

1 Tuesday, 13 September 2022  
2 [Closing Statements]  
3 [Open session]  
4 [The accused attended via videolink]  
5 --- Upon commencing at 9.30 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning.  
7 Court Officer, can you please call the case.

8 THE COURT OFFICER: Good morning, Your Honours. This is  
9 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.  
11 First of all, I will call appearances.

12 Let me see for -- who is present for the Specialist Prosecutor's  
13 Office? You have the floor.

14 MR. MICHALCZUK: Good morning, Your Honours, and everyone in and  
15 around the courtroom. The SPO is represented today by  
16 Mr. Jack Smith, the Specialist Prosecutor; Prosecutor Silvia D'Ascoli  
17 and Prosecutor Filippo de Minicis; our case manager Julie Mann. We  
18 also have two SPO legal interns with us, Ebba Nermark and  
19 Benjamin Dearden. And I am Cezary Michalczuk, the SPO Prosecutor.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.  
21 Victims' Counsel, you have floor.

22 MS. PUES: Good morning, Your Honours. Good morning, everybody.  
23 The victims participating in this trial are today represented by a  
24 new addition to the team Jack Provan as junior legal associate,  
25 Brechtje Vossenbergh as co-counsel, and by myself, Anni Pues, as

1 counsel.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Defence Counsel, you have the floor.

4 MR. VON BONE: Good morning, Your Honour. My name is  
5 Julius von Bone. The Defence is represented by myself,  
6 Julius von Bone; my co-counsel, Mr Betim Shala; interpreter and  
7 investigator, Mr. Fatmir Pelaj. And joining us via remote is  
8 Mr. Salih Mustafa.

9 Thank you very much.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 And for the record, you're appearing before Trial Panel I.

12 Today we begin with the hearing of the closing statements in  
13 this case, and we will follow the agenda as set out in the decision  
14 setting the agenda for the closing statements and related matters,  
15 which is filing 468.

16 I remind you that this hearing is held in open session unless  
17 otherwise requested by the parties or the Victims' Counsel or decided  
18 by the Panel. And because in the course of the closing statements,  
19 reference may be made to confidential information or information  
20 subjected to protective measures, I remind you to give me prior  
21 notice should you wish to go into closed or private session for the  
22 purpose of your submissions.

23 And I also remind you that we will follow the procedure on  
24 requesting in-court redactions that we have been using throughout the  
25 trial and as set out in the Conduct of Proceedings, and which is

1 filing 170.

2 We can now begin with the closing statements of the SPO for  
3 which you were allocated five and a half hours, as requested. Please  
4 inform us, like always, of any changes time-wise for planning  
5 purposes.

6 You have the floor.

7 MR. SMITH: [Microphone not activated]

8 As Specialist Prosecutor, I am pleased to have the privilege of  
9 addressing you today as we conclude the second trial of this Court.

10 If it is to have meaning, the work of this Court must focus on  
11 victims. Victims must know that this is a place that they can tell  
12 their story without fear, that accountability has no expiration date,  
13 and that the rule of law matters. So as I begin my remarks to you  
14 today, I will ask that we take a moment to think about one of the  
15 victims in this case. The victim who did not survive the torture at  
16 the Zllash detention compound. The victim whose family you heard  
17 from during the course of this trial. The victim whose murder is  
18 charged in this case.

19 How old would he be today, and what would he have done with his  
20 life had it not been taken from him? He would be in his early 50s,  
21 we know that, but what would he have done with his life? We'd never  
22 know for sure. He'd have lived a life. We can say that much. Maybe  
23 a really good life. Maybe a tough life. Maybe a very successful  
24 life, or maybe not. Maybe he would have contributed tremendously to  
25 his community and even to his country. Maybe he would have had a

1 family of his own, children of his own to raise to adulthood. Maybe.  
2 Possibly.

3 We can only speculate on what he would have done with his time  
4 on earth up to today and beyond. The truth, the truth is we will  
5 never know and his family will never know because of Salih Mustafa  
6 and the men under his command who tortured and killed him. We will  
7 never know.

8 Your Honours, the victims and their personal tragedies are at  
9 the very heart of this case. For the first time, after more than 23  
10 years, this case has given them voice and has given them an  
11 opportunity to speak of the pain and suffering they were forced to  
12 endure in April of 1999 and also how the long shadow of those  
13 traumatic events still haunts them.

14 In the words of Witness 1679, a victim detained and tortured for  
15 18 days by Mr. Mustafa and his men:

16 "I feel like I'm just watching a movie. When I go to bed at  
17 night, I wake up during the night, I scream, I say things in my sleep  
18 ... my family tell me that. So I wake up and scream and I get  
19 sweaty. I remember the voices of the people. I have all those  
20 flashbacks.

21 "The voices of the victims and the voices of the people who  
22 tortured us."

23 This case is also about the social stigma that the victims, all  
24 Kosovar Albanians, had to endure for years, years after these  
25 traumatic events. In the words of another victim:

1            "... I hope one day we will all be free to speak out about what  
2 we've lived through. I hope for a future free from crime, murder,  
3 and fear. All I'm asking for is freedom. We love our country,  
4 Kosovo, and it has never been our intention to say anything bad about  
5 it. All I'm asking is to be free to speak out about what we went  
6 through without any fear. I hope that one day we will be able to."

7            Your Honours, before the existence of this Court, this Tribunal,  
8 the Kosovo Specialist Chambers, that freedom to speak out about what  
9 the victims went through simply did not exist, and even today it  
10 requires extraordinary courage.

11           When two of the victims in this case saw each other years after  
12 the events in Zllash, one asked the other if he would tell what had  
13 happened to them at Zllash, and he was told it was not the right  
14 time, not the right place, because, and I quote, "If you're going to  
15 report what happened, all the institutions are held by those people."

16           Your Honours, the permanent stigma caused by the accused's  
17 actions and those acting upon his orders and under his leadership and  
18 control who labelled the victims as spies and collaborators of the  
19 enemy, a label falsely attributed to them because they were either  
20 perceived as not sufficiently loyal to the KLA or accused of  
21 displaying the wrong political affiliations. Maybe they favoured the  
22 LDK over the KLA to run the country going forward. Maybe they  
23 thought Ibrahim Rugova, instead of Hashim Thaci, was the person best  
24 suited to lead Kosovo once it achieved independence.

25           And for this, Your Honours. For this, they were imprisoned at

1 an isolated compound. They were beaten daily. For this, they were  
2 tortured and in one case killed.

3 These people were not spies. They were not working with the  
4 enemy. They were not - not - enemies of Kosovo. It's important to  
5 note that this trial began a year ago, and in that year this Court  
6 has not heard a scintilla of evidence from any corner that would  
7 support those baseless allegations.

8 So who were these victims? They were fellow Kosovar Albanians,  
9 community members, countrymen, some of them whom volunteered for  
10 service with the KLA because they believed strongly in Kosovo's fight  
11 for independence. The fact that each and every victim in this case  
12 was a fellow Kosovar Albanian does not fit the narrative of the  
13 enemies of this Court.

14 For those who have been opponents to this Court, sought to  
15 obstruct the work of this Court and my office at every turn, this is  
16 an inconvenient fact but it remains an unassailable fact. It is a  
17 fact you will never hear addressed by those who seek to destroy this  
18 institution of justice. They very consciously - very consciously -  
19 do not address such victims because they cannot. Because to do so  
20 would put the lie to their world view about what this Court is and  
21 who it's for.

22 This is a Kosovo court created by the will of the Kosovo people,  
23 and it serves all victims under its mandate. And that includes many,  
24 many Kosovar citizens.

25 The truth is this Court heard over the last years that certain

1 KLA leaders, like Mr. Mustafa, used their power to victimise and  
2 brutalise fellow Kosovars, including individuals whose only  
3 transgressions were to have been judged insufficiently loyal to the  
4 KLA and its leaders or possess political views that differed from the  
5 KLA leaders.

6 As you saw in the course of the evidence presented over this  
7 last year, there was no legitimate military objective for their  
8 detention, no justification whatsoever for the deplorable conditions  
9 under which they were held or for the manner in which they were  
10 tortured during detention.

11 Any discussion of this case must begin with a full reckoning of  
12 the gravity of the crimes involved and the remarkable level of  
13 violence which these victims were subjected. When considering this  
14 evidence, Your Honours, it's critically important never to forget  
15 that everything the victims underwent, everything they suffered  
16 through is attributable to the accused because he not only permitted  
17 it, he not only aided it, he not only supported it, Your Honours, he  
18 personally modelled violence for his subordinates.

19 At the Zllash detention compound, detainees were beaten daily.  
20 Detainees imprisoned in the stable could hear inhuman screams of  
21 those being beaten upstairs. Witness 1679 explained:

22 "I could hear all sorts of voices, and it's there where I  
23 learned that somebody's voice could change because of what he's  
24 undergoing."

25 Witness 1679 heard people screaming, howling like dogs, making

1 sounds like cats, screaming cats, because of the torture and the  
2 pain. Similarly, Witness 3593 testified regarding the sounds of  
3 people being beaten and their screams, adding that, "We simply  
4 couldn't sleep because we were scared that at any time they would  
5 come down and bring us upstairs as well."

6 Witness 3593 further testified that, when hearing voices and the  
7 screams of the people being beaten, "We felt very badly because we  
8 were thinking about ourselves. We were thinking we would have the  
9 same chance as them."

10 Witness 1679 made this chillingly clear when he told us:

11 "You were just waiting for death, when it will come. Today,  
12 tomorrow. You were waiting for you to be killed."

13 The Zllash detention compound was nothing less than a torture  
14 chamber for these people. And in the course of the evidence, you  
15 heard repeated instances of that torture. The witnesses in this case  
16 saw each other covered in blood and bruises, having been beaten until  
17 they lost consciousness. They were beaten with hatchets and iron  
18 police batons, their flesh burned with candles and hot irons. They  
19 were stabbed with knives. They were even electrocuted.

20 Witness 1679 described how his tormentors would sit him down in  
21 a chair, light a candle, put it near his back so the drops would fall  
22 on his skin and burn him. They also used an electricity box to  
23 torture him. They would fold up his trousers, attach wires to the  
24 flesh on both his legs and his feet, and turn the box on. The  
25 electric shock would make his body shake.



1           As the forensic reports offered by Victims' Counsel makes clear,  
2           this torture left permanent and unmistakable scars on the bodies and  
3           the minds of those who survived it. The grave nature of this  
4           violence goes not only to what is a just sentence in this case,  
5           Your Honours, but also to the credibility of the victims in this  
6           case, particularly those who had the courage to identify the accused  
7           for his role in these offences.

8           As you will hear throughout our presentation today, these  
9           victims are corroborated in their accounts in nearly all ways  
10          reasonably possible after 20-plus years, and they have no incentive  
11          to falsely identify the accused as being involved in or responsible  
12          for their torment. Given the truly incredible degree of suffering  
13          they went through, the many years they have waited to be heard, their  
14          only incentive is to correctly identify those involved in the hope,  
15          the hope that justice is served.

16          Of all the abuse heaped upon the victims, nobody suffered more  
17          than the young man whose murder is charged in this case. In  
18          describing his condition, Witness 1679 stated:

19                 "It was a catastrophe. His body had all these marks. It was  
20                 terrible. Every one of us was beaten, but he was beaten the most."

21          So what do we know about the events leading to the death of this  
22          young man, and how does what we know show beyond any reasonable doubt  
23          that Mr. Mustafa is responsible for his murder?

24          Well, let's begin with the basics. We know that the murder  
25          victim was brought to the Zllash detention compound on April 1, 1999.

1 We further know that that compound at that time was controlled by the  
2 BIA unit of the Kosovo Liberation Army. We also know that BIA and  
3 that compound were under the command of the accused in this case,  
4 Mr. Salih Mustafa.

5 We further know that on April 1st the accused was there at the  
6 compound to witness the murder victim being handed over to a guard,  
7 Muhamet Ajeti, at the gate of the compound. We further know that  
8 Ajeti himself was a BIA soldier under the command of the accused.

9 We know that this victim was tortured at the Zllash detention  
10 compound over the course of more than two weeks, starting on that  
11 day, April 1st. And very importantly, we know that the Zllash  
12 detention compound was a very small, very isolated compound. And we  
13 know in the same period at that very small, very isolated compound  
14 the accused, by his own admission, and other evidence, was there at  
15 that very same compound at that very same time.

16 We know that from day one this particular victim, the murder  
17 victim, was singled out for particularly abusive treatment. A  
18 decision was made from the beginning to beat him more severely and  
19 treat him more harshly. Witness 4669 saw five or six people beat him  
20 with everything they had in their hands. Witness 1679 told us how he  
21 saw that he was burnt with an iron and stabbed with a knife.

22 The murder victim was also the only prisoner who was restrained  
23 and had his hands tied at all times.

24 Significantly, Witness 1679 told us that this victim knew many  
25 of his captors, including Salih, the accused, Tabut, Ilmi Vela, and

1 Fatmir, and as such, "they were afraid to remove his handcuffs."

2 When he was brought back to the barn after being tortured, he  
3 looked destroyed from the beatings. He had bruises and marks on his  
4 face and body, and he could not stand up because of his injuries.  
5 According to Witness 4669, "He was black from the beatings.  
6 Everything on his face, his eyes, nose, everything was black." "He  
7 was bruised, black, on all visible parts of his body." He could  
8 barely open his eyes.

9 The captors even used the murder victim to terrorise - to  
10 terrorise - other prisoners, displaying his severely beaten body as a  
11 warning. Witness 4669 stated that when the witness was brought to  
12 the stable badly mistreated, all the prisoners were in fear as they  
13 understood the situation was critical and that the same could happen  
14 to them.

15 Every time he was brought to the barn, Witness 4669 and his  
16 co-detainees were forced to say, "Death to the traitors, death to the  
17 thieves, death to the thugs, and glory to the KLA."

18 What else do we know? We know that as a result of these severe  
19 beatings, the murder victim was already on the verge of death when  
20 the other prisoners last saw him. When Witness 4669 last saw the  
21 victim, "he was almost dead" and was lying down, was even more  
22 swollen. His nose was bleeding. He was unable to speak and was just  
23 crying out of pain. He was so close to death at this point that the  
24 soldiers, according to Witness 4669, had to hold him, all the weight  
25 of his body. They placed him lying on the ground because he could

1 not stand on his feet.

2 In the words of Witness 1679:

3 "You cannot even describe his state in words. His body, his  
4 injuries, the smell, the smell of flesh that we could sense. It was  
5 terrible. In my opinion, it was a massacre."

6 Although the murder victim may still have been breathing when  
7 last seen by other prisoners, his life was over. All visible parts  
8 of his body black with bruises, not able to speak, and barely able to  
9 open his eyes. He could not walk on his own. He was almost dead.  
10 And, Your Honours, when they chose not to release him, they condemned  
11 him to death.

12 We know that the soldiers who tortured and brutalised this  
13 victim were BIA soldiers under the command of the accused and that no  
14 other commander had the ability to exercise control over these  
15 soldiers. It was the accused alone who the power to give them  
16 orders, had the power to discipline them.

17 What else do we know? We know that when the other prisoners  
18 were released, the murder victim, along with another prisoner, were  
19 intentionally held back. Again, the murder victim was singled out.  
20 They did not allow the other prisoners to bring this victim with them  
21 -- along with them to safety. They did not allow the other prisoners  
22 to bring him to safety despite his grievous condition.

23 The only reasonable inference to draw is his captors had decided  
24 he would not survive. He would not be allowed to live. His last  
25 chance to survive was the moment when the other prisoners were

1 released. When the captors held him back, they sealed his fate and  
2 they ensured that he would never see his family again.

3 There is more we know. We know that when the other prisoners  
4 were released, it was as the Serbian offensive was approaching the  
5 area of Zllash. We further know that the accused himself was present  
6 at the Zllash detention compound at that very time. A Defence  
7 witness, a Defence witness, Teuta Hadri, specifically recalled seeing  
8 the accused at the Zllash detention compound at this very time. As a  
9 result, we know the accused was present at the Zllash detention  
10 compound at two key moments related to this crime: April 1st, the  
11 day the victim was delivered to the compound, and as the Serbian  
12 offensive approached and the decision was made not to release this  
13 victim along with other prisoners.

14 We further know that it was known within the KLA just a few days  
15 - just a few days - after the release of other prisoners that the  
16 murder victim was dead. As Witness 4600 told you, he learned  
17 directly from a KLA commander that the murder victim was dead within  
18 days of the offensive that had necessitated the KLA's retreat from  
19 Zllash and the release of the other prisoners.

20 Finally, we know that the murder victim's body was found in  
21 early July secreted in a shallow grave very near the isolated Zllash  
22 detention compound. He was barefoot and his legs had been broken,  
23 consistent with the testimony of Witness 1679 who stated that when he  
24 last saw him, he could not walk on his own.

25 While today the accused would like to blame advancing Serb

1 forces for his death, the evidence in this case does not support such  
2 a defence. As an initial matter, while Serbian forces may have  
3 entered the area generally, there is no reliable evidence in this  
4 case that those forces entered the Zllash detention compound where  
5 the victim, who could not walk on his own, was last seen.

6 Moreover, we know the accused and his subordinates had a choice,  
7 a choice whether to release the prisoner, as they did release other  
8 prisoners. Knowing his condition, knowing the approach of Serbian  
9 forces, they affirmatively chose not to do so. They released other  
10 prisoners but made the very intentional choice not to release him,  
11 the person they had beaten most severely and who knew his captors by  
12 name from before his time in detention.

13 Given the impending approach of Serbian forces and his grave  
14 immobile condition, we know the only reason to do so was they never  
15 intended for him to be released. Unlike other prisoners who only  
16 learned of the accused and his subordinates in the course of their  
17 imprisonment, the murder victim knew the accused, knew him as Salih,  
18 and knew his subordinates as well.

19 Everything we know adds up to just one conclusion: The accused  
20 knew the murder victim had been arrested. This particular victim was  
21 singled out from the beginning for more severe treatment. He was  
22 tortured from the day of his arrival in unimaginable ways until he  
23 could not stand or walk or even open his eyes. Until his flesh,  
24 black with bruises, smelled of decay and death.

25 In that condition, he was held back while other were released.

1 And then shortly thereafter, his body was found just next to the  
2 isolated Zllash detention compound, the place where he had been  
3 tortured.

4 While the SPO has not called a witness who was present when the  
5 murder victim drew his last breath, that cannot be a prerequisite to  
6 a finding of guilt. The accused and those under his command  
7 committed this crime so there would be as few witnesses as possible,  
8 torturing the victim at a remote location and then releasing other  
9 victims who could be witnesses to his final moments.

10 Salih Mustafa, commander of BIA, was there at the Zllash  
11 detention compound the very day this victim was delivered into his  
12 custody, delivered to a place that he would never leave.  
13 Salih Mustafa, as the commander of BIA, was there at the Zllash  
14 detention compound the very time the fateful decision was made not to  
15 release this victim along with other prisoners, despite the impending  
16 approach of Serbian forces.

17 The accused is criminally responsible for his murder, and the  
18 facts leave no room for reasonable doubt under each of the theories  
19 of liability charged in this case.

20 There are other victims in this case who survived their time in  
21 Zllash but only as broken men. Some sat in a chair in this  
22 courtroom, told you what they suffered, told you about their enduring  
23 pain, their nightmares. Our trial team will talk about their  
24 evidence in more detail, about what was proven in this case, about  
25 the responsibility of the accused, but for a moment I would like to

1 talk to you about the tremendous courage these people showed to come  
2 here to testify.

3 They did so in a climate of fear and intimidation that persists  
4 in Kosovo to this day. It's part of the reason this Court was  
5 created, and certainly why this courtroom is located here in  
6 The Hague.

7 When considering the evidence of these victims, when weighing  
8 their testimony and weighing their credibility, please keep in mind  
9 these circumstances. Keep in mind how hard it was for these victims  
10 to come here and tell you their stories. And we saw it in this case,  
11 the intimidation that persists in Kosovo to this day. [REDACTED]  
Pursuant to Order F474RED.

12 [REDACTED] Pursuant to Order F474RED.

13 [REDACTED] Pursuant to Order F474RED.

14 [REDACTED] Pursuant to Order F474RED.

15 [REDACTED] Pursuant to Order F474RED.

16 [REDACTED] Pursuant to Order F474RED.

17 [REDACTED] Pursuant to Order F474RED.

18 [REDACTED] Pursuant to Order F474RED.

19 Now, you will remember, and I would submit to Your Honours it is  
20 no coincidence, that just after the accused was summoned for  
21 interview by the SPO he received information from an associate about  
22 this very same witness, Witness 3593. Why? The only reasonable  
23 inference is that the accused and his associates knew that this  
24 witness, 3593, was detained at Zllash and could provide damaging  
25 evidence against him.



1           [REDACTED] Pursuant to Order F474RED.

2           [REDACTED] Pursuant to Order F474RED.

3           [REDACTED] Pursuant to Order F474RED.

4           Your Honours, you can see how these pieces fit together. Is it  
5 surprising, then, that when Witness 3593 came to Court, he  
6 persistently refused to say the accused's name aloud to you.

7           And then there was Witness 3594. It will be for Your Honours to  
8 assess and weigh his credibility and his demeanour, but we submit  
9 that this witness was afraid, very afraid to be a witness against a  
10 KLA commander like the accused. He attempted to recant previous  
11 statements. He attempted to minimise the serious injuries he saw to  
12 other prisoners. He even withdrew from proceedings as a  
13 participating victim.

14           Significantly, this same witness, Witness 3594, admitted in a  
15 prior interview statement that he had been "sent word to be careful,  
16 not to mention any names." And at trial, Your Honours, he did just  
17 that.

18           I say all this to you because the witnesses who came before this  
19 Chamber to tell their stories live in this climate of intimidation  
20 and retaliation every day. They are subject to it and their families  
21 are subject to it.

22           I dearly hope that the work of this Tribunal and that the truths  
23 that it exposes through evidence and law over time help eradicate  
24 this climate that has been the scourge of rule of law efforts in  
25 Kosovo for two decades now.

1           In the meantime, in your deliberations on this case,  
2           Your Honours will be required to consider how this climate has  
3           affected individual witnesses.

4           Now, throughout this case, throughout the Defence case, we saw  
5           numerous Facebook posts from supporters of the accused. Those posts  
6           described how proud they were of him, to the point of creating  
7           T-shirts to show their support for him. Sadly, you will find no  
8           public statements of support for the victims of his crimes. They  
9           stand nothing, nothing to gain, by naming him as they're tormentor.  
10          Only to be named as pariahs by those who cling to this false concept  
11          of an entirely clean war, where the Serbian forces committed  
12          atrocities but the KLA not a single crime.

13          Your Honours, we ask that the Court take this reality into  
14          account in assessing the credibility of the witnesses in this case,  
15          particularly those witnesses like 1679, 4600, and 3593, whose  
16          testimony directly implicates the accused, a senior KLA commander, in  
17          the crimes you've heard about.

18          Given the climate of retaliation that they live in and that  
19          their families live in, they had every reason - every reason - not to  
20          say his name knowing what doing so could mean for them and their  
21          families. They had absolutely zero reason to identify him, to say  
22          what he did, if he were not there, if he were not in charge, and if  
23          he were not participating and overseeing their torture.

24          The raw courage these witnesses had to exhibit to come forward  
25          and all they have stood to lose by doing so weighs very strongly in

1 favour of their credibility.

2 When our trial team goes through the evidence of these witnesses  
3 in more detail, you'll also hear how their evidence was repeatedly  
4 corroborated over and over again during the course of a year of  
5 trial. From the accused's admissions regarding his presence at  
6 Zllash, to his admissions regarding his role as the unquestioned  
7 leader of BIA, the victims' stories were corroborated by the accused  
8 himself in ways they could never have imagined when they gave their  
9 initial statements.

10 Similarly, the victims' ability to name actual BIA soldiers  
11 involved in their torture, whose presence at Zllash was confirmed by  
12 completely unrelated witnesses and other evidence, provides telling  
13 corroboration, as does the prisoner list and the forensic report  
14 submitted by Victims' Counsel, both of which the victims could never  
15 have known would exist when they gave their statements implicating  
16 the accused.

17 This case is and must be about the victims, but ultimately it is  
18 also, of course, about the accused and his conduct. The evidence  
19 that proves his responsibility for the crimes charged is compelling  
20 and layered, and it will be presented over the course of today in  
21 detail by our team.

22 What is notable is the commanding role of the accused over BIA  
23 and the Zllash detention compound. He was not an absent or  
24 disengaged commander. As he explained himself, when asked about the  
25 headquarters of BIA during his interview with the SPO, he stated

1 unequivocally, and I quote, "I am the headquarters," underlying his  
2 complete and ultimate authority over his subordinates in BIA. He was  
3 a commanding figure in BIA in all respects: He gave orders, and  
4 those orders were followed.

5 The first time Witness 1679 was beaten, the very first time, it  
6 was in the presence of the accused who initiated, who began, who  
7 started the assault. And then after the accused's subordinates  
8 joined in, he directed his subordinates to "finish him." The  
9 soldiers obeyed and continued to punch, kick, and beat Witness 1679  
10 until he lost consciousness.

11 In his commanding role, he modelled criminal brutality to his  
12 subordinates, directly participating in barbaric beatings of  
13 prisoners, giving them license and direction to do the same. By  
14 committing serious acts of violence in front of his subordinates, he  
15 communicated in a way that words cannot that he approved, that he  
16 condoned, and then he expected - expected - them to behave similarly.

17 This brings me to the issue of sentencing. My office has  
18 requested that you impose a lengthy term of imprisonment on the  
19 accused in this case. And you should know that we do not do so  
20 lightly but only after a thorough consideration of all the relevant  
21 factors that can legitimately be considered in determining the just  
22 sentence in such a serious case.

23 The gravity and depravity of the charged crimes, including the  
24 tremendous effect they've had on the lives of the victims in this  
25 case, is a particularly weighty consideration.

1           In this case, the accused's dual role as commander and  
2 participant constitutes a particularly aggravating factor for  
3 sentencing. As a direct perpetrator Salih Mustafa ensured that those  
4 under his command treated the victims with particular brutality.

5           Conversely, the lack of any mitigating factors of any weight is  
6 especially striking in this case. Independent of defending himself  
7 against the charges he faced, the accused has never once made any  
8 effort to express remorse or sympathy for the victims of the crimes  
9 you've heard of over the last year. Despite hearing how the murder  
10 victim was beaten until his skin was black with bruises, despite  
11 hearing how Witness 1679 was electrocuted, how victims were  
12 stigmatised in their communities for decades, how they suffer  
13 physically and psychologically until this day. Never once did he  
14 offer a hint of remorse or even an acknowledgement of the damage that  
15 had been caused.

16           Coupled with the weighty aggravating factors, this lack of  
17 mitigation weighs strongly in favour of the sentence we've  
18 recommended.

19           This case is about the victims and their families, innocent  
20 persons who suffered a lifetime of pain because of the accused. This  
21 case is also about accountability in affirming the rule of law for  
22 the future in Kosovo. A future built on justice the victims and  
23 families have sought for so long and on their freedom to live as  
24 equal members of the Kosovar community.

25           Your Honours, for these reasons and based solely on the evidence

1 and the law, we ask that you find the accused guilty of each of the  
2 crimes charged and impose the sentence recommended as it is a just  
3 and fitting one for crimes so heinous and so grave.

4 Thank you very much for your time this morning. I will now turn  
5 the floor over to my colleagues who will continue our presentation  
6 and provide additional details of our arguments. Thank you, again.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Prosecutor.

8 I will now give the floor to one of your colleagues.

9 MS. D'ASCOLI: Good morning, Your Honours, and everyone in and  
10 around the courtroom.

11 As the Specialist Prosecutor has already outlined, you had the  
12 opportunity to hear throughout the trial the voices of the victim  
13 witnesses who courageously came forward to testify in this case about  
14 what they experienced in Zllash in April 1999.

15 After more than 23 years, this trial has given them an  
16 opportunity to speak, to have their voices heard. And what have they  
17 helped us establish? What have they told us?

18 One message should be clear from the outset. The evidence  
19 presented at trial proves that the accused, Mr. Salih Mustafa, is  
20 responsible beyond reasonable doubt for all of the crimes charged in  
21 the four counts of the indictment. The crimes of arbitrary  
22 detention, cruel treatment, torture, and murder.

23 In this first part of the SPO closing statements, the Specialist  
24 Prosecutor's Office, SPO for brevity, will outline what the  
25 Prosecution case is about and analyse in which ways the evidence of

1 the victim witnesses is corroborated. After the break, we will  
2 continue with discussing further elements of credibility and  
3 corroboration of the evidence, including those concerning the  
4 responsibility of the accused. We will then move on to assess the  
5 Defence case, and the concluding part of the SPO statements will  
6 focus on sentencing.

7 Your Honours, let me return to September 2021 when the SPO  
8 opened this case in this very courtroom. In its opening speech, the  
9 SPO underlined the relative simplicity and straightforwardness of the  
10 facts of the case to be presented. Throughout the trial, you heard  
11 the victim witnesses who, in simple and compelling terms, told you  
12 how during the war in Kosovo, between approximately 1 and 19 April  
13 1999, they were taken to the village of Zllash and were unlawfully  
14 held in a compound in harsh, deplorable conditions unfit for humans.  
15 You heard them describe how they were repeatedly abused, threatened,  
16 severely beaten or tortured by their captors. Their stories were  
17 straightforward. Their stories were strong, were similar to one  
18 another, and corroborating of one another. Their stories,  
19 Your Honours, established all of the elements of the crimes charged  
20 in the indictment and the responsibility of the accused,  
21 Mr. Salih Mustafa, for those crimes.

22 Before moving to their stories, to their evidence, let me  
23 briefly describe the location where the charged crimes were  
24 perpetrated. The location matters greatly in this case.

25 The SPO has referred to the detention place where the victims

1 were held as the Zllash detention compound. We are all familiar in  
2 this courtroom with its location, structure, as these were amply  
3 discussed at trial, so for the benefit of the public, however, I  
4 would like to show a few slides for us to visualise where the crimes  
5 charged in the indictment took place in April 1999.

6 The crimes occurred in Zllash, as we know, a small remote  
7 village located in the mountainous region of Gollak, east of  
8 Prishtine, the capital of Kosovo. The map now displayed on the  
9 screens depicts the relation of Zllash in relation to Prishtine. You  
10 can see Zllash on the right-hand side. It is circled in blue. It is  
11 about 20 kilometres by road from Prishtine.

12 In April 1999, the village of Zllash consisted of a few clusters  
13 of houses scattered over a wider hilly area being connected to the  
14 main roads only via a small winding way. This is shown in the aerial  
15 photograph now displayed on the screen. You can see the group of  
16 houses in the middle of the photo. They are circled in blue. They  
17 represent the Zllash detention compound. You can see how isolated it  
18 was. You can see how small it was, surrounded only by trees, far  
19 away from inhabited places.

20 Who ran this compound in April 1999? The compound was run by  
21 members of the Kosovo Liberation Army, in particular, by a KLA group  
22 called BIA, B-I-A, which was commanded by the accused,  
23 Mr. Salih Mustafa. He was also known as Commander Cali or simply  
24 Cali.

25 As we heard at trial, the compound, which the SPO has called the



1 Zllash detention compound, was known in the area as the Skifterat  
2 base or compound. The BIA unit, commanded by the accused, was, in  
3 fact, also known as Skifterat. BIA used that location as one of its  
4 bases. Salih Mustafa, as the BIA commander, was in charge and in  
5 control of the compound and of his BIA soldiers operating there.

6 Now, a few buildings of this compound are particularly relevant  
7 for this case as they were used by Salih Mustafa and other BIA  
8 members to detain, interrogate, and mistreat at least seven local  
9 Kosovo Albanian civilians during the timeframe of the charges.

10 Your Honours, the relevant buildings now appear on the screens.  
11 I will return to these buildings in a moment.

12 Let me now discuss, although in brief, what the evidence  
13 presented at trial established in relation to the four counts charged  
14 in the indictment. The details of the witness evidence of the  
15 victims, those who survived the mistreatments and torture in Zllash,  
16 are provided in the Prosecution final trial brief, so I will only  
17 give an outline of the established facts.

18 First, who were the victims of the crimes in this case?

19 As the Specialist Prosecutor said already, the victims were all  
20 local Kosovo Albanian civilians. None of them were taking active  
21 part in the hostilities at the time they were arrested, mistreated,  
22 or, for one of the detainees, killed. None of them posed any  
23 military threat to the KLA. None of them assisted the Serbian forces  
24 in any way.

25 What happened to those victims?

1           They were arrested or abducted, taken to the village of Zllash  
2           and detained. No arrest documents were provided to them. The  
3           victims were not told why they were arrested and then kept in  
4           detention, aside from some baseless accusations made during the  
5           interrogations that they were thieves, spies, Serbian collaborators.  
6           No evidence was presented at trial that they were spies,  
7           collaborators. None.

8           Where specifically were the victims taken in Zllash?

9           They were all taken to the Zllash detention compound and,  
10          specifically within it, to a set of buildings that the victims all  
11          consistently and independently recognised in photos shown to them  
12          during their in-court testimonies.

13          The victims described being held in a cow shed, stable or place  
14          used to keep animals, in their words, as well as in the basement of  
15          the building where they were taken for interrogation and beatings in  
16          the upper floor.

17          Your Honours, the relevant buildings will now be shown on the  
18          screen.

19          Most of the victims, including the murder victim, were detained  
20          in what we see on the screen as the building marked as 4A. This  
21          building is now in focus on the screens. As well as in the basement  
22          of the building attached to it, which in the photo is marked with a  
23          red circle. This building is also zoomed in on the screens right  
24          now.

25          They were also frequently mistreated in both of these places, 4A

1 and the basement of the building now on the screens. On the upper  
2 floor of the building still on the screens, the entrance to which you  
3 can see marked in red with a vertical line in the zoomed-in part,  
4 detainees were interrogated and tortured.

5 Witness 4669 was detained in a separate building marked with  
6 number 5. Your Honours can see the zoomed-in part of this building  
7 on the screen.

8 A few words about the photo now on the screens. Your Honours  
9 will remember that this is a photo that was marked in court by  
10 Defence Witness Selatin Krasniqi, a BIA member himself. He was the  
11 nephew of Adem Krasniqi, the owner of the Zllash detention compound  
12 who had let the KLA use it as a contribution to the war effort.

13 Mr. Selatin Krasniqi knew the Zllash detention compound well and  
14 described it to the court; however, omitting what really happened in  
15 those buildings.

16 The evidence presented by the SPO established beyond reasonable  
17 doubt that the victims were held in those buildings, at the Zllash  
18 detention compound. Some for a few days or a week. Some others for  
19 about two weeks. Some others for up to 18 or 19 days.

20 During their detention, the victims were beaten, mistreated, and  
21 tortured almost every day, both in the barn, which was building 4A,  
22 and in the interrogation room, the upstairs part we just saw. In the  
23 barn, mistreatment took place in front of the other detainees, and  
24 these also instilled fear in all of them.

25 Detainees were also taken, as we said, in the building upstairs

1 where they were interrogated, beaten, tortured. This upstairs part,  
2 and again we see it now zoomed in on the screen, was accessible  
3 through that door indicated with the vertical line that I have  
4 mentioned. When detainees were taken upstairs through that door,  
5 they were taken there individually, one at a time. They were  
6 interrogated there and they were brutally beaten, mistreated or  
7 tortured as we have heard during trial.

8 At the Zllash detention compound, detainees were also  
9 psychologically abused. This, for example, included the soldiers  
10 entering the barn and displaying to the other detainees the severely  
11 injured body of one detainee in particular, the victim who was later  
12 murdered.

13 At the Zllash detention compound, the conditions of detention  
14 were deplorable, inhumane. The victims were made to sleep on the  
15 floor in the animal barn, were given insufficient food and water,  
16 were kept in extremely unsanitary conditions. No medical care was  
17 offered to mend the wounds inflicted by the accused and his  
18 subordinates during the frequent interrogation and beating sessions.  
19 No family contacts or visits were allowed.

20 And what role did Mr. Salih Mustafa have in all of that? The  
21 evidence established that he himself took part in and oversaw the  
22 mistreatments at the Zllash detention compound. Two witnesses in  
23 particular, 1679 and 3593, named the accused as directly  
24 participating in their interrogation and beatings.

25 Let's first recall the evidence of Witness W01679. This

1 witness, after being taken to the Zllash detention compound by BIA  
2 soldiers, was interrogated by Commander Cali. That is the accused,  
3 Mr. Salih Mustafa. Commander Cali accused him of being a liar,  
4 shouted at him, cursed him, and then slapped him and beat him before  
5 leaving him to the hands of his BIA soldiers who beat 1679 until he  
6 lost consciousness.

7 The accused also took part in the beatings and mistreatment of  
8 Witness W03593. This happened soon after the witness was taken to  
9 the Zllash detention compound and put in the barn. Shortly after  
10 that, he was dragged out of the barn by three to four people, taken  
11 to another building, and there he was severely beaten up. He was  
12 kicked, hit with wood, injured on his head and teeth, and he fainted  
13 at least a couple of times during those beatings.

14 Those people were swearing at him and accusing him of being a  
15 collaborator of the Serbs. The beating, which lasted for a long  
16 time, ended when a man with a red hat, who was present during those  
17 beatings and whom the witness identified as the accused, took a  
18 revolver, put it to the witness's head and pulled the trigger. The  
19 gun clicked but did not fire, and that man, the accused, said: "Let  
20 him be. He is lucky."

21 The accused then interrogated the Witness 3593 about a week  
22 later. That time, the accused, again identified by this recognisable  
23 red hat, asked 3593 questions about thieves and then beat him with a  
24 baseball bat.

25 Further, the evidence established that the accused was at the

1 Zllash detention compound when the victim who was later murdered was  
2 taken there. Surviving Witnesses 1679, 3593, 4669 provided  
3 compelling evidence concerning the circumstances that ultimately led  
4 to this victim's murder. They testified about his extremely brutal  
5 and prolonged mistreatment, that he was kept behind and not freed  
6 when the other detainees were released in the wake of the Serbian  
7 offensive on or about 18, 19 April 1999.

8 Witnesses W01679 and W04669 also testified that the last time  
9 they saw the murder victim, he was in a terrible, near-to-death  
10 physical condition. The body of this victim was later found in a  
11 shallow grave in the immediate vicinity of the Zllash detention  
12 compound.

13 My colleague Mr. de Minicis will address Count 4, murder, in  
14 more details in his presentation later today.

15 On its own, Your Honours, the evidence of the victims  
16 establishes all of the elements of the crimes charged in the  
17 indictment beyond a reasonable doubt, and this evidence is powerfully  
18 corroborated. I want to discuss today the corroboration coming in  
19 particular from the accused himself, from the victims, to the extent  
20 that they corroborated one another, from the testimony of other  
21 witnesses in the case, as well as from non-testimonial documentary  
22 evidence that is in the record.

23 I will first start with the accused's own statement. And within  
24 that, I will focus on certain specific admissions that he made.

25 As we know, Mr. Mustafa was interviewed by the Specialist

1 Prosecutor's Office as a suspect. He had a lawyer present and was  
2 advised of his rights, including his right to remain silent. Let's  
3 watch a short clip from the SPO interview where it confirmed the  
4 propriety of the interview process.

5 [Video-clip played]

6 MS. D'ASCOLI: So as we could see and hear, Mr. Mustafa  
7 confirmed he did not have any objections to the manner the interview  
8 was conducted and the way the statement was taken.

9 Now, before going into important aspects of his admissions, I  
10 think we have to answer one question: How should we assess  
11 Mr. Mustafa's statement?

12 When assessing his interview with the SPO, when comparing the  
13 content of that interview to the evidence in the case, Your Honours  
14 will see that he tried to walk a very careful line. Let's not forget  
15 that he was interviewed as a suspect. As such, he walked the fine  
16 line between appearing credible and not admitting responsibility. He  
17 admitted what he had to. He denied what he had to.

18 He admitted those facts that would be hard to refute because of  
19 the evidence available on them that he knew about. For example, he  
20 admitted being at the Zllash detention compound during the timeframe  
21 of the charges. He admitted being in charge of BIA. He confirmed  
22 the identity of specific members of BIA. And, Your Honours,  
23 significantly, in brackets, those are soldiers named by the victims  
24 as participating in their beatings, in their mistreatment.

25 Mr. Mustafa even admitted hearing rumours of civilians being

1 detained at the Zllash detention compound, but he stopped there, to  
2 hearing rumours. He knew that if he had admitted even only a little  
3 more - for example, that people were for a fact detained and abused  
4 at the Zllash detention compound, that it was not just a rumour - he  
5 could not escape responsibility for those crimes as he was the one in  
6 command there.

7 The admissions he made are significant, no doubt more  
8 significant than Mr. Mustafa realised at the time, and they  
9 powerfully corroborate the victims in key aspects.

10 Let's discuss these admissions in a little more detail.

11 I will start with the admission regarding time and place. So  
12 first, the accused made important admissions concerning time and  
13 place relevant to the charges. He admitted he was in Zllash during  
14 the indictment period. He started by explaining that between  
15 25 March and 22 April 1999, he stayed in Zllash. He, and I quote,  
16 "slept there overnight two or three times for a couple of nights."  
17 He specified that he left Zllash at some point between 12 and  
18 14 April 1999, and confirmed that he was present in Zllash before  
19 this date.

20 More specifically, what he said was that he was there, and I  
21 quote, "perhaps 15 days or 20 days before the offensive," which,  
22 according to him, commenced on or about 16 April 1999.

23 Second, the accused admitted his presence not just in Zllash but  
24 specifically at the Zllash detention compound, confirming that, when  
25 in Zllash, he stayed in one of the buildings of the Zllash detention



1 compound. He confirmed that some BIA soldiers were based in Zllash  
2 and that they used as a safe house the compound that we have seen on  
3 the screen, the compound that the SPO has referred to as the Zllash  
4 detention compound.

5 So why are these admissions regarding time and place important?  
6 Your Honours, because they match and therefore corroborate the  
7 evidence given by 1679 and 3593 with regard to the time, that is, the  
8 beginning of April 1999, when they saw the accused in Zllash because  
9 he participated in their beatings and mistreatment. They're  
10 important because they confirm the place, the very same place, the  
11 Zllash detention compound, where these victims say they were  
12 interrogated and mistreated by the accused.

13 So we know from the accused that he was there.

14 Mr. Mustafa's admissions on time and place also match, and thus  
15 corroborate, the evidence concerning when and where the murder victim  
16 was delivered to the Zllash detention compound in his presence, in  
17 the presence of the accused.

18 To sum up, Your Honours, the accused admits that he was at the  
19 Zllash detention compound in early April at the same time, early  
20 April, when 1679, 3593, and 4600 say they saw him there.

21 Now, the question is if these witnesses were making up their  
22 stories, how is it possible that they picked as the time when they  
23 saw the accused at the Zllash detention compound, that they picked  
24 the exact time when the accused himself admitted he was there. If  
25 they were making it all up, how could they possibly have known that

1 Mr. Mustafa was there at that time? The answer is they could not.  
2 The probability of such coincidence is, in fact, zero, and does just  
3 not happen in objective reality.

4 The fact that the accused admits he was at the Zllash detention  
5 compound at the time he said he was is a powerful corroboration of  
6 the account provided by the victim witnesses.

7 I will move to a second admission which is also important. The  
8 accused admitted that he was the one in command of BIA, including the  
9 unit's members whom we know from witness evidence were stationed at  
10 the Zllash detention compound in April 1999. The accused was the  
11 only commander of BIA throughout the unit's existence, as he said.  
12 He was the unit's ultimate authority, as he phrased it himself, and  
13 we now see it on the screen as an excerpt: "... I was the  
14 headquarters."

15 The accused had the power to nominate his subordinates to  
16 various positions in BIA, including his deputies, head of sectors,  
17 and to discipline them. His commanding power over his soldiers was  
18 evidenced by the orders he was imparting to them and which were  
19 executed. We have in evidence several examples of those orders,  
20 including one concerning an attack on a Serbian fuel depot conducted  
21 in March 1999, which the accused discussed in his interview.

22 Again, why are these admissions important? Because  
23 Mr. Mustafa's admissions about his role and about his command over  
24 the soldiers in BIA match, again, the evidence given by 1679 and  
25 3593, amongst others, of course. These witnesses said that the

1 accused was referred to by others as "commander." They also saw  
2 while they were held at the Zllash detention compound that he  
3 exercised authority over the soldiers there, over those soldiers who  
4 engaged in the abuse and torture of the detainees.

5 Again, powerful corroboration of the evidence provided by the  
6 victims, which cannot be read as a mere coincidence, especially since  
7 the victims did not know Commander Cali when they were taken to  
8 Zllash. They could not know about his title or authority. They  
9 didn't.

10 The third important admission of the accused is that people  
11 were, indeed, held in the compound in Zllash. When questioned about  
12 it during the SPO interview, Mr. Mustafa first said that he knew that  
13 soldiers were held there, and he remembered two episodes: One at the  
14 end of March 1999, and one in April 1999.

15 When pressed further, Mr. Mustafa also admitted having heard  
16 rumours that civilians, some of them allegedly being thieves, were  
17 detained in what the SPO called the Zllash detention compound, which  
18 is the place where the accused said he was staying when in Zllash.  
19 Mr. Mustafa said that that fact, the detention of civilians, was not  
20 a secret. He added that he heard that some of those civilians were  
21 released in the wake of the incoming Serbian offensive, but he  
22 maintained that he did not see them himself.

23 Note here how carefully the accused walks the line in his  
24 statements. He tries to admit as much as he has to because he knew  
25 those detentions were known, were not a secret, while underlining at

1 the same time that he had nothing to do with the detention of  
2 civilians.

3 So what was his actual knowledge of the victims being detained  
4 and abused? What was his action, participation in interrogations and  
5 beatings? Those were turned, in the interview, into rumours that  
6 civilians were being held at the very location he commanded, at the  
7 very location where BIA soldiers were stationed together with him.

8 In the end, even this careful and strategic admission by the  
9 accused corroborates the victims in this case. They testified how  
10 they, as civilians, were detained and that some of them, including  
11 the victim, who was later murdered, were accused of being thieves,  
12 and that most of them were released around 18, 19 April as the  
13 Serbian offensive was approaching.

14 A fourth important admission of the accused that corroborates  
15 the accounts of 1679 and 3593 is that he identified and named three  
16 members of BIA specifically mentioned by these victims. In  
17 particular, the accused had knowledge that a person nicknamed Tabuti,  
18 which means coffin, as we heard at trial, with the real name of  
19 Nazif, was indeed a BIA members. Your Honours will remember that the  
20 nickname Tabuti was heard by the victims, by 3593 and 1679 at the  
21 Zllash detention compound as belonging to one of their chief  
22 tormentors.

23 Two other soldiers confirmed by the accused among the BIA  
24 members were Brahim Mehmeti, Bimi, and Ilmi Vela, Vdekja, Death, he  
25 was known as such. Again, their names were both mentioned by one of

1 the victims, 1679, among those of the soldiers in Zllash who  
2 participated to his mistreatment.

3 Your Honours will remember that Witness 01679 even recognised  
4 Bimi.

5 Now, the naming of these three individuals independently by the  
6 victims on one hand and by the accused on the other is again a  
7 powerful corroboration of the evidence provided by the victims. If  
8 they were making up their stories, as the Defence now contends, would  
9 they be able to specifically name people who participated in their  
10 abuse? People whom the accused himself in his own interview admits  
11 were, in fact, members of BIA? What is the chance of that happening?  
12 The chance is zero.

13 The victims provided those names because they were at the Zllash  
14 detention compound. They were detained there. They were abused  
15 there by the accused and his subordinates whose names the victims  
16 heard at the Zllash detention compound and clearly remembered and  
17 testified about very courageously. And as I said, W01679 even  
18 recognised physically Bimi.

19 And a further note, aside, is interesting to be made at this  
20 point. While the accused admitted that Coffin, that Bimi were  
21 members of BIA, he did everything he could in his interview to  
22 minimise their roles, protecting both them and himself. He no doubt  
23 knew that, as close associates, any responsibility for the crimes  
24 that fell on them could also fall on him, their commander.

25 This extrication strategy of the accused was particularly

1 visible with regard to his former deputy in BIA, Brahim Mehmetaj,  
2 also known as Bimi, who Mr. Mustafa tried to remove from the scene,  
3 claiming that Bimi was never or was rarely in Zllash. I quote from  
4 Mr. Mustafa's interview:

5 "Bimi did not. Bimi never stayed in Zllash. He might have  
6 visited for an hour or two, but he did not stay in Zllash."

7 This is from Part 8 of the interview.

8 Your Honours will remember how close to this version of the  
9 facts the evidence that Mr. Mehmetaj provided to the SPO, when he was  
10 also interviewed by the SPO as a suspect, was. And he was  
11 interviewed by the SPO as a suspect some months after Mr. Mustafa had  
12 been interviewed as a suspect.

13 Mr. Mehmetaj, in the SPO interview, never mentioned being in  
14 Zllash in April 1999.

15 Your Honours will also remember a call log, which is now on the  
16 screens, extracted from the phone of Mr. Salih Mustafa which was  
17 seized by the SPO. Your Honours will remember that this log  
18 established, and we see the specific entry highlighted on the screen,  
19 that Mr. Mustafa and Mr. Mehmetaj spoke the day before the SPO  
20 interview with Mr. Mehmetaj, at the minimum. They then communicated  
21 again just five minutes after the conclusion of the SPO interview.

22 And we will now see the relevant excerpt of these other phone  
23 calls on the screens.

24 Your Honours will also remember how Mr. Mehmetaj's account of  
25 the times he was in Zllash changed substantially during his in-court

1 testimony in this case, and that Mr. Mehmetaj then placed himself in  
2 Zllash in April 1999. The SPO showed, during cross-examination, why  
3 he did so, why he changed his account and tried to help the accused's  
4 defence.

5 The accused adopted the same extrication strategy with regard to  
6 Ilmi Vela, also known as Vdekja, Death, whom the accused allegedly  
7 demobilised in March 1999, shortly before the events charged in this  
8 case. In this way, Mr. Mustafa provided Mr. Vela with a convenient  
9 alibi for whatever happened in Zllash in April 1999, and he further  
10 distanced himself from the crimes that Vela participated in as we  
11 heard from the victim witnesses.

12 Beyond these three individuals whom the accused confirmed as BIA  
13 members and who were named by the victims as being present in Zllash,  
14 there are also two other BIA members whose names were connected to  
15 the events in Zllash. These are Dardan and Shyti. These are nom de  
16 guerre nicknames.

17 Dardan was identified at trial as Kujtim Qerimi. Wartime  
18 photographs seized from the USB drive on Mr. Mustafa's person at the  
19 time of his arrest show Mr. Mustafa and Dardan together.

20 Let me just give you two examples of those photos. We have a  
21 first one now on the screens. We can see Mr. Mustafa in the middle  
22 with the red beret, and Dardan is the soldier on the right-hand side  
23 of the photo. He is circled in blue. The faces are blurred for the  
24 public screening of this photo.

25 A second photo. Again, we can see Mr. Mustafa with the red

1 beret kneeling down in the front part of the photo, and Dardan is the  
2 person circled in blue. They're all together. Again, the faces are  
3 blurred just to allow for public screening.

4 Your Honours will remember that Witness 1679 named Dardan as one  
5 of the perpetrators of the abuses he underwent in Zllash.

6 Let's move to Shyti. Defence Witness Muhamet Ajeti confirmed,  
7 during his in-court testimony, that his nom de guerre was Shyti, that  
8 he was a member of BIA, and that he was in Zllash at the beginning of  
9 April 1999.

10 Your Honours will remember that Shyti was mentioned by a witness  
11 as one of the guards at the Zllash detention compound. And  
12 Your Honours will also remember that Mr. Mustafa had Mr. Ajeti's  
13 number registered in his phone directory as Shyti AAK.

14 In sum, these identifications of Mr. Mustafa's associates in BIA  
15 are a further powerful corroboration of the evidence provided by  
16 1679, 3593, and 4600. These witnesses would not have been able to  
17 name Tabut, Ilmi Vela, Dardan, Bimi, or Shyti had they not met them  
18 at the Zllash detention compound in April 1999.

19 I will address one remaining point of the accused's admission,  
20 which will take us to the break.

21 A fifth important admission that the accused made during the SPO  
22 interview is that during the war in Kosovo he wore a red beret. A  
23 red beret that was not part of the standard BIA uniform. And he said  
24 also that there was no one else in Zllash, to his knowledge, whom was  
25 referred to as Commander Cali and also wore a red beret.



1 Your Honours, this admission, again, is significant.

2 You will remember that Witness 3593 identified the person who  
3 interrogated and mistreated him in Zllash as wearing a red beret.

4 When the accused was arrested, the only photograph he was  
5 carrying in his wallet was the photo you can now see on the screens.  
6 And what was he wearing in that photo? He was wearing a red beret.

7 So this red beret was a particularly distinctive feature of the  
8 accused, whereby he stood out among other KLA members. For example,  
9 this is evident in the photo now on the screens which again was  
10 seized from the accused.

11 The red beret was a very memorable feature and it was so for  
12 W03595. To him, the red beret made Commander Cali stand out among  
13 other KLA members. Your Honours will remember that when he was asked  
14 in court to describe that red hat, W03593 said, and I quote:

15 "So it was like the other hats, but it was red. I think that  
16 was for the fact of making him distinct from the others. He was the  
17 only one to have a red hat. Nobody else had a red hat."

18 Your Honours, as I will now move to the mutually corroborative  
19 accounts of the victims, I think this is a good place for the break.  
20 Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

22 We will then now take a break. We will resume in 30 minutes.

23 The hearing is adjourned.

24 --- Recess taken at 10.58 a.m.

25 --- On resuming at 11.27 a.m.

1           PRESIDING JUDGE VELDT-FOGLIA: We will continue with the closing  
2 statements by the SPO.

3           But before I do that, I check the appearances. I see there that  
4 you are in the same composition.

5           MR. MICHALCZUK: The same composition, Your Honours.

6           PRESIDING JUDGE VELDT-FOGLIA: Very well. And that also goes  
7 from the Victims' Counsel. I see you nodding.

8           And the same goes for the Defence team. Very well.

9           Specialist Prosecutor's Office, you have the floor.

10          MS. D'ASCOLI: Thank you, Your Honours.

11          I will continue on corroboration of the evidence presented by  
12 the Specialist Prosecutor's Office at trial.

13          Moving now to discuss how the accounts given by the victims are  
14 mutually corroborative.

15          The witnesses corroborated one another, as I will be discussing.  
16 First, the victims confirmed seeing one another at the Zllash  
17 detention compound in April 1999, and in their respective testimonies  
18 they explained what they knew about one another. For example, W01679  
19 saw six other detainees including the murder victim, W03594, 3593,  
20 4669, and a young man nicknamed Burmak.

21          Second, the victims provided very similar stories concerning the  
22 way they themselves, as well as the other detainees whom they met at  
23 the Zllash detention compound, were arrested and taken there. For  
24 example, 1679 and 3593, independently from each other, gave the same  
25 information about another witness, W03594, and the reasons for his

1 arrest. The same information was the one that W03594 provided  
2 himself.

3 Third. All the victims detained in Zllash consistently  
4 described the place of their detention and recognised it in photos  
5 shown to them during their in-court testimonies. Their respective  
6 descriptions moreover are consistent with the descriptions provided,  
7 for example, by Defence Witness Selatin Krasniqi, as we said, a BIA  
8 member and a relative of the owners of the Zllash detention compound.

9 Just to give an example. The internal layout of the building  
10 where the detainees were interrogated, as described by V01679,  
11 matches the description provided by Defence Witness Mr. Selatin  
12 Krasniqi when describing the same building, and in particular the  
13 upstairs part of that building that we saw marked with a red vertical  
14 line on the door. They give the same description, that is, the  
15 inside part was composed of two rooms, one on each side of a  
16 corridor.

17 Fourth. The victims corroborated one another's physical  
18 conditions and were consistent about the type and nature of the  
19 mistreatments and torture received, in particular, by the victim who  
20 was later murdered, as well as the dire conditions in which he was  
21 in, in which they all saw him.

22 Fifth. The witnesses testified to similar tools of abuse. For  
23 example, both W03593 and 1679 said that they were beaten with a  
24 baseball bat. W01679 was burned with a hot iron, and 3593 witnessed  
25 burn marks on the body of the victim who was later murdered. 1679

1 said he was electrocuted. And 3593 indicated that he heard -- he was  
2 told from other witnesses that the perpetrators were using  
3 electrocution as a means of torture.

4 Sixth. W03593 and W01679 identified several BIA members as  
5 present at the Zllash detention compound and participating to their  
6 beatings. As I have already pointed out, both victims, 3593 and  
7 1679, identified a man nicknamed Tabuti, Coffin. 1679 also mentioned  
8 Ilmi Vela, aka Vdekja, as well as Afrim, Dardan, Bimi, and Fatmir.  
9 These were all BIA members, as confirmed by the accused and also by  
10 other evidence, including W04600, Ahmet Ademi and Brahim Mehmetaj,  
11 aka Bimi. And the details of these are in the SPO final trial brief.

12 Further, W01679, 3593 and 3594 provided almost identical  
13 descriptions of their release from the Zllash detention compound on  
14 or about 18, 19 April 1999. For example, they all confirmed the  
15 order in which they were released and the fact that the young man  
16 nicknamed Burmak and the murder victim were not released. They also  
17 gave matching accounts concerning a certain visit that they all paid  
18 immediately after their release.

19 In sum, Your Honours, on so many points, the victims  
20 corroborated each other. It bears recalling that all victims gave  
21 their evidence independently from one another at different times and  
22 not even necessarily knowing one another or knowing of others being  
23 witnesses in the case.

24 To believe that their accounts were fabricated requires  
25 believing not just that each of them invented the story that they

1 testified to under oath, but that they all also colluded to make up  
2 the very details of their stories before they were even interviewed  
3 during the investigations in this case. This is a wholly improbable  
4 theory. A sequence of plots that does not occur in objective  
5 reality.

6 And that is not all. Not only the account of the victims was  
7 mutually corroborative. Their evidence was also corroborated by  
8 other witnesses in the case and by documentary evidence. For  
9 example, several witnesses put the accused at the Zllash detention  
10 compound during the indictment period, not only the victims. For  
11 example, Witness 4600 testified about seeing the accused at the  
12 compound at the beginning of April 1999. Thus, supporting the  
13 evidence of 1679 and 3593.

14 Further, the presence of the accused both in Zllash and at the  
15 Zllash detention compound during April 1999 was also confirmed by a  
16 number of other witnesses. For example, Sejdi Veseli, Fatmir Sopi,  
17 and Defence witnesses Teuta Hadri and Selatin Krasniqi.

18 For example, to take one of them, Teuta Hadri testified that she  
19 saw the accused one night before the Serbian offensive and on the day  
20 of the offensive at the Zllash detention compound. This is a  
21 powerful piece of evidence showing that the accused was at the Zllash  
22 detention compound precisely on the day of the release of the  
23 detainees.

24 The presence of the accused, the commander of BIA, indicates  
25 that he was the one who decided which prisoners would be released and

1 which prisoners would not be permitted to leave. Also, several other  
2 witnesses confirmed the identities of BIA members mentioned by 1679  
3 and 3593 as well as by the accused, as we already discussed. These  
4 witnesses include, for example, Fatmir Sopi, Sejdi Veseli, 4600, as  
5 well as Defence witness Muhamet Ajeti, also known as Shyti.

6 Moreover, several witnesses independently testified to  
7 Salih Mustafa's command and authority over the Zllash detention  
8 compound. They primarily include Mr. Fatmir Sopi, Mr. Sejdi Veseli,  
9 and W04600. These witnesses also confirmed that BIA and Brigade 153  
10 were distinct units and that no brigade soldiers were stationed in  
11 the Zllash detention compound.

12 Further significant corroboration about the involvement of BIA  
13 comes from a family member of the victim who was later murdered who  
14 learned from the victims, just after they were released, that they  
15 had been held and detained by Skifterat, that Skifterat was managing  
16 the prison where they were held, and that the detainees had all been  
17 mistreated there, including the victim who was later murdered, who  
18 was treated worse than any of the others.

19 We know Skifterat was another name for the BIA unit. So if we  
20 think about that, just hours after being released, the victims said  
21 who was responsible for their detention and abuse. This is yet  
22 another strong corroboration of the victims' testimonies and of the  
23 accused's responsibility for what happened to them.

24 Evidence coming from Defence witnesses also provided further  
25 corroboration to the evidence of the victims concerning the

1 possibility to perform electrocution at the Zllash detention  
2 compound, which they said was used as a means of torture. For  
3 example, Defence witness Ibadete Canolli referred to the use of car  
4 batteries in April 1999 to provide light inside of the buildings.  
5 This corroborates the account given by 1679 with regard to the use of  
6 what he called electricity boxes at the Zllash detention compound.

7 Further, we heard it was confirmed that there was electricity at  
8 the Zllash detention compound at times. Your Honours will remember  
9 the Defence Witness Teuta Hadri testified that there was a  
10 functioning TV set at the Zllash detention compound when she was  
11 there at a certain time in April 1999.

12 In addition to testimonial evidence, the evidence of the victims  
13 is also significantly corroborated by documentary evidence in the  
14 record, and I will be discussing here now a document that we called  
15 the list of prisoners.

16 Your Honours, I would ask that the next few slides be not  
17 broadcast to the public so that we look at them only inside of the  
18 courtroom.

19 Can I confirm that? Okay. I will proceed then.

20 So the document that we now see on the screens just inside this  
21 courtroom is an original document in Albanian which lists a number of  
22 people detained in Zllash in April 1999. We can see on the screens  
23 the first page of the list. Your Honours can see the names of the  
24 prisoners marked in red.

25 Starting from the top, those names include the murder victim,

1 3593, 3594, 1679. The document indicates the dates of their arrest  
2 consistent, by the way, with those stated by the victims, and also  
3 some other personal details, including names of their fathers, dates,  
4 places of birth, as well as their place of residence.

5 Besides the names and detention of the victims themselves, the  
6 list of prisoners also corroborates other aspects of the evidence  
7 heard from witnesses in this case. First, it contains the names of  
8 as many as 19 detainees. And this is consistent, for example, with  
9 what W03593 indicated in his testimony when he said that the KLA  
10 "were bringing people every night. We have been up to 17 people in  
11 that same room."

12 Second, the document corroborates the testimony of W03594.

13 Can I please confirm that also the next slide is kept in the  
14 courtroom? Thank you.

15 Your Honours, you now see a further page from this document on  
16 the screen. The document contains, in fact, what appears to be notes  
17 taken during the interrogation of W03594. One of the answers of the  
18 witness recorded in these notes that we see on the screens  
19 corroborates the fact that the witness, as he testified, I can give  
20 the quote, it's pages 1034 to 1035, that the witness met with certain  
21 people and discussed with them certain issues appearing on the  
22 screen. I will not further specify them due to the protected status  
23 of the information and of the witness. Your Honours can, however,  
24 see these entries both in English and in Albanian on the screens.

25 Finally, I will move to the next page, also confirming that the



1 page is to be kept in the courtroom. This is a page of notes within  
2 the same document which contains an annotation. This annotation says  
3 "For CALI." Your Honours can see the English and the Albanian on the  
4 screen.

5 Overall, the document containing the list of prisoners offers a  
6 high level of corroboration to the evidence presented by the  
7 witnesses in this case. Its authenticity is proven by the very  
8 aggregate details of its contents. These details could only have  
9 been compiled by those who imprisoned the victims.

10 In fact, the victims were together as a group only one time in  
11 their lives, and that is when they were together in Zllash detained  
12 at the Zllash detention compound. So this list with that information  
13 that we have seen could only have been created then.

14 Finally, other documentary evidence on the record corroborating  
15 the victims are medical records and forensic reports presented at  
16 trial, which corroborates the accounts of the victims, their  
17 condition, what happened to them.

18 In order to remain in open session, I would just refer  
19 Your Honours to paragraphs 186 to 191 of the SPO final trial brief.

20 A corroborating medical record that I can mention is the one  
21 belonging to the murder victim, a medical record which was found  
22 shortly after the war in one of the buildings of the Zllash detention  
23 compound.

24 This in conjunction with testimonial evidence we heard about the  
25 document confirms that the victim who was later murdered was indeed

1 detained at the compound, was there, as testified by 1679, 4669,  
2 3593, and 3594.

3 Your Honours, I will now leave the floor to my colleague,  
4 Mr. Michalczuk, who will continue with the SPO closing statements by  
5 discussing issues of credibility of the evidence presented by the  
6 Specialist Prosecutor's Office. Thank you very much.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.  
8 Mr. Prosecutor.

9 MS. D'ASCOLI: Please allow us a couple of seconds just to  
10 change position.

11 PRESIDING JUDGE VELDT-FOGLIA: Yes.

12 MS. D'ASCOLI: Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, you have the  
14 floor whenever you are ready.

15 MS. D'ASCOLI: Maybe I can already specify that the slides that  
16 were to be kept inside the courtroom are now over. So from the next  
17 ones onwards, they can be again broadcast to the public. Thank you.

18 MR. MICHALCZUK: Your Honours, let me now move on to the  
19 discussion about the responsibility of the accused.

20 The responsibility of the accused for the crimes charged in the  
21 indictment is proven by the testimony of the victims, as we have just  
22 discussed, and these testimonies of the victims are corroborated by  
23 several other evidentiary clusters.

24 First of all, they are confirmed by the admissions of the  
25 accused. Second, they are confirmed by the testimony of each of the

1 victims corroborating the others. Third, they are confirmed by the  
2 testimony of other witnesses, including the Defence witnesses.  
3 Fourth, they are confirmed by the documentary evidence. And, fifth,  
4 they are confirmed by the conduct of the accused during the  
5 investigation.

6 Allow me now, Your Honours, to return to the victims and their  
7 testimony, and let's look at it again to consider just the issue of  
8 their credibility. Let's discuss, specifically, the evidence of the  
9 two victims who identified the accused as being present for  
10 interrogations and beatings, Victim 1679 and Victim 3593.

11 I will start with 1679, Your Honours. This witness was a direct  
12 victim of the accused's criminal conduct. He consistently mentioned  
13 the accused as Cali or Commander Cali across all his statements,  
14 starting from the very first one where the nickname Cali already  
15 features. This witness told the same story from the very beginning.  
16 Even in an environment of intimidation of witnesses, he mentioned the  
17 accused from the very outset.

18 Further, this witness did not embellish the evidence he provided  
19 and did not enrich it across time, which you would expect if you were  
20 falsely blaming the accused. In fact, this witness testified that  
21 Commander Cali personally participated in beating him just one time.  
22 That is when the witness was first taken to the Zllash detention  
23 compound, during which time he also gave orders to the others.

24 Witness 1679 testified that Commander Cali was not present  
25 during all the beatings, and that on the other occasions when he was

1 present, he did not beat the witness but he looked on and made fun of  
2 him while his comrades were beating 1679.

3 This witness credibly testified that he knew who Commander Cali  
4 was because the other soldiers told him that they were taking him to  
5 speak with the commander. This witness knew that as the commander  
6 introduced himself as Commander Cali.

7 He also knew because, once inside the room where the commander  
8 beat him, he heard the others referring to him as Cali. 1679 also  
9 explained that the others addressed the commander by asking, and I  
10 quote, "What shall we do, Cali? What shall we do?" That witness  
11 confirmed that also the murder victim knew who Cali was.

12 And, finally, 1679 recognised Cali in two photographs that were  
13 shown to him by the Trial Panel in this very courtroom.

14 The evidence of Witness 1679 is powerfully incriminating, but it  
15 is also restrained. He did not embellish. He did not claim that the  
16 accused participated in all the beatings. He might have done so if  
17 he were making it all up as the Defence now claims.

18 Moreover, the evidence of this witness, 1679, remained  
19 consistent throughout his in-court testimony and was also consistent  
20 with his prior statements. There were some details he could not  
21 recall or minor inconsistencies in his evidence. This is true.  
22 However, those are exactly what one would expect from a witness being  
23 called upon to recall every detail of events that occurred more than  
24 20 years ago.

25 To the extent that there were errors in the witness's prior

1 statements, 1679 was insistent on clearing them up and explaining  
2 what he remembered. For example, when he was confronted with  
3 seemingly divergent accounts concerning the people who took him from  
4 the Zllash school and brought him to the detention compound, this  
5 witness explained that he remembered he did mention Bimi also in the  
6 past in his prior statements. He was adamant about that and  
7 indicated that the statement taken back then did not adequately  
8 capture what he intended to communicate, considering the different  
9 conditions under which he testified and how he felt at that time.

10 A striking and unplanned confirmation of the witness's ability  
11 to identify his perpetrators occurred when Brahim Mehmetaj, Bimi,  
12 testified at trial. 1679 immediately recognised him as the Bimi --  
13 the same Bimi who participated in his mistreatment at the Zllash  
14 detention compound even before Mr. Mehmetaj acknowledged that his  
15 nickname was, indeed, Bimi.

16 Witness 1679 on that day was watching the proceedings on  
17 television, and he promptly recognised Bimi as he appeared on the  
18 screen. Your Honours know that this is confirmed by a text message  
19 that the witness sent that is in evidence. In that message, 1679  
20 wrote that he recognised Bimi as the one who mistreated him in  
21 Zllash. And, again, this message was sent before Mr. Brahim Mehmetaj  
22 said in his testimony that his nickname was Bimi.

23 The identification of Bimi by this witness, in an unprompted  
24 test 23 years after the events in Zllash, corroborates and supports  
25 his identification of Bimi as one of the people who tortured him, but

1 it also demonstrates his ability to identify the persons involved in  
2 his abuse and torture, including the accused. It was an objective  
3 test of the witness's ability to recollect what he saw and what he  
4 remembered, a test that the witness, Your Honours, passed with flying  
5 colours, and the Court should heavily factor it in when assessing his  
6 identification of the accused.

7 Your Honours, I will now turn to the second witness in this  
8 case, 3593.

9 This witness indicated the reasons why he was sure that his  
10 tormentor in Zllash was, indeed, the accused, that it was indeed  
11 Cali, and how he identified him.

12 The witness first saw the accused in Zllash on three occasions.  
13 During the first beating that took place on the same day when he was  
14 arrested and taken to the detention compound. Then during the second  
15 beating that took place a few days later. And then when the accused  
16 came at one point to the barn with his soldiers.

17 During the first beating, 3593 looked up once and saw the  
18 accused who was wearing the red hat, as the witness put it. Even if  
19 it was dark, the witness was still able to see the accused in the  
20 light of the torch, as he said himself. And he could see the accused  
21 as the accused was wearing exactly that distinctive red beret that we  
22 discussed before the break. On that occasion, the accused had no  
23 mask on his face.

24 What made 3593 remember the accused particularly well was also a  
25 traumatising and memorable experience in the course of which the

1 accused put the pistol to the head of the witness and pulled the  
2 trigger. The witness characterised that particular moment as  
3 horrifying and described it consistently in all of his statements.

4 Let's move on to the second beating of this victim. During this  
5 second beating, the sack was removed from the witness's head and he  
6 could see the accused clearly. The accused was in uniform, again  
7 wearing the red hat, and was the only person beating the witness with  
8 the baseball bat.

9 The witness also heard the accused's nickname Cali when he was  
10 in Zllash. As he explained, he heard it once when he was put before  
11 the accused. At that point, someone said, and I quote, "Here. Here,  
12 here, here, Cali," and also "Commander Cali, what to do?" The  
13 witness then clearly heard that the accused was called "commander."  
14 He also confirmed that the accused was indeed a commander in Zllash a  
15 month after his release in his conversation with KLA soldiers from  
16 the area.

17 Your Honours, 3593 has no reason to lie and no reason to falsely  
18 implicate the accused. He does not otherwise know the accused, has  
19 no personal bias against him, and actually had a strong incentive not  
20 to name a KLA commander given the climate of witness retaliation and  
21 intimidation in Kosovo. Also, as with Witness 1679, the testimony of  
22 3593 was restrained. He did not embellish. If he were going to lie  
23 to falsely implicate the accused, he would have mentioned the accused  
24 at every beating, participating and overseeing his torture and the  
25 treatment of others every time it happened. But the witness did not

1 do that, Your Honours.

2 He did not try to add to or improve his story to make it more  
3 incriminatory.

4 Nonetheless, should the Court be concerned that 3593 did not  
5 mention the accused in his initial UNMIK statement but did so only in  
6 his SPO interview and later in this court, Your Honours, there are,  
7 in our view, several specific and compelling reasons why the witness  
8 behaved in such a way. These reasons include primarily fear. Fear  
9 stemming from the pervasive climate of witness intimidation, and  
10 impunity regarding former KLA members in Kosovo.

11 Since the end of the war in Kosovo and until today, those  
12 willing to come forward and testify with regard to the alleged crimes  
13 committed by the former members of the Kosovo Liberation Army, they  
14 all have faced an existential dilemma: To remain silent and continue  
15 living in the world of lies and fear with the sense of guilt for  
16 doing nothing; or, to seek justice and truth, facing social ostracism  
17 and putting themselves and their families in danger of retaliation.

18 The first choice is, at first glance, easier, and has been the  
19 choice of many. The second option, chosen by very few, requires a  
20 lot of courage, determination, and the support of loved ones. Those  
21 few who dared speak the truth have faced very strong headwinds as the  
22 conditions in Kosovo have not been particularly conducive for them as  
23 witnesses.

24 Before the creation of the Kosovo Specialist Chambers, what many  
25 in Kosovo observed, and were convinced of, was a pervasive climate of



1 impunity from crimes committed during the war of 1998 to 1999 by  
2 former KLA members. This perception was justified and was evidenced  
3 by a low number of successful prosecutions. Many in Kosovo believe  
4 that those in the KLA were still powerful in the official Kosovo  
5 institutions and were, in fact, controlling them. This was remarked,  
6 for example, by one of the witnesses, Witness 4669.

7 This witness testified that when, some years ago, he was  
8 approached by another detainee with the suggestion to reporting about  
9 what happened to them in Zllash, this witness felt that it was not  
10 the right time because, and I quote, "all the institutions were held  
11 by those people." This witness added that he did not trust  
12 institutions back then.

13 This Court, Your Honours, in this case, has proven to be a forum  
14 where witnesses such as 4669 and the other victims could finally tell  
15 their stories. In this respect, the creation of the Specialist  
16 Chambers was a breakthrough moment for these witnesses and, more  
17 broadly, for justice in Kosovo.

18 The lack of forum was, however, not the only factor dissuading  
19 the witnesses. Another was a social and cultural climate that  
20 persists to date.

21 In a tightly knit society where ethnic identification and  
22 loyalty can surpass an allegiance to the state and its official  
23 authorities, cooperation with investigative institutions against  
24 former KLA leaders like the accused can be anathema, going strongly  
25 against local norms. In such a climate, witnesses giving evidence

1 against such KLA members have faced, as a minimum, social ostracism  
2 and exclusion.

3 Another important element that strongly discouraged many  
4 witnesses and victims to speak up was the fact that many of them were  
5 labelled, even without evidence, as Serbian collaborators and spies.  
6 And in the post-war period, that classification was extremely  
7 dangerous for those concerned. Even after 23 years, this  
8 consideration is still surprisingly strong and valid, as was  
9 eloquently put by Witness 4676. And Your Honours have it right now  
10 on the screen. This witness said:

11 "Fear exists all the time, yes. And it's out of some  
12 misunderstanding that people could think of. It's a fear of being  
13 pointed out, fear of being labelled as a traitor, a collaborator,  
14 somebody who wishes ill on other people, somebody who has betrayed  
15 the values of freedom and values of the war, and that comes out of a  
16 mindset that exists amongst us."

17 For all the aforementioned reasons, Your Honours, the fact that  
18 Witness 3593 did not mention the accused in his UNMIK statement  
19 should not be held against this witness and should not have any  
20 significant impact on his overall credibility, including the  
21 identification of the accused. As he clearly indicated in his UNMIK  
22 statement, and you have, Your Honours, this quotation on the screens:  
23 "I wanted to give a statement immediately," said that witness, "when  
24 I was released, but for the security of my children and me, I did not  
25 give a statement to anybody."

1           The witness then dared to inculcate the accused only when he  
2     felt more safe. More safe, Your Honours. Not safe. More safe.  
3     Because even today, after 23 years, when he testified in this very  
4     courtroom before the Panel of the Kosovo Specialist Chambers, the  
5     fear of the witness was still evident.

6           Your Honours remember his repeated and persistent refusal to  
7     mention the name, surname or even the nickname of the accused. Even  
8     when the witness -- even if the witness's own SPO drawing was shown  
9     to him in court with the name Cali clearly written on it, he still  
10    refused to confirm that the word Cali was written there. Instead, he  
11    said, and I quote: "I don't know. I don't recall."

12          When the examining Prosecutor put it to him twice, he said:

13          "Yes, I understand. This is the name of the accused. So, I  
14    refuse to mention his name. I said that yesterday as well, and I  
15    don't want to ever mention his name in my life."

16          Your Honours, did 3593 appear to be a witness who was adding the  
17    accused to his testimony? Was he the one who was falsely implicating  
18    the accused? No, Your Honours. He was just a reluctant and afraid  
19    witness who resisted implicating anybody in his initial statements  
20    and only just managed to tell his full story in this Court.

21          Your Honours should also consider in relation to this witness  
22    the significant evidence stemming from the conduct of the accused  
23    during the investigation. That conducting strongly indicates the  
24    accused's involvement in the crimes charged. The name of  
25    Witness 3593 appeared in a message sent from an associate of the

1 accused to the accused. That message was sent shortly after  
2 Salih Mustafa was summonsed for an interview by the SPO.

3 Why is it that significant? Why is this communication that  
4 significant? It is significant, Your Honours, because it shows that  
5 the accused knew 3593 was a potential witness against him already at  
6 that time. It is significant because it shows that the accused knew  
7 that 3593 had been detained and abused at the Zllash detention  
8 compound.

9 Let me explain that in more detail. On October 16, 2019, the  
10 accused received a summons to appear before the Specialist  
11 Prosecutor's Office for an interview in the capacity of a suspect.  
12 Just four days later, on 20 October 2019, the accused's associate  
13 sent him a mobile communication containing the name and surname of  
14 Witness 3593. Was that a coincidence, Your Honours? This is highly  
15 unlikely. In fact, this is impossible.

16 Let me put it simply. 3593 and the accused had no contact after  
17 the war, and there was no connection between the two apart from the  
18 imprisonment and torture that 3593 received at the hands of the  
19 accused and his soldiers in BIA. Moreover, SPO had interviewed 3593  
20 in secrecy just a few weeks before that mobile communication, and the  
21 accused had no way to know at this point about that interview.

22 So the only reasonable explanation for the name of 3593  
23 appearing in the text message that I have mentioned is that the  
24 accused and his associates independently knew that 3593 was a victim  
25 at the Zllash detention compound and that he could be a potential

1 witness against the accused.

2 [REDACTED] Pursuant to Order F474RED.

3 [REDACTED] Pursuant to Order F474RED.

4 [REDACTED] Pursuant to Order F474RED.

5 [REDACTED] Pursuant to Order F474RED.

6 [REDACTED] Pursuant to Order F474RED.

7 [REDACTED] Pursuant to Order F474RED.

8 [REDACTED] Pursuant to Order F474RED.

9 Your Honours, I would like to turn now to the third witness, and  
10 I would like to discuss also the significance and credibility of the  
11 evidence provided by him, and this is Witness 4600.

12 In his final trial brief, the SPO described in detail some  
13 specific elements of corroboration, accuracy, and veracity of this  
14 witness's evidence. So here, allow me just to focus on some of them.

15 Witness 4600 testified about seeing the accused at the Zllash  
16 detention compound at the beginning of April 1999, which was, in  
17 fact, by putting all the evidence together, the 1st of April of that  
18 year. That date, as Your Honours are aware, is of great significance  
19 in that case.

20 Witness 4600 was consistent in recounting his story both during  
21 the investigation and in court. His account regarding the events  
22 that took place on 1 April was clear, it was detailed, and it was  
23 corroborated by other witnesses including 4603, 4390, 4391, 4674, and  
24 Witness 4648.

25 Witness 4600, knowing that he might be inculcating himself,

1 nevertheless provided his evidence without embellishing it or  
2 attempting to remove himself from the picture. There is no  
3 reasonable explanation as to why he would have lied about what he did  
4 and about his own involvement in this case.

5 The evidence of this witness also confirmed that members of BIA  
6 included Dardani and Nazif Musliu, known as Tabuti. Apart from these  
7 two members of BIA, Witness 4600 particularly identified another BIA  
8 soldier nicknamed Shyti who was, in fact, the Defence Witness Muhamet  
9 Ajeti. Muhamet Ajeti came to this very courtroom and confirmed his  
10 nickname Shyti, confirmed that he was a BIA member in 1999, that he  
11 was in Zllash in April 1999, and that people indeed called him Shyti.

12 You may also remember from the evidence that the accused  
13 himself, that he called Mr. Ajeti Shyti and that he had him saved in  
14 his phone directory as Shyti AAK.

15 In sum, Your Honours, all three witnesses - that is, 1679, 3593,  
16 and 4600 - provide evidence that can be credited by this Court  
17 confirming the presence of the accused in Zllash, at the Zllash  
18 detention compound, and in periods confirmed or admitted by the  
19 accused himself.

20 Your Honours, I would like to very briefly, in the context of  
21 all the evidence in this case, discuss also the conduct of the  
22 accused in this investigation. I have already mentioned one episode  
23 of that conduct concerning Witness 3593, where his name was revealed  
24 to the accused in the message sent to the accused. But in addition  
25 to that episode, the accused also actively tracked investigations

1 about him and displayed his intent to interfere with those  
2 investigations.

3 Three examples demonstrate that.

4 The first example. Shortly after the war when asked about the  
5 ongoing UNMIK investigation into the events in Zllash, the accused  
6 said, and I quote: "There will be no case. There will be no trial."  
7 He added, and I quote: "For as long as I am here, this case will not  
8 go ahead." And as the accused correctly predicted, no case was,  
9 indeed, initiated. Salih Mustafa was at that time an officer of the  
10 Kosovo Protection Corps.

11 The second episode, and this one regards the SPO investigations  
12 particularly. The accused was in frequent contact with his former  
13 BIA comrade, Mr. Kujtim Qerimi, aka Dardan, informing him in realtime  
14 about developments in this case. The two men had an SMS exchange  
15 with each other concerning Brahim Mehmetaj, Bimi, who had just been  
16 summonsed as a suspect by the SPO. That exchange indicates that the  
17 accused and Kujtim Qerimi wanted to meet with Brahim Mehmetaj before  
18 his trip to The Hague. They did so in order to coordinate his  
19 evidence with that of the accused and to obstruct the SPO's  
20 investigation of the crimes at the Zllash detention compound.

21 The third episode, Your Honours. After the interview of  
22 Mr. Agron Xhemajli, another suspect in this case, the accused and  
23 Kujtim Qerimi spoke again. And Kujtim Qerimi said, in his  
24 communication to the accused, and I quote: "There are ways to deal  
25 with that, to solve this business."

1           Your Honours, Mr. Mustafa's conduct during the investigation  
2 shows his consciousness of guilt and his awareness of evidence  
3 implicating him in the crimes committed at the Zllash detention  
4 compound. It also shows his intent to hinder efforts to get to the  
5 truth.

6           Having discussed that, Your Honours, I would now address the  
7 Defence case, with your kind permission. This defence revolves  
8 mainly around the claim that the accused could not have committed the  
9 crimes in Zllash as he was elsewhere during the indictment period.

10          To refute the Prosecution case, the Defence put forward several  
11 witnesses who attempt to place the accused in various locations in  
12 Kosovo in April 1999. Some of them claimed to specifically have  
13 interactions with the accused in the first days of April 1999.

14          Let me be clear from the outset, Your Honours. The Defence's  
15 evidence does not establish that Salih Mustafa was not in Zllash  
16 during the indictment period. Even considered on its own, separate  
17 from the evidence offered by the Prosecution and the accused's own  
18 admissions that he was in Zllash, the Defence witnesses do no more  
19 than indicate that Salih Mustafa moved around during the indictment  
20 period and was at times at locations other than Zllash, such as  
21 Prishtine, Butovc, or Barileve.

22          However, all of these locations are accessible from Zllash  
23 within a few hours, and there is no evidence that the accused was not  
24 in Zllash at critical moments during the indictment period or that  
25 he's not criminally responsible for the crimes charged in the



1 indictment through multiple forms of liability.

2 It is true that moving throughout the area in April 1999 was at  
3 times challenging because of the occasional presence of Serbian  
4 forces and the topographical characteristics of the terrain.  
5 However, the evidence also shows that the accused was still able to  
6 move around in those conditions.

7 We know that the accused had access to vehicles that he used to  
8 move from place to place. For example, Witnesses Bislime Nreci and  
9 Avni Gashi specifically indicated that, in April 1999, the accused  
10 moved in a Volkswagen Golf II, a four-wheel drive. Also Witness  
11 Nazmi Vrbovci and Fatmir Humolli mentioned that the accused was using  
12 a car. As confirmed by Teuta Hadri and Salih Mustafa himself, in  
13 April 1999, there were cars and other means of transportation in  
14 Zllash which, as a commander of BIA, the accused would have clearly  
15 had access to.

16 Salih Mustafa was also able to traverse the area on foot. He  
17 knew the area particularly well, as he routinely delivered supplies  
18 to various KLA locations. He was also engaged in safely escorting  
19 KLA officials and the wounded within the zone. For all these  
20 reasons, the accused's ability to move between locations by car or on  
21 foot is without a doubt.

22 Having said that, Your Honours, allow me to move on to a brief  
23 assessment of individual accounts of Defence witnesses. In order not  
24 to repeat their evidence, my focus will be not so much on their  
25 accounts but, rather, on their credibility.

1           In some cases, such credibility was visibly influenced by an  
2           apparent bias not only in favour of the accused but also against this  
3           Court. Why is the bias against this Court so important? It is  
4           important because it impacts on the credibility of Defence witnesses  
5           where it exists to such an extent that it undermines any obligations  
6           that these witnesses might have felt to provide truthful testimony to  
7           this Court.

8           Your Honours, two Defence witnesses, Fatmir Humolli and Ahmet  
9           Ademi, were put forward to demonstrate that they met Salih Mustafa in  
10          Prishtine on 1 April 1999. You have noticed, Your Honours, how this  
11          date became important during the trial. Once the Prosecution  
12          established that critical events occurred on this very date involving  
13          the accused himself, the evidence of the Defence witnesses began  
14          evolving from their previous statements and suddenly in court the  
15          witnesses pretended to remember very specific things about this date,  
16          which had not been the case previously.

17          Despite the best efforts of these witnesses, their evidence does  
18          not establish that the accused was not in Zllash on 1 April 1999.

19          Defence Witness Fatmir Humolli claimed being with the accused in  
20          Prishtine for one day, around 1 April 1999. According to this  
21          witness, they both left Prishtine on 1 April early in the morning,  
22          then they reached the village of Barileve where they parted ways at  
23          some point in the afternoon. But this evidence of this witness is  
24          not reliable.

25          Fatmir Humolli was uncertain about the dates of these events.

1 He indicated different dates during his in-court testimony and  
2 different dates in the statements that he gave both to the SPO and to  
3 the Defence. By his own admissions, this witness was not able to  
4 recall the exact dates, as he said, due to the passage of time.  
5 Asked about other meetings with Salih Mustafa in January or in  
6 February 1999, this witness was not able to provide any concrete  
7 dates of such meetings whatsoever.

8 Before the Court, Mr. Humolli claimed that he was suddenly sure  
9 about the 1 April 1999 as on that day there was an exodus of the  
10 population to Macedonia passing through Prishtine. However, as  
11 proven by various documents tendered at trial, including reports of  
12 international organisations, for example, OSCE, or several media  
13 outlets, the refugees, in fact, began leaving Prishtine shortly after  
14 the NATO bombing campaign started on 24 March 1999, and their exodus  
15 continued at least until 6 April of that year.

16 If it was indeed this event that helped Fatmir Humolli remember  
17 the date of his encounter with Mr. Mustafa as he claimed, it could  
18 have been on any day within this period of time and not necessarily  
19 on 1 April 1999 as he claims.

20 Further, Fatmir Humolli was not an objective or credible  
21 witness. He published Facebook posts in support of the accused and  
22 is a friend of the accused as they were long-term comrades in the  
23 National Movement for the Liberation of Kosovo and the KLA  
24 brothers-in-arms.

25 Moreover, Mr. Humolli displayed a negative bias towards the

1 Specialist Chambers that raises questions about the sincerity of his  
2 oath to be truthful. He indicated that, and I quote, "the Court was  
3 unjustly established." He also publicly compared it to Guantanamo  
4 for the Kosovo Liberation Army. He also publicly called it, and I  
5 quote, "an unfair, essentially racist court and a human rights  
6 violator" and a "political institution that cannot guarantee a fair  
7 judgement."

8 Ahmet Ademi was another Defence Witness called to testify about  
9 meeting the accused in Prishtine for one day at the end of March,  
10 beginning of April of 1999. Mr. Ademi's evidence does not provide an  
11 alibi for the accused for 1 April. The witness was not sure about  
12 the dates of that encounter, admitting that all he knew was that the  
13 meeting with the accused took place at the end of March or at the  
14 beginning of April. He blamed the lapse of time for his uncertainty.

15 In sum, Your Honours, the accounts of Fatmir Humolli and Ahmet  
16 Ademi did not establish that Salih Mustafa was not in Zllash on  
17 1 April 1999. Additionally, Prishtine is about 22 kilometres away  
18 from Zllash, which is 40 minutes by car. So even if the accused  
19 were, indeed, in Prishtine in the early morning of 1 April 1999,  
20 which has not been established by the evidence, he could have still  
21 arrived in Zllash within the same day in time to be present when  
22 critical events occurred in Zllash on that day.

23 Nazmi Vrbovci and Bislime Nreci were called to give an alibi for  
24 Salih Mustafa, claiming that they interacted with him in the village  
25 of Barileve in the first days of April 1999. The accounts of both

1 witnesses are highly problematic. But even if true, they still do  
2 not conflict with the Prosecution case.

3 Nazmi Vrbovci testified that he saw the accused in Barileve on  
4 the 1st or 2nd April 1999, where he stayed for one to three hours.  
5 Bearing in mind this short time span when Nazmi Vrbovci claims he saw  
6 the accused, his evidence does not establish that Salih Mustafa was  
7 not at the Zllash detention compound during that same day. Barileve  
8 is located 31 kilometres from Zllash, which is about 30 minutes by  
9 car, and the accused could be easily in both places still within the  
10 same day.

11 Further, Nazmi Vrbovci's evidence is problematic for two  
12 particular reasons. First, he provided different dates of his  
13 encounter with the accused in his Defence statement and in his  
14 in-court testimony and was not able to convincingly explain that  
15 apparent discrepancy. In court he focused on 1 April, even if he  
16 never mentioned that day before. He suddenly insisted on that date  
17 even if, as he admitted, there weren't any specific events that one  
18 can remember around that particular date.

19 Secondly, and more importantly, Your Honours, Nazmi Vrbovci did  
20 not give his account independently but agreed on the dates with other  
21 persons, including Defence Witness Bislime Nreci. Bislime Nreci  
22 discussed with Nazmi Vrbovci not only the date when he met,  
23 allegedly, the accused but also other circumstances surrounding the  
24 events that took place in Barileve on 1 April 1999.

25 The account of Bislime Nreci is also not in contradiction with

1 the Prosecution case. This witness testified about meeting  
2 Salih Mustafa in Barileve in February or March 1999 and then around  
3 mid-April of that same year. This witness was also uncertain about  
4 the date of his encounter with the accused.

5 The evidence of Mr. Nreci must also be assessed in the light of  
6 his pro-accused bias evidenced by his supportive Facebook posts and  
7 his proven collusion with Nazmi Vrbovcic concerning the dates and  
8 events in Barileve in April 1999.

9 In this context, it bears recalling that Nazmi Vrbovcic and  
10 Bislim Nreci have known each other since childhood. They are  
11 friends, neighbours, and meet frequently.

12 Your Honours, Gani Sopi, Hazir Borovci, and Jakup Ismaili were  
13 all called by the Defence to confirm the accused's alibi for a few  
14 days at the beginning of April 1999. According to these witnesses,  
15 Salih Mustafa allegedly spent those days in the village of lower  
16 Butovc. All three witnesses belonged to the same KLA unit in Butovc  
17 that at some point formed part of the BIA unit commanded by the  
18 accused. They were also friends during the war and are friends  
19 today.

20 Gani Sopi. Gani Sopi was confused with regard to the dates of  
21 the accused's stay in Butovc. He specifically indicated that he  
22 could only give approximate dates and that he would rather not refer  
23 to specific dates as he might forget them due to the passage of time.  
24 He claimed possibly remembering the dates as the Muslim celebration  
25 Eid al-Adha, or small Bajram, took place around that time. However,

1 this witness could not even give a precise date of that celebration,  
2 the date on which that celebration commenced.

3 When assessing Gani Sopi's evidence, Your Honours, one should  
4 bear in mind that he has a strong familial bond with the accused as  
5 the accused's wife is Gani Sopi's niece. The witness and  
6 Salih Mustafa are also friends, brothers-in-arms, and have known each  
7 other since 1996, 1997.

8 Moreover, Gani Sopi admitted following the testimony of his  
9 friends Hazir Borovci and Jakup Ismaili, who gave evidence before  
10 him, where he could clearly notice the importance of certain dates  
11 for the criminal culpability of the accused.

12 Jakup Ismaili said that he met Salih Mustafa in Butovc first at  
13 the end of March, and then around the 7th or 8th April 1999, and then  
14 approximately on 20 April of that year. None of this testimony is  
15 inconsistent with the evidence of the accused's participation and  
16 direction of the crimes in Zllash.

17 Further, in assessing his evidence, the Court should consider  
18 Mr. Ismaili's memory problems, an issue he himself invoked several  
19 times during his testimony, as well as the fact that he's a good  
20 friend of Mr. Salih Mustafa with whom he had stayed in frequent  
21 contact both before and after his arrest.

22 The third witness who allegedly saw the accused in Butovc in  
23 April 1999 is Hazir Borovci. Like his friends Gani Sopi and  
24 Jakup Ismaili, also this witness was not sure about the dates in  
25 April, indicating that he might have seen Salih Mustafa on the 2nd or

1 the 3rd April and later maybe three, four, five times, as he said  
2 himself.

3 Like Gani Sopi, Hazir Borovci gave wrong dates concerning the  
4 Muslim celebration of Eid al-Adha that was his main signpost for his  
5 interaction with the accused. He also admitted that he did not see  
6 the accused every day.

7 In evaluating the testimony of Mr. Borovci, what we should  
8 consider is this witness's bias in favour of the accused, which was  
9 evidenced by his supportive posts published on Facebook.

10 Your Honours, even taken at their highest, the accounts of  
11 Mr. Sopi, Mr. Ismaili, and Mr. Borovci do not contradict the  
12 Prosecution case. Butovc is located 32 kilometres from Zllash, which  
13 is about 50 minutes by car, and the accused could move to Zllash and  
14 back even on a daily basis.

15 Three additional witnesses were called to testify about meeting  
16 the accused for a short period of time in mid-April 1999. Their  
17 evidence also does not contradict the Prosecution case. One was  
18 Kapllan Parduži, wounded in the battle of Surdull on 10 April 1999.  
19 This witness attempted to provide the accused with an alibi for an  
20 unspecified date between 10th and 13th April of that year, claiming  
21 that the latter escorted him and Nuredin Ibishi to the place called  
22 Rimanishte or Bellopoje on their way to the KLA hospital in the  
23 village of Potok.

24 Mr. Parduži's evidence is marginally relevant and does not in  
25 any way undermine the proof offered by the Prosecution.



1           Additionally, the evidence of Mr. Parduzi should be considered  
2           and discounted in the light of the condition he was in, the brevity  
3           and circumstances of the alleged encounter with Mr. Mustafa, the  
4           contradicting evidence of Nuredin Ibishi, and Mr. Parduzi's  
5           expressions of support for the accused and against this Court.

6           The last alibi witness of the Defence was Sheqir Rrahimi who  
7           drove the vehicle in which the wounded Nuredin Ibishi and Kapllan  
8           Parduzi were transported. He testified that at some point during the  
9           trip he met two people driving the tractor and heard one of them  
10          calling another "Cali".

11          This witness did not know Salih Mustafa at that time and  
12          acknowledged that after 23 years he was unable to determine whether  
13          the person called Cali was actually the accused.

14          In sum, Your Honours, the accused's claimed alibi has been  
15          disproven beyond a reasonable doubt. There is no reliable evidence  
16          that Mr. Mustafa was not at the Zllash detention compound on 1 April  
17          1999 or at other significant times during the indictment period.

18          Your Honours, apart from the alibi, the Defence attempted to  
19          prove that there were no detainees held in Zllash in April 1999 and  
20          that the accused was not in charge of the detention compound there.  
21          Muhamet Ajeti, also known as Shyti, and Selatin Krasniqi were  
22          specifically put forward to demonstrate that, during the indictment  
23          period, no detainees were held at the compound.

24          Their evidence, Your Honours, should not be given any credit  
25          whatsoever. They are both the accused's former subordinates in BIA,

1 both admire him and consider him their friend.

2 Selatin Krasniqi, member of the BIA unit, and the son of the  
3 owners of the Zllash detention compound, claimed that he was not  
4 aware of any detainees kept at the compound, despite the fact that he  
5 stayed there, albeit not constantly, from the beginning April 1999.  
6 The credibility of this witness is greatly impaired by several  
7 factors, as demonstrated during his testimony.

8 I'm going to give just a few examples of such factors which  
9 should be considered as his evidence is weighed against all the other  
10 Prosecution evidence.

11 First, during his initial Defence interview in February 2021,  
12 while drawing the detailed sketch of the compound that he allegedly  
13 knew very well, he intentionally forgot to draw and mark the very  
14 building where the detainees were held even though it was rather a  
15 big and important structure within the compound.

16 Before the Court he claimed, implausibly, that he does not  
17 remember how such a crucial omission happened.

18 Second, even if he initially and adamantly claimed that no one  
19 was detained in Zllash, he later admitted that people, including  
20 himself, were questioned by the KLA at the compound in the period  
21 after NATO commenced its strikes.

22 Third, when asked a number of times about who was in charge of  
23 the Zllash detention compound, Selatin Krasniqi mentioned a variety  
24 of names, but remarkably, he never mentioned Salih Mustafa amongst  
25 those in command. And this is despite knowing that Mr. Mustafa was

1 his BIA commander and despite Mr. Mustafa's own admissions on this  
2 point.

3 Fourth, Selatin Krasniqi attempted to remove from Zllash his  
4 close acquaintance and co-fighter in BIA Muhamet Ajeti, also known as  
5 Shyti, who himself admitted being present at the Zllash detention  
6 compound. This is what Selatin Krasniqi said in court about Ajeti's  
7 presence in Zllash, and I quote:

8 "Muhamet Ajeti came in October. I mentioned it earlier. He  
9 stayed for a night or two and went towards Majac or someplace else.  
10 I'm not quite certain. And I did not see them until the offensive.  
11 In fact, I saw him in Prishtine the day that Prishtine was attacked  
12 by Serb forces, and then I did not see him again until the  
13 offensive."

14 When pressed by the cross-examining Prosecutor and confronted  
15 with the account of Muhamet Ajeti, Selatin Krasniqi reluctantly  
16 conceded, and I quote:

17 "I don't remember. I don't remember. He might have been there,  
18 but I don't remember. I can't say yes or no."

19 Think of this, Your Honours. Selatin Krasniqi knew Mr. Ajeti  
20 and knew that Mr. Ajeti was there, but tried to do whatever he could  
21 to remove him from the compound. He did that not only to protect  
22 Mr. Ajeti but also to help in this way the accused's defence.

23 In assessing Mr. Krasniqi's evidence, the Court should consider  
24 the witness's strong emotional bond with the accused, exemplified by  
25 his statement. And I quote:

1 "We are all friends and will remain friends until we die and  
2 after death."

3 We should also remember that, in the past, Mr. Krasniqi was  
4 convicted for the intentional crime of fraud.

5 Muhamet Ajeti, also known as Shyti, was another witness who said  
6 that he neither saw nor heard that people were held at the detention  
7 compound in April 1999. He also denied being present where a murder  
8 victim was delivered to the compound. His evidence is both limited  
9 and unreliable.

10 Unsurprisingly, he did not implicate himself and admit to being  
11 present when the murder victim was delivered to the Zllash detention  
12 compound with the accused present. He admitted as few facts as  
13 possible and nothing that could incriminate him or his commander,  
14 Salih Mustafa.

15 With respect to the issue of prisoners being kept at the Zllash  
16 detention compound, Mr. Ajeti did not seem to even enter the compound  
17 buildings that are critical to this case. He said that he did not  
18 stay in the building of the compound used as a detention and  
19 interrogation site, and he admitted that he never visited the  
20 basement of this house where at least some of the detainees were  
21 held.

22 He says he only stayed outside in the yard. He was also not  
23 sure which rooms in that house were occupied by soldiers and  
24 civilians. Confronted with the evidence from the accused, who  
25 admitted that people were actually detained in the Zllash detention

1 compound, Muhamet Ajeti conceded, "Of course, Salih Mustafa knows  
2 better."

3 Regarding credibility, Your Honours, you should consider two  
4 additional matters.

5 First, Muhamet Ajeti's claims that he never met the accused in  
6 Zllash in April are implausible. The accused himself admitted being  
7 in Zllash in April 1999, and it is inconceivable that Mr. Ajeti would  
8 not be aware of the presence of his BIA commander whom he deeply  
9 admired.

10 Second, Muhamet Ajeti has strong ties to the accused as  
11 evidenced by his Facebook posts and phone data record recovered from  
12 the accused's phone. He has also similarly strong bond with BIA  
13 member and former comrade Brahim Mehmetaj, as evidenced by various  
14 Facebook posts.

15 In his testimony, Mr. Ajeti had a strong motive both to  
16 exculpate himself and to protect the accused and Mr. Mehmetaj.

17 Your Honours, some other witnesses were asked by the Defence  
18 about their knowledge of the detainees at the Zllash detention  
19 compound in April 1999. They all denied having such knowledge. But  
20 as was established in court, they do not possess a sufficient basis  
21 to testify as to the presence or non-presence of the detained persons  
22 there.

23 Fatmir Sopi. Fatmir Sopi testified that during the period in  
24 question, he was continuously on the move, was engaged in fighting,  
25 and did not think he was there in April 1999.

1           Sejdi Veseli. Sejdi Veseli never visited the compound and no  
2 one ever relayed to him any information about that place.

3           Fatmir Humolli. This witness never visited any locations within  
4 the Zllash detention compound other than the one where the wounded  
5 were staying. When he met his family there in April 1999, they were  
6 staying outside in the yard and the witness did not enter any  
7 buildings.

8           Teuta Hadri. Teuta Hadri, a doctor, arrived in Zllash towards  
9 the end of the indictment period on 16 April and remained there for  
10 three days. She was unfamiliar with the area as she had never been  
11 there before. While in Zllash, she was extremely busy with her  
12 medical work. She stayed mainly in her assigned room, rarely got out  
13 in the yard, and did not visit any other buildings at the Zllash  
14 detention compound. She indicated that she could only see the nearby  
15 area of the compound from the inside of her room.

16           Ibadete Canolli-Kaciu. This witness, a BIA member, arrived in  
17 Zllash on 16 April 1999, where she stayed until 21 April. She had  
18 not been there before. Due to the passage of time, she was not able  
19 to provide the description of the place where she stayed. When shown  
20 photographs of the buildings within the Zllash detention compound,  
21 she said that she did not remember whether she had seen them.

22           Mrs. Kaciu stayed mostly inside and did not move much in the  
23 yard. She left her room only once to fetch some food from the nearby  
24 kitchen. The witness did not visit any other buildings within the  
25 compound. While in Zllash, she had a great deal of medical work and

1 her focus was mainly on the wounded.

2 In sum, Your Honours, the witnesses called by the Defence create  
3 no doubt whatsoever about what happened in Zllash in April 1999.  
4 They do not undermine in any way the overwhelming evidence  
5 establishing that the victims were brought to Zllash, were detained  
6 and abused there, and that one of the victims was, in fact, murdered.

7 Your Honours can consider why the Defence has taken this extreme  
8 position of claiming that there were no detentions in Zllash and that  
9 the victims are all fabricating their accounts. Why continue to  
10 insist on this defence in the face of all the evidence? Why? The  
11 answer to this question, Your Honours, is very simple.

12 Given Salih Mustafa's role as Zllash, his command over BIA and  
13 over the compound, proof that detainees were held and abused at the  
14 compound, all this establishes that the accused was responsible for  
15 the crimes committed there. He was there. He was in command. He  
16 was the only one in command of the BIA unit. He is responsible for  
17 the prisoners' health and abuse there.

18 Your Honours, we're approaching, as I can see, 1.00. Is this a  
19 convenient moment for us to break for lunch?

20 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, I leave that to  
21 you in the sense that if you think that this is a natural moment in  
22 your presentation, then we can break for lunch.

23 MR. MICHALCZUK: Your Honours, I believe it's a natural and very  
24 convenient moment for us to have a break now.

25 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then we will adjourn

1 for one and a half hours, so until 2.30. I wish you a good lunch.

2 And the hearing is adjourned.

3 --- Luncheon recess taken at 12.57 p.m.

4 --- On resuming at 2.30 p.m.

5 PRESIDING JUDGE VELDT-FOGLIA: I will call the appearances.

6 I see that the SPO is in the same composition.

7 MR. DE MINICIS: Yes, Your Honour, the same composition apart  
8 from our two interns who have left for this session.

9 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Thank you for  
10 that.

11 Victims' Counsel, yes.

12 And I see the same composition for the Defence counsel. And I  
13 also see that Mr. Mustafa is present via the video Zoom connection.

14 Very well. We continue. I will give the floor to the  
15 Specialist Prosecutor's Office.

16 It's for you now.

17 MR. DE MINICIS: Good afternoon, Your Honours. Before we start,  
18 I would like to inform the Panel that we plan on finishing with our  
19 closing arguments within this session. We are fairly confident that  
20 we will finish before 4.00 p.m.

21 PRESIDING JUDGE VELDT-FOGLIA: Very well.

22 However, in that case, we will not continue today with your  
23 closing statement, Victims' Counsel, because we took note that you  
24 wanted to have at least an hour in order to compare with what was  
25 said by the Specialist Prosecutor's Office, and I think that 4.00 is



1 a good moment to finish, and then tomorrow there will be a new day.

2 So, okay, yes.

3 Mr. Prosecutor, you have the floor.

4 MR. DE MINICIS: Your Honours, I will now address Count 4, and  
5 specifically the evidence underpinning the charge of murder.

6 There are no eyewitnesses to confirm the exact circumstances of  
7 the victim's final moments. Nevertheless, the evidence in this case  
8 proves beyond a reasonable doubt that the victim was murdered and  
9 that the accused is criminally responsible for his murder.

10 Your Honours, the Rules of Procedure and Evidence allow you to  
11 convict on circumstantial evidence when the guilt of the accused is  
12 the only reasonable inference that you can draw from that evidence.  
13 The consistency and intrinsic coherence of such evidence is an  
14 important consideration in this regard.

15 We submit, Your Honours, that even without direct evidence of  
16 the very final moments of the victim's life, every piece of evidence  
17 in this case points to one conclusion and one conclusion only: That  
18 the victim was murdered and that Salih Mustafa is responsible for it.

19 Firstly, Your Honours, consider the exceptional severity of the  
20 mistreatment of the victim by the subordinates of the accused. This  
21 mistreatment included beatings with metal rods and the use of knives.  
22 This treatment was, from the very beginning, and throughout his  
23 detention, harsher than that reserved to the other detainees.

24 Second, the fact that the victim was not freed by the accused  
25 and his subordinates when the other detainees were suddenly released

1 on or about 18 April 1999 at a time when BIA was preparing to  
2 evacuate the Zllash detention compound. As I will explain in a  
3 moment, this is a crucial factor in the assessment of the evidence of  
4 murder.

5 Third, consider the victim's near-death condition and his  
6 inability to move towards the end of his detention when W04669 last  
7 saw him at the Zllash detention compound.

8 Fourth, consider the extremely close proximity to the Zllash  
9 detention compound. We are talking about 100 to 200 metres of the  
10 place where the victim's body was found in early July 1999.

11 Fifth, Your Honours, consider the presence of a second body in  
12 that grave. The circumstance acquires particular relevance for two  
13 reasons. First, there was another detainee held at the Zllash  
14 detention compound whom the witnesses in this case remember with the  
15 nickname Burmak. He also was not released together with the murder  
16 victim when all the other detainees were freed. Secondly, this  
17 person, Burmak, was, according to other witnesses in this case - for  
18 instance, W03593 - the detainee who was mistreated the most, together  
19 with the murder victim.

20 So here we have, Your Honours, the two detainees who received  
21 the worst treatment and those who were not allowed to leave when all  
22 the others are.

23 Finally, Your Honours, consider the state of the victim's body  
24 as found by his relatives which is wholly consistent with the  
25 evidence of the beatings he received and with the description of the

1 victim's condition the day the others were released.

2 This evidence, Your Honours, is both consistent and internally  
3 coherent. As we add every piece of this evidence together, we get an  
4 evidentiary picture that only allows for one conclusion: That the  
5 murder victim was killed shortly after the other detainees were all  
6 released. We may not know the precise moment when that happened, but  
7 it was at a moment when his fellow detainees were no longer there to  
8 witness his murder.

9 This circumstance should not prevent Your Honours from finding  
10 that the victim was murdered at the hands of the accused and his men.

11 I ask Your Honours to give careful consideration to the decision  
12 not to release the victim with the other detainees and to the timing  
13 of this decision. This detail is extremely significant and telling  
14 of the intentions of the accused and of the other JCE members with  
15 regard to the murder victim. There was no plausible reason for  
16 Salih Mustafa and his men to delay his release. There is no  
17 indication, absolutely nothing, that would justify that choice other  
18 than a decision to kill him.

19 In this regard, it is important to remember why the detainees  
20 were released in the first place. It was a decision dictated by a  
21 change in circumstances. The KLA in Zllash, including the BIA at the  
22 Zllash detention compound, had to leave and evacuate the civilians in  
23 the area because of the approaching Serb offensive. Under those  
24 circumstances, why were the murder victim and Burmak held back and  
25 not allowed to leave to safety with the other prisoners? Why,

1 Your Honours? There is only one reasonable explanation, and that is  
2 that it had been decided that they would be killed, which is exactly  
3 consistent with what happened with the severity of the beatings they  
4 received and with the recovery of the victim's body 1- to 200 metres  
5 from the compound, together with another body.

6 The Defence, Your Honour, attempted to sow doubt on the  
7 accused's responsibility for the murder, indicating the possibility  
8 that the victim was killed by Serb forces. This is not only  
9 inconsistent with all the evidence we've just discussion. It is also  
10 a conclusion not supported by the evidence.

11 There is, in fact, no evidence that Serbian forces entered the  
12 Zllash detention compound and killed civilians there. There is, on  
13 the contrary, no doubt that at the time the prisoners were released  
14 from the compound, they neither encountered nor saw any Serb forces  
15 around it. In fact, upon their release, they safely walked their way  
16 back to Prishtine and to other locations.

17 Your Honours, as I said, we do not have a witness for what  
18 happened in the last moment of the victim's life. His murderers made  
19 sure of that. However, under the circumstances I have just  
20 discussed, there can be no doubt that the victim was murdered by his  
21 captors at the Zllash detention compound. I will now further  
22 illustrate why Salih Mustafa is criminally responsible for this  
23 murder.

24 Your Honours, the SPO charged the accused under multiple modes  
25 of liability, as it is allowed to do, for the crimes charged under

1 Counts 1 to 4. We have amply addressed his responsibility in  
2 relation to each count in the final trial brief. Today, we will only  
3 make some further remarks with respect to Salih Mustafa's  
4 responsibility for the crime of murder as charged in Count 4 and  
5 pursuant to the modes of liability or joint criminal enterprise,  
6 aiding and abetting, and superior responsibility.

7 Your Honours, Salih Mustafa is responsible for murder as a war  
8 crime through his participation in the joint criminal enterprise.  
9 The SPO has explained in paragraphs 311 to 329 of the final trial  
10 brief how the crimes under Counts 1 to 4 were committed by  
11 Salih Mustafa together with a plurality of persons who included  
12 members of the BIA unit under his command. We have explained how  
13 this common criminal plan included murder.

14 Several facts and circumstances prove that the accused and the  
15 other JCE members all shared the intent to commit this crime. First,  
16 Your Honours, the use of potentially lethal instruments, such as  
17 metal rods and knives, during the beatings.

18 Second, the severity and frequency of these beatings which  
19 reduced the murder victim to a state described by his fellow  
20 detainees as a massacre, near death, a state in which he could no  
21 longer move.

22 Third, the accused's conduct with other detainees, such as his  
23 use of a gun during the interrogation of W03593 and his order to his  
24 subordinates to finish Victim W01679.

25 Fourth, and crucially, the decision not to release the murder

1 victim.

2 As explained, there is no other reasonable explanation why, with  
3 the Serb offensive approaching, Salih Mustafa and his men would have  
4 delayed the victim's release.

5 Finally, Your Honours, the intent of Salih Mustafa to murder the  
6 victim is evidenced by his ultimate command and control over the  
7 Zllash detention compound and the BIA soldiers who were stationed  
8 there. Such authority and the fact that the members of BIA followed  
9 the orders and direction of the accused was amply proven at trial.  
10 Only the accused could order or approve the singling out of the  
11 victim for particularly abusive treatment during his entire stay at  
12 the Zllash detention compound. Only the accused could take the  
13 decision not to release the victim while the others were released.

14 In this regard, as the Specialist Prosecutor has already stated  
15 this morning, the evidence shows that the accused was at the compound  
16 when the prisoners were released and the murder victim was held back.  
17 Defence Witness Teuta Hadri clearly indicated that she saw him one  
18 night before the Serbian offensive and on the day of the offensive on  
19 18 April 1999.

20 In addition to possessing the intent required for murder,  
21 Your Honours, Salih Mustafa significantly contributed to the  
22 execution of the common plan, which included murder. He did so in a  
23 variety of ways, as explained in paragraph 325 to 327 of the final  
24 trial brief. As the commander of the Zllash detention compound, he  
25 kept the victim in detention under harsh conditions, subjecting him

1 to brutal treatment that had, day after day, a devastating effect on  
2 his health.

3 In spite of this and of the visible effects that the  
4 mistreatment had on the victim, Salih Mustafa did at no point put an  
5 end to it. He at no point provided any type of medical care to the  
6 victim. On the contrary, he allowed the abuses to continue unabated  
7 until the victim could no longer move, as described in paragraph 90  
8 of the final trial brief.

9 Your Honours, as I've just stated, our position is that  
10 Salih Mustafa was at the Zllash detention compound when the murder  
11 victim was killed. But even in the event that Your Honours should  
12 not be satisfied with this circumstance, in light of the evidence  
13 I've just discussed, that would not be an impediment to finding him  
14 guilty of murder.

15 For responsibility under JCE to arise, the accused's physical  
16 presence at the time of the crime's commission is not required. In  
17 fact, under joint criminal enterprise, an accused can be held  
18 responsible for the crimes committed by other physical perpetrators,  
19 whether or not they were also JCE members, provided that the crimes  
20 form part of the common criminal plan.

21 For these reasons, Your Honours, we submit that the evidence  
22 proved beyond reasonable doubt Salih Mustafa's responsibility under  
23 the first type of joint criminal enterprise for all counts, including  
24 murder.

25 Now, Your Honours, as we have charged in the indictment, in the

1 alternative, and at the very least, Salih Mustafa is responsible for  
2 murder as a war crime under Count 4 through the third form of joint  
3 criminal enterprise.

4 We have described extensively in our final brief and during  
5 today's submissions the brutal treatment reserved for the victim by  
6 members of the BIA unit. We have heard evidence from multiple  
7 witnesses that the devastating effects on the victim's health were  
8 obvious - obvious - to anyone who saw him. We heard how his health  
9 worsened beating after beating until he could no longer move and had  
10 to be laid down on the ground by his jailers.

11 Salih Mustafa, Your Honours, encouraged his subordinates to  
12 commit acts of violence against the detainees, even encouraging his  
13 subordinates to finish W01679. Under these circumstances, it was  
14 clearly and plainly foreseeable to Salih Mustafa that the crime of  
15 murder could result as a consequence of the arbitrary detention,  
16 cruel treatment, and torture of the victim. In spite of this,  
17 Salih Mustafa did not stop the mistreatments, did not stop the  
18 detention, continued to allow these crimes to take place, and by so  
19 doing, he willingly took the risk that the victim could be murdered.

20 Your Honour, the Prosecution has also alternatively pleaded that  
21 the accused is responsible as an aider and abettor. We have  
22 explained the reasons in our final trial brief. To sum up,  
23 Your Honours, his personal participation, as just described, with  
24 regard to joint criminal enterprise - I don't want to repeat myself  
25 and take more of the Court's time than is necessary - also amounts to



1 encouragement, assistance, and moral support to the acts of the  
2 physical perpetrators; for instance, by allowing the premises of the  
3 Zllash detention compound to be used as a place of illegal detention  
4 and mistreatment, the accused provided practical assistance to the  
5 commission of these crimes, including to the crime of murder.

6 This practical assistance, Your Honour, had a substantial effect  
7 on the commission of the crimes.

8 Now, as the commander with the ultimate authority over BIA and  
9 the Zllash detention compound and with knowledge of the crimes being  
10 committed there, Salih Mustafa was necessarily aware that his conduct  
11 would contribute to the commission of these crimes, including the  
12 crime of murder.

13 Lastly, Your Honour, I will address his responsibility for  
14 murder under the doctrine of superior responsibility.

15 Your Honours, the accused is criminally responsible for the  
16 crime of murder also because, as a superior with the requisite  
17 knowledge, he failed to prevent and punish the murder committed by  
18 his subordinates. This was a double failure, Your Honour, because he  
19 knew the crimes were about to be committed and failed to prevent  
20 them, and he knew that crimes had been committed and failed to  
21 investigate and punish them.

22 The physical perpetrators of this crime of murder, but also of  
23 the other crimes, were all members of BIA of which the accused was  
24 the commander both *de jure* and *de facto*. The accused's effective  
25 control over his subordinates is evidenced by a plethora of factors

1 which we have discussed in detail in our final brief. They include  
2 his ability to impart orders and discipline his subordinates. The  
3 accused himself explained extensively in his interview the high  
4 degree of control he was able to exercise over the members of BIA.

5 The accused had knowledge, or at the very least he had reason to  
6 know, Your Honours, that his subordinates were about to commit crimes  
7 against those detained at the Zllash detention compound, including  
8 the murder victim. This is established by the very factors we have  
9 listed with regard to his intent under joint criminal enterprise, and  
10 especially the brutal beatings he was routinely subjected to,  
11 including with metal rods and knives. Also, the accused was at the  
12 Zllash detention compound the day that the murder victim was brought  
13 there.

14 The accused also knew, or had reason to know, that the victim  
15 had been killed. First, he knew that the victim had been detained at  
16 the compound. Second, the fact that the victim had died was known  
17 within the local members of the KLA at the latest one week after his  
18 death. W04600, in fact, testified that he learned about the victim's  
19 death on 23 or 24 April 1999. That is less than a week after the  
20 release of the other detainees.

21 It would be unreasonable to think, Your Honours, that the  
22 commander in charge of the place where the victim was detained would  
23 not be aware or have reason to know of this very fact.

24 In spite of this knowledge, whether actual or constructive, and  
25 despite his effective control over his subordinates, the accused

1 failed to take necessary and reasonable measures to prevent and  
2 punish the crimes of his subordinates, including the crime of murder.  
3 In fact, Your Honours, he failed to take any measure at all.

4 In conclusion, Your Honours, the guilt of the accused for  
5 under Count 5 -- the accused is guilty of murder under Count 4 of the  
6 indictment, under joint criminal enterprise, aiding and abetting, and  
7 superior responsibility.

8 Your Honours, this concludes my part. I will now give the floor  
9 to Prosecutor Michalczuk who will address the issue of sentencing.

10 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

11 Mr. Prosecutor, you have the floor.

12 MR. MICHALCZUK: Your Honours, the final part of the SPO's  
13 submissions today concerns sentencing matters.

14 This morning, the Specialist Prosecutor addressed the SPO's  
15 request for a lengthy term of imprisonment in light of the  
16 circumstances in this case.

17 The term of imprisonment should reflect the following factors:  
18 The gravity of the crimes committed by the accused, their severe  
19 consequences on the victims, the role of the accused in the crimes,  
20 the presence of multiple aggravating factors and the lack of  
21 mitigating factors, as well as the importance of general deterrence  
22 in cases like this one.

23 Your Honours had some specific questions regarding the  
24 sentencing scheme that we addressed in our filing F00471, dated  
25 8 September. And we will not cover those matters any further now

1 unless, of course, Your Honours have any further questions.

2 Part 6(A) of the Prosecution final trial brief discusses the  
3 applicable sentencing ranges before the Specialist Chambers, which is  
4 a maximum term of life imprisonment. For the purpose of those  
5 closing statements of today, I will focus mostly on four distinctive  
6 issues: The gravity of the crimes committed by the accused, the role  
7 of the accused in the crimes - including his direct participation,  
8 the presence of multiple aggravating factors, and, finally, the  
9 absence of mitigating factors.

10 Let me discuss, Your Honours, first, the issue of the gravity of  
11 the crimes committed by the accused.

12 Your Honours, pursuant to Article 44(5) of the Law on the  
13 Specialist Chambers, the gravity of the crimes and their consequences  
14 are relevant factors in guiding the imposition of punishment by the  
15 Panel. As discussed in the Prosecution final trial brief, there is  
16 no doubt about the fact that the crimes proven in this case are not  
17 only grave but also utterly brutal, as are the consequences of these  
18 crimes on the victims.

19 Your Honours will remember the words used by the victims when  
20 describing the beatings, mistreatments, and torture they underwent.  
21 Victim 1679 testified in this court about the way he felt when he and  
22 others detainees were continuously and daily abused by their captors.

23 [Video-clip played]

24 MR. MICHALCZUK: This witness, Your Honours, explained that,  
25 from the cow shed, he and other detainees could hear when people were

1 beaten up in the upstairs building. He said --

2 [Trial Panel and Court Officer confers]

3 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] For  
4 the whole time that the video was on, your sound, what you have been  
5 saying --

6 [Trial Panel and Court Officer confers]

7 PRESIDING JUDGE VELDT-FOGLIA: Would you like to replay the  
8 video?

9 MR. MICHALCZUK: Yes, Your Honours, with your permission we'll  
10 play the video again.

11 [Video-clip played]

12 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, at least for me,  
13 it was not possible to hear what was said. I don't have audio at the  
14 moment.

15 [Trial Panel and Court Officer confers]

16 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, if you would not  
17 mind, could you repeat it again. I think there was something --  
18 there was a problem with my audio.

19 MR. MICHALCZUK: Right. Your Honours, we'll play this clip  
20 again.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

22 [Video-clip played]

23 MR. MICHALCZUK: This witness explained that, from the cowshed,  
24 he and other detainees could hear when people were beaten up in the  
25 upstairs building. He said:



1 everything was black." "He was bruised, black, on all visible parts  
2 of his body." He would barely open his eyes.

3 Let me play, Your Honours, a very short clip of the testimony of  
4 this witness in which he described the dire condition of the murdered  
5 victim and the abuse he was subjected to by his tormentors.

6 [Video-clip played]

7 MR. MICHALCZUK: The beatings that were inflicted were  
8 unpredictable and extraordinarily violent. At times, the victims  
9 were beaten so severely that they fell unconscious. The tools used  
10 to administer beatings and mistreatments included candles in order to  
11 inflict burnings, electricity boxes in order to inflict  
12 electroshocks, wooden sticks and iron rods to inflict heavy beatings.

13 The torture with the electricity box was usually done by two  
14 subordinates of Salih Mustafa, by Kujtim Qerimi, also known as  
15 Dardan, and by another BIA member by the name of Afrim.

16 Your Honours, we discussed already at the beginning of these  
17 closing statements the deplorable, inhumane condition of detentions.  
18 And remember, Your Honours, what Witness 3594 said. He said the  
19 following thing:

20 "I felt as if I were an animal and no longer a human being."

21 The circumstances of the victims' detention and mistreatment  
22 were also extremely humiliating and isolating. Several of the  
23 victims sought to join the Kosovo Liberation Army or support its  
24 cause, but were targeted by the accused and his subordinates and  
25 labelled as collaborators or spies without any basis or possibility

1 to defend themselves or refute those baseless accusations.

2 Those words, "spy," "collaborator," "thief," "liar," were chosen  
3 by the accused and his subordinates because of their powerful meaning  
4 at the time in the context of the war in Kosovo and also still  
5 nowadays in current Kosovo society.

6 By choosing those words, by using those words, the accused and  
7 his subordinates wanted to label, to marginalise the victims, to  
8 separate them from their families and communities. Branded as  
9 collaborators, the victims were deemed enemies of the KLA and pariahs  
10 in their communities. Those designations isolated the victims both  
11 during their detentions and long afterwards.

12 Even after their release, the victims had to hide in shame what  
13 had happened to them and were forced to live as survivors without any  
14 community or support. The consequences of those crimes were  
15 far-reaching both psychologically and physically for the victims.  
16 But not only for them, they were also for their families.

17 Without going into the details of these consequences, which are  
18 confidential because of their very nature, I would just refer  
19 Your Honours to part 6, paragraphs 361 to 364 of the Prosecution  
20 final trial brief.

21 I will turn now, Your Honours, to the specific role of the  
22 accused in the commission of the crimes.

23 In this case, the accused both directed the crimes and he  
24 participated in them. He was the BIA commander and was in charge of  
25 what was happening at the Zllash detention compound. At the same



1 time, he also was a participant to the crimes perpetrated there, and  
2 his sentence, Your Honours, should reflect his dual role.

3 The accused ordered his subordinates to detain and abuse the  
4 victims, resulting in the death of at least one of them. He  
5 mistreated the victims himself, using his own hands and weapons to  
6 abuse them. He interrogated and beat Victim 3593 in the presence of  
7 his subordinates, modelling in this way for his subordinates the type  
8 of conduct that he desired.

9 After 3593 was beaten, the accused placed a revolver against the  
10 middle of his forehead and pulled the trigger. This behaviour  
11 displayed for his subordinates, another disregard for human life and  
12 dignity, a desire to instill terror, and a readiness to kill.

13 On several occasions, the accused witnessed the mistreatment of  
14 victims and encouraged his subordinates to continue. After  
15 initiating the beating of Victim 1679, the accused commanded his  
16 subordinates to "finish him."

17 The sentence that Your Honours will decide upon needs to be  
18 severe to reflect the specific role that the accused had: A leader  
19 who abused his role. A leader who directly participated in the  
20 crimes to help ensure that his order as commander would be fully  
21 carried out by his subordinates and be fully carried out with  
22 brutality and disregard for human dignity.

23 I will now move to discuss aggravating factors and also the  
24 mitigating factors.

25 Pursuant to Article 44(5) and Rule 163(1), in determining an

1 accused's sentence, the Panel should consider, as appropriate,  
2 aggravating and also mitigating circumstances, where applicable.

3 The Trial Panel has a wide discretion in determining these  
4 circumstances and the weight to be accorded thereto.

5 With regard to aggravating factors first, the Prosecution hereby  
6 invites the Trial Panel to consider at least three aggravating  
7 circumstances: One, abuse of power, official capacity by the  
8 accused; the fact that the crimes were perpetrated on particularly  
9 vulnerable or defenceless victims; and, three, the fact that the  
10 crimes were committed with particular cruelty.

11 Let me discuss these factors one by one.

12 Abuse of power. The accused occupied a significant position  
13 within the Kosovo Liberation Army. He was a commander and he  
14 exercised a significant leadership role in his unit, BIA. But he  
15 abused his position. He abused his power as the commander of that  
16 unit.

17 His superior position and his role in the beatings and torture  
18 at the Zllash detention compound, together with his continued  
19 approval and endorsement of the same acts during the indictment  
20 period, should be considered a highly aggravating circumstance.

21 Let me now discuss the issue of vulnerability of victims.

22 As discussed earlier today, the victims of the accused and his  
23 crimes were particularly vulnerable and defenceless and rendered even  
24 more vulnerable as a result of the crimes and because of the  
25 isolation and remoteness of the Zllash detention compound. This

1 position of special vulnerability is evident when the victims are in  
2 the situation of illegal detention, without access to any contact  
3 outside of the place of the detention. And, in this case, the  
4 victims were individuals who were arbitrarily detained, who were kept  
5 in inhumane and humiliating conditions in complete isolation from the  
6 outside world and without any possibility to make any contact.

7 The victims of the accused were vulnerable, defenceless, and  
8 they were at the mercy of their captors.

9 They routinely witnessed the beatings endured by one another  
10 which created an atmosphere of terror and shock that contributed to  
11 the victims' general state of fear. The degree of suffering and  
12 humiliation inflicted, the degrading conditions of detention and the  
13 loss of dignity are all factors that aggravate the crimes committed  
14 by the accused.

15 The victims of the accused were also labelled as collaborators  
16 and in this way were even further prevented from seeking justice even  
17 after they were released. As a result, the crimes committed against  
18 the victims had long-lasting consequences, both physical and  
19 psychological, which are circumstances that aggravate further the  
20 crimes committed by the accused.

21 Finally, with regard to cruelty. In evaluating the manner in  
22 which the crimes were perpetrated, Your Honours should take into  
23 account the level of brutality, barbarity, and zeal of both the  
24 accused and his subordinates under his command.

25 The brutality of the crimes has been discussed already earlier

1 and is evidenced by both the tools or means of perpetration and the  
2 level of suffering inflicted upon the victims. Just as an example,  
3 Your Honours, the use of hot irons or bars and electrocution speaks  
4 to the brutality of the mistreatment and torture. Similarly, the  
5 firing of a gun against the forehead of 3593 denotes deliberate  
6 cruelty.

7 The SPO invites Your Honours to take into consideration all of  
8 these circumstances, at a minimum, as aggravating factors.

9 I will be brief on mitigating factors as there are simply no  
10 circumstances which could mitigate the sentence to be imposed on the  
11 accused.

12 In particular, the accused expressed no remorse or indication of  
13 sympathy, compassion or sorrow for the victims. Regardless of  
14 whether he declared himself innocent or guilty, never once did he  
15 address, if nothing else, at least out of respect, the victims in  
16 this case. The victims who were Kosovo Albanian civilians who  
17 suffered severe crimes committed by fellow Kosovars.

18 The accused offered no condolences for the harm suffered by the  
19 victims and their families and never acknowledged the pain and  
20 suffering that the victims in this case have endured. Further, any  
21 possible submissions as to the good character of the accused, or lack  
22 of his prior criminal convictions, should not be given any  
23 substantial weight and should in no way detract from the crimes the  
24 accused is charged with given the gravity of the crimes he has  
25 committed.

1 All of these aggravating factors are highly relevant to  
2 Your Honours' determination on sentence. The crimes committed by the  
3 accused are particularly grave. His conduct was particularly serious  
4 and had devastating consequences on the victims and their families.  
5 If victims and witnesses are meaningful actors in trials like this  
6 one, where the mandate of the Court is to try crimes that include  
7 very serious ones like war crimes, then victims and witnesses deserve  
8 that such crimes be adequately punished.

9 Your Honours can do that by imposing the sentences required by  
10 the SPO which are fully warranted in the specific circumstances of  
11 this case.

12 For all these reasons, and based on the entirety of the evidence  
13 adduced at trial, the SPO hereby requests the Panel to impose the  
14 following sentences on the accused:

15 Count 1 - arbitrary detention: 10 years' imprisonment;

16 Count 2 - cruel treatment: 20 years' imprisonment;

17 Count 3 - torture: 25 years' imprisonment;

18 Count 4 - murder: 33 years' imprisonment.

19 Rule 163(4) requires the Panel to impose a single sentence  
20 reflecting the totality of the criminal conduct of the accused. It  
21 remains open to the Panel to sentence the accused to the terms of  
22 imprisonment set out in relation to Counts 1 to 4 cumulatively or to  
23 a higher sentence of imprisonment than that set out in relation to  
24 any specific count.

25 In order to reflect the totality of the criminal conduct of the

1 accused, the SPO requests to impose on the accused a single sentence  
2 of 35 years' imprisonment.

3 Thank you.

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

5 With this, we conclude, for now, the closing statements of the  
6 Specialist Prosecutor's Office. Tomorrow, we will continue with the  
7 agenda as already discussed with you.

8 I repeat, we will have tomorrow the closing statements of the  
9 Victims' Counsel both on guilt and innocence of the accused and the  
10 sentencing for one hour, we noted. And we will also have the closing  
11 statements of the Defence on the same subjects for four and a half  
12 hours.

13 Yes, Mr. von Bone? Yes. Very well.

14 Then we have reached the end of our session. If there's nothing  
15 else that parties and Victims' Counsel would like to raise? I am  
16 looking, doing the tour.

17 Mr. von Bone, is there something you would like to raise? No.  
18 Very well. Thank you.

19 Then we will adjourn the hearing, but not before I thank the  
20 parties and the Victims' Counsel for their attendance. And I thank  
21 the interpreters for today's assistance and the audio-visual  
22 technicians and the security and our stenographer.

23 The hearing is adjourned.

24 --- Whereupon the hearing adjourned at 3.20 p.m.

25