

1 Tuesday, 8 March 2022  
2 [Defence Preparation Conference and  
3 Victims' Status Conference]  
4 [Open session]  
5 [The accused present via videolink]  
6 --- Upon commencing at 9.30 a.m.

7 PRESIDING JUDGE VELDT-FOGLIA: Good morning. And welcome,  
8 everyone.

9 Madam Court Officer, could you please call the case.

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

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.  
13 I will now call appearances.

14 Mr. Prosecutor, could you tell us who is present for the  
15 Specialist Prosecutor's Office, please.

16 MR. MICHALCZUK: Good morning, Your Honours. Good morning,  
17 everyone. The Prosecution is represented today by Silvia D'Ascoli,  
18 Associate Prosecutor; Filippo De Minicis, another  
19 Associate Prosecutor; Julie Mann, our case manager; Agathe Tregarot,  
20 the SPO intern. And my name is Cezary Michalczuk, I'm the SPO  
21 Prosecutor.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 Victims' Counsel, you have the floor.

24 MS. PUES: Good morning, Your Honours. Good morning, everybody.  
25 The participating victims in this case are today represented by

1 Liesbeth Zegveld, co-counsel, and by myself, Anni Pues, as counsel.

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

3 Defence counsel, you have the floor.

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

8 Thank you very much.

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

10 And the Registry, you have the floor.

11 MR. NILSSON: Good morning, Your Honours. Jonas Nilsson,  
12 Judicial Services Division, Registry.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 Mr. Mustafa, does the connection work okay? Can you hear us  
15 fine?

16 THE ACCUSED: [via videolink][Interpretation] Yes, Your Honour.

17 PRESIDING JUDGE VELDT-FOGLIA: And, for the record, you are  
18 appearing in front of Trial Panel I.

19 Today we will hold the Defence Preparation Conference and the  
20 Victims' Status Conference which precedes the presentation of  
21 evidence called by the Panel upon Victims' Counsel request and the  
22 opening of the Defence case.

23 And before we start, and for the benefit of the public, I will  
24 give a short procedural history.

25 The SPO opened its case on 15 September 2021 and presented

1 evidence between 20 September 2021 and 2 February. And the SPO  
2 formally closed its case on 4 February 2022. That's filing 308.

3 And on the same day, the Defence notified the Panel that it  
4 intended to file a motion to dismiss any or all of the charges  
5 against the accused, and that should the motion be rejected, it  
6 intended to present a case. That's filing 312 and 320.

7 On 23 February 2022, the Panel rejected the Defence motion to  
8 dismiss the charges; filing 326. And on 1 March, upon instruction of  
9 the Panel, the Defence and the Victims' Counsel filed their  
10 submissions regarding the oral and non-oral evidence that they wished  
11 to present in front of the Panel; filing 333 and 334, respectively.

12 On 7 March, yesterday, the Panel received submissions from the  
13 Defence, filing 335, the Registry, 337, and the SPO, filing 338, on  
14 the Defence case and the presentation of evidence called by the Panel  
15 upon Victims' Counsel's request.

16 The purpose of this conference is -- of today to prepare for the  
17 presentation of the evidence called by the Panel upon Victims'  
18 Counsel request and for the Defence case.

19 The intention is to go through the agenda set out in the second  
20 decision of the conduct of proceedings, filing 296, and address some  
21 other issues from the Defence, the SPO, and Victims' Counsel  
22 submissions.

23 After that, the parties and Victims' Counsel will be given the  
24 possibility to raise any other issues they deem necessary. And the  
25 Panel will then render tomorrow, Wednesday, a number of oral orders,

1 at half past 2.00 in the afternoon.

2 And before we start with the first item, I kindly ask the  
3 parties and participants to adhere to the agenda sent out in our  
4 decision and, of course, as far as possible, not to repeat what we  
5 have already been able to read in your written submissions.

6 Okay. First item on the agenda. That is the opening statement  
7 by the Defence. The Defence has indicated, Defence counsel, it will  
8 be making an opening statement; that's filing 333.

9 Would the Defence be ready to make its opening statement on  
10 Tuesday, 22 March?

11 And then my -- another point I want to make. The Panel further  
12 notes the Defence submissions, filing 333 and 335, indicating that it  
13 will need two hours for its opening statement and that visual aids  
14 and other tools will be used. And the Panel wishes to remind Defence  
15 counsel that it will need to communicate to the CMU, the SPO,  
16 Victims' Counsel, and the Panel the visual aids, so the maps and the  
17 photographs, that it intends to use by reference to the ERN number  
18 under which those visual aids can be found in Legal Workflow. And  
19 should the Defence intend to disclose any visual aids which not have  
20 been previously disclosed, then it should be made available to CMU,  
21 the SPO, the Victims' Counsel, and the Panel in electronic form and  
22 they should be added to Legal Workflow before the opening of the  
23 Defence case.

24 Defence counsel, you have the floor.

25 MR. VON BONE: I'm trying to find a calendar. The 22nd of March

1 is a Tuesday.

2 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] It's a  
3 Tuesday. Next week, the court is not at our disposal, but the week  
4 after it is. So we would like to continue.

5 MR. VON BONE: I understand.

6 I had estimated the first witness in the first week of March and  
7 therefore we were in the --

8 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you said  
9 "March." I assume you --

10 MR. VON BONE: April. Sorry. And therefore, it would be  
11 helpful if it would be in the last week of March that we could do the  
12 opening statement. It goes in sequence. And, actually, we were  
13 wondering whether it was possible to make an opening statement and  
14 follow up with the first Defence witness on that.

15 I estimated about two hours. I think it's a rather long  
16 estimate. In any event, we think it would be done within -- let's  
17 say, we start at 9.30. At 11.00, that is how I estimated it, it  
18 would be within that time-frame done. And then afterwards we could  
19 actually start with the first Defence witness. It was a little bit  
20 the idea that I had. If you would like to do that earlier, that  
21 would be possible. I think we would like to consult with our client  
22 regarding it. But we would prefer one week later start. At least we  
23 want to have it a little bit connected to the first witness of the  
24 Defence. Just not to lose any time in that respect.

25 So that was just the idea we had. But --

1           PRESIDING JUDGE VELDT-FOGLIA: On the issue of time, that's  
2 exactly one of the factors we take into consideration and that  
3 therefore it would be helpful to -- if we are ready to start as soon  
4 as we can.

5           MR. VON BONE: Yes.

6           PRESIDING JUDGE VELDT-FOGLIA: And we will discuss further on  
7 also the start, the possible start, of the --

8           MR. VON BONE: Witnesses.

9           PRESIDING JUDGE VELDT-FOGLIA: -- interrogation of the  
10 witnesses, because maybe we can do something with that too and maybe  
11 anticipate that also. But we will discuss that later.

12           But I didn't hear a no, but I heard you say, "I would like to  
13 consult with my client," so I will give you the opportunity to  
14 consult with your client. But for planning reasons, purposes, the --  
15 if there are no hard issues not to do it, I would -- we would have a  
16 preference to start as soon as possible, and that would be -- but we  
17 are just tentatively now seeing what is possible, to start then. But  
18 I will give you the possibility during the break, which we will have,  
19 as usual, at 11.00 to consult with your client.

20           MR. VON BONE: And as far as the visual aids is concerned, we do  
21 not expect to use any visual aid that has not been disclosed in our  
22 disclosures. Probably a map, some other things that we have  
23 compiled, these kind of things. And that's why -- we do not always  
24 know how that works with visual aids. That's why the estimate was  
25 two hours. But my intention is to do this within the one and a half

1 hour that we use usually, as we are doing it now, from 9.30 until  
2 11.00. That's why the estimate is on the rough side, so to speak.

3 PRESIDING JUDGE VELDT-FOGLIA: So within one session. I  
4 understand that making very precise estimates is not always easy, but  
5 it's not necessary, I can tell you, to make too rough estimates  
6 because the Panel, if you reason why you think you would need more  
7 time, is always open to discuss that. So ...

8 MR. VON BONE: In any event, and that counts for everything, I  
9 would like to say that, is that with all our estimates, we tried to  
10 obviously limit the scope of things of whatever we want to do. So  
11 that's why I think even with this I estimated two hours. That's  
12 maybe just going over one session or just staying within it. That is  
13 the target that I set for myself.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well.

15 Mr. Prosecutor, would you like to raise anything in this regard.

16 MR. MICHALCZUK: Your Honours, nothing in particular. We, first  
17 of all, welcome the willingness of the Defence to deliver the speech  
18 within a shorter time-frame than he indicated and to proceed  
19 immediately with the first witness. As we understand from the  
20 submission of the Registry, they would be ready with the first  
21 witnesses on that week, and the date was indicated in the submission.  
22 For the Prosecution, Your Honours, the sooner, the better.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 MR. MICHALCZUK: 24th, for example, would be perhaps a good day  
25 to start with the first witnesses.

1 Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Victims' Counsel, would you like to make any observations?

4 MS. PUES: Your Honours, apart from that we are ready to proceed  
5 whenever the parties are, no.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7 Very well. I will pass to the next topic and the issue of when  
8 to start will come up at further issues we will discuss during this  
9 conference.

10 The next topic is the order of the Defence proposed witnesses  
11 included in the list of witnesses submitted to Panel on 1 March 2022.  
12 That's filing 333.

13 Defence counsel, the Panel notes your submission of 6 March,  
14 filing 335, in which you indicate you wish to follow the order of the  
15 witnesses indicated in annex 1 of filing 333. Yes? I see you  
16 nodding.

17 MR. VON BONE: [Microphone not activated].

18 PRESIDING JUDGE VELDT-FOGLIA: Yes, thank you.

19 And on this point, the Panel would like to inquire with the  
20 Registry whether it would be feasible to organise the testimony of  
21 the witnesses in such a way that if a witness finishes her or his  
22 testimony earlier than expected, the next scheduled witness can start  
23 with her or his testimony immediately afterwards.

24 You have the floor, Registry.

25 MR. NILSSON: Thank you, Your Honour.



1 In short, yes, it is possible to have witnesses lined up within  
2 reason. We, of course, plan the witnesses' travel and so on in  
3 accordance with the estimates given by the parties, but it is  
4 possible to have witnesses lined up so that testimonies can continue  
5 on -- in continuous.

6 Thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you.

8 Defence counsel, would you like to make any submissions on this  
9 point?

10 MR. VON BONE: No. Actually, we wanted to group some of the  
11 witnesses because we thought they would be in line. And to be quite  
12 honest, we, for the first witness, calculated in the working  
13 conditions of the people involved, that's why we thought that the  
14 first week of April would give them at least the time to organise.

15 I consulted with WPSO regarding this, and they -- within those  
16 consultations, we said for about three weeks things are necessary to  
17 organise. But if we can start earlier, that's fine with me, as long  
18 as we try to keep the order as it is.

19 We will see, I think, along the way that -- as we have seen with  
20 maybe Prosecution witnesses too, that some people might not be  
21 available at some point and could go into other slot, so to speak.  
22 But, you know, we have to go about it as we find it. But I think  
23 very few times we will have problems with people appearing, just in  
24 the cases that they have particular working conditions or  
25 self-employed or have a practice to take care of, then that takes

1 organisation for them to do that.

2 PRESIDING JUDGE VELDT-FOGLIA: Yes, but some kind of flexibility  
3 is, of course, requested. But I hear you say that you will do your  
4 utmost and the witness, too, to organise that.

5 MR. VON BONE: Absolutely.

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

7 Yes, Mr. Prosecutor, would you like to raise anything in this  
8 regard.

9 MR. MICHALCZUK: No, nothing else, Your Honours.

10 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel.

11 MS. PUES: No, Your Honours. Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Okay. Now, we noted the  
13 submissions made, although this point still we -- will be elaborated  
14 some more at a further moment in this conference.

15 Yes, the next topic is the request for protective measures for  
16 the Defence proposed witnesses.

17 Defence counsel, the Panel notes the Defence submission that it  
18 might request protective measures for one witness. That's filing  
19 335. And the Panel would like to know whether the Defence will be  
20 able to indicate to the Panel by Monday, 28 March, whether such a  
21 request will be made and for which witness such request is being  
22 considered. And in order to preserve the confidentiality of such  
23 information, you can respond by indicating the witness pseudonym or  
24 the witness number, as you wish, as indicated in the Defence list of  
25 witnesses.

1           You have the floor.

2           MR. VON BONE: At the time of filing, I was not completely sure.  
3 I think it is only in one occasion. And for the 28th, there is no  
4 problem to inform you about that, whether that will be necessary at  
5 all.

6           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7           Mr. Prosecutor, would you like to make an observation on this?

8           MR. MICHALCZUK: Your Honours, no observations.

9           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10          Victims' Counsel, do you anything to say?

11          MS. PUES: No, thank you.

12          PRESIDING JUDGE VELDT-FOGLIA: Does the Registry wanted to make  
13 an observation on this point?

14          MR. NILSSON: No observation. Thank you, Your Honour.

15          PRESIDING JUDGE VELDT-FOGLIA: Okay.

16          Since the Defence has already indicated that it does not intend  
17 to request redactions to any other material, I will now move to the  
18 next topic, and that is the start date of the presentation of  
19 evidence by the Defence and the organisation of the Defence witness  
20 testimonies by the Registry.

21          Defence counsel, the Panel notes your submission indicating that  
22 the Defence would be ready to start its presentation of evidence in  
23 the first week of April, as you already told us before. That's  
24 filing 335. We note the submission of the Registry indicating that  
25 the appearances of the first seven witnesses on the Defence list of

1 witnesses for which complete documentation was available - so not the  
2 first witness; there I saw that passport copies, something like that,  
3 was missing - can be facilitated at the earliest on 24 March 2022.  
4 And that's filing 337.

5 The Panel would nevertheless like to ask the Defence whether it  
6 would be in a position to call its first witness on Wednesday,  
7 23 March 2022, and then to continue in the week of the 28th of March,  
8 taking into consideration that the Panel will be able to use the  
9 courtroom on 23 March for a full day and also for a session on  
10 Thursday, the 24th.

11 And the Panel would have a preference to hear one witness for  
12 which the Defence estimates a shorter time for direct examination,  
13 such as Witness number 11 on the Defence list of witnesses, which is  
14 Witness 1100.

15 And on this point, the Panel would like to inquire with the  
16 Registry whether appearance of Witness, for the Defence, 1100 could  
17 be organised for Wednesday, 23 March, taking into consideration the  
18 aforementioned date of 24 March as the first day in which an  
19 appearance of a Defence witness could be facilitated.

20 Defence counsel, you have the floor.

21 MR. VON BONE: Your Honour, I didn't catch it well.

22 Starting with the first witness on 23 March. That is the  
23 question. I'm not sure about the first witness because I think, with  
24 this witness, that might be too short for the witness to make  
25 arrangements, but I cannot be conclusive about it. I know for that

1 witness we have, I believe -- yesterday we organised his passport.

2 But to move Witness 11 all the way up, I don't think that would  
3 be preferable as this witness is connected to Witness 9 and 10. It  
4 would not make -- I don't think it would be a good order to move that  
5 person all the way up. I think they're just simply too connected to  
6 Witness 9 and 10. I think that would not be a good choice to do so,  
7 even though it is limited in scope. As I say, for the other witness  
8 - 9 and 10 - I have estimated five hours, which I calculate, like,  
9 half a day or not a complete full day, but half a day, and,  
10 therefore, I think it would not be wise to do that, Your Honour.

11 The first witness appearing on 24 March or either 23 March is,  
12 as far as I'm concerned, okay, if it is possible for the witness to  
13 do that. I do not have a -- that in mind. We estimated that for  
14 that witness, he might have needed to take some more time - and also  
15 the second witness - to organise properly work or professional  
16 obligations in order to be able to testify. That's why. That's why  
17 my estimate was the first week of April to be sure that we have lined  
18 up everybody properly.

19 PRESIDING JUDGE VELDT-FOGLIA: Yes, but we have two weeks now  
20 and we don't want to lose those two weeks. "Lose" in the sense of  
21 having an empty courtroom, whereas everybody is ready to move on.

22 MR. VON BONE: Yeah.

23 PRESIDING JUDGE VELDT-FOGLIA: So one way or the other, we  
24 really have to make it work --

25 MR. VON BONE: Yeah.

1           PRESIDING JUDGE VELDT-FOGLIA: -- I would say, and also in the  
2 interests of your client, to proceed as fast as we can within, of  
3 course, the logistic and organisational and -- the organisation also  
4 of your Defence case. Let me be clear on that, that we don't want to  
5 interfere with that, but we need to -- to organise it.

6           So what I -- if I summarise, I hear you say that Witness 1100,  
7 you see it as problematic because, although limited in scope, he is  
8 connected -- the witness is connected to Witnesses 9 and 10.

9           MR. VON BONE: May I interfere for something?

10          PRESIDING JUDGE VELDT-FOGLIA: Of course.

11          MR. VON BONE: Could we just consult among the Defence to move  
12 another witness up in that particular manner, to see whether we can  
13 finish another witness within the date of the 23 March. If the issue  
14 is to use 23 March for a witness, then we would rather prefer to  
15 have -- to seek another witness rather than that particular witness  
16 that you just indicated.

17          PRESIDING JUDGE VELDT-FOGLIA: Yes. But that was going --  
18 within my summary, my -- it was a step up to --

19          MR. VON BONE: Oh.

20          PRESIDING JUDGE VELDT-FOGLIA: -- bring you to my next point.  
21 But I see we are on the same line, so that's good. That we have  
22 another proposal that would be Mr. -- that would be a witness who has  
23 already testified in court, Defence Witness 1900. That witness has  
24 already appeared before the Panel in February 2022. We have had the  
25 preparation -- the parties and the Victims' Counsel and the Panel

1 have had the possibility to prepare for the examination of said  
2 witness. And, alternatively, if you could propose any other witness  
3 who would be ready to testify on 23 March.

4 That is the order I had in mind. And we had chosen the first  
5 one because of the limited amount of hours you have proposed, and we  
6 still have to look at the amount of hours that you have estimated,  
7 but that's another topic.

8 But, yes, please, if you have somebody -- another witness that  
9 could come on 23rd, with the possibility of one session on the 24th.  
10 But all that, before we do that, I have to go -- while you think,  
11 Defence counsel, I will go to the Registry now in order to see what  
12 the possibilities are because the proposal of the Panel implies an  
13 anticipation of one day, from the 24th to the 23rd, to have a witness  
14 ready for its testimony in court -- his or her testimony in court.

15 So, yes, Registry, you have the floor with regard to the  
16 possibilities to do it on the 23rd, to start on the 23rd.

17 MR. NILSSON: Thank you, Your Honour.

18 With regard to number 11 on the list, I did some quick  
19 consultation, and it appears that it is possible to do it one day  
20 earlier than we had indicated for this particular witness, so on the  
21 23rd already. So that's number 11.

22 The first witness on the list, you have already indicated there  
23 is a problem with the passport copies so it is difficult to commit  
24 to -- until that has been resolved.

25 And with regard to the third witness that has been mentioned,

1 which is number 19, there is still outstanding -- we still have to do  
2 a visa request. I'm afraid the earliest it can be done for that  
3 witness is the week of 28 March.

4 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

5 Thank you. I have a question in this regard to the Registry.  
6 This witness has already testified in February, and it was my  
7 understanding that the *[REDACTED] Pursuant to Post-Session Redaction  
Order F341.*

8 *[REDACTED] Pursuant to Post-Session Redaction Order F341.*

9 MR. NILSSON: Thank you, Your Honour.

10 My understanding is *[REDACTED] Pursuant to Post-Session Redaction  
Order F341.* So once it

11 is used, you have to apply again.

12 PRESIDING JUDGE VELDT-FOGLIA: Ah, okay. So is your answer that  
13 it would not be possible to have this visa ready for the 23rd?

14 MR. NILSSON: For this -- for 19 on the list, unfortunately, the  
15 earliest I have right now from my colleagues is - I'm trying to  
16 consult very quickly - the week of 28 March, unfortunately.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay, very well. And with regard  
18 to the witnesses, starting with the second witness on the list, in  
19 the Registry observations, the Panel noted that there were seven  
20 witnesses, not consecutively, but seven witnesses which would be  
21 ready to testify -- could be ready to testify, from the visa point of  
22 view, on the 24th. Would those witnesses be ready also on the 23rd?

23 MR. NILSSON: All I know specifically is number 11. But I  
24 can -- I will follow up and see -- right now and see if any of the  
25 others could be one day earlier as well, just like 11.



1           PRESIDING JUDGE VELDT-FOGLIA: Because I think that would be of  
2 use for Defence counsel, isn't it, if you would know if one of those  
3 witnesses mentioned in the submissions of the Registry filed  
4 yesterday, if they would be ready on the 23rd. Because then you  
5 could assess if one of them could be possible. And if you have  
6 somebody else, please propose, because then the Registry can inquire  
7 what the possibilities are. But it is my understanding that the  
8 seven witnesses on the list of the Registry that would be available  
9 the 24th, are, yes, more likely to be also ready on the 23rd.

10           I saw you standing, Defence counsel. You have the floor.

11           MR. VON BONE: I think, honestly, to be -- that with the  
12 first -- within the first seven witnesses, that would be one of the  
13 witnesses that our mind goes to, to move it forward.

14           PRESIDING JUDGE VELDT-FOGLIA: And I have --

15           MR. VON BONE: And that is -- excuse me. That is the first  
16 eight, number one until eight.

17           PRESIDING JUDGE VELDT-FOGLIA: Yes, but number one, as we were  
18 informed again, there is a passport problem. There is not yet a copy  
19 of --

20           MR. VON BONE: We have that. As of today, we have that, because  
21 we organised that yesterday.

22           PRESIDING JUDGE VELDT-FOGLIA: Okay.

23           MR. VON BONE: So that's for sure.

24           PRESIDING JUDGE VELDT-FOGLIA: Very well.

25           Registry, you have the floor.

1 MR. NILSSON: Thank you.

2 So even if we received the passport copy today, yeah, it might  
3 not be possible for the first witness until the week of 28 March.  
4 But I did receive just now confirmation that for the -- for all of  
5 the seven, it is possible to move it one day earlier, to the 23rd, if  
6 that's what the Panel wishes. So for Witness number 2, 3, 4, 6, 7,  
7 10 and 11 - so all the seven witnesses that we indicated could be  
8 ready on 24 March - they can be ready one day earlier, if that is  
9 helpful.

10 Thank you.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much for this  
12 quick follow-up.

13 Defence counsel, my request to you for now would be that the  
14 bottom line is that we would like to start on 23rd and we would like  
15 to have a witness for that day. I propose to leave you in the break  
16 for a consultation with your colleagues on this matter, and then  
17 after the break you can come back to us and we can discuss it some  
18 more, and I hope you can come with an answer on this.

19 We appreciate very much your willingness to try to organise this  
20 matter.

21 MR. VON BONE: May I ask, Your Honour --

22 PRESIDING JUDGE VELDT-FOGLIA: Yes.

23 MR. VON BONE: -- so let's say we would start on 22 March with  
24 the - what is it - the opening statement and we would proceed the  
25 following day with the first witness, that first witness would be

1 number 2 on the list?

2 PRESIDING JUDGE VELDT-FOGLIA: That would depend, of course, on  
3 you.

4 MR. VON BONE: Yeah. Because we have on the 23rd and the 24th?

5 PRESIDING JUDGE VELDT-FOGLIA: Only in the morning. We were  
6 searching for a witness which is not too long because if not, that  
7 would imply that the witness would not be finished on the 24th.  
8 Because in the 24th in the afternoon, there is already another  
9 hearing. You can see that on the public calendar of the KSC. And on  
10 Friday, I know that the courtroom is not available.

11 So as you see --

12 MR. VON BONE: So we're looking at the 23rd of March only in the  
13 morning.

14 PRESIDING JUDGE VELDT-FOGLIA: 24th.

15 MR. VON BONE: 24th in the morning. Let me just come back to  
16 you on this issue.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes, very well.

18 For now, it has been a small debate between the Registry and the  
19 Defence counsel. But I look at Mr. Prosecutor. Would you like to  
20 make an observation on this point?

21 MR. MICHALCZUK: Your Honours, an observation, we are not going  
22 to organise the Defence. It is not my intention to indicate anything  
23 or my purpose. I mean, if we started on 23rd with the first witness,  
24 that would be prudent, whoever the witness is.

25 Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: Very well.

2 Victims' Counsel, I see you nodding. I just want to give  
3 everybody the floor. Good.

4 Then we go to the next week and that's a follow-up on this,  
5 Defence counsel. We would then like to inquire with you and the  
6 Registry -- but I already understood from the observations made by  
7 the Registry that the testimony of witnesses could be scheduled in  
8 the week of the 28 March. And my question to you would be if you  
9 could come back after the break with also a proposal for two  
10 witnesses in that week.

11 MR. VON BONE: [Microphone not activated].

12 PRESIDING JUDGE VELDT-FOGLIA: Yeah?

13 I look at the Registry. Do you wish to make any observation on  
14 this point?

15 MR. NILSSON: No. Thank you, Your Honour. Nothing.

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

17 Very well. On the week of 28th, is there any observations to be  
18 made by Mr. Prosecutor?

19 MR. MICHALCZUK: No observations, Your Honour.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. And by the  
21 Victims' Counsel.

22 MS. PUES: No, thank you.

23 PRESIDING JUDGE VELDT-FOGLIA: It's clear from your side that  
24 you are ready to start whenever it's possible. Good.

25 Yes, Defence counsel, I will give the -- in the break some extra

1 time, so that we don't have a normal break but just a little bit  
2 more, for you to get organised with the team and your client.

3 The next topic on the agenda is the remaining outstanding  
4 material that the Defence intends to disclose to the SPO and the  
5 Victims' Counsel to communicate to the Panel.

6 Defence counsel, the Panel notes your submission indicating that  
7 the Defence might disclose some photographic material, statements or  
8 documentary evidence at a later stage of the proceedings. And we  
9 wish to remind you that, pursuant to Rule 104(5) of the Rules, it  
10 shall disclose to the SPO, Victims' Counsel the statements, documents  
11 and photographs which it intends to use as evidence at trial within a  
12 time-limit set by the Panel and no later -- we have lost the  
13 connection with Mr. Mustafa, so we wait.

14 MR. VON BONE: Your Honour, for my information, we sit also on  
15 Tuesdays, Wednesdays, and Thursdays in the weeks, in those weeks.

16 PRESIDING JUDGE VELDT-FOGLIA: I have to wait.

17 To be honest, we have not decided anything yet. I am here  
18 really tentatively looking for the possibilities we are and already  
19 gathered a lot of information which we will use for our deliberation.  
20 But as you might understand from what we're saying, we're looking at  
21 the week of the 21st and the week of the 28th.

22 [Trial Panel and Court Officer confer]

23 PRESIDING JUDGE VELDT-FOGLIA: We might need a few minutes and I  
24 will get an update as soon as we -- as it is possible, and then we  
25 can see if we have to adjourn or if we can continue.

1 [Microphone not activated]. I will ask you later on if it would  
2 be possible to have two witnesses, one or two witnesses, waiting to  
3 give their testimony. So I will repeat the question afterwards when  
4 the accused is present too, but for your information.

5 [Trial Panel and Court Officer confer]

6 PRESIDING JUDGE VELDT-FOGLIA: I have received an update. The  
7 hearing will be adjourned for 15 minutes, so at 10.30 we will  
8 continue.

9 --- Break taken at 10.14 a.m.

10 --- On resuming at 10.30 a.m.

11 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, I see you're  
12 standing, but I also remember that I was halfway a question for you  
13 with regard to the outstanding material that the Defence intends to  
14 disclose.

15 So I can continue with that unless you think it's very urgent  
16 that -- the point that you have to share with us. You can do it  
17 later on? Okay, thank you.

18 I will -- it's good that you are back, the connection is  
19 restored, Mr. Mustafa. I see that you are here again. I hope that  
20 the connection remains intact. We keep an eye on it.

21 Let me see. Mr. Mustafa, did you hear that I addressed the  
22 topic regarding the outstanding material that the Defence intends to  
23 disclose to the SPO and Victims' Counsel, and to communicate to the  
24 Panel?

25 THE ACCUSED: [via videolink][Interpretation] No, Your Honour.

1           PRESIDING JUDGE VELDT-FOGLIA: Okay. Then I will start from the  
2 beginning.

3           Now, the next topic is the remaining outstanding material that  
4 the Defence intends to disclose. And the Panel, Defence counsel,  
5 notes your submission indicating that the Defence might disclose some  
6 further photographic material, statements or documentary evidence at  
7 a later stage of the proceedings. And we wish to remind you that,  
8 pursuant to Rule 104(5) of the Rules, you shall disclose to the SPO  
9 and the Victims' Counsel the statements, the documents, and the  
10 photographs which you intend to use as evidence at trial within a  
11 time-limit set by the Panel, and no later than 15 days prior to the  
12 opening of the Defence case.

13           So that is already very soon.

14           And the Panel further notes the SPO submission, filing 338,  
15 indicating that the Rule 95 summary for the Witness 500 was not  
16 notified pursuant to Rule 104(1), and it was not enclosed in the  
17 Defence notice of alibi, and it was disclosed only on 3 March and  
18 this statement has been taken in March 2021.

19           Defence counsel, would you like to submit any observation on the  
20 point raised by the SPO?

21           MR. VON BONE: Well, Your Honour, we remain with that witness,  
22 and even though this person also testifies something about the  
23 whereabouts about Mr. Mustafa, the primary issue is that this person,  
24 he is, as an LDK member, as a president of one of the branches of the  
25 LDK, in the best position to testify about the issues regarding

1 whether there was any animosity within LDK regarding political  
2 affiliation or anything else, rather than the fact that he, indeed,  
3 also met Mr. Mustafa on several occasions.

4 So that is actually the reason why he was not included in the  
5 first group of people, but that is the reason why we have included  
6 him in the second.

7 We do believe that this is a witness that we would like to hear  
8 and I think it is important for the determination of the entire case  
9 useful that this person would appear.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

11 Mr. Prosecutor, would you like to raise anything in this regard?

12 MR. MICHALCZUK: Your Honour, we include our position in our  
13 submission in this regard, so this witness should have been notified  
14 with an notice of alibi. Maybe there are other reasons this witness  
15 has been notified so late. Maybe the Defence counsel could elaborate  
16 further on that.

17 But this is the only thing that I could say on that issue.

18 Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Very well.

20 Victims' Counsel, would you like to make any observations on  
21 this point?

22 MS. PUES: No, thank you. Nothing that would go further than  
23 what the SPO already stated. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay. I have a look at the  
25 persons in the courtroom, and I see that for the SPO we are in the



1 same composition.

2 MR. MICHALCZUK: We are.

3 PRESIDING JUDGE VELDT-FOGLIA: For the Victims' Counsel also. I  
4 see you nodding.

5 The Registry too.

6 And for the Defence, I see that we have one person missing.

7 MR. VON BONE: He will appear just in a minute. He is just  
8 upstairs to pick up a document for the Registry. So Fatmir Pelaj is  
9 not here but he will be coming soon.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

11 MR. VON BONE: And may I, if we have finished that point, come  
12 back to the issue of the scheduling?

13 PRESIDING JUDGE VELDT-FOGLIA: Let me see. No, please go ahead.

14 MR. VON BONE: So, Your Honour, the issue is actually the 23rd  
15 and the 24th of March. And the first witness that would be possible  
16 to appear is Witness 2 on our list. It's the one with number 200  
17 indicated. And I think, honestly, that it would be useful to use  
18 those two days for it and we have completed his testimony. And then  
19 in the next week, we schedule the other witnesses, because I do  
20 believe that we will -- with that witness - he was also heard by the  
21 Prosecution at one particular stage - we might need a little bit  
22 longer time than that. And if we are going to move up a person and  
23 we try to squeeze that person into a morning session, I think that we  
24 will have -- it would be better to use a full day for that particular  
25 witness, Witness 200, I am speaking about.

1           PRESIDING JUDGE VELDT-FOGLIA: Okay. But you're talking now  
2 about the 23rd of March.

3           MR. VON BONE: That's right. The 23rd and the 24th morning  
4 session as a -- I think that is --

5           PRESIDING JUDGE VELDT-FOGLIA: If that is possible and that -- I  
6 note that.

7           MR. VON BONE: Yes.

8           PRESIDING JUDGE VELDT-FOGLIA: And that would be a way to  
9 proceed.

10          MR. VON BONE: And it would kind of conclude properly that  
11 particular witness without need to -- putting him into two sessions.  
12 So I think if we have all the documentation, then we can just move on  
13 with that witness in the first week.

14          And then in the second week, that is the week of the 28th -- and  
15 my question, Your Honour, was how many dates -- how many days in a  
16 week do we sit?

17          PRESIDING JUDGE VELDT-FOGLIA: We will have to decide on that.

18          MR. VON BONE: Okay.

19          PRESIDING JUDGE VELDT-FOGLIA: But for us - and then I mean the  
20 Panel --

21          MR. VON BONE: Yes.

22          PRESIDING JUDGE VELDT-FOGLIA: -- it would be helpful if you  
23 would give us two names.

24          MR. VON BONE: Yes.

25          PRESIDING JUDGE VELDT-FOGLIA: And we have to further deliberate

1 on how and -- how we are going to proceed. So I cannot be too clear  
2 yet because we are in a deliberation process and in a moment of  
3 gathering information.

4 MR. VON BONE: Yes. So what we come up with is on 23 and 24th  
5 to do Witness 200. That is number 2 on the list. And then --

6 PRESIDING JUDGE VELDT-FOGLIA: Oh, Defence counsel, sorry to  
7 interrupt you.

8 MR. VON BONE: Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: I have been informed that the  
10 first witness --

11 MR. VON BONE: Yes.

12 PRESIDING JUDGE VELDT-FOGLIA: -- so number 1 on your list --

13 MR. VON BONE: Yes.

14 PRESIDING JUDGE VELDT-FOGLIA: -- could be heard in the week of  
15 the 28th. That apparently the papers would be ready.

16 MR. VON BONE: Yeah, yeah. That was just what I was going to  
17 speak about, because we consulted with each other in the break.

18 PRESIDING JUDGE VELDT-FOGLIA: Very well.

19 MR. VON BONE: And then most probably, Your Honour, in the same  
20 week, we would probably be able to simply proceed with the Witness 3  
21 on the list.

22 PRESIDING JUDGE VELDT-FOGLIA: So 2, 1, 3.

23 MR. VON BONE: That's right, yeah. And then we do not get mixed  
24 up in orders or dates or whatever. We are more or less in a  
25 chronology, as well. Yeah.

1 PRESIDING JUDGE VELDT-FOGLIA: Very well. Very well.

2 MR. VON BONE: That's --

3 PRESIDING JUDGE VELDT-FOGLIA: Now, that is good that that point  
4 has been discussed.

5 No further observations from the side of the Prosecution?

6 MR. MICHALCZUK: No observations.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

8 Victims' Counsel.

9 MS. PUES: Just for clarity in terms of timing. The seven hours  
10 estimate by the Defence, obviously don't include any questions either  
11 from the SPO or from us. So it would, I guess, be two days a week  
12 for one witness who is scheduled for seven hours. Is it? Just to be  
13 clear on the scope of time that we will be spending.

14 PRESIDING JUDGE VELDT-FOGLIA: That is still something that  
15 needs to be discussed so I cannot answer you on that. We have  
16 received a request from -- and an estimation from the Defence and we  
17 will see how to approach that issue.

18 MS. PUES: Okay. Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Yes. To the Registry, do you  
20 have any observations on this specific matter?

21 MR. NILSSON: Thank you, Your Honour.

22 Just to confirm, that the schedule just set out by Defence  
23 counsel, this can be accommodated by the Registry. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. I have a  
25 question that I already put to you but then the connection -- we lost

1 the connection with Mr. Mustafa.

2 My question is if the Registry could accommodate one or two  
3 witnesses -- so you already confirmed one, but could accommodate two  
4 witnesses to be in line in order to have always somebody ready for  
5 next -- for the next testimony.

6 MR. NILSSON: Thank you, Your Honour.

7 Yes, logistically, from the Registry point of view, it is  
8 possible. We always try to limit the time the witness spends in  
9 The Hague. But that aside, if the testimonies are very short, of  
10 course, it makes perfect sense and it is possible to do.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that to the  
12 Registry.

13 Yes, Defence counsel, we have now been discussing the 23rd and  
14 the 24th in the morning. Could you already confirm that the 22nd you  
15 could be doing the opening statements?

16 MR. VON BONE: Yes, I can.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you. Thank you for  
18 that.

19 Next point on the -- next point I would like to discuss with you  
20 is the -- the indication by the Defence that the witness for the  
21 Defence 100, so the first one, will testify as an expert witness.  
22 That's Annex 1 of filing 333. And the Panel notes the submission  
23 that witness for the Defence 100 has been indicated as an expert  
24 witness without proper notification of the nature of the witness  
25 evidence and without following the procedures set out by Rule 149 of

1 the Rules.

2 Defence counsel, would you like to submit any observation on the  
3 SPO submission on this point?

4 MR. VON BONE: Yes. Your Honour, this witness is a person who  
5 was in the general command of the KLA. So that is the basic idea of  
6 this witness. Apart from that, he has particular expertise. We do  
7 not intend to use him as an expert witness in the sense that he is an  
8 expert on a particular material issue. However, he has expertise  
9 regarding that. But, once again, this person is a person who was a  
10 member of the general command of the KLA and, therefore, obviously,  
11 can give clear lines about how orders were -- went, what was the  
12 proper line of command, and so on. That is basically what we want to  
13 use this witness for.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay.

15 MR. VON BONE: So --

16 PRESIDING JUDGE VELDT-FOGLIA: But he is also a witness in --

17 MR. VON BONE: He's a witness in the sense of a --

18 PRESIDING JUDGE VELDT-FOGLIA: -- a witness in the sense --

19 MR. VON BONE: [Overlapping speakers] ...

20 PRESIDING JUDGE VELDT-FOGLIA: -- and the word "expert" --

21 MR. VON BONE: Yeah.

22 PRESIDING JUDGE VELDT-FOGLIA: -- was an addition from your side  
23 to --

24 MR. VON BONE: That's right.

25 PRESIDING JUDGE VELDT-FOGLIA: -- to point out that, in your

1 view, he has specific knowledge on a specific point.

2 MR. VON BONE: Yes, yes.

3 PRESIDING JUDGE VELDT-FOGLIA: But you were not referring to the  
4 Rules of Procedure and Evidence in the more formal point --

5 MR. VON BONE: Exactly.

6 PRESIDING JUDGE VELDT-FOGLIA: -- in a more formal approach.

7 MR. VON BONE: No.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay.

9 Mr. Prosecutor, would you like to raise anything in this regard?

10 MR. MICHALCZUK: We are absolutely fine with this explanation.  
11 Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 Victims' Counsel, would you like to make an observation?

14 MS. PUES: On the point of the expert witness status, no. Thank  
15 you.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 Very well. Then we have this -- yeah. The Panel takes note of  
18 the Victims' Counsel submission, filing 297 and filing 334,  
19 requesting the Panel to appoint an expert on medical forensic  
20 evidence for the purposes of individual reparation and truth-finding,  
21 as well as authorise to one participating victim, Victim-05/05, to  
22 directly address the Panel to present views and concerns.

23 And although I think know the answer, but the Panel would like  
24 to know first whether Victim-05/05 would be ready to address the  
25 Panel on Monday, 21 March 2022 if authorised. We still have a take a

1 decision on that. And on this, the Panel notes that Registry  
2 submissions indicating that the appearance of Victim-05/05 can be  
3 facilitated at the earliest on 21 March 2022.

4 And second, Victims' Counsel, you have already made an opening  
5 statement at the start of the trial, on 15 September, and you have  
6 requested the Panel the equivalent of two sessions for your  
7 presentation. That was filing 283.

8 And the question of the Panel is does this encompass the  
9 presentation of the views and concerns of Victim-05/05, and does the  
10 Victims' Counsel intend to make further oral submissions to the Panel  
11 before or after the presentation of those views and concerns? And  
12 with regard to the victim who will be expressing the views and  
13 concerns, we would like to stress in this regard that the person  
14 should not repeat what he has already said or she has already said in  
15 the statement to the SPO which has already been admitted into  
16 evidence under Rule 153 of the Rules. Rather, the victim should  
17 focus on and convey the views and concerns going beyond the evidence  
18 previously provided.

19 And, third, the Panel would like to inquire with  
20 Victims' Counsel whether she intends to request the appointment of an  
21 expert, in addition to the one she has requested for the medical  
22 forensic examination of some of the victims - that's filing, *inter*  
23 *alia*, 297 - for the specific purpose of assisting the Panel in the  
24 determination of the compensation to be awarded to victims for the  
25 harm allegedly suffered should reparations be ordered in case of a



1 conviction.

2 So if the Panel would enter a conviction and we would enter into  
3 the determination of compensation to be awarded to victims, is the  
4 Victims' Counsel requesting appointment of an expert on the financial  
5 compensation; and, otherwise, how does Victims' Counsel foresee to  
6 proceed in this regard?

7 You have the floor, Victims' Counsel.

8 MS. PUES: With regard to the views and concerns to be  
9 represented by Victim-05/05, we will be very careful, if authorised,  
10 that we will not hear any repetitive statements but, rather,  
11 complementary to what the evidence so far has shown.

12 If we make any further oral observations from my part, they will  
13 be very short so that, overall - and this is subject to one further  
14 meeting that has to be had - it will not take longer than one  
15 morning, possibly even just one and a half, two hours, as initially  
16 indicated. It is a rather short presentation -- sorry, presentation  
17 and in combination with the observations by the victim.

18 With regard to the appointment of the expert, it would be great  
19 if we could have a few minutes just to liaise just between co-counsel  
20 with me to further discuss that. Is that all right?

21 PRESIDING JUDGE VELDT-FOGLIA: I propose that we use the break  
22 for that. If you can liaise now, feel free, but you might want to  
23 pay attention to what is happening here, too, so we don't have to  
24 overlap. And I think we are not in a rush today.

25 So, yes, thank you for that.

1 MR. VON BONE: Your Honour, may I, for a brief second?

2 PRESIDING JUDGE VELDT-FOGLIA: On this? Because I would  
3 first -- shall I first finish this point --

4 MR. VON BONE: Sure.

5 PRESIDING JUDGE VELDT-FOGLIA: -- and then you get the floor on  
6 the topic you would like to -- to raise.

7 And let me see.

8 Defence counsel, would you like to raise anything in regard to  
9 what was just said by the Victims' Counsel?

10 MR. VON BONE: No, Your Honour. We make no observation.

11 PRESIDING JUDGE VELDT-FOGLIA: And does the SPO wants to make an  
12 observation on this point?

13 MR. MICHALCZUK: No, Your Honour, we will wait for the final  
14 position of the Victims' Counsel on this second issue.

15 With regard to the first issue of the Victim-05/05, no further  
16 observations.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good.

18 And the Registry, is there anything you would like to say on  
19 this matter?

20 MR. NILSSON: Thank you, Your Honour. Nothing from the Registry  
21 on this.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 Defence counsel, I saw you standing. You have the floor.

24 MR. VON BONE: Just the previous topic that you discussed with  
25 the outstanding material and you gave the timeline.

1 I just wanted to say, once again, we do not foresee anything in  
2 particular, if it would be a document, a photograph or something, but  
3 there's not going to be --

4 PRESIDING JUDGE VELDT-FOGLIA: A lot. But --

5 MR. VON BONE: No. But it is just sometimes something comes up.  
6 Then at that time we will file accordingly, according to the rules  
7 that you just set out. But we do not foresee anything in this  
8 matter.

9 PRESIDING JUDGE VELDT-FOGLIA: Okay. I note that  
10 Mr. Fatmir Pelaj came in, and I realise that that was already ten  
11 minutes ago, but I acknowledge your presence again in the courtroom.  
12 And for the record, you are -- you have been here for, yeah, more  
13 than ten minutes now. Good.

14 Yes. There is another topic I would like to discuss with the --  
15 regarding the Defence list of exhibits and Legal Workflow.

16 Defence counsel, we have noticed in your list of exhibits - and  
17 that's filing 333/KOR/AO2 - as well as in Legal Workflow, that there  
18 are several - yeah, how would I call them? - irregularities and we  
19 need to address that because the way we refer -- or the exactness of  
20 the way we refer to ERN numbers must be 100 per cent trustworthy.  
21 And also the SPO has raised a number of issues in this regard in its  
22 written submissions. And it's a list of several points.

23 Now, we note that the ERN of multiple items on the Defence list  
24 as they appear both in the list and in Legal Workflow do not  
25 correspond with the ERNs stamped on the items themselves. And by way

1 of example, item 18 on the Defence list appears both in the list and  
2 in Legal Workflow with the ERN DSM-00198 until 00198, but it is  
3 stamped with the ERN DSM-00199.

4 Other items appear correctly in the list but still have an  
5 incorrect ERN in Legal Workflow. And this is the case with the  
6 statement of, for example, Witness 500, which is stamped with the ERN  
7 DSM-00570 till 00578, but appears in Legal Workflow under ERN  
8 DSM-00579 till 00579.

9 Second, and as a consequence, different items have been  
10 registered in Legal Workflow under the same ERN. So, for instance,  
11 ERN DSM-00561 till 561, so it's the same page, identifies in Legal  
12 Workflow both the statement of Witness 200 and a copy of his ID card.  
13 And the Panel reminds the Defence that each item should have a unique  
14 ERN.

15 And, third, at times, one and the same item has been disclosed  
16 twice, so either under the same ERN or under different ERNs. So, for  
17 instance, one and the same map has been disclosed both as DSM-00421  
18 and as DSM-00447. And this is true for several annexes to witness  
19 statements which have been disclosed both as part of the statements  
20 and as separate items, as in the case of Witness 1400.

21 And, lastly, the Panel notes, as pointed by the SPO, that  
22 information on the provenance of certain items is missing in Legal  
23 Workflow.

24 And we note that these are not isolated occurrences, but there  
25 are, yes, I must say, numerous items on the Defence list of exhibits

1 with these problems. The Panel wants to express its concern in this  
2 regard, and we would like to hear whether the Defence has faced any  
3 difficulties and what has happened. Because we should have a system  
4 that should be as perfect as possible, because when we refer to the  
5 different ERN numbers, it is going to get very complicated if the  
6 numbers are -- yeah, are not correct. It's just a library you have  
7 with no efficient access to the books in it. We cannot work in that  
8 way.

9 So we have to resolve it, but I like to give you the floor to  
10 see if -- what your reaction is on this.

11 You have the floor, Mr. Defence counsel.

12 MR. VON BONE: Well, first of all, Your Honour, the disclosures  
13 have been done two times in total and that was in order to ensure  
14 that the Victims' Counsel was also getting everything that was  
15 needed.

16 Now, to the best of my and Mr. Pelaj's knowledge, we have done a  
17 correction in the filing. Now I cannot tell you which ones. He  
18 would know, he would be in the best position to tell me about it.

19 In any event, corrections will be made, obviously, if -- we will  
20 just go once again through the entire list and then see whether the  
21 document which is stamped has the same ERN number as on this list.

22 Now -- yes.

23 PRESIDING JUDGE VELDT-FOGLIA: And -- also that is an important  
24 point. Thank you for that. It's very important.

25 MR. VON BONE: Yeah, yeah.

1           PRESIDING JUDGE VELDT-FOGLIA: But also that each disclosed item  
2 has only one ERN number.

3           MR. VON BONE: Number, yes.

4           PRESIDING JUDGE VELDT-FOGLIA: Because what has also happened is  
5 that you have a statement --

6           MR. VON BONE: Yes.

7           PRESIDING JUDGE VELDT-FOGLIA: -- with the attachments you have  
8 shown to the witness, and then we have another batch within  
9 disclosure with all the items again which have received in that case  
10 another ERN name. So the same -- the attachment attached to the  
11 statement has that ERN number and then it has an individual ERN  
12 number. And there will come a moment in time that that will raise  
13 confusion when citing documents.

14          MR. VON BONE: And what I understand is that you would like to  
15 have one single ERN number, obviously.

16          PRESIDING JUDGE VELDT-FOGLIA: Yes, of course --

17          MR. VON BONE: Because I remember how it was filed in -- back  
18 in -- at the end of April. I recall that, at that time, all the  
19 attachments were included in the statement, which we found would make  
20 it more easily readable for the reader, apart from that, to give each  
21 of such items a separate ERN number. So that is why I think two ERN  
22 numbers might appear.

23          Now, I have to consult with Mr. Pelaj about it, but what would  
24 be the preference? Because we could either list the two ERN numbers  
25 under which a specific photograph is listed, once as a separate item,

1 and one as the attachment to a statement, or just have each and every  
2 one as a single one. I'm not sure about what is the easiest way to  
3 go about it.

4 And I see [REDACTED] Pursuant to Post-Session Redaction Order F341.  
she is the Wikipedia on this issue.

5 [Trial Panel and Court Officer confer]

6 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. CMU  
7 has confirmed what I was going to propose to you, that -- two things.  
8 You can discuss with CMU further details. That's one point. But on  
9 this -- on your specific question, I would say, and it was confirmed,  
10 that once a document has an ERN, we don't change it anymore, so --  
11 because if not, it gets confusing.

12 But what is also very important that -- but you already  
13 indicated your willingness to go through all items on the exhibit  
14 list and to have the same numbering on the document as in Legal  
15 Workflow, also for -- it's evident for reasons of reference.

16 Let me see. Yes --

17 MR. VON BONE: Well, we will obviously, if corrections are made,  
18 probably file a new second corrected version or third corrected  
19 version or --

20 PRESIDING JUDGE VELDT-FOGLIA: That was my next question. And  
21 we will for sure give an oral order on that, but thank you for  
22 expressing your willingness on this. We would then like to have kind  
23 of a final list which will be the reference point of parties,  
24 Victims' Counsel, and the Panel, when referring to the exhibits of  
25 the Defence.

1 Very well. Yes. And there is -- I -- this point that the  
2 origin, the provenance of certain items is missing in Legal Workflow,  
3 that should be added too.

4 Mr. Prosecutor, would you like to raise anything in this regard?

5 MS. D'ASCOLI: No, Your Honours. Thank you. Nothing further.  
6 We had noticed these issues and we had liaised with the Defence, in  
7 particular for the originator, which is very important on the side of  
8 the other corrections. But you covered everything. Thank you.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 Victims' Counsel, would you like to make any observation?

11 MS. PUES: No, thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well. It's now five minutes  
13 past 11.00. We will adjourn now for -- we will break now for half an  
14 hour, till 11.35.

15 And the hearing is adjourned.

16 --- Recess taken at 11.06 a.m.

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

18 PRESIDING JUDGE VELDT-FOGLIA: I will call appearances, and I  
19 see that we are in the same composition as before the break. And I  
20 see everybody nodding, so we can take that as a yes.

21 Very well. I will go now to the point of the protective  
22 measures for the victim wishing to present the views and concerns.  
23 But before I do that, Victims' Counsel, did you confirm that the  
24 victim could present views and concerns on 21 March? Because I  
25 realised afterwards that I didn't hear that.



1 MS. PUES: Your Honour, yes, apologies. That actually slipped  
2 my mind.

3 As long as the Registry, as they have confirmed in their  
4 submission, is able to do their part of the facilitation, the 21st of  
5 March is fine. So I can confirm that.

6 And if you would like, I can also address the other outstanding  
7 question on experts. But we can also do that at a later stage.

8 PRESIDING JUDGE VELDT-FOGLIA: We will be talking about the  
9 protective measures, and you can first start with that and we will go  
10 into the protective measures. I mean --

11 MS. PUES: Okay. Good. Just to finish up on what was left open  
12 from before the break, just to be clear, and perhaps - and I  
13 apologise if that was the case - our two submissions were maybe  
14 slightly confusing there to some extent, just to be clear, we do not  
15 request two expert examinations. Just to be clear on that.

16 The proposed examination is, in our view, clearly relevant for  
17 questions of compensation as you've said today or, in the past, we  
18 more broadly referred to reparations and this is our primary request,  
19 based on Rule 168. Yeah? And this expert then to be appointed by  
20 the Panel. But only if the Trial Panel deems it necessary to support  
21 its truth-finding efforts. And this is something that we cannot  
22 fully determine. We, from our perspective, think that the Prosecutor  
23 has laid out a very solid case that doesn't require any further  
24 expert examination to support, for example, witness credibility; but  
25 at the same time, ultimately it is the Trial Panel who will have to

1 decide on this.

2 So if, in the efforts of the Trial Panel to -- or in its mission  
3 to find the truth, you deem it necessary, at your discretion, that  
4 such an examination may be a further help to you, then - and this is  
5 really just a matter of timing within the procedure - such an  
6 examination may be done slightly earlier than only at the reparations  
7 order stage and done, as envisaged in Rule 132/127, at the end of the  
8 Defence case, once you know what your preliminary assessment is.  
9 Because we are driven by trying to use an approach that is as  
10 sensitive as possible to issues of retraumatisation, for example,  
11 and, of course, every examination is rather stressful, and this is  
12 why we have these -- yeah, the stepped approach or this paced  
13 approach, if that makes sense.

14 And I hope this is now a bit clearer.

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

16 I think there is a slight misunderstanding, and I will try to  
17 clarify. What you just explained to us was clear to us. You have  
18 made your two filings, and we -- it was not ambiguous for us what you  
19 were requesting, and the purposes of both reparations and the  
20 truth-finding component, and you have explicitly said that in your  
21 view what was represented was enough, but, of course, you can always  
22 corroborate. That's how I understood, in my words, with extra  
23 information. That's one thing.

24 The question from the Panel is an additional one, and that is if  
25 the Victims' Counsel team is considering to request the appointment

1 of an expert, in addition to this medical forensic examination, that  
2 should assist the Panel in the determination of an eventual -- I mean  
3 if we could enter a conviction, in the determination of the  
4 compensation to be awarded. So that is much more a numeric exercise.

5 And I just want to put it on the table, and I would say no need  
6 at this point to react on it now because of -- because we can imagine  
7 that it needs some further thoughts. And if it's not an expert, if  
8 you are foreseeing to proceed in another way or -- we are not doing  
9 your case here, but, for us, it is important to already envisage what  
10 is coming in possible further phases, like we have been doing all the  
11 time.

12 That's the point the Panel wanted to make, and if I was not  
13 clear before, I hope I have clarified it now.

14 MS. PUES: Thank you very much for that clarification. It is  
15 well noted. Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: Good. Then -- very well.

17 Does the Defence want to make an observation on this point?

18 MR. VON BONE: No, Your Honour.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

20 With regard to the protective measures, the Panel recalls that  
21 Victim-05/05 has been granted anonymity under Rule 80(4)(a)(i) of the  
22 Rules, and the name and the identifying information shall be withheld  
23 from the public and the parties.

24 Victims' Counsel, would you like to submit any observation on  
25 this point?

1 MS. PUES: Given that protective measures are in place already,  
2 we think that their scope is possibly sufficient. I will be further  
3 guided by the expert of the -- or the WPSO experts, but that with  
4 those protective measures continuously in place, the appearance  
5 should be no problem.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay.

7 Mr. Prosecutor, would you like to make an observation in this  
8 regard?

9 MR. MICHALCZUK: Yes. But on the previous point, I was not  
10 given the floor and I didn't want to jump up on the issue of the  
11 medical expert.

12 PRESIDING JUDGE VELDT-FOGLIA: Medical expert? I didn't give  
13 you the floor because we were talking about compensation. But if you  
14 want the floor I can give you the floor.

15 MR. MICHALCZUK: If possible, very, very briefly.

16 As indicated by the Victims' Counsel, and we fully agree, that  
17 the Prosecution case stands quite solidly on its feet and we don't  
18 need such a medical expert for the purpose of any further assessment  
19 of evidence.

20 With regard to the reparations, if there is a need for such an  
21 expert to determine the reparations, if granted, if there is a case  
22 that we have a conviction, then the Prosecution will make necessary  
23 representations later on in this case, possibly after the conclusion  
24 of the Defence case.

25 PRESIDING JUDGE VELDT-FOGLIA: We will come back on this point

1 not now but -- okay. Thank you for your observations.

2 Very well.

3 And do you have any observations with regard to the protective  
4 measures?

5 MR. MICHALCZUK: No, Your Honour.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7 Defence counsel. No, I see you saying no.

8 Yes. Then we have point 10. Submissions on the eventual  
9 sentencing of the accused in the event that the accused is found  
10 guilty. More specifically, whether the sentence should be pronounced  
11 with a Trial Judgement or in accordance with Rules 162 and 164 of the  
12 Rules.

13 We have read your observations. Thank you for that.

14 Mr. Prosecutor, would you like to submit any further observation  
15 on this point?

16 MR. MICHALCZUK: No, we have submitted everything on the written  
17 submission, Your Honours.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Just to make sure.  
19 Victims' Counsel.

20 MS. PUES: Nothing more from our side, Your Honours. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: And the Defence counsel.

22 MR. VON BONE: And nothing from our side as well, Your Honour.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That was the last  
24 item on the agenda the Panel had foreseen for today.

25 Do the parties and the Victims' Counsel have any other issue

1 that they would like to discuss?

2 I start with Mr. Prosecutor.

3 MR. MICHALCZUK: Nothing further, Your Honours.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5 Victims' Counsel.

6 MS. PUES: No, thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

8 Defence counsel.

9 MR. VON BONE: Yes. Your Honour, we will confer once again with  
10 CMU regarding this list of things.

11 I just want to make one clarification why I think sometimes we  
12 have doubles. The idea was the following. We had a statement with a  
13 bunch of attachments, and sometimes we used the same attachment for  
14 the same witness or even for another witness. It could be a  
15 photograph or a map that was initially made. And later on, we also  
16 made specific maps after we made some measurements. All those items,  
17 we thought it was useful to also do that separately so that any party  
18 could ever use such a photograph or a map or whatever it was in it.  
19 That, I believe, is the reason why sometimes we have this kind of  
20 doubling, even though it is the same document.

21 So, for example, if it is an aerial photograph, so to speak,  
22 that we showed to Witness A, maybe the same photograph was shown to  
23 Witness B, and so on. They got separate ERN numbers, even though it  
24 is the same photograph. That is, I think, the reason why.

25 We'll go through it once again. And for us, it made kind of a

1 logic to read the statement together with that attachment. That was  
2 the idea. That is how it was done initially.

3 We have refiled it. We take a clear note of the issues, but  
4 that is just to explain to you why that would appear on multiple ERN  
5 numbers sometimes, even though it is the same document.

6 That is all I wanted to say. But we will confer with CMU again  
7 on it and see. But what we will not do is divert from the stamp  
8 which is on the document but reuse that same number probably in any  
9 other item that follows.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay. I would say on that  
11 specific point, please liaise with CMU.

12 MR. VON BONE: Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: Because if it becomes very  
14 technical, I don't want to say something to you that in the end we  
15 have to -- but the numbers should be the same in Legal Workflow as on  
16 the document.

17 MR. VON BONE: All right.

18 PRESIDING JUDGE VELDT-FOGLIA: Because if not, we cannot  
19 retrieve the document. That is the problem.

20 MR. VON BONE: Yes [overlapping speakers] ...

21 PRESIDING JUDGE VELDT-FOGLIA: Yeah?

22 MR. VON BONE: Okay. That is all I had to say. And that's why  
23 I wanted to clarify it once again. We'll get to it and there will  
24 come then a new corrected version. It is monk work, but it's --  
25 we're going to do it. We'll take care of it.

1           PRESIDING JUDGE VELDT-FOGLIA: I know it's monk work but this  
2 monk work has to be done.

3           MR. VON BONE: It has to be done. No problem.

4           PRESIDING JUDGE VELDT-FOGLIA: It has to be done and it's done  
5 by everybody so ...

6           MR. VON BONE: Yes. Absolutely.

7           PRESIDING JUDGE VELDT-FOGLIA: Very well.

8           Then we have arrived at the end of our conference for today.

9           The hearing is adjourned till tomorrow, half past 2.00, and then  
10 the Panel will issue a number of oral orders.

11           I thank the parties and the Victims' Counsel for their  
12 attendance. And I thank the interpreters and the stenographer, and  
13 the people of the audiovisual booth, security, and, last but surely  
14 not least, the Registry for their attendance.

15           The hearing is adjourned.

16                           --- Whereupon the hearing adjourned at 11.52 a.m.

17

18

19

20

21

22

23

24

25