at the request by a Party or *proprio motu*, may issue such arrest warrants, summonses, decisions or orders as may be necessary for the purposes of the investigation or for the preparation and conduct of the proceedings. This latter provision is analogous to Rule 54 of the ICTY/ICTR Rules, which has been interpreted as encumbering upon the seized chamber the “overarching interest and commitment to ensuring that in the case of the accused, justice is not only done, but justice is seen to be done, including by the accused himself.”¹⁰ Furthermore, pursuant to Article 40(2) and Rule 116, the Panel is under an obligation, on an ongoing basis, to “take all measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings”.¹¹ As the Law and the Rules endow the Trial Panel with a wide authority as regards the measures that it may make use of for the purposes of ascertaining the truth, the appointment of an *amicus* investigator falls squarely within the Panel’s discretionary power to that effect. Furthermore, the Rules do not contain any provisions that would render this outcome impermissible, which has been previously put forward by the SPO as a basis for the appropriateness of a requested relief, and accepted by the Trial Panel as such.¹²
13. In fact, the possibility for entities other than the Parties to make submissions aimed at assisting the Panel in the determination of the matters *sub judice* is already contemplated by Rules 108(5) and 67. Rule 108(5) expressly provides for the possibility that *amicus curiae* be appointed to assist the Panel in ensuring that a fair balance is struck in between the interests laid down in Rule 108(1) and the

¹⁰ ICTY, *Prosecutor v. Popovic*, Case No. IT-05-88-T, Decision on the Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletic, 20 February 2007, p. 3; *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T, Decision on Independent Counsel for Videoje Blagojevic’s Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003, para. 112.

¹¹ See also KSC-BC-2020-06/F01960, Decision on Specialist Prosecutor’s Request Concerning Post-Testimony Witness Contact, 27 November 2023, para. 15.

¹² Transcript of 16 November 2023, p. 10354.

rights of the Accused to confront the evidence against them. Therefore, the Rules clearly envisage the possibility that the Panel may be assisted by independent entities in order to safeguard the fairness of the proceedings and the Accused's confrontation rights.

14. Furthermore, Rule 67 constitutes an equivalent provision of Rule 74 of the ICTY and ICTR Rules of Procedure and Evidence. In that respect, the *ad hoc* tribunals have determined that the essential test of whether a Chamber may hear submissions from an independent entity pursuant to that Rule is whether such submissions would assist the Chamber in considering the questions at issue.¹³ On that basis, *amicus curiae* appointed under that Rule have been granted a wide variety of functions, including assisting by way of carrying out investigative and litigation tasks in the interests of self-represented Accused, with the interests of justice being put forward as the basis for granting such functions.¹⁴
15. Furthermore, *amicus* investigators have been routinely engaged at the *ad hoc* tribunals, particularly in situations where the prosecution has a conflict of interest *vis-à-vis* the subject-matter of an investigative activity that would otherwise fall within its purview pursuant to Rules 77(C)(ii) and 91(B)(ii) of the ICTY and ICTR Rules of Procedure and Evidence.¹⁵ Therefore, notwithstanding

¹³ ICTR, *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on the Admissibility of the Amicus Curiae Brief Filed by the Open Society Justice Initiative and on its Request to be Heard at the Appeals Hearing, 12 January 2007, p. 3; *Prosecutor v Kayishema*, Case No. ICTR-2001-67-I, Decision on ADAD's Motion for Reconsideration of Request for Leave to Appear as Amicus Curiae, 1 July 2008, para. 10; ICTY, *The Prosecutor v. Brđjanin*, Case No. IT-99-36-A, Decision on Association of Defence Counsel Request to Participate in Oral Argument, 7 November 2005, p. 3.

¹⁴ ICTY, *Prosecutor v. Milosevic*, Case No. IT-02-54-T, Order Inviting Designation of *Amicus Curiae*, 30 October 2001; *Prosecutor v. Krajisnik*, Case No. IT-00-39-A, Decision on Momcilo Krajisnik's Request to Self-Represent, on Counsel's Motion in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007, para. 21.

¹⁵ ICTY, *Florence Hartmann*, Case No. IT-02-54-R77.5, Judgment on Allegations of Contempt, 14 September 2009, para. 6; *The Prosecutor v. Šešelj*, Case No. IT-03-67-T, Redacted Version of the "Decision in Reconsideration of the Decision of 15 May 2007 on Vojislav Šešelj's Motion for Contempt against Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon", 29 June 2010, para. 32; ICTR, *Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution Oral Motion for Rule 77 Investigation Related to Witness ANAF, 30 October 2009, paras. 13-14.

that the investigation of potential offences against the administration of justice falls under the prerogative of the prosecution, the latter's status as a party to the substantive proceedings will often result in a conflict of interest on its part with respect to such investigations.¹⁶ As such, the appointment of an independent investigator constitutes the most appropriate course of action to ensure both the integrity of the proceedings and the Accused's right to challenge the evidence against them.¹⁷

16. Nevertheless, the provisions in question concern exclusively investigative activities undertaken with a view to institute contempt proceedings, and the KSC legal framework does not contain analogous provisions. However, the Defence does not seek, at this stage, the initiation of contempt investigations against W04577. Rather, the Defence requests the appointment of an *amicus* investigator for the exclusive purposes of investigating the allegations contained in the W04577 Letter in order to preserve the Accused's right of confrontation and to enable the Trial Panel to reach informed determinations on W04577's credibility. Should indications arise as to the possibility that W04577 has committed contempt of the tribunal, the Defence reserves the right to make further submissions at that stage in a manner consistent with the KSC legal framework.
17. Therefore, the Defence does not seek the imputation of the contempt investigation procedure employed at the *ad hoc* tribunals into the KSC legal framework. As such, the absence of the relevant provisions from the KSC legal framework does not demonstrate that their drafters intended to render the requested relief unavailable to the Trial Panel, for such relief markedly differs

¹⁶ ICTY, *Prosecutor v. Karadzic*, Case No. MICT-13-55-R90.3 IT-95-5/18-T, Decision to Invite the ICTY Trial Chamber in the Karadzic Case to Determine Whether There is "Reason to Believe" that Contempt has Been Committed by Members of the Office of the Prosecutor, 21 July 2014, para. 14.

¹⁷ ICTR, *Prosecutor v. Ntakirutimana*, Case No. MICT-12-17-R108.1, Order Appointing an *Amicus Curiae* to Investigate False Testimony, 13 June 2016.

from that envisaged by the relevant rules from the *ad hoc* tribunals which have not been incorporated into the KSC Rules.

18. However, the *raison d'être* of those rules, namely that a potential conflict of interest on the part of the prosecution may inevitably affect its investigative choices with respect to potentially exculpatory leads, which raises concerns about the truth-finding function of the proceedings, is equally pervasive in the present circumstances. The SPO's case against the four Accused rests in part on the credibility of W04577 and the reliability of his evidence. In this situation, the information contained in the W04577 Letter inevitably places the SPO in a predicament where it could either elect to investigate those allegations fully, yet at the risk of jeopardising the credibility of its evidence-in-chief, or to abscond from its investigative duties in favour of buttressing its case.
19. In fact, in at least one other similar incident, the SPO has chosen the latter course. With respect to W04828, the Thaçi Defence has put the SPO on notice already during opening statements about the existence of evidence alleging his responsibility for war crimes committed during the wars in Croatia and Bosnia and Herzegovina.¹⁸ Notwithstanding the clear exculpatory nature of these allegations, and that the Defence does not have access to Serbia's intelligence and police files on W04828 so it must rely on the Prosecution to obtain additional information from Serbia, the SPO has not demonstrated any willingness to conduct further investigation into W04828's activities in Croatia, Bosnia and Herzegovina, or Kosovo.¹⁹ Such course of action, if replicated in the present scenario, will result in the admission of highly incriminating evidence against all four Accused, yet whose credibility could not be fully challenged given the SPO's prosecutorial interests. The appointment of an *amici* investigator would

¹⁸ KSC-BC-2020-06, Transcript of Hearing (Opening Statements), 4 April 2023, public, pp. 2334-2338.

¹⁹ KSC-BC-2020-06/F01865, Joint Defence Response to Prosecution Third Motion for Admission of Evidence Pursuant to Rule 155 (F01804), 17 October 2023, para. 15.

therefore both ensure that the Defence is provided the requisite information to effectively challenge W04577's evidence in respect of this allegation, while also avoiding a potential or actual conflict of interest that would result in the scenario discussed above.

20. Therefore, the requested relief is warranted considering (i) the wide authority of the Trial Panel to ensure that the proceedings are conducted in full compliance with the rights of the Accused and with a view to ascertaining the truth; (ii) the potential conflict of interest on the part of the SPO with respect to investigating the allegations contained in the W04577 letter make the appointment of an *amicus* investigator the most appropriate outcome in the interests of justice and fair and expeditious proceedings; and (iii) the fact that KSC legal framework does not exclude this relief, and the practice of the *ad hoc* tribunals supports the propriety of the appointment of *amicus curiae* in circumstances similar to the present one. Should the Trial Panel grant this relief, the Defence undertakes to file additional submissions on the specific modalities of the appointment of prospective *amici* and the parameters of their functions.

D. Alternative relief

21. The Defence maintains that the appointment of an *amicus* investigator is the most appropriate solution in the present circumstances in order to safeguard the fairness of the proceedings and the Accused's right of confrontation, which would be inevitably prejudiced by a conflict of interest on the part of the SPO with respect to investigating the allegations contained in the W04577 Letter.
22. Nevertheless, should the Trial Panel determine that no potential or actual conflict of interest on the part of the SPO exists, the Defence requests in the alternative that the Prosecution should be ordered to thoroughly investigate that allegation and apprise the Defence of the status of such investigation on an ongoing basis, including to disclose to the Defence any material obtained during the course of

such investigations that falls within the SPO's disclosure obligations, with such redactions as necessary.²⁰

23. As a first step, the Defence requests that the SPO be ordered to conduct an interview with the author of that message, and should the evidence thus collected provide a reasonable basis to believe that additional evidence of an exculpatory nature that the Defence may not be able to collect itself as a result of protective measures, the Defence reserves its right to make further requests for subsequent investigative actions.
24. Pursuant to Rule 62, in performing his or her functions, the Specialist Prosecutor shall contribute to the establishment of the truth by the Specialist Chambers and shall take measures for the protection and due respect of the victims and witnesses and for the fundamental rights of suspects and Accused. At the ICC, the obligation on the part of the Prosecution to contribute to the establishment of the truth is interpreted as an obligation on its part to investigate both incriminating and exonerating circumstances equally pursuant to Article 54(1)(a) of the Rome Statute, 'which enjoins the Prosecutor "to establish the truth".'²¹ The jurisprudence of the *ad hoc* tribunals further confirms the existence of a prosecutorial obligation to investigate exculpatory leads and to disclose the material thus obtained, which runs conterminously with its duty to prosecute²² and stems from the prosecution's duty to fully investigate the case before it.²³

²⁰ This is without prejudice to the Defence's right to further contest the propriety of any such redactions should the need arise.

²¹ ICC, *Prosecutor v. Chui*, Case No. ICC-01/04-02/12 A, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 27 February 2015, para. 256.

²² ICTR, *Prosecutor v. Karemera*, ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations, 30 June 2006, para. 9; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 44.

²³ ICTR, *Prosecutor v. Bizimungu et al*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence, 25 May 2004, para. 9.

25. The obligation in question is triggered when there are reasonable grounds to believe that information not in the prosecution's possession may be potentially exculpatory, and as such a duty arises on the part of the prosecution to make reasonable efforts to obtain that information.²⁴ While this "does not mean that the Prosecutor should hunt for materials that he has no knowledge of", it is incumbent upon it to attempt to gain control or possession over evidence that the Defence has specific knowledge of and which there are reasonable grounds to believe may mitigate the guilt of the Accused.²⁵
26. Trial chambers further have review power over the manner in which the prosecution comports with this obligation,²⁶ and orders for the production of evidence have been issued by such chambers to ensure the prosecution's compliance with it.²⁷ In that regard, pursuant to Article 39 of the Law, the Pre-Trial Judge may, at the request of an Accused, issue such orders as may be necessary for the preparation of his or her defence. It may also issue any other order as may be necessary for the preparation of a fair and expeditious trial. Pursuant to Article 40(6)(a) of the Law, the Trial Panel may exercise any of the powers of the Pre-Trial Judge referred to in Article 39.
27. The authority of the Panel to issue orders compelling the SPO to investigate particular leads is further confirmed by Article 40(6)(e), pursuant to which the Trial Panel may order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties. This

²⁴ ICC, *Prosecutor v. Ruto and Sang*, Case No. ICC-01/09-01/11, Lesser public redacted version of Decision on Joint Defence Application for Further Prosecution Investigation Concerning the Asylum Application Records of Certain Prosecution Witnesses, 11 December 2017, para. 32.

²⁵ ICTR, *Prosecutor v. Bizimungu et al*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence, 25 May 2004, para. 9.

²⁶ ICC, *Prosecutor v. Nourain*, Case No. ICC-02/05-03/09, Public redacted "Decision on the 'Defence Request for Termination of Proceedings'", 30 January 2014, para. 50.

²⁷ ICC, *Prosecutor v. Ruto and Sang*, Case No. ICC-01/09-01/11, Lesser public redacted version of Decision on Joint Defence Application for Further Prosecution Investigation Concerning the Asylum Application Records of Certain Prosecution Witnesses, 11 December 2017.

provision is analogous to Rule 98 of the ICTY/ICTR Rules, which has been interpreted as encompassing an ability on the part of the Chamber to order any of the parties to produce the requisite evidence.²⁸

28. In that respect, the trial chambers of the *ad hoc* tribunals have previously ordered the prosecution to produce additional evidence that would be conducive to the determination of the truth or to the fair and expeditious conduct of proceedings, invoking either Rule 98 in their respective statutes as the legal basis,²⁹ or Rule 98 read in conjunction with Rule 54, which is analogous to KSC Rule 48(2), outlined above,³⁰ and pursuant to their responsibility to ensure respect for the rights of the Accused.³¹
29. Furthermore, an order that the SPO carry out an interview with the author of the W04577 Letter is essential to the determination of the truth and to the fair and expeditious conduct of proceedings, as it is only by virtue of the evidence to be produced thereto that the Trial Panel may fully appreciate W04577's credibility as a witness, and that the Defence may effectively challenge those aspects of his anticipated testimony. In contrast, in the absence of further investigative steps, the W04577 Letter, albeit bearing the potential to radically erode W04577's

²⁸ ICTR, *Prosecutor v. Gatete*, Case No. ICTR-2000-61-T, Decision on Defence motion for disclosure of Rwandan judicial records pursuant to Rule 66 (A)(ii) and order to the prosecution to obtain documents, 23 November 2009, footnote 22; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on Matters Related to Witness KDD's Judicial Dossier, 1 November 2004, para. 11; *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-T, Order for the Production of Prosecution Witness Protective Measures from the *Kamuhanda* Case, 16 June 2009

²⁹ ICTY, *Prosecutor v. Deronjic*, Case No. IT-02-61-S, Order on Production of Additional Evidence Pursuant to Rule 98, 5 December 2003; *Prosecutor v. Stakic*, Case No. IT-97-24, Order Pursuant to Rule 98 to Appoint a Forensic Handwriting Expert, 28 June 2002.

³⁰ *Supra* para. 12.

³¹ ICTR, *Prosecutor v. Gatete*, Case No. ICTR-2000-61-T, Decision on Defence motion for disclosure of Rwandan judicial records pursuant to Rule 66 (A)(ii) and order to the prosecution to obtain documents, 23 November 2009, para. 30; *Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-T, Order for Judicial Records, 12 October 2006, para. 7.

credibility, will remain devoid of evidential value to the detriment of the Accused.

E. Request for further adjournment of W04577's testimony

30. The Defence notes that the Trial Panel has adjourned W04577's testimony until further notice and [REDACTED].³² As the resolution of the issues raised in the present filing will significantly impact the Defence preparations for his expected testimony, the Defence requests that the Trial Panel further extend the adjournment currently in place until such time as the litigation on the issues herein is finalized. The Defence reserves the right to make further adjournment requests in the event that the outcome of this litigation results in investigative opportunities that ought to be undertaken prior to the continuation of W04577's testimony.

III. CONFIDENTIALITY

31. The present submissions are filed strictly confidentially pursuant to Rule 82(4) as it relates to and refers to decisions issued by the Trial Panel bearing that classification.³³ The Defence undertakes to file a public redacted version of the present filing in due course.

IV. CONCLUSION AND RELIEF REQUESTED

32. Considering the foregoing, the Defence respectfully request that the Trial Panel:
- APPOINT an *amicus curiae* investigator with a view to investigating the allegations contained in the W04577 Letter and preparing a report on the result of such investigations, alongside disclosing to the Panel and the Parties any material thus obtained that falls under Rules 102-103; OR

³² [REDACTED].

³³ *Id.*

- ORDER the SPO to investigate the allegation contained in the W04577 Letter, in particular by carrying out an interview with its author, and apprise the Defence of status of its investigation and disclose all the material thus obtained that falls within the purview of its disclosure obligations; AND
- ADJOURN the continuation of W04577's testimony until such time as the litigation on the matters outlined in the present motion is finalized.

Word count: 4618

Respectfully submitted on 23 February 2024,



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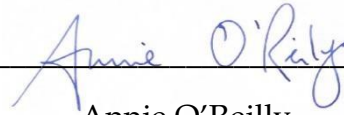


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