

1 Tuesday, 21 February 2023

2 [Opening Statements]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 9.30 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning and welcome.

7 Before we start, I would like to give the photographers the  
8 possibility to take some pictures.

9 Please proceed.

10 Thank you.

11 Pursuant to Rule 124(1) of the Rules of Procedure and Evidence  
12 before the Kosovo Specialist Chambers, I hereby open this trial.

13 Madam Court Officer, please call the case.

14 THE COURT OFFICER: Your Honours, this is case file  
15 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 Before asking those present in the courtroom to introduce  
18 themselves, I would like to remind everyone of a few rules which we  
19 should adhere to all.

20 Please, before speaking, make sure your microphone is activated  
21 and switch it off as soon as you finish.

22 Speak slowly and clearly. We have interpretation from and into  
23 Albanian and Serbian, and in this way the interpreters can do their  
24 work properly. Before intervening, kindly wait five seconds in order  
25 to allow the interpreters to finish the interpretation of the

1 previous sentence.

2 I would like to remind you that this hearing is held in open  
3 session unless otherwise requested by the parties and  
4 Victims' Counsel or decided by the Panel. And this applies  
5 particularly to the opening statements we are to hear about today and  
6 tomorrow.

7 I kindly ask the parties and the Victims' Counsel to present  
8 their opening statements as much as possible in public and to rely on  
9 visual aids and material that can be broadcast to the public. That  
10 said, identification evidence, such as photographs of the alleged  
11 crime and of the accused, should not be broadcasted to the public in  
12 principle.

13 I would like to remind the parties that certain information is  
14 subject to protective measures and confidentiality orders. That  
15 information cannot be disclosed. If parties and Victims' Counsel  
16 would have submissions that require to disclose this confidential  
17 information, please inform me about that and then we can go into  
18 closed or private session.

19 I will now briefly refer to the procedure that the parties and  
20 Victims' Counsel should adhere to to request in-court redactions.

21 Any request by the parties and Victims' Counsel during the  
22 hearing to redact part of what was inadvertently said in public  
23 session should be made via e-mail so as not to attract undue  
24 attention to any confidential information. This e-mail shall be sent  
25 to the address of the Panel, copying the court officer and

1 representatives of all the other entities present in the courtroom.  
2 The request must clearly identify the words to be redacted, the time  
3 stamps, pages and line numbers of the real-time transcript, and such  
4 request must be made as soon as possible and no later than 15 minutes  
5 after the information was received. The entities present in the  
6 courtroom shall have five minutes to object, if they so wish, of  
7 course, and subsequently, I will rule on the request. The usual  
8 procedure.

9 Should the parties and Victims' Counsel consider it necessary to  
10 go into private session, that's also possible if an explanation would  
11 be faster or more appropriate to make an oral request.

12 This procedure is without prejudice to the Panel's *proprio motu*  
13 power to decide on the need for any redactions, and any applied  
14 in-court redactions is also without prejudice to a subsequent revised  
15 assessment by the Panel.

16 And now I would kindly ask the parties and Victims' Counsel to  
17 introduce themselves, and we will start with the Specialist  
18 Prosecutor's Office.

19 You have the floor.

20 MR. DE MINICIS: Good morning, Your Honours. For the Specialist  
21 Prosecutor's Office, Alex Whiting, Acting Specialist Prosecutor;  
22 Line Pedersen, our case manager; Giulia Bianchi, our legal intern.  
23 And then Gaia Pergolo, Eva Wyler, and myself, Filippo De Minicis,  
24 Associate Prosecutors.

25 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]

1 MR. LAWS: Thank you. Good morning to Your Honours and to  
2 everyone. I'm Simon Laws, and I represent the victims this in case,  
3 together with my co-counsel Maria Radziejowska and my legal associate  
4 Kiat Wei Ng.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Yes, now I turn to the counsel - you have the floor - of the  
7 Defence.

8 MR. GILISSEN: Thank you very much, Your Honours.

9 So I am Jean-Louis Gilissen, lead counsel from Belgium. We are  
10 here with Mr. Pjeter Shala, who is an important one in this  
11 procedure, of course. And I'm going to present you Mr. Hedi Aouini,  
12 co-counsel, you know him. Ms. Leto Cariolou, co-counsel. Mr. Aouini  
13 comes from Tunisia and France. Ms. Cariolou comes from Cyprus. We  
14 are here with Ms. Katerina Charitou, legal officer from Cyprus;  
15 Dzeneta Petravica, case manager from Latvia; with Kailin Chen,  
16 assistant legal officer from China; Juliette Healy, evidence review  
17 assistance, Ireland and France; Francisca De Castro, evidence review  
18 assistance, Colombia, France; and Judit Kolbe, evidence review  
19 assistant from Germany.

20 Thank you very much.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel.

22 Now I turn to the Registry.

23 Please, you have the floor.

24 MR. ROCHE: Good morning, Your Honours. It's Ralph Roche from  
25 Judicial Services Division in the Registry. Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

2 And for the record, my colleagues for Trial Panel I are  
3 Judge Roland Dekkers, Judge Gilbert Bitti, and Judge Vladimir Mikula.  
4 And my name is Judge Mappie Veldt-Foglia.

5 I will first start with giving an oral order by the Panel.

6 The Defence has raised an objection to any references being made  
7 by the Specialist Prosecutor's Office and Victims' Counsel to the  
8 accused's prior statements given as a suspect to the Office of the  
9 Prosecutor of the International Criminal Tribunal for the former  
10 Yugoslavia, that was in 2005 and 2007; and also to the Belgian  
11 federal judicial police in 2016 and 2019. The Defence argues that  
12 their admissibility is under currently appellate consideration. The  
13 statements were taken in breach of the accused's rights and referring  
14 to them would be inappropriate, unfair and unduly prejudicial.

15 The Defence objection was communicated to the Panel, the SPO and  
16 Victims' Counsel via e-mail on 15 February 2023 at 36 minutes past  
17 10.00.

18 The Panel has taken notice of the SPO's and Victims' Counsel's  
19 responses on this matter, which were communicated to the Panel, the  
20 parties and Victims' Counsel via e-mail on 16 February 2023 at 14  
21 minutes past 1.00 and 43 minutes past 3.00, respectively.

22 The Panel recalls that on 6 December 2022, it issued the  
23 decision concerning prior statements given by Pjeter Shala - this is  
24 filing F00364 - in which it ruled that the material relating to the  
25 accused's ICTY interviews is admitted into evidence; and, two, the

1 material relating to accused's interviews with the Belgian  
2 authorities is not inadmissible and therefore can be considered by  
3 the Panel in accordance with Rule 139(1) one of the Rules.

4 The Panel further recalls that on 24 January 2023 it granted the  
5 Defence leave to appeal the aforementioned decision on three issues.  
6 That's filing F00401. And the Defence filed its appeal on 13  
7 February of this year, which is filing IA006-F00004.

8 The Panel also recalls that, in accordance with Rule 171 of the  
9 rules, interlocutory appeals shall not have suspensive effect unless  
10 otherwise ordered, and the Defence had not made a request to this  
11 effect.

12 Accordingly, the Panel finds that the parties and  
13 Victims' Counsel can refer to prior statements given by the accused  
14 during their opening statements.

15 Mindful of the ongoing proceedings before the Court of Appeals  
16 Panel, the Panel instructs the parties and Victims' Counsel, when  
17 making reference to the accused's prior statements, to note the fact  
18 that the issue of their admissibility is currently under appellate  
19 review.

20 And this concludes the Panel's oral order.

21 Today's hearing is dedicated to the procedures as set out in  
22 Rules 124 and 125 of the rules and the opening statements of the  
23 Specialist Prosecutor's Office and Victims' Counsel pursuant to Rule  
24 126 of the rules.

25 The opening statements of the Specialist Prosecutor's Office and

1 Victims' Counsel will be heard in two or three sessions. We start  
2 this morning at 9.30 till 11.00, then we have a break. Then we  
3 proceed from 11.30 till 1.00. And if necessary, there will be  
4 another break and then we will re-start at 2.30, if needed, till  
5 4.00.

6 Tomorrow, we will have the opening statements by the Defence.  
7 The Defence has informed us that Mr. Shala will -- intends to make an  
8 unsworn statement following the conclusion of the opening statements  
9 of the Defence. I see Specialist Counsel for the Defence nodding.

10 Before we begin with the procedure in Rules 124 and 125 of the  
11 rules, I will give a short procedural history in this case.

12 On 12 June 2020, the Pre-Trial Judge issued the decision on the  
13 confirmation of the indictment against Mr. Shala and also granted the  
14 requests for an arrest warrant and the transfer order for Mr. Shala.

15 On 16 March 2021, the accused was arrested in Belgium and was  
16 transferred on 15 April 2021 to the detention facilities of the  
17 Specialist Chambers in The Hague.

18 On 18 October 2021, the Pre-Trial Judge granted in part the  
19 Defence preliminary motion alleging defects in the indictment and  
20 ordered the SPO to file a corrected version of the confirmed  
21 indictment, and that was done by the SPO on 21 November 2021.

22 Then, on 21 September 2022, the Pre-Trial Judge transferred the  
23 case to Trial Panel I.

24 On 26 January of this year, the Panel set the date for the  
25 commencement of the trial for today, 21 February.

1           And both the Pre-Trial Judge and the Panel have issued decisions  
2           on the participation of victims during the proceedings and  
3           reparations, and there are now eight victims participating to the  
4           proceedings in this case.

5           And now, the procedure as set out in Rule 124 of the rules,  
6           paragraph 2, requires that the trial shall proceed with the reading  
7           by the Specialist Prosecutor of the confirmed indictment by the  
8           Pre-Trial Judge. And as it was determined in our decision on the  
9           commencement of trial, we think, as the Panel, that it is sufficient  
10          for the purpose of today's hearing to read out the charges as stated  
11          in -- during the initial appearance of Mr. Shala.

12          Mr. Prosecutor, you have the floor.

13          MR. DE MINICIS: Thank you, Your Honours.

14          The accused, Mr. Pjeter Shala, is charged with four counts of  
15          war crimes.

16          Count 1, arbitrary detention, as a war crime, committed at the  
17          Kukes metal factory between approximately 17 May and 5 June 1999,  
18          punishable under Article 14(1)(c) of the Law on the Kosovo Specialist  
19          Chambers.

20          Count 2, cruel treatment, as a war crime, committed at the  
21          Kukes metal factory between approximately 17 May and 5 June 1999,  
22          punishable under Article 14(1)(c)(i) of the Law on the Kosovo  
23          Specialist Chambers.

24          Count 3, torture, as a war crime, committed at the Kukes metal  
25          factory between approximately 17 May and 5 June 1999, punishable



1 under Article 14(1)(c)(i) of the law.

2 Count 4, murder, as a war crime, committed on or about 5  
3 June 1999 at the Kukes metal factory, punishable under  
4 Article 14(1)(c)(i) of the indictment.

5 The accused is charged with these crimes, pursuant to  
6 Article 16(1)(a) of the law, under three modes of liability.

7 First, he is charged as a participant in a joint criminal  
8 enterprise, the common purpose of which was the commission of the  
9 crimes of arbitrary detention, cruel treatment, torture, and murder  
10 as charged in Counts 1 through 4 of the indictment.

11 The accused is charged with having possessed the intent for each  
12 one of these crimes.

13 Alternatively, it was at least foreseeable to the accused that  
14 the crime of murder could be committed as a consequence of the  
15 furtherance of the common purpose, and he willingly took that risk.

16 Second, the accused is charged as a physical perpetrator of the  
17 crimes of arbitrary detention, cruel treatment and torture, as  
18 charged in Counts 1 through 3 of the indictment.

19 Finally, the accused is charged as an aider and abetter for all  
20 crimes charged under Counts 1 through 4 of the indictment.

21 And this, Your Honours, concludes the reading of the charges.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

23 Mr. Shala, please stand up.

24 Mr. Shala, I understand -- I trust you understand the nature of  
25 the charges brought against you; is that correct?

1 THE ACCUSED: [Interpretation] Yes. I understand but I do not  
2 accept anything. It's all fabricated. Everything is fabricated.

3 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, you will be given the  
4 opportunity to give an unsworn statement. Thank you.

5 And, Mr. Shala, during your initial appearance on 19 April 2021,  
6 you pleaded not guilty to all counts of the confirmed indictment.  
7 You have now the opportunity to confirm this plea. Do you confirm  
8 this plea?

9 THE ACCUSED: [Interpretation] Fully not guilty.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Shala. You may be  
11 seated.

12 Mr. Shala, let me inform you of some important rights that are  
13 afforded to you before this Court, pursuant to its legal framework.

14 You have the right to remain silent, and any silence being --  
15 and no silence being a consideration in the determination of your  
16 guilt or innocence.

17 You have the right not to be compelled to confess guilt or to  
18 testify.

19 You have the right not to incriminate yourself or your immediate  
20 family members.

21 You have the right to be represented by a counsel. And I note  
22 that you are represented by Specialist Counsel Mr. Gilissen and the  
23 co-counsels, Mr. Aouini and Ms. Cariolou.

24 You have the right to adequate time and facilities to prepare  
25 your Defence and to communicate with your counsel.

1           You have the right to be tried within a reasonable time.

2           You have the right to examine or have examined witnesses against  
3 you, and to obtain the attendance and examination of witnesses on  
4 your behalf.

5           You have the right to make an unsworn statement regarding the  
6 case, and also to appear as a witness under oath.

7           And I also must inform you, according to Rule 61(2) of the  
8 rules, that I can order your temporary removal from the courtroom  
9 should you adopt disruptive behaviour during the proceedings.

10          Yes?

11          We will now proceed to hear the opening statements.

12          And I saw, Mr. Shala, that you wanted to say something. We will  
13 give you the opportunity tomorrow, when your Defence Counsel has  
14 concluded the opening statements, to give your unsworn statement.  
15 You will be given the opportunity to speak.

16          Yes, the opening statements. We will first hear, as said, the  
17 opening statements by the Specialist Prosecutor's Office, then  
18 followed by Victims' Counsel.

19          The decision on the commencement of the trial had indicated two  
20 hours each for the -- for each opening statement.

21          We were informed yesterday evening by the Specialist  
22 Prosecutor's Office that they have done a reassessment of duration of  
23 their opening statements, and that, for now, it is estimated on one  
24 hour and 15 minutes.

25          I see Mr. Prosecutor nodding. That is the noted.

1 Mr. Prosecutor, you have the floor.

2 MR. WHITING: Good morning. And may it please the Court.  
3 Your Honours, counsel, as Acting Specialist Prosecutor, it is an  
4 enormous privilege to be able to address the Court at the beginning  
5 of this trial. Before I turn to the case at hand, allow me to say a  
6 few words about where we find ourselves at this moment as an  
7 institution.

8 We have had many milestones and many firsts at this Tribunal.  
9 First indictment, first arrests, first pre-trial hearings, first  
10 trial, first judgment, first sentencing, first appeal. We are now  
11 past all of those firsts, and we are in a different phase. We are  
12 now a fully functioning, well-established, proven institution. An  
13 institution that has demonstrated that it can deliver, that it can  
14 adjudicate cases within its maintain both fairly and efficiently,  
15 even what are often extraordinarily challenging circumstances.

16 Credit for this accomplishment to the states that established  
17 this court and that have continued to support it. Credit also goes  
18 to the hard-working and dedicated staff members of this institution.  
19 The staff of the Specialist Prosecutor's Office, the president's  
20 office, Chambers, the Registrar, the Victims' Representative, and the  
21 Defence. But most of all, Your Honour, credit is due to those in  
22 Kosovo who have supported the work of this Court and, in particular,  
23 the victims and witnesses who have shown tremendous courage in coming  
24 to this courtroom and sitting in that chair to give their evidence.

25 The Judges of this Court have found repeatedly, in judgments,

1 decisions and orders, that there continues to exist a climate of  
2 witness intimidation in Kosovo. It is real, it is serious, it is  
3 pervasive, and it is ongoing. Our office and this institution have,  
4 again and again, acted to counter this climate by protecting  
5 witnesses, and by taking measures against anyone who illegally seeks  
6 to undermine this institution or to intimidate witnesses. And we  
7 will continue to do so. We will continue to use all available means  
8 to ensure that witnesses can come to this courtroom to provide their  
9 evidence safely and securely.

10 Nonetheless, Your Honours, there is no doubt that this  
11 persistent climate of witness intimidation will continue to shape and  
12 affect this trial. It will weigh on the witnesses as they come into  
13 this courtroom to testify. It is a climate that they and their  
14 families live in every day. It is a reality that they must return  
15 to.

16 And, therefore, as Your Honours listen to the witnesses who come  
17 into this courtroom during this trial and sit in that chair, as  
18 Your Honours consider their words and assess their credibility, we  
19 will always ask you to keep in mind the circumstances under which  
20 they are testifying, the persistent climate of fear and intimidation,  
21 and the effects that this climate might have on their testimony.

22 Ultimately, Your Honours, the success of this institution is a  
23 success for Kosovo. Opponents of this court have repeatedly sought  
24 to claim that it is anti-Kosovo and anti-KLA, but nothing could be  
25 further from the truth. This is a Kosovo court, created by the

1 Kosovo Assembly, with international support and cooperation, that  
2 sits within the Kosovo legal system.

3 The cases brought in this Court are not against Kosovo and they  
4 are not against the KLA. They are brought against individuals who  
5 are alleged to have committed crimes during the war.

6 Moreover, in all of the cases charged at this court,  
7 Your Honours, including this one, a majority of the victims are  
8 Kosovar Albanians, and in some cases all the victims are Kosovar  
9 Albanians.

10 This Court affirms the principle of the rule of law in Kosovo,  
11 including the rights of persons accused of war crimes to receive a  
12 fair trial. And it emphasises that nobody is above the law, and that  
13 those persons accused of committing international crimes can be held  
14 to account, no matter what cause they are fighting for. That  
15 principle, Your Honours, applies to all armies, including the KLA.

16 Let me be clear on this point. The righteousness of one's cause  
17 or the belief in one's cause, no matter how strong that belief might  
18 be, does not provide immunity for those who violate the laws of war  
19 and commit war crimes. They are accountable to the law, just like  
20 everybody else, regardless of their cause.

21 The case that begins today, Your Honours, against the accused,  
22 Pjeter Shala, is actually very straightforward and simple, even if it  
23 tragically altered the lives of many and ended the life of one. The  
24 evidence will show that in spring 1999, in Kukes, northern Albania,  
25 the accused committed the war crimes of arbitrary detention, cruel

1 treatment, torture and murder. The evidence will further show that  
2 Mr. Shala was part of a small group of KLA soldiers that committed  
3 these crimes. The group included Sabit Geci and Xhemshit Krasniqi,  
4 both of whom were already convicted in two trials in Kosovo for  
5 arbitrary detention and mistreatment at the Kukes metal factory.

6 The indictment in this case alleges that this criminal group  
7 that included the accused detained and severely mistreated at least  
8 18 victims in the detention centre located within the former metal  
9 factory in Kukes. This criminal group, including the accused,  
10 murdered one of those victims on or about the night between 4 and 5  
11 June 1999.

12 The victims in this case were targeted because of their  
13 perceived affiliation with the Serbs, considered spies or  
14 collaborators that deserved punishment and humiliation. They were  
15 detained without any legitimate process whatsoever, and while they  
16 were held in detention, they were subjected to severe and repeated  
17 abuse, torture and, in one case, murder.

18 Let's be clear here. The intentional abuse of detainees during  
19 an armed conflict is a war crime, pure and simple, and can never be  
20 justified, under any circumstances. There is no justification for  
21 abuse, torture and murder of detainees. The laws of war do not  
22 permit it, not for this conflict, not for any conflict.

23 The accused, Pjeter Shala, participated in all aspects of the  
24 crimes alleged in this case. He was present at the Kukes metal  
25 factory at significant times during the period of the indictment. He

1 participated in at least one arrest and transfer of a prisoner to the  
2 detention facility. He contributed to maintaining the inhumane  
3 conditions of detention at the facility, which included crowded and  
4 dirty rooms and inadequate food. He participated in repeated and  
5 severe beatings of prisoners at the detention facility that included  
6 beatings with iron bars and sharp objects. As a result of these  
7 beatings, victims were left covered in blood, suffering from broken  
8 bones or unable to walk.

9 The accused was also part of the group that murdered one of the  
10 detainees by beating him repeatedly and severely and shooting him in  
11 the leg, causing him to bleed to death over a period of many hours.

12 In a moment, the trial team will provide more detail about the  
13 circumstances of these crimes, the layout and background of the  
14 Kukes metal factory, the connection to the armed conflict, and the  
15 responsibility of the accused.

16 But before I cede the floor to the team to continue with the  
17 opening statement, one final point. There is one thing that the  
18 Prosecution and the Defence in this case agree on, and that is that  
19 the Prosecution, and the Prosecution alone, bears the burden of  
20 proving these allegations beyond a reasonable doubt. That is a  
21 burden we accept, we welcome, and we will meet. The Defence bears no  
22 burden and is entitled to remain silent throughout these proceedings.

23 But, Your Honours, the Defence has not remained silent, and to  
24 the extent that the Defence has taken positions on the factual  
25 allegations, the Trial Panel is entitled to consider them when



1 evaluating the evidence. And in this case, the Defence has denied  
2 everything. The accused did not arrest or transfer anyone; did not  
3 participate in detaining anyone; did not maintain inhumane  
4 conditions; did not abuse any prisoners, none, and was not even at  
5 Kukes when the detainee was murdered. As far as the accused is  
6 concerned, none of it ever happened. None of it.

7 When Your Honours listen to the witnesses called by the  
8 Prosecution and review the statements submitted into evidence, keep  
9 in mind, Your Honours, these complete denials by the accused in this  
10 case. Why is he now claiming no connection whatsoever to what  
11 happened at Kukes? Why is he trying to distance himself as much as  
12 he can from what happened at Kukes?

13 And to the extent the Trial Panel considers Mr. Shala's prior  
14 interviews whose admission into evidence has been challenged by the  
15 Defence and is now being considered by the Appeals Panel of this  
16 Court, and which be will discussed in more detail at the end of the  
17 opening statement, you will want to consider whether admissions made  
18 by the accused in those interviews are consistent with the denials he  
19 now makes in this case now that he has been charged with the crimes.

20 As will be explained in more detail now by my colleagues, we are  
21 confident that the evidence that will be presented during this trial  
22 will establish beyond a reasonable doubt that Mr. Shala is criminally  
23 responsible for the crimes charged in the indictment.

24 Thank you, Your Honours.

25 I knew cede the floor to Ms. Pergolo who will continue with the

1 Prosecution's opening statement.

2 MS. PERGOLO: Your Honours, during this part of the  
3 presentation, I will discuss the site where the crimes charged in  
4 this case were committed. First, I will provide some geographical  
5 and contextual information about the Kukes metal factory. Second, I  
6 will explain how the Kukes metal factory is connected with the armed  
7 conflict in Kosovo and how it was used by the KLA during the  
8 indictment period. Third, I will take you to virtually visit the  
9 site, stopping at specific locations where key events took place.

10 Your Honours, I will now use a PowerPoint presentation. The  
11 first three slides can be broadcast to the public.

12 The town of Kukes lies at the foot of Gjallica mountain,  
13 overlooking the merging of the Black and White Drini rivers, in the  
14 northern part of Albania, about 20 kilometres from the Kosovo border.

15 The Kukes metal factory is situated in the outskirts of the town  
16 of Kukes, approximately 1 and a half to 2 kilometres from the centre  
17 of Kukes town on the road going to Krume, as indicated by the red dot  
18 on the screen.

19 Your Honours, as per your instructions, the rest of the SPO  
20 presentation is not to be broadcast to the public.

21 This is a north/south view of the Kukes metal factory with the  
22 road going to Krume on the right-hand side of image. The Kukes metal  
23 factory had an entrance gate accessible from the road going to Krume  
24 and a guard booth to the left-hand side of the entrance gate, a  
25 command building where KLA soldiers and officers were accommodated

1 while staying at the factory, a number of warehouses, an internal  
2 courtyard, and a small building protruding inside the courtyard.

3 The site is a former metal works factory and was once property  
4 of the Albanian state. It was privatised in 1998, and Witness 4379  
5 became the owner, using it initially for private purposes.

6 A few days after the NATO bombing began on 24 March 1999, a KLA  
7 member asked W04379 to use the factory to which he agreed.

8 The KLA used the factory for three months until approximately  
9 June or July 1999.

10 The Kukes metal factory was used during and in connection with  
11 the armed conflict that existed during the indictment period between,  
12 on the one hand, the Serbian forces, in particular, forces of the  
13 Army of the Federal Republic of Yugoslavia, VJ, and the Ministry of  
14 Interior of Serbia, MUP, and on the other hand, the Kosovo Liberation  
15 Army, KLA. The existence of the armed conflict during the relevant  
16 period has been established by other courts, the ICTY in particular,  
17 and by this Panel in the case Specialist Prosecutor versus Salih  
18 Mustafa. In that case, this Panel found that at least as of the end  
19 of May 1998, the armed hostilities in Kosovo between the Serbian  
20 forces and the KLA had the requisite level of intensity to be  
21 considered an armed conflict. This Panel also endorsed ICTY findings  
22 that, as of May 1998, the KLA possessed a sufficient level of  
23 organisation to be able to engage in a non-international armed  
24 conflict. The Djordjevic trial chamber at the ICTY and the Supreme  
25 Court of Kosovo in the Latif Gashi case also found that armed

1 conflict in Kosovo continued during the period of the indictment in  
2 this case.

3 As a result of the armed hostilities in Kosovo between the end  
4 of March and May 1999, large numbers of refugees fled Kosovo and  
5 settled in the municipality of Kukes. Some of those refugees ended  
6 up in the Kukes metal factory, which, as mentioned before, was  
7 controlled by the KLA during that period.

8 The Kukes metal factory was used as a base for recruitment,  
9 mobilisation and logistics. KLA recruits were provided with weapons  
10 and uniforms, then sent for training before joining the front line.

11 In addition to being used to further the KLA's war efforts, the  
12 Kukes metal factory was also used to detain, interrogate and mistreat  
13 individuals considered spies and collaborators of Serbia.

14 The individuals who were imprisoned in the Kukes metal factory  
15 arrived there for a variety of reasons and in many different ways.  
16 Some came to the factory voluntarily; others were taken there  
17 forcibly.

18 For example, Trial Witness 4-01 travelled to Albania in May  
19 1999. Upon arrival to Kukes, he went to the Kukes metal factory.  
20 Your Honours, a terrible fate was awaiting him. As the evidence will  
21 show, Trial Witness 4-01 was subjected to ill treatment, torture, and  
22 beatings because he was suspected of being a spy.

23 Trial Witness 4-11 left the Kosovo municipality of Prizren in  
24 March 1999, together with his family, due to attacks by the Serbian  
25 forces. He travelled to Albania on foot and settled in a refugee

1 camp in Kukes in April 1999. About a month later, in May 1999, Trial  
2 Witness 4-11 was approached by two KLA members who hold him he had to  
3 provide a statement, at which point he was taken to the Kukes metal  
4 factory and detained there for about a month.

5 Witness 4733 fled Kosovo in April 1999 with his family. As a  
6 refugee in Albania, he did not encounter a better fate, as he was  
7 kidnapped by KLA members in May 1999 and taken to the Kukes metal  
8 factory. There, he was subjected to ill treatment and torture, as he  
9 was accused of not resigning his job as a police officer in the Serb  
10 institutions in the 1990s.

11 Your Honours, the evidence will show that all of the individuals  
12 who were detained in the Kukes metal factory were civilians, not  
13 taking active part in the hostilities. The perpetrators were all KLA  
14 members, including the accused, Pjeter Shala.

15 Your Honours, I will now like to show you, with the assistance  
16 of visual aids, some of the locations inside the Kukes metal factory  
17 where key events took place. To do so, I will use a 3D model of the  
18 Kukes metal factory that the SPO has previously shared with the  
19 Panel, Defence Counsel, and Victims' Counsel.

20 This 3D model has been created for the purposes of this  
21 presentation only, on the basis of old and new cadastral maps of the  
22 Kukes metal factory as well as photographs the SPO has taken during  
23 visits to the site. It is used here just to give everyone in this  
24 courtroom an impression of the site itself, of where certain  
25 buildings are positioned and where they stand in relation to one

1 another. Next to each rendering of the 3D model, pictures of the  
2 metal factory will be shown.

3 We will start with an aerial view of the Kukes metal factory you  
4 are already familiar with. As this image fades away, you will see  
5 the 3D model appear in an aerial view.

6 We will now zoom into the factory and approach the entrance  
7 gate. You can see a photo of the entrance gate on the left-hand side  
8 of the screen next to the corresponding part of the 3D model  
9 rendering.

10 We will then enter the premises and look to the left-hand side  
11 to see the guard booth and what we will refer to as the command  
12 building.

13 Moving now into the internal courtyard, we first have a view of  
14 the command building from the north-west corner. And then, turning  
15 on the left-hand side, we have a frontal view of the command  
16 building.

17 The command building is a concrete structure with two floors  
18 which inside had different rooms used as offices and accommodation  
19 for the KLA soldiers. There was also a pharmacy and an office where  
20 a so-called KLA prosecutor or judge interrogated those suspected of  
21 collaboration.

22 The evidence will show that some witnesses, including W04733 and  
23 W01448, were detained in this building in May 1999, interrogated and  
24 ill-treated.

25 Further, in this building, some of the most brutal beatings

1 happened on or around 20 and 21 May 1999, when W04733, W01448, Trial  
2 Witness 4-01, and the murder victim were tortured by certain KLA  
3 members, including the accused.

4 Moving now away from the command building, we will turn to our  
5 right-hand side, moving clock-wise inside the metal factory to see  
6 one of the warehouses across the courtyard.

7 As we continue, we will see a smaller building protruding inside  
8 the courtyard.

9 The 3D model shows how the structure was at the time of the  
10 events, as it can also be seen in this picture. Since then, this  
11 building got partially destroyed; now looking like this. The arrow  
12 shows that the part made of red bricks that still stands today  
13 corresponds to the furthest part of the building as it used to be.

14 The evidence tendered by the SPO will show that the victims were  
15 held in this building, which we will call the detention building,  
16 throughout their detention in the Kukes metal factory, in poor  
17 conditions, and subjected to torture and ill treatment. Crucially,  
18 this is also where the murder victim was brutally assaulted, beaten,  
19 shot and killed on or about the night between 4 and 5 June 1999.

20 Finally, in the warehouse opposite the detention building, which  
21 we can see here on the right-hand side of the 3D model and on the  
22 picture, the toilets were located. The witnesses that the SPO will  
23 call to testify will explain that they were harassed when they left  
24 the detention building on their way to the toilets.

25 We will now leave the site and go back to the initial cadastral

1 map of the Kukes metal factory.

2 Your Honours, this concludes my part of the presentation. My  
3 colleague Eva Wyler will now present to you the evidence that the SPO  
4 will rely on to prove the charges in this case.

5 Thank you.

6 MS. WYLER: The evidence the SPO will show in this case will  
7 leave no doubt that the charged crimes occurred at the Kukes metal  
8 factory at the times relevant to the indictment.

9 Your Honours will hear and see evidence of how victims were  
10 abducted and brought for detention to the Kukes metal factory,  
11 including by some of the victims themselves. The victims will  
12 testify about their detention at the Kukes metal factory, the people  
13 they recognised there, the inhumane conditions of their detention,  
14 the torture and cruel treatment they suffered there, and who their  
15 tormenters were. They will report on the severe physical and  
16 psychological injuries inflicted on them, some of which continue to  
17 affect the victims and their families to this day.

18 The targeted individuals were almost exclusively of Kosovar  
19 Albanian ethnicity, and some of Roma ethnicity. They were all  
20 civilians. They were abducted, detained and mistreated on the  
21 suspicion of being collaborators. None of them, though, at the time  
22 of their arrest took part in any of the hostilities. Some of them  
23 just arrived to Albania from Kosovo. Others actually supported the  
24 KLA with donations and food supplies, and again others just wanted to  
25 stay out of the war. None of the detainees were given any valid



1 reason as to why they were detained and no arrest documents were  
2 provided to them.

3 Witness 4733, a Kosovar Albanian living with his family in  
4 Cermjan in the municipality of Gjakove, was one of these victims. He  
5 had left Kosovo for Durres, Albania, in April 1999. Shortly after  
6 their arrival, KLA members started to repeatedly visit the home where  
7 Witness 4733 and his family had found shelter, trying to kidnap him.  
8 In mid-May 1999, the KLA military police succeeded and abducted  
9 W04733. They kept him in Romanat [phoen], Albania, for three days  
10 and then handed him over to the accused, alongside with other KLA  
11 members, to be transferred to Kukes.

12 They brought W04733 to the Kukes metal factory late in the  
13 evening on or about 20 May 1999. He was brought in the command  
14 building, the building right to your left-hand side once one entered  
15 the main entrance gate to the premises. They put him into an  
16 improvised cell, dirty, narrow, and with no daylight. There, he met  
17 Witness 1448 who had been kept in this very cell at Kukes for some  
18 days already.

19 The night of W04733's arrival at the Kukes metal factory was  
20 also the night brutal beatings at the command building are reported  
21 by the victims in this case, including W04733.

22 Shortly after being brought to his cell, W04733 was taken to  
23 another room in the command building, where he was met by a group of  
24 KLA soldiers, including the accused. W04733 was asked to confess to  
25 the murder of hundreds of Albanians, to the raping of women, and he

1 was asked to sing a Serbian song. Then they started to beat him,  
2 with their fists, a baseball bat, sticks, rubber batons and the  
3 barrel of a revolver. They cut his wrists, they burned him with  
4 cigarettes, they poured salt into his wounds, and they broke his  
5 teeth. W04733 was brutally beaten until he lost consciousness. Once  
6 he regained consciousness, he was wet from the water that was poured  
7 on him to bring him back, and the beatings continued.

8 Eventually, other detainees were brought into the room. Witness  
9 1448 and Trial Witness 4-01 found W04733 covered in blood, and they  
10 witnessed the further beatings inflicted on him, while being  
11 mistreated themselves, by the accused and his associates.

12 One detainee was told to beat W04733 and when he refused to do  
13 so, he was severely beaten up himself.

14 Once the accused and his associates were finished with W04733,  
15 they dragged him out of the room, as W04733 could not walk anymore.  
16 In the hallway, the mistreatments continued until he was dragged back  
17 to his cell.

18 As we was being removed, the beating of other prisoners,  
19 including Trial Witness 4-01 and the murder victim in this case,  
20 started.

21 As they were abusing their victims, the perpetrators accused  
22 them of having personal or professional ties and relations with  
23 Serbian institutions or individuals. The beatings lasted until the  
24 next morning and caused severe physical harm, extensive bleeding and  
25 extreme pain to the victims.

1           A few days after the night of the brutal beatings in the command  
2 building, W04733 and his co-detainees were brought from their cell in  
3 the command building across the courtyard into the detention  
4 building. You were shown a photo of the detention building during  
5 the virtual site visit, and you also heard that the building has been  
6 demolished in the meantime. There, they joined another group of  
7 detainees.

8           The detention building had three rooms. Two of them were used  
9 to keep detainees. About nine detainees were crammed into one of  
10 these rooms. The room had barred windows. It was locked and guarded  
11 by KLA soldiers. The detainees could not leave the room, except for  
12 four of them which were subject to forced labour, forced to clean  
13 dirty toilets and to load and unload the trucks that arrived for the  
14 KLA at the Kukes metal factory.

15           To use the bathroom in the other building, the detainees had to  
16 ask for permission. The toilets the detainees were allowed to use  
17 were in a very poor hygienic status, and on the way there they were  
18 regularly harassed by KLA soldiers. One of them, for example, tried  
19 to stab the detainees with a knife while they were crossing over from  
20 the detention building to the building with the toilets.

21           The detention room had no furniture, no beds and no mattresses.  
22 The detainees tried to sleep leaned along the walls or on the sandy  
23 floor. They received drinking water but food was scarce for them,  
24 and they were provided no or inadequate medical care.

25           The physical and psychological abuse by the accused and other

1 KLA members continued also after the night of the brutal beatings in  
2 the command building on or about 20 May 1999. Thereafter, Witness  
3 4733 and his co-detainees were regularly subjected to beatings,  
4 humiliations, interrogations and threats.

5 Some victims were singled out and subjected to particularly  
6 harsh treatment and severe injuries. Trial Witness 4-01 was one of  
7 them. The accused personally participated in his mistreatment on at  
8 least ten separate occasions. During one of them, Trial Witness 4-01  
9 was ordered to put on a bullet-proof vest and was shot at with an  
10 automatic weapon, leaving TW4-01 with severe pain, trauma, and  
11 trouble breathing.

12 One prisoner did not survive his detention and the torture he  
13 suffered at the Kukes metal factory.

14 On 4 June 1999, the murder victim of this case and Trial Witness  
15 4-01 were removed from the room where they were kept in the detention  
16 building. They savagely were beaten and shot at by a KLA member.  
17 The murder victim was shot at his leg. He was only provided very  
18 basic medical care. KLA personnel refused to take him to a hospital.  
19 Instead, they continued to humiliate and threaten him. As a  
20 consequence, the murder victim bled out that night and died on or  
21 about 5 June 1999.

22 During this trial, Your Honours will be presented with the  
23 accounts of those who survived the detention at the Kukes metal  
24 factory. They survived and were released either because of personal  
25 ties and relationships, or they were freed by the German KFOR in

1 mid-June 1999 after they were transferred to the police station in  
2 Prizren. None of the detainees were ever referred for any judicial  
3 review or adjudication of their detention.

4 Witness 4733 was released due to the intervention of the  
5 Albanian intelligence service in the beginning of June 1999. When he  
6 returned to his family, they barely recognised him.

7 Being detained in Kukes was not only traumatising for the  
8 victims but also for their families.

9 W04733 was marked with scars and wounds from the mistreatments  
10 he suffered during his detention at the Kukes metal factory. He was  
11 unwashed, blood-stained, and had lost a lot of weight. W04733  
12 suffered from the physical and psychological injuries he endured  
13 during his detention at the Kukes metal factory for the rest of his  
14 life. His family members will describe how once Witness 4733  
15 returned to them, they witnessed the signs of his mistreatments he  
16 had suffered and heard directly from W04733 the account of his  
17 ordeals. They will also testify about the effect that his detention  
18 in Kukes had on them and the burden it has placed on the entire  
19 family.

20 Some of the evidence in this trial was provided by witnesses who  
21 are unavailable to testify in court during this proceeding, either  
22 because they are deceased or not fit to testify in court. The  
23 statements of these witnesses, however, are corroborated and  
24 supported by evidence of other witnesses who will testify before  
25 Your Honours in this trial.

1           The evidence presented in the course of this trial will leave no  
2           doubt that the charged war crimes of arbitrary detention, torture,  
3           cruel treatment of several detainees, and the murder of one of them  
4           took place at the Kukes metal factory during the indictment period.

5           My colleague will illustrate now how the SPO will prove that the  
6           accused is criminally responsible for these crimes charged in the  
7           indictment.

8           MR. DE MINICIS: Your Honour, before I start, I'm mindful of the  
9           time. I believe that it will take me approximately 15 minutes to  
10          complete my presentation.

11          PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, I suggest that  
12          then you finalise unless you see that these 15 minutes become longer,  
13          because then we have all the time to do it after the break.

14          MR. DE MINICIS: Will do, Your Honour.

15          Your Honours, the accused, Pjeter Shala, is criminally  
16          responsible for the crimes charged in the indictment and just  
17          described by my colleague. The evidence will show that he was a  
18          member of a small criminal group of KLA soldiers that committed these  
19          crimes at the Kukes metal factory. The Prosecution will present  
20          evidence showing that he is responsible for these crimes as a  
21          physical perpetrator, as a member of the joint criminal enterprise,  
22          and as an aider and abettor.

23          In 1998, Your Honours, the accused was a member of the KLA in  
24          Jabllanice, Kosovo. The accused was also known with the nickname of  
25          Ujku which means Wolf. This, as Your Honours will learn, is a

1 significant detail. For instance because W04733 recalls that the  
2 accused, as he was transporting him after his arrest to the  
3 Kukes metal factory, made a wolf-like howl. The accused was known to  
4 make such howling sounds when he was in action.

5 In the summer of 1998, the accused left the war in Kosovo and  
6 moved to Belgium. He remained there until approximately half March,  
7 mid-March 1999, when he decided to make his way back to the region.  
8 He travelled to Albania, arriving in Durres. Upon his arrival, he  
9 was told to go to Kukes and to join the 128th Brigade of the KLA in  
10 the Pashtrik zone.

11 The accused was led to believe that he was going to acquire sort  
12 of a commanding role within that brigade, but upon his arrival, it  
13 became immediately clear to him that that was not going to be the  
14 case. Disappointed, the accused left approximately after a couple of  
15 days and went to the front lines at the border between Kosovo and  
16 Albania.

17 And Your Honours may recall from the first slide presented by my  
18 colleague, which was publicly broadcast, that Kukes and the metal  
19 factory are not far from the international border.

20 The accused remained there, operating in that area for several  
21 months thereafter. And several witnesses will testify that he was  
22 present at the Kukes metal factory during critical moments within the  
23 indictment period.

24 As I said, Your Honours, the Prosecution case is that the  
25 accused committed these crimes as a member of a small group of KLA

1 soldiers, a small criminal group. He was not the commander of this  
2 group but a direct participant who committed these crimes both  
3 personally and together with others. The accused's responsibility  
4 stems from his participation in acts that both initiated and  
5 maintained the arbitrary detention of the victims at the Kukes metal  
6 factory. He also extensively participated in their mistreatment.  
7 Mistreatment which eventually led to the killing of one of them.

8 In this regard, Your Honours, while the accused did not formally  
9 hold a high rank within the KLA or within the Kukes metal factory,  
10 for that matter, he enjoined a high degree of freedom and action,  
11 which were instrumental to his criminal conduct. This included the  
12 ability to move in and out of the crime site as he pleased.

13 Your Honour, in fact, the Prosecution - and this, I want to make  
14 it clear - does not allege that the accused was present at the  
15 Kukes metal factory every day during the indictment period. But he  
16 was present when it mattered. He was present at critical times  
17 within the indictment period.

18 This will become clear from the evidence of several witnesses in  
19 this case, Your Honours. They include victims, such as W04733, Trial  
20 Witness 4-01, and W01448. They also include members of the  
21 Kosovo Liberation Army who was present -- who were present and  
22 stationed at the Kukes metal factory during the indictment period.

23 Finally, Your Honours, the accused's presence at the times  
24 relevant to the indictment at the Kukes metal factory is also clear  
25 from his own admissions and statements, which I want to recall these



1 statements and their admissibility is under scrutiny before the  
2 Appeals Chamber.

3 Your Honours, in these statements, the accused corroborated  
4 through his own admissions multiple important aspects of the  
5 Prosecution case and of the evidence Your Honours will hear in this  
6 trial.

7 For instance, Your Honours, importantly, the accused admitted to  
8 seeing Trial Witness 4-01 and the murder victim within the premises  
9 of the Kukes metal factory. As a matter of fact, he admitted to  
10 beating them.

11 The accused also admitted to seeing W04733 in the factory. He  
12 did not have kind words in relation to that witness. Importantly -  
13 this is a significant detail - he admitted to seeing him wearing a  
14 uniform. Now, W04733 was wearing a uniform because after he was  
15 abducted in Albania, his family reported the abduction to the police,  
16 the police were looking for him, so the KLA, to transfer him to the  
17 Kukes metal factory and avoid being detected by possible roadblocks  
18 of the police, put him in a KLA uniform. They were pretending he was  
19 one of them.

20 Your Honours, the accused was not only present at the Kukes  
21 metal factory, the evidence of several witnesses, and his own  
22 statements, will establish that he actively participated in the  
23 charged crimes. This participation was both significant and  
24 extensive. The following are just some examples of his  
25 participation.

1           So around 21 May 1991, approximately around that date, the  
2           accused participated in the transfer of W04733 to the Kukes metal  
3           factory. He did so together with other KLA members. As recalled,  
4           W04733 recalled that he was making a wolf-like howl during the  
5           transport. W04733 recalled that the accused did so on other  
6           occasions while at the Kukes metal factory.

7           The accused, Your Honours, was the first person to hit Trial  
8           Witness 4-01 and the murder victim in this case after they were  
9           arrested at the Kukes metal factory. W01448, too, described the  
10          extensive involvement of the accused in the mistreatment of detainees  
11          at that site.

12          Your Honours, my colleague Ms. Wyler has described in detail the  
13          extremely violent beatings that took place on or around the night of  
14          20 May 1999 in the command building at the Kukes metal factory. The  
15          accused was present in the room. We know this from the evidence of  
16          multiple witnesses. Together with other KLA members, including  
17          members of the joint criminal enterprise, he savagely beat Trial  
18          Witness 4-01, W01448, the murder victim, and W04733. All three  
19          witnesses, all of them, indicate that he was one of the participants  
20          to that brutal beating that took place throughout the night.

21          Your Honours, the fear in that room that night is difficult to  
22          imagine. The accused and the others attacked and savagely beat the  
23          victims when they were at their most vulnerable. These people could  
24          not defend themselves. They were there and they had to take whatever  
25          they decided to inflict on them.

1           Your Honours, these, as I say, are just some examples of his  
2 participation in the crimes which took other forms. For instance, we  
3 have evidence, and we will present this evidence, that he, for  
4 instance, forced the detainees to perform forced and degrading labour  
5 while at the Kukes metal factory, thereby maintaining their arbitrary  
6 detention and cruel treatment.

7           Your Honours, unfortunately, two of the victims, W04733 and  
8 W01448, have passed away. We will tender their statements in  
9 evidence. Your Honours, we submit this evidence is corroborated and  
10 reliable, as you will be able to appreciate in the course of the  
11 trial.

12           Your Honours, in addition to denying any participation in the  
13 crimes, as recalled by Mr. Whiting, the Defence has also repeatedly  
14 attacked both the investigation in this case and the credibility of  
15 one particular Prosecution witness, Trial Witness 4-01. They say  
16 that this witness gave false testimony in the past, that he is not  
17 credible because he has a criminal record.

18           Your Honours, Trial Witness 4-01 did give false testimony in the  
19 past. He recanted certain incriminatory statements and later  
20 explained why he provided, falsely, this exculpatory evidence. Your  
21 Honours, the witness will take the stand before you. We will address  
22 this issue. Your Honours will be able to question the witness about  
23 it.

24           Trial Witness 4-01, Your Honours, also has a criminal record.  
25 The Prosecution is not denying that. But the fact remains,

1 Your Honours, that he was also a victim at the Kukes metal factory.  
2 The two things, Your Honours, are not incompatible. Nor does his  
3 criminal record make him less deserving of justice.

4 This witness, Your Honours, has provided several statements over  
5 the years. In these statements, he always consistently implicated  
6 the accused in his mistreatment and in the mistreatment of the other  
7 victims at the Kukes metal factory. Always.

8 And, Your Honours, in the end, it will be up to you to listen to  
9 this witness and assess his credibility in light of everything that  
10 happened to him and what he tells you. It will be up to you to  
11 assess his credibility when he will testify about having been the  
12 victim of unspeakable acts of violence at the Kukes metal factory  
13 perpetrated by the accused and by other members of the joint criminal  
14 enterprise. You will decide how and in what ways this evidence is  
15 corroborated by the evidence of other witnesses in this trial.

16 And, finally, Your Honours, you may also consider, depending on  
17 the outcome of the appeal, the accused's own statements and his very  
18 admissions that he beat Trial Witness 4-01, he beat the murder  
19 victim, and why he beat them.

20 In the end, Your Honour, you will decide whether Trial Witness  
21 4-01 is fabricating a story, as the Defence now claims, or he is  
22 telling the truth about the role that the accused had in the crimes  
23 charged in this case.

24 Before I conclude, I just want to say a final word about these  
25 statements, Your Honours, which we will amply recall are currently on

1 appeal. Your Honours, as the trial progresses and you become  
2 familiar with the evidence in this case, I invite to you think about  
3 the admissions that the accused made in these statements, which he  
4 repeated over the years, with regard to his role in the crimes he  
5 committed in Kukes. Your Honours, you will see that he only provided  
6 a partial account of his involvement in these crimes. He tried to  
7 minimise his responsibility which is, in fact, much, much broader  
8 than what he was prepared to state. Through the statements and  
9 testimonies of these witnesses at trial, the SPO will prove the full  
10 scope of the accused's responsibility.

11 In conclusion, Your Honours, this is a case of violence,  
12 cruelty, attacks against human dignity perpetrated in a period of a  
13 little over two weeks in a small location in northern Albania. It's  
14 not a complicated case. The crimes were committed by certain KLA  
15 members. The accused was one of them. His responsibility also  
16 encompasses the murder of the named victim in this case. The  
17 evidence the Prosecution will present at trial will prove beyond a  
18 reasonable doubt that the accused possessed the required intent for  
19 this crime. In the alternative, and at the very least, Your Honours,  
20 it was foreseeable to him that the murder could be committed.

21 Think about the weapons that they used -- that were used during  
22 these mistreatments. They were potentially lethal weapons that  
23 included batons, knives and fire-arms. So it was entirely  
24 foreseeable to him that the victim could have died eventually, and by  
25 continuing to engage in that criminal enterprise, he willingly took

1 that risk.

2 In it the end, Your Honours, through the evidence that the SPO  
3 will present at trial, the SPO will prove beyond reasonable doubt  
4 that the accused is guilty and criminally responsible for the crimes  
5 charged through Counts 1 through 4 of the indictment.

6 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, thank you. Thank  
7 you, Specialist Prosecutor's Office, for the opening statements of  
8 this morning.

9 It's now time for the break. After that, we will continue with  
10 the opening statements for the -- by the Victims' Counsel and, at the  
11 end of your opening statement, I will discuss shortly the request  
12 made by the Trial Panel with regard to submissions to be made with  
13 regard to the video hearing for three witnesses. There's something I  
14 want to say about that.

15 For now, the hearing is adjourned.

16 --- Recess taken at 11.07 a.m.

17 --- On resuming at 11.36 a.m.

18 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

19 I have a look at who is present, and I'm under the impression  
20 that there is no change in who is attending.

21 MR. DE MINICIS: That's correct, Your Honours.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 And for the Victims' Counsel, it's the same.

24 MR. LAWS: It's the same, Your Honour, yes.

25 PRESIDING JUDGE VELDT-FOGLIA: The Registry.

1 And here, are we in the same composition, Defence Counsel?

2 MR. AOUNI: Good morning, Your Honour. Just to announce that  
3 we are joined by Mr. Mathias Lenglet, Ms. Zoe Paris, and Ms. Zeynip  
4 -- her last name is a bit difficult for me, from Turkey. I'm sorry  
5 not to be able to pronounce the last name. It's a bit difficult for  
6 me to pronounce. The three of them are new interns with us, and we  
7 wanted to give them the opportunity to attend.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much, and that is  
9 noted for the record.

10 Yes, we have finalised the opening statements by the Specialist  
11 Prosecutor's Office, and it is now the turn for the Victims' Counsel.

12 Victims' Counsel, could you indicate how much time you estimate  
13 that you will be needing?

14 MR. LAWS: Your Honour, we said initially up to two hours and  
15 we're going to be shorter than that. I hope that it may be possible  
16 to do it in about hour and a half, an hour and 40 minutes, something  
17 of that kind.

18 PRESIDING JUDGE VELDT-FOGLIA: Let us see how we will proceed.  
19 After your opening statement, the Panel wants to address still two  
20 issues before we conclude this hearing today.

21 MR. LAWS: Yes. If it assists, the last ten or 15 minutes of  
22 the opening statement on behalf of the victims will be made by my  
23 co-counsel, so there will come a natural break, if that assists.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Because then, in that  
25 way, I think we -- I foresee that we will break at 1.00 and then

1 resume after lunch. Because I think that if not, we will spill over  
2 too much the 1.00 break also for the interpreters.

3 MR. LAWS: Yes, of course. Well, let's see how we go. It may  
4 move more quickly, but those were our best estimates.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well. You have the floor.

6 MR. LAWS: Your Honour, thank you.

7 May it please the Court. The evidence in this case shows that  
8 in the indictment period, the Kukes metal factory was a place that  
9 temporarily existed beyond the rule of law. People were abducted and  
10 taken there. If they were already there, they could be locked away  
11 on the whim of a commander. There was no question of any review of  
12 their detention, still less of any appeal. Detention decisions were  
13 made arbitrarily, driven by spurious allegations of collaboration.

14 Once detained, those in charge took the opportunity to  
15 interrogate their captives with intense brutality. They were beaten,  
16 burnt and electrocuted. They heard each other scream, and they knew  
17 that they might be next. They were housed in harsh conditions, and  
18 their days and nights were full of suffering and fear.

19 Their captors' sense of impunity, that they could act without  
20 consequences, emboldened them. Their cruelty grew.

21 In the end, a man was killed. It was a senseless and pointless  
22 waste of a young life.

23 The victims and others say that the accused, Pjeter Shala,  
24 played a part in all of these crimes.

25 He and others with him persecuted those who were powerless and



1 who were vulnerable to any kind of abuse which their jailers decided  
2 upon.

3 Amidst all the barbarity and cruelty that we will hear about,  
4 the victims were not allowed to raise their voices. We will see  
5 references to them being forbidden to speak among themselves.  
6 Instead, they spoke in low, and, no doubt, anxious, whispers.

7 W04733 says this:

8 "We would whisper in each other's ear because we didn't dare  
9 speak properly in case we were eavesdropped from outside."

10 And another, W01448, remembered it in this way:

11 "We were not allowed to speak to each other. While lying  
12 crumpled on the hard floor, we used to talk in low whispers."

13 In these proceedings, the voices of those who suffered at Kukes  
14 will be heard, even the voices of those who are now dead, whose  
15 testimony lives on in their statements and in the memories of their  
16 family members.

17 From the perspective of the victims, this is one of the most  
18 important aspects of this court. Their harm will be recognised. The  
19 fact that they are victims will be recognised.

20 It is no easy thing to be a victim in one of these cases. As  
21 this Court has already acknowledged, there is a climate of fear and  
22 intimidation in Kosovo for those who agree to assist this Court in  
23 its work.

24 In Kosovo, some try to portray the victims of crimes committed  
25 by members of the KLA as traitors or collaborators. I want to say

1 this on their behalf: These victims were supporters of the KLA, not  
2 enemies of it. The fact that they accuse this member of the KLA,  
3 Pjeter Shala, is not in any way a condemnation of the KLA itself.  
4 The victims in this case suffered harm as a result of the lawlessness  
5 of Pjeter Shala and of others. It is not right that they be made to  
6 suffer again by being regarded as disloyal, as disloyal, to Kosovo.  
7 They are no such thing.

8 What do the victims want here?

9 Then want acknowledgment of the harm that they suffered, and my  
10 co-counsel Ms. Radziejowska will address you more on that towards the  
11 end of this opening statement. But they also want a just outcome to  
12 this case. And in their view, a just outcome of this case is one  
13 that involves Mr. Shala admitting his guilt or that guilt being  
14 proved.

15 His attitude is one of denial. But as you have already heard,  
16 and as he started to repeat this morning, it goes very much further  
17 than that. He claims that lies are being told about him. And  
18 because of that, we, on behalf of some of those whom he harmed, are  
19 going to take a little time to see if we can assist the Panel with  
20 finding the way to the truth in this case. And we do so because the  
21 victims participating in these proceedings have a right to the truth.

22 And so what I'm going to do next is to conduct an examination of  
23 some of the evidence in this case.

24 And what we say about the evidence is this. When it's properly  
25 and fairly analysed, it's apparent who is lying and who is telling

1 the truth here. The truth is that the evidence in the case  
2 implicates Pjeter Shala in a way that is only compatible with his  
3 guilt. But in order to do that, we need to look at the evidence in  
4 some real detail.

5 And it is, I am afraid, impossible to do that and to respect the  
6 protective measures that are in place, it's impossible to do that in  
7 open session.

8 So I would invite the Court, please, to move into private  
9 session at this stage.

10 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you  
11 bring us into private session.

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7 [Open session]

8 THE COURT OFFICER: Your Honours, we're now in open session.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much, Madam Court  
10 Officer.

11 The hearing is adjourned. We will be back in a while.

12 --- Recess taken at 12.16 p.m.

13 --- On resuming at 12.28 p.m.

14 PRESIDING JUDGE VELDT-FOGLIA: We are in public session, and the  
15 decisions of the Panel with regard to what I'm going to say now can  
16 be done in public session because I will not go to the content of  
17 anything regarding possible evidence.

18 There are two points that have to be decided on now as far as  
19 the Panel is concerned. One is with regard to the objection to the  
20 content. That was a point made by the Defence. The Panel agrees  
21 with Victims' Counsel that the slides were notified in advance.  
22 There's a time-limit in order to be able to react, and no reaction  
23 came. So in this respect, the objection is rejected.

24 There is another point, Victims' Counsel, with regard to the  
25 opening statements being done in private or public. And the Panel

1 has made it clear several times in our e-mail correspondence that the  
2 opening statements should be done as much as possible in public. And  
3 the division of the opening statement prepared by you as is done now,  
4 is not, in the view of the Panel, in conformity with that general  
5 rule we formulated.

6 So what we will do, we will give you another 20 minutes to  
7 discuss what you wanted to discuss with regard to your presentation  
8 in private. We will then take a break, the normal break of one and a  
9 half hour. Depending on the moment when we will have finalised, then  
10 the one and a half hour start. And then you will be -- given the  
11 floor to continue with your opening statements but in public.

12 MR. LAWS: Thank you very much for that. That's extremely  
13 helpful.

14 I have 20 minutes to complete what I want to say in private  
15 session and that will be wholly adequate.

16 Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: But as a general remark for the  
18 Panel, I read differently when you said that there were three parts,  
19 a first, second, and a third part, and when you said that it the  
20 second part would be in public -- in private, I had not expected that  
21 that would be an hour, and then there would be five minutes in public  
22 and 15 minutes or 10 minutes in public too. So I put it there.

23 MR. LAWS: We meant no discourtesy at all, of course. And I  
24 hope I made it very clear that the slides were all related to private  
25 session, and that what's I'm dealing with now, but I shall use the

1 remaining time to deal with them expeditiously.

2 Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you  
4 bring us into private session, please.

5 [Private session]

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21 [Open session]

22 THE COURT OFFICER: Your Honours, we're in public session.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

24 Victims' Counsel, it is my understanding, based on what you said  
25 at the beginning before you started with your opening statements,

1 that the last ten, 15 minutes, your co-counsel would be dealing with  
2 the opening statements. Is that correct?

3 MR. LAWS: That's correct. I have another two minutes to say in  
4 open court, if that.

5 PRESIDING JUDGE VELDT-FOGLIA: No, because normally the break  
6 would be at 1.00.

7 MR. LAWS: Yes.

8 PRESIDING JUDGE VELDT-FOGLIA: So if you don't -- my proposal to  
9 have a break right away was in order to have you reorganise if you  
10 wanted to do something from private into public. But if that is not  
11 necessary, I propose that we proceed.

12 MR. LAWS: Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: And then I think we can finalise  
14 before 1.00, including maybe, if I'm allowed by the interpreters,  
15 take a few minutes for two points which are brief, but one is -- I  
16 will discuss them but they are brief. And then we could have the  
17 afternoon to do other important things with a view to tomorrow when  
18 we will have the Defence opening statements.

19 That would be my suggestion. Yes? I see nodding here.

20 So, Victims' Counsel, you have the floor.

21 MR. LAWS: Thank you so much.

22 In summary, then, the evidence will show that Pjeter Shala was  
23 one of the perpetrators at Kukes.

24 The existence of this court shows that victims, if they have the  
25 courage, can and will be heard many years after crimes were committed



1 against them, and that the perpetrators of crimes of this gravity are  
2 never, in fact, beyond the reach of the law.

3 Those who were powerless then will now have the power. Those  
4 who were not allowed to speak will have their say.

5 And with Your Honours' leave, I will ask my co-counsel,  
6 Ms. Radziejowska, to address you further, specifically in relation to  
7 harm.

8 Thank you.

9 MS. RADZIEJOWSKA: Thank you, Your Honours.

10 War crime of arbitrary detention, cruel treatment, torture and  
11 murder. These are the crimes that Mr. Shala is accused of.

12 Victims of these crimes have been harmed tremendously. One has  
13 not survived the ordeal that he has been put through. And although  
14 these crimes took place more than 20 years ago the harm and the  
15 suffering that they caused continue to affect peoples' daily lives  
16 deeply.

17 Persons who were detained at the Kukes factory were not actively  
18 taking part in any hostility against the KLA. To the contrary, some  
19 of them wanted to join the KLA. None of the victims detained and  
20 mistreated at the Kukes factory was officially presented with  
21 charges, accused or sentenced for a crime. Yet they were detained  
22 and treated in the most cruel, dehumanising ways.

23 Some of the victims were kept at Kukes facility for over a  
24 month. They were routinely beaten and mistreated, practically on a  
25 continuous basis.

1 Description of what happened at the Kukes factory to some extent  
2 illustrates the harm endured by those who survived it and those who  
3 were detained there.

4 They were beaten nearly every day and night, with hands and feet  
5 or with various instruments, rubber batons, wooden batons covered in  
6 bandages, baseball bats, iron or metal bars, guns, and other sharp  
7 objects, knives. Sometimes this mistreatment lasted all night.

8 According to one of the victims, they used baseball bats and  
9 metal rods to hit him on his head, back, arms, and wherever else they  
10 could. Then he lost consciousness. He was covered in blood all  
11 over. They even put salt on his wounds and his eyes.

12 That is not all. Some of the detainees were shot at and then  
13 the beating continued despite the gun-shot wounds. They were refused  
14 necessary medical care.

15 Those detained at Kukes were also abused psychologically. First  
16 of all, they were exposed to the suffering of others. They could  
17 often either hear or see other -- how others were mistreated. They  
18 were threatened with death or serious bodily injury. Some were  
19 ordered to beat their co-detainees and heavily beaten when refused.

20 To be clear, this description of tools and methods of  
21 mistreatment that victims suffered from at the Kukes factory is far  
22 from exhaustive.

23 We can only try to imagine what impact this mistreatment has had  
24 on the lives of those who survived it. And it is difficult to find  
25 the words that would do justice to the harm they suffered.

1           Years after, when asked directly about consequences of his  
2           mistreatment at the Kukes factory, one of the victims described  
3           succinctly that he has pain in his leg, wounds, broken rib injuries,  
4           bone pains, headaches, spinal disc pains. He suffers from stress,  
5           loses his temper quickly. He has frequent flashbacks of the  
6           mistreatments he suffered at the time and does not sleep well. He  
7           says that fear is stuck in his head. He bitterly resents the  
8           portrayal of him as a traitor by those who mistreated him and said he  
9           was a collaborator, while he was not.

10           He struggles to find his place in life. "I am in the middle,  
11           neither on the land neither on the sky." That's what he told us when  
12           we met him.

13           It is clear the trauma of these events has never left him and,  
14           probably it never will.

15           The crimes that occurred at Kukes factory have also affected the  
16           lives of those who have never been inside the facility. Those whose  
17           family members who were detained and tortured there, even today, they  
18           cry when they speak of these events. They speak of trauma and  
19           distress when their family members were arrested. They speak of  
20           trauma and distress that they felt when the family member returned  
21           from Kukes.

22           They speak of loss that cannot be regained. Even though their  
23           family member had survived his ordeal at the Kukes factory  
24           physically, he came back as a different man. The years passed, but  
25           the person they knew before Kukes never came back.

1           They speak of social stigma resulting from these events. The  
2 stigma prevented them from attending school, finding a job, but also  
3 aimed at intimidating their attempts to seek justice for what  
4 happened.

5           And, Your Honours, it is important to explain that the relatives  
6 of those who were detained and mistreated at the Kukes factory,  
7 they're not prone to speak about themselves. They do not dwell into  
8 their own suffering. At the same time, upon meeting them, one can  
9 immediately sense that still today they're deeply overwhelmed by what  
10 happened to their loved ones. It is illustrated not necessarily by  
11 words but, rather, by tears and by their persistency to learn what  
12 happened and for what reason.

13           In the course of this trial, we will hear victims and witnesses  
14 speaking of the impact that the crimes charged in this case have had  
15 on their lives. Without these accounts it is impossible to draw a  
16 full picture of what happened at the Kukes factory and to comprehend  
17 the gravity of the crimes committed there.

18           Your Honours' determination, recognition and acknowledgment of  
19 the harm suffered by victims of these crimes is an important  
20 objective of these proceedings.

21           What matters most to victims is finding what exactly happened,  
22 for what reason, and who was responsible for it, and the ability to  
23 take part in these proceedings in which their harm will be finally  
24 publicly recognised and acknowledged.

25           Thank you, Your Honours. This completes our submissions on

1 behalf of victims.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you Victims' Counsel.

3 This concludes the opening statements for the Specialist  
4 Prosecutor's Office and the Victims' Counsel.

5 We will hear tomorrow the opening statements by the Defence,  
6 followed by an unsworn statement of Mr. Shala.

7 Before we will conclude today's hearing, there are two issues I  
8 would like to discuss with you.

9 One concerns the SPO request filed on 13 February of this year  
10 for video-conference testimony for three witnesses. Yeah, for three  
11 witnesses. That suffices for now. That is filing 425. We have  
12 asked by e-mail to the Defence and Victims' Counsel to confirm by the  
13 end of the first session of today's hearing whether they will be in a  
14 position to respond to the SPO request orally. We have informed --  
15 the Defence has informed us by e-mail already yesterday, at 15.43,  
16 that it is not in a position to do so and will proceed to file  
17 written submissions on this matter following the time-limits  
18 prescribed by Rule 76 of the rules.

19 However, I would like to ask Victims' Counsel whether they  
20 intend to respond orally in court to the SPO request tomorrow or  
21 whether they will also file written submissions.

22 MR. LAWS: Your Honour, I can respond orally tomorrow or I can  
23 respond orally today. Very happy to say that we have no objection to  
24 the course that is proposed by the SPO.

25 PRESIDING JUDGE VELDT-FOGLIA: That's -- thank you for that.

1           However, in this respect, because there will be written  
2           submissions, I propose that the Specialist Prosecutor's Office files  
3           their reply -- written reply to the SPO following Rule 76. We tried  
4           to avoid a written decision, but I understand that it's a busy moment  
5           at the moment.

6           Nothing else to add from the SPO?

7           MR. DE MINICIS: No, Your Honours. We understand we will file a  
8           reply if needed once we have the Defence response.

9           PRESIDING JUDGE VELDT-FOGLIA: Very well.

10          Then there is a second point with regard to scheduling, and it  
11          is specifically the SPO I would like to direct my request to. We are  
12          considering to add, if parties and Victims' Counsel are available,  
13          two extra dates -- no, one extra date and a swap of dates for  
14          hearings in case 04. And the additional dates could be Friday, 19  
15          May, and Friday, 16 June of this year.

16          And we would like to discuss the following with the parties and  
17          Victims' Counsel and the Registry tomorrow after the opening  
18          statements by the Defence, and we would like to hear from the SPO if  
19          it would be possible to call witnesses on those dates. And it should  
20          be witnesses, maybe expert witnesses, there is also a witness which  
21          is estimated for two hours, because it should be concluded in one  
22          day, because both 19 May and 16 June would be a sole day. And the 16  
23          June would instead of 30 June. Yeah?

24          So 19 May would be an additional day, and 16 June would be a  
25          swap day.

1           And now we -- as I said, the Panel was considering the  
2           possibility of an expert witness or a witness that is calculated for  
3           a limited amount of time, but we leave it, of course, to the SPO to  
4           decide if it is feasible and who should that be, and also the  
5           availability of the witness. I mean, there are a lot of factors to  
6           be taken on board in deciding that. But the Panel is trying to make  
7           the best use of the available days we have before the judicial summer  
8           recess, and the calculation -- a goal could be, a purpose could be,  
9           to have the SPO case finished before the summer. Let us see. But my  
10          proposal is to use to the utmost what we have at our disposal.

11          So my proposal would be if you could look into that. Any  
12          further observations by the Defence and the Victims' Counsel in this  
13          respect, and the Registry, tomorrow after the Defence opening  
14          statements will be more than welcome. Yes?

15          Okay. Very well.

16          I will do a tour along the Specialist Prosecutor's Office, is  
17          there something that you would like to bring up?

18          MR. DE MINICIS: Nothing at this moment. Thank you.

19          PRESIDING JUDGE VELDT-FOGLIA: No? Very well.

20          Victims' Counsel, is there something ...

21          MR. LAWS: No, thank you, Your Honour.

22          PRESIDING JUDGE VELDT-FOGLIA: Very well.

23          Defence Counsel.

24          MR. AOUBINI: Thank you for the opportunity, Your Honours.

25          Sorry, just to -- my apologies. I would like to put the correct last

1 name of my colleague - my apologies to her - who is attending,  
2 because I had difficulty pronouncing her last name earlier. So I'll  
3 try to do it now, if you'll allow me. Thank you very much.

4 It's Ms. Zeynip Yanikomeroglu.

5 Thank you, Your Honours.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

7 This concludes today's hearing. The hearing is adjourned. We  
8 see each other tomorrow at 9.30.

9 --- Whereupon the hearing adjourned at 1.01 p.m.

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