

1 Monday, 5 October 2020

2 [Status Conference]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon, everyone in and outside the  
7 courtroom.

8 Madam Court Officer, can you please call the case.

9 THE COURT OFFICER: Good afternoon, Your Honour. This is  
10 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

11 JUDGE GUILLOU: Thank you, Madam Court Officer.

12 Now I would kindly ask the parties and participants to introduce  
13 themselves, starting with the Specialist Prosecutor's Office.

14 Mr. Prosecutor, please.

15 MR. CARNEY: Your Honour, my name is Andrew Carney, Prosecutor.  
16 With me, supporting the Specialist Prosecutor's Office, are  
17 Silvia D'ascoli, Associate Prosecutor; Clare Lawson, head of the  
18 Legal Office; and Aniko Boldog, the Case and Evidence Assistant.

19 JUDGE GUILLOU: Thank you very much, Mr. Prosecutor.

20 Now I turn to the Defence, please.

21 MR. VON BONE: Good afternoon, Your Honour. Good afternoon,  
22 ladies and gentlemen. My name is Julius von Bone, and I am the  
23 Defence counsel of Mr. Mustafa. Thank you very much.

24 JUDGE GUILLOU: Thank you, Mr. von Bone. And I note for the  
25 record that your client, Mr. Mustafa, is also present in the

1 courtroom.

2 Now I turn to the Registry, please.

3 MR. ROCHE: Good afternoon, Your Honour. My name is  
4 Ralph Roche, head of Judicial Services Division.

5 JUDGE GUILLOU: Thank you very much, Mr. Roche.

6 And for the record, I am Nicolas Guillou, Pre-Trial Judge for  
7 this case.

8 On 30 September 2020, I scheduled a Status Conference for this  
9 Monday. I asked the parties to provide submissions of any of the  
10 items listed in the annexed agenda to my order and all the topics  
11 they deemed necessary. Both the Specialist Prosecutor's Office and  
12 the Defence submitted their observations this morning.

13 The purpose of our hearing today is to review the status of the  
14 case and to organise exchanges between the parties to ensure an  
15 expeditious preparation for trial. In particular, I wish to discuss  
16 the status of the parties' investigations, the estimated amount of  
17 documentary and testimonial evidence the parties will bring to trial,  
18 and issues related to the disclosure of supporting material to the  
19 indictment, additional material intended for use at trial,  
20 exculpatory evidence, and protected material, and finally any other  
21 issues the parties may wish to raise.

22 I note that the Defence suggests to discuss about the course of  
23 conduct to be set out for instances where both parties approach the  
24 same witness. We will address this topic after the items already on  
25 the agenda if you agree, Mr. von Bone.

1 MR. VON BONE: Absolutely.

2 JUDGE GUILLOU: Thank you, Mr. von Bone.

3 I also note that the Defence would like to make some comments  
4 about the documents already disclosed, preferably in closed session.  
5 I invite the Defence to let me know during the hearing whether a  
6 closed or maybe private session is needed.

7 I would also like to inform the parties, and especially the  
8 Defence, that the redacted version of my confirmation decision will  
9 be made available to the Defence and to the public tomorrow at the  
10 latest.

11 And in this context, I wish to inform the Defence that in my  
12 confirmation decision, I set a two-week deadline from the Initial  
13 Appearance for the Specialist Prosecutor to submit any request for  
14 protective measures in the supporting material, so any current  
15 redactions at the moment will be conditional upon my decision on  
16 protective measures.

17 Now I invite the parties to follow the agenda set out for this  
18 Status Conference, starting with the section on general questions.

19 And before I give the floor to the parties, I wish to remind  
20 them of the general principles of disclosure in the legal framework  
21 of the Specialist Chambers.

22 Disclosure is an inter partes process in electronic form,  
23 organised and facilitated through the Registry's court management  
24 system.

25 Disclosure shall be a priority for the Prosecution at this

1 stage, and the parties shall disclose evidence of true relevance to  
2 the case and not the greatest volume of evidence.

3 And in view of the publicity principle, evidence is registered  
4 as public unless there are reasons to classify otherwise. The  
5 disclosing party determines the appropriate level of classification  
6 of evidentiary items on a case-by-case basis.

7 I would first like to hear from the Prosecution on this topic of  
8 the general questions.

9 Mr. Prosecutor, you have the floor.

10 MR. CARNEY: Your Honour, yes. Your Honour should have a copy  
11 of the Prosecution submissions for this first conference, which in  
12 fact was filed with the Court this morning.

13 Your Honour, as far as the overall and general questions,  
14 Your Honour can see that as far as the issue of the investigative  
15 steps that remain ongoing in this case, there are some limited  
16 investigations to continue, and as a result of that, there is a  
17 likelihood that further evidence may well be adduced.

18 However, the Specialist Prosecutor's Office, certainly at this  
19 stage, does not foresee that this will impact upon the speedy conduct  
20 of proceedings, and certainly the remaining investigative steps are  
21 likely to be included during this preliminary stage of the pre-trial  
22 proceedings.

23 As far as, if I can say this, the overall size of the case, the  
24 Specialist Prosecutor's Office essentially relies upon at this stage  
25 five witnesses for the purposes of the confirmed indictment, and

1 intends to rely upon those five witnesses for trial, and the  
2 Specialist Prosecutor's Office anticipates adding at least a further  
3 11 witnesses to the witness list, although that number could vary, of  
4 course, depending on the outcome of those final investigative steps.

5 But if I can say this, that at this stage, certainly the  
6 Prosecution will be calling 16 witnesses and there may be more, but  
7 if I can say that I wouldn't anticipate there being much more than  
8 that. And that's in order to assist the Court in overall planning  
9 for the next stage.

10 In addition to that, the Specialist Prosecutor anticipates  
11 presenting documentary evidence which includes, for example, reports,  
12 photographs, contemporaneous KLA documents, such as orders and  
13 regulations, and other publications.

14 So if I can indicate that at this stage that that is the overall  
15 response to the general questions, and I hope that assists in giving  
16 both the Court and the Defence an overall idea of the scale of the  
17 Prosecution case.

18 JUDGE GUILLOU: Thank you very much, Mr. Prosecutor.

19 Now I turn to the Defence. Mr. von Bone, do you have any  
20 comments to either what Mr. Prosecutor just said, or also if you wish  
21 to contribute at this stage -- I think you already mentioned in your  
22 filing this morning that it was a bit premature, but please feel free  
23 to elaborate. You have the floor.

24 MR. VON BONE: Yes, Your Honour. Thank you very much. Apart  
25 from the submissions of today of the Prosecution, obviously I've also

1 seen the redaction system that has been filed by the Prosecution as  
2 well as the comments regarding the working language. I have hardly  
3 any comments on it. Only the comments that I made in my observations  
4 regarding that.

5 As far as the investigative state or the amount of witnesses,  
6 the amount of documentary material, I can really at this point not  
7 say anything conclusively. Certainly there will be an investigation,  
8 certainly there will be witnesses, certainly there will be  
9 documentary evidence; however, the size of that remains to be seen.  
10 But let it be clear that whatever it is, it is of relevance to the  
11 case and not too much in the generalities of it.

12 So that's my observation, as far as this moment is concerned.  
13 Thank you very much, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. von Bone.

15 At this stage, do you have anything to say on the potential  
16 investigations that you would like to have done for the Defence, or  
17 is it too premature?

18 MR. VON BONE: I think it's too premature, Your Honour. I have  
19 noticed that the exculpatory evidence that was mentioned in the  
20 submissions of the Prosecution, I'm not 100 per cent sure whether it  
21 was Disclosure 3 or 4, I'm not 100 per cent sure of that, but I just  
22 was wondering whether I missed Disclosure 1 or that it is still to  
23 come?

24 That is the only point that I have to say at this moment. I'm  
25 just not sure whether I missed 1 or not. I got 2, 3, and 4.

1 JUDGE GUILLOU: Thank you, counsel.

2 Mr. Prosecutor, do you have anything to say on this specific  
3 question of the disclosure batches?

4 MR. CARNEY: Your Honour, yes. Disclosure 1, in fact, was the  
5 material supporting the submission to Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 Does it clarify your point, Mr. von Bone?

8 MR. VON BONE: It does not, actually. The submission, the  
9 submission to what? I haven't seen disclosure as far as evidence  
10 material in that sense, or is it just the -- what is it? The  
11 mentioning of the underlying evidence of the indictment, is that what  
12 is meant?

13 JUDGE GUILLOU: Mr. Prosecutor.

14 MR. CARNEY: Your Honour, yes. And for clarification, the  
15 Defence will be receiving in a forthcoming batch the indictment  
16 submission.

17 JUDGE GUILLOU: So will this be the first batch that the Defence  
18 was referring to?

19 MR. CARNEY: That's correct.

20 JUDGE GUILLOU: So, Mr. von Bone, I think we've solved your  
21 issue. Thank you.

22 Now, let me move to the second item of the agenda of our  
23 Status Conference, which is the supporting material to the  
24 indictment.

25 I would like to remind the Specialist Prosecutor that within

1 30 days from the Initial Appearance, all supporting material to the  
2 indictment and all statements of the accused shall be disclosed to  
3 the Defence.

4 I invite the SPO to give its submissions on the disclosure of  
5 the supporting material to the indictment.

6 Mr. Prosecutor.

7 MR. CARNEY: Your Honour, as far as the indictment supporting  
8 material is concerned, in fact, the Defence have already received two  
9 batches of that material, and that is Disclosures 2 and 3. And in  
10 essence, the remaining materials beyond that are, in fact, all  
11 witness-related materials mostly comprising statements and  
12 testimonies.

13 The first batch, which the Defence have already received,  
14 primarily include non-witness-related indictment supporting materials  
15 as well as the statements obtained from the accused, but they have  
16 yet to receive the remainder of that material.

17 And can I say that the remaining indictment supporting material  
18 primarily relates to five witnesses, which I've mentioned, that the  
19 SPO rely upon for the purpose of the confirmed indictment, and they  
20 will, in fact, be the object of the Specialist Prosecutor's first  
21 request, a first request that we intend to make for protective  
22 measures. That request will be filed, as is prescribed, within two  
23 weeks of the Initial Appearance of the accused as has, in fact, been  
24 previously ordered.

25 The witness-related indictment supporting material will,



1 consistent with the Pre-Trial Judge's prior provisional  
2 authorisation, require redaction of information that could lead to  
3 the identification of witnesses and victims in addition to redaction  
4 of certain information falling within categories identified in the  
5 SPO's redaction observations.

6 Such redactions are in the process of being completed, and the  
7 Specialist Prosecutor's Office expects to be ready to disclose  
8 redacted versions of the remaining supporting materials within the  
9 next two weeks, and, in any case and in any event, within the expiry  
10 of the 30-day period that is prescribed by the Rules.

11 I should also say that as far as that material is concerned,  
12 which includes the witness statements and the transcripts, I know  
13 Your Honour's agenda had inquired about the issue of translations  
14 into Albanian of that material. That is virtually complete. And  
15 these translations will also be disclosed within the 30-day timeframe  
16 that is provided for the disclosure of the indictment supporting  
17 material.

18 As I say, there is material still to be disclosed, but that will  
19 be disclosed, as I've indicated.

20 JUDGE GUILLOU: Thank you very much, Mr. Prosecutor.

21 Mr. von Bone, do you have anything to say on this supporting  
22 material to the indictment?

23 MR. VON BONE: Well, Your Honour, what I've seen in the  
24 disclosures regarding the statements of my client, in those  
25 statements, there is a constant reference to a particular book by a

1 particular author. I have not seen that book, and I'm not sure  
2 whether that book will become available or become part of the  
3 evidence.

4 I think it's important, Your Honour, to say that because in the  
5 questioning of my client, there has been constantly parts which have  
6 been made clear citations, and if we cannot put these citations into  
7 context, neither we can control what is the source of that particular  
8 citation. I think it is important to know, and I would like to know  
9 from the Prosecutor, whether the Prosecutor is intending to give that  
10 and to bring that into evidence.

11 I think that is important for the Court in order to check and to  
12 test whether we are able to see what was the proper context of the  
13 citation in question so that we can also put the proper answer of  
14 that into consideration.

15 That is my observation and it's a question to the Prosecution.

16 JUDGE GUILLOU: Thank you, counsel.

17 Mr. Prosecutor, is it something that is feasible? And if so, is  
18 it feasible in the 30-days deadline?

19 MR. CARNEY: Your Honour, my belief is that, in fact, the book  
20 that the Defence are referring to is not contained within the  
21 indictment supporting material. However, it will be forming part of  
22 the evidence in the case, so they will be receiving that material.

23 JUDGE GUILLOU: Do you think it's possible that the Defence  
24 receives it before the 30-days deadline?

25 MR. CARNEY: Yes, I do.

1 JUDGE GUILLOU: Thank you.

2 Mr. von Bone, are you satisfied?

3 MR. VON BONE: I take it, Your Honour, that it was a book in  
4 Albanian, as I see in the transcripts that there has been constantly  
5 something translated. So I was wondering whether this is both in  
6 English and in the Albanian language available and forming part of  
7 the evidence, and whether that is, of course, feasible to do within  
8 the time limit.

9 JUDGE GUILLOU: Mr. Prosecutor.

10 MR. CARNEY: Your Honour, certainly, the text that is referred  
11 to is an Albanian text. Most of that text is translated into  
12 English, and that which is not translated, we will review how much  
13 more there is to translate and certainly that will be submitted to  
14 the Defence. But, again, I think it's likely that the parts that are  
15 referred to within the transcripts of the accused's interview, in  
16 fact, are translated and can be given to the accused.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 MR. VON BONE: Yes, that does not completely satisfy the  
19 Defence, Your Honour. As I say, it is already now translated because  
20 when I read the transcript there is a clear citation of something.  
21 However, I would like to have that particular citation seen in the  
22 context of the particular chapter, the footnotes, or whatever was the  
23 source of that particular citation.

24 Now it looks as if there is something put to my client and then  
25 he -- sometimes we can even see that, that he is explaining it in a

1 different way. And therefore, I think the chapters -- and it does  
2 not necessarily need to be the entire book. That's why I say it's  
3 just when a particular citation is taken, that we can contextual --  
4 put into the context and say: Well, this is what that chapter was  
5 about and that is what the particular person says, and in that  
6 context, the Prosecutor took that out, that particular citation, and  
7 has put it to my client.

8 And then sometimes I clearly see that my client says, well,  
9 probably he knows here something else is meant, or maybe that  
10 particular person describes something entirely different as far as  
11 location-wise is concerned.

12 So I think these are really concerns that are important. And  
13 certainly when the Prosecution wants to put that into evidence, I  
14 think it's very important.

15 Moreover, the reaction of my client will certainly be a point of  
16 focus from the Prosecution, so that's why I think it's very important  
17 for the Defence to get that material in the proper context in order  
18 that the Court can make a correct determination of the facts that the  
19 accused stated and that he has commented on.

20 Thank you very much, Your Honour.

21 JUDGE GUILLOU: Thank you, Mr. von Bone.

22 I don't think the whole book can be considered as supporting  
23 material for the indictment. There might be some extract of it that  
24 has been used at this stage, so this has indeed to be translated to  
25 you. After that, I don't think the whole book in itself has to be

1 translated into English.

2 So it's a question of striking the right balance between the  
3 pages that could be relevant, and as such, this can be material that  
4 the SPO gives access to to the Defence. And then we will use our  
5 interpretation and translation capabilities in order to give you  
6 access to the whole material.

7 But in any case, I think for clarification, I don't think we  
8 shall consider this as supporting material to the indictment,  
9 according to Rule 102(1)(a).

10 MR. VON BONE: Yes. One more comment on that, Your Honour. In  
11 the supporting material that I've received until now in the  
12 disclosures, there is a breakdown of the UCK - or the KLA, so to  
13 speak - and I wonder what the source of that was and whether that  
14 came from that particular book or not. I took it that it was a  
15 historian that wrote that. Maybe that person is going to be heard or  
16 not. We don't know at this stage. But, however, I think that it is  
17 important that we know what the source was of that particular  
18 organigramme or breakdown of the entire KLA.

19 Thank you very much.

20 JUDGE GUILLOU: Thank you, counsel.

21 Mr. Prosecutor, do you have anything to add on this particular  
22 topic before we move to the next item of the agenda?

23 MR. CARNEY: Your Honour, yes. The next item relates to the  
24 material which is additional material intended for use at trial --

25 JUDGE GUILLOU: Sorry, Mr. Prosecutor, just on the question of

1 Mr. von Bone, the real specific point that he just raised. Did you  
2 have anything to add on this? I think it's the organigramme of the  
3 KLA, because, Mr. von Bone, if I understood you correctly, the  
4 question you had was what was the source of this document.

5 Is it correct, Mr. von Bone?

6 MR. VON BONE: That's right, Your Honour. That's right.

7 JUDGE GUILLOU: Sorry, Mr. Prosecutor --

8 MR. CARNEY: Yes.

9 JUDGE GUILLOU: -- just to clarify this before moving on to the  
10 next item.

11 MR. CARNEY: Your Honour, yes. In fact, the origin should be  
12 addressed within the metadata that the Defence will have. However,  
13 if that causes the Defence difficulties, then we shall address that  
14 very point inter partes.

15 JUDGE GUILLOU: Noted.

16 Mr. von Bone, can we move to the next item?

17 MR. VON BONE: Yes, Your Honour.

18 JUDGE GUILLOU: Mr. Prosecutor, you have the floor for the  
19 additional material intended for use at trial.

20 MR. CARNEY: Your Honour, yes. In addition to the material that  
21 falls under Rule 102(1)(a), the SPO does intend to disclose, as it's  
22 obliged to, further material under 102(1)(b).

23 We expect to be ready to disclose that additional material to  
24 the Defence by 1 December 2020, or in any case, no later than 30 days  
25 prior to the opening of the Specialist Prosecutor's case, subject

1 only to any protective measures granted.

2 The additional Rule 102(b) material is currently anticipated to  
3 include the statements and testimonies of at least a further 11  
4 witnesses, and transcription and translation of those statements and  
5 testimonies remains ongoing in respect of some eight witnesses. But,  
6 of course, as the Court will understand, this is a labour-intensive  
7 and time-consuming process that requires careful review and revision.

8 With regard to the documentary evidence, the SPO anticipates  
9 presenting approximately 50, 5-0, exhibits at trial. But I should  
10 add this caveat, that this is a preliminary estimate and maybe  
11 varied depending on the relevance of items recently seized and the  
12 results of the further limited investigative steps.

13 Those exhibits, by way of their overall classification, are  
14 likely to include items produced by witnesses during the course of  
15 interviews, photographs, reports, contemporaneous documents, and  
16 video footage. The Rule 102(1)(b) material; that is, the additional  
17 material intended for use at trial, witness related materials, they  
18 will require redactions of those parts that identify victims and  
19 witnesses in line with Your Honour's prior provisional authorisation  
20 and/or any protective measures which may be granted in relation -- in  
21 addition to redaction of certain information falling within  
22 categories identified in the SPO's redaction observations.

23 And in this regard, the SPO intends to file a second request for  
24 protective measures concerning eight of the additional witnesses.

25 And the SPO anticipates being in possession or being in a position to

1 file this second request for protective measures promptly after the  
2 SPO's first application for protective measures has been litigated  
3 and ruled upon. But, as I say, the date that we give as the backstop  
4 for that is 1 December 2020.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Mr. von Bone, about this additional material, and especially the  
7 timeline suggested by Mr. Prosecutor.

8 MR. VON BONE: Well, as far as the timeline is concerned, I  
9 think --

10 JUDGE GUILLOU: Microphone, please.

11 MR. VON BONE: As far as the timeline is concerned, Your Honour,  
12 the Defence can agree to that, so that is fine.

13 I am not sure whether the photo book that I've received forms  
14 part of this particular batch that we are discussing now. I was just  
15 wondering whether there was any particular material that adds  
16 explanations to these photographs that we've seen. Just simply  
17 providing a number of photos without anything that supports where we  
18 are or what it is, apart from the title, then we can't move on  
19 further.

20 On this point, something else, Your Honour, is I've seen that in  
21 the material that is disclosed by the Prosecution, there is -- they  
22 are relying in some parts on minutes of a different trial, of which I  
23 will not name at this point, but they are minutes of a different  
24 trial. And I've seen that not all those minutes have been translated  
25 into Albanian. There has been a very selective material that has



1     been translated into Albanian. I think it's only maybe two  
2     statements, if I'm -- if I recall.

3             But I think that is important, obviously, that if the  
4     Prosecution wishes to rely on that, if that is the content of this  
5     particular issue, then I would like to know from the Prosecution how  
6     is that going to be translated? Simply because otherwise we are  
7     going to rely on something that my client could not simply react to.

8             JUDGE GUILLOU: Thank you, counsel.

9             Mr. Prosecutor, on these two questions, the photo album and the  
10     translation.

11             MR. CARNEY: Your Honour, well, as far as the issue of the  
12     photographs, the Defence have received part of the indictment  
13     supporting material and will receive the remainder of the indictment  
14     supporting material, so there is still more material to come.

15             In addition to that, of course, the Defence are still to receive  
16     all of the material subject to Rule 102(1)(b), and there will be  
17     clarity as to material that they've already received once they  
18     receive, effectively, the full package.

19             Again, as far as the Defence are concerned, they should  
20     understand that the material they've received is part of the  
21     indictment supporting material, and there is more -- there is more by  
22     way of evidence to come.

23             As far as the issue as the proposed part of a previous trial is  
24     concerned, again, the Defence will be receiving the material which is  
25     within Rule 102(1)(b). But in addition to that, which we'll come on

1 to in a moment, the Defence shall also be receiving material that's  
2 subject to 102(3), which will be detailed notice of evidence that may  
3 assist the Defence in the preparation of their case.

4 And so, again, they've only received just a part of what they're  
5 going to receive, but we note the Defence counsel's observations and,  
6 of course, we will examine those points in detail.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 MR. VON BONE: Just one more thing on this, Your Honour.  
9 Because parts of that particular different trial were also in the  
10 citations that were then again put to my client, and they are what he  
11 has reacted to. So I think it's very important that we have those  
12 parts also in Albanian translated so that we can review and test  
13 anybody who would come forward or has something to say about that.  
14 So that part -- that it's clear to the Prosecutor what I'm actually  
15 aiming on.

16 MR. CARNEY: Your Honour, in fact, it would be -- again, it  
17 would be helpful if subsequent to this hearing if the Defence were,  
18 in fact, to indicate to us in writing the ERNs specifically of the  
19 documents that they refer to, then, of course, we can examine that in  
20 detail.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor. I think it's a good  
22 idea.

23 Let me first say that it's just the beginning of the disclosure  
24 process. So as you said, Mr. Prosecutor, I think you, Mr. von Bone,  
25 will receive the different batches. That will probably answer

1 some -- at least some of your questions.

2 But I think it's also important, as you said before, that, on  
3 the Prosecution side, you also hear what the Defence needs so that  
4 you can adapt your next disclosure batch, especially on the question  
5 of translations.

6 MR. CARNEY: Yes, Your Honour.

7 JUDGE GUILLOU: Unless any of the parties have anything else to  
8 say on this particular topic, we are going to move to the evidence  
9 material to Defence preparation, according to Rule 102(3).

10 I would like to remind the SPO that disclosure or inspection of  
11 evidence, such as statements, documents, photographs, or tangible  
12 objects, material for the defence must be disclosed without delay,  
13 and what is considered material to the preparation of the defence  
14 must be understood broadly.

15 I also remind the parties that disputes as to the materiality of  
16 the information, as claimed by the Defence, must be submitted  
17 immediately to the Pre-Trial Judge, i.e., to myself, for resolution.

18 I took note, Mr. Prosecutor, of your submission in which you  
19 anticipate to provide the Defence with detailed notice of evidence  
20 material by 1 December 2020. Now you have the floor if you want to  
21 give more details about this, Mr. Prosecutor.

22 MR. CARNEY: Your Honour, that is correct. The SPO anticipates  
23 providing the Defence with a detailed notice of evidence material to  
24 it pursuant to Article 21(6) of the Law and Rule 102(3) of the Rules  
25 by December 1, 2020 upon the finalisation of and together with the

1 disclosure of material falling under Rule 102(1)(b).

2 The items in Rule 102(3) notice, the notice will comprise any  
3 other residual information particularly material to the Defence after  
4 the items to be presented at trial and the potential or potentially  
5 exculpatory items have been disclosed. And the SPO does expect that  
6 some of the Rule 102(3) material will require some redactions, in  
7 particular pursuant to Rule 108(1).

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 Mr. von Bone, on this specific category.

10 MR. VON BONE: No observations, Your Honour.

11 JUDGE GUILLOU: Thank you.

12 We will now move to the next item in the agenda, which is  
13 exculpatory evidence.

14 Mr. Prosecutor, you have the floor on this.

15 MR. CARNEY: Thank you, Your Honour.

16 As far as the exculpatory evidence pursuant to Rule 103 material  
17 is concerned, in fact, on 29 September the SPO disclosed to the  
18 Defence a first batch of potentially exculpatory material. The only  
19 redactions that were provisionally applied to this material were  
20 redactions to contact details and to protect the names of  
21 investigators.

22 We have given some detail as to the amount of documentation that  
23 has been provided already and disclosed to the Defence already. I  
24 should say that that does not complete the disclosure exercise and  
25 that the SPO is currently reviewing a second batch of potentially

1 exculpatory material.

2 That batch is also likely to require certain redactions in  
3 particular pursuant to Rule 108(1). Any potentially exculpatory  
4 material identified in that material will be disclosed following  
5 review and redaction, and the SPO shall continue to review and,  
6 following application of any required redactions, immediately  
7 disclose on a rolling basis any Rule 103 material within its custody,  
8 control, or actual knowledge, as we are required to do.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Mr. von Bone.

11 MR. VON BONE: The material that was disclosed on 29 September  
12 was Disclosure 2, 3, and 4. So if that is all exculpatory evidence  
13 or potential exculpatory evidence, then I'd like to hear that from  
14 the Prosecution.

15 What I see is that in the first batch, those were the statements  
16 of my client, if that is what is being pointed out as the exculpatory  
17 material, or whether there is any other sources apart from that, then  
18 I would like to know that.

19 JUDGE GUILLOU: Thank you, counsel.

20 If you can answer this, Mr. Prosecutor, and also tell us how  
21 long your review of the evidence will take.

22 MR. CARNEY: Your Honour, that is -- well, first, can I just  
23 answer this: Again, so there is no confusion, the Disclosures 2 and  
24 3 relate to indictment supporting material. It's Disclosure 4 that  
25 relates to exculpatory material, and that is that situation.

1           As far as the other exculpatory material searches which are  
2 ongoing at the moment, we move through that as expeditiously as we  
3 can. There is a fair amount of that material for us to have to  
4 examine, and we will do so. When we're able to put an exact or more  
5 closely defined date upon that, we shall inform the Court come  
6 straightaway. But at the moment, as I say, there is a fair amount of  
7 that material for us to examine.

8           JUDGE GUILLOU: Can you say anything about the type of evidence  
9 it is?

10          MR. CARNEY: Your Honour, this is a review as a result of  
11 searches conducted, which will consist of all variety of material  
12 that we have within our possession. As I say, we are conducting that  
13 review in order to be able to identify, from whatever source it is,  
14 exculpatory material that may assist the Defence or undermine the  
15 Prosecution, and that's the purpose of the review. So whatever the  
16 material is, if it's exculpatory, the Defence will receive it.

17          JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18          I turn to the Defence. Anything else to add?

19          MR. VON BONE: No, Your Honour. Not on this point.

20          JUDGE GUILLOU: Thank you, counsel.

21          Now we'll move to the protected material.

22          Mr. Prosecutor, you have the floor on this, bearing in mind that  
23 in your submissions, you mentioned that this should not be an  
24 important issue in the disclosure process. You have the floor.

25          MR. CARNEY: Your Honour, yes. As far as protected material is

1 concerned, all relevant Rule 107 clearances have been obtained for  
2 material which the SPO currently anticipates tendering into evidence  
3 at trial, and such clearances, as relevant, have been obtained for  
4 all material which has so far been identified as falling within  
5 Rules 102(3) and Rule 103.

6 If that should change, the SPO will promptly inform Your Honour  
7 should any further material relevant to the case be identified which  
8 falls under Rule 107 restrictions.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 I turn to the Defence. Do you have anything to add on this  
11 topic?

12 MR. VON BONE: No, Your Honour.

13 JUDGE GUILLOU: Thank you.

14 So now let me move to the point that the Defence raised in its  
15 submission this morning, which is the course of conduct to be set out  
16 for instances where both parties approach the same witness.

17 Mr. von Bone, you have the floor on this.

18 MR. VON BONE: Yes, Your Honour.

19 I take it that the investigation of the Prosecution is still  
20 going on, and obviously the investigation of the Defence is about to  
21 start. And in that course, it is maybe possible that we reach the  
22 same person at some point in time.

23 So maybe -- I think it's important that no party - any of the  
24 parties - can claim or monopolise the particular witness. And even  
25 though maybe witnesses can be protected witnesses, we might get to

1 the same one at some point. I've had that one time before in a  
2 different trial. I just want to make sure that -- it's in good faith  
3 that things might just occur. And then in that case, I think it's  
4 useful to have a type of course of conduct.

5 Another part of that is also that sometimes we see that reports  
6 are revealed by a particular source that was maybe up to now unknown,  
7 or maybe that particular source couldn't speak or couldn't reveal  
8 whatever he wants to reveal or she wants to reveal. At that time, we  
9 could end up also at the same particular person for that report.

10 So I just want to be, at the beginning of the trial, clear that  
11 as sometimes witnesses or experts or people who might disclose  
12 material that is hot, so to speak, then in that case, I think it is  
13 important that if that person is protected, that both parties know  
14 that they are working in good faith and that they arrive at that  
15 person at the same time, or maybe one a little bit before and the  
16 other one afterwards. But that could be simply because of conducting  
17 a particular investigation that that could happen.

18 So I'm not sure whether there is any provision for that, and I  
19 just thought to bring it up and to be mindful about it, that both  
20 parties are mindful for -- it's paramount for sources or witnesses  
21 that their proper position, their own position, as well as maybe for  
22 their families is concerned, that that is a paramount issue for both  
23 parties. And certainly the Defence is mindful about that.

24 We just want to make sure that, as we act in good faith, we  
25 might come to this. And then either submit it to a panel. We speak



1 about it with each other or any other kind of session that can be  
2 dealt with in order, or not. As long as we are sure that we acted in  
3 good faith that there would be no particular thing, like things we  
4 see that people are approaching a witness or people are approaching  
5 an expert or people are approaching somebody that has some hot  
6 information to reveal, so that there is a particular course of  
7 conduct.

8 As far as I'm concerned, I think that in all cases when we have  
9 a redaction system, maybe in redacted formats, when we read  
10 materials, like we do now, in a particular form, we use the same  
11 pseudonym for somebody in order to get clear who it is. If we use  
12 the same pseudonym for that particular case, then it would be much  
13 easier to read the materials and to assess them.

14 So that's why I wanted to bring it up, Your Honour, at the  
15 beginning of the trial so that we are clear about that.

16 JUDGE GUILLOU: Thank you very much, counsel.

17 Mr. Prosecutor.

18 MR. CARNEY: Your Honour, yes. This observation falls under the  
19 Defence observation on a redaction regime, and I should say that the  
20 SPO does not envisage it impacting on the redaction regime itself.

21 But as far as the points that counsel make are concerned, they  
22 do require consideration, and we may well make certain submissions or  
23 proposals on this very point in the context of our forthcoming and up  
24 and coming protective measures motions or motion.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Does it satisfy your concern, Mr. von Bone?

2 MR. VON BONE: Yes, unless that happens before. But personally,  
3 I do not envisage that at this stage of the proceedings. But  
4 nevertheless, I just want to make clear that we will certainly act in  
5 good faith, and the paramount interest of the witness concerned or  
6 the expert concerned or whoever it is concerned that has to reveal  
7 something is always a focus of the Defence as well in order to get  
8 the proper proceedings but to be fair also to each party.

9 JUDGE GUILLOU: Thank you, counsel.

10 So I expect the parties to find a common course of conduct on  
11 this issue and that there will not be any incident and everybody will  
12 act in good faith.

13 At this point, I would like to ask the parties whether they have  
14 any other issues they would like to raise. I would also like to  
15 remind the parties to give prior notice should any submission require  
16 the disclosure of confidential information.

17 Mr. Prosecutor.

18 MR. CARNEY: Your Honour, no. Those are our submissions on  
19 these particular issues.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 To the Defence, please.

22 MR. VON BONE: The only other thing that I would have is that I  
23 think it may be wise to have a calendar that we have an idea for when  
24 the dates are set and for what, so that's useful.

25 JUDGE GUILLOU: Thank you, counsel.

1 I want to inform both parties that I intend to issue shortly a  
2 decision on the working languages of the proceedings.

3 I note that the Defence did not file any observation on this.  
4 Counsel, do you have any observation on this?

5 MR. VON BONE: Working language is fine. We agree.

6 JUDGE GUILLOU: Noted.

7 Then I intend to issue a decision relating to victims  
8 participation, in particular on issues related to the application  
9 process. And I also intend to issue a framework decision on the  
10 Specialist Prosecutor's disclosure obligations in accordance with  
11 Rule 102, which will also set the redaction regime for the  
12 proceedings.

13 Now, I will just ask the parties for their views on a suitable  
14 date for the next Status Conference. It is my objective to schedule  
15 it immediately after the hearing in which the accused will enter a  
16 plea, but feel free to let me know if you have any other views on  
17 this.

18 Mr. Prosecutor.

19 MR. CARNEY: Your Honour, from the Prosecution, no observations  
20 on that. When it's convenient for the Court.

21 JUDGE GUILLOU: Thank you.

22 For the Defence?

23 MR. VON BONE: Yes, Your Honour. I'm not sure what the target  
24 date is for the accused to enter a plea. I'm not sure about that.  
25 As far as I'm concerned, I would have a problem a little bit with the

1 15th and 20th October. Those are dates which are a little bit  
2 unavailable.

3 JUDGE GUILLOU: Then we will avoid the 15th and the 20th of  
4 October.

5 I invite the parties to make a written submission if they want  
6 to raise any specific issue during the next Status Conference.

7 This concludes today's public hearing.

8 I thank the parties and the Registry for their attendance. I  
9 thank the interpreters, stenographers, audio-visual technicians, and  
10 security personnel for their assistance.

11 The hearing is adjourned for ten minutes and we will continue in  
12 closed session for the second part of the Status Conference. The  
13 hearing is adjourned.

14 --- Whereupon the hearing adjourned at 3.53 p.m.

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