

1 Wednesday, 13 July 2022  
2 [Status Conference]  
3 [Open session]  
4 [The accused attended via videolink]  
5 --- Upon commencing at 1.31 p.m.

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

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

9 THE COURT OFFICER: Good afternoon, Your Honour. This is case  
10 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci,  
11 Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi.

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

16 Madam Prosecutor.

17 MS. LAWSON: Good afternoon, Your Honour, and to those joining.  
18 For the Specialist Prosecutor's Office this afternoon are  
19 Alan Tieger; Ward Ferdinandusse; Marlene Yahya Haage;  
20 Matthew Halling; and I am Clare Lawson. Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Now, I turn to the Defence, starting with Mr. Kehoe, please.

23 MR. KEHOE: Yes, good afternoon, Your Honour. Gregory Kehoe,  
24 Sophie Menegon, and Bonnie Johnston on behalf of  
25 President Hashim Thaci.

1 JUDGE GUILLOU: Thank you, Mr. Kehoe.

2 Mr. Emmerson, please.

3 MR. EMMERSON: Good afternoon, Your Honour. I appear on behalf  
4 of Mr. Veseli together with Mr. Andrew Strong, Ms. Annie O'Reilly,  
5 Mr. Hajredin Kuci, Ms. Pascale Langlais, and Ms. Cosima Schelfhout.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Mr. Young, please.

8 MR. YOUNG: Good afternoon, Your Honour, and to everyone in  
9 court. For Mr. Rexhep Selimi, I'm David Young; and today I am  
10 assisted by Mr. Geoffrey Roberts, co-counsel; Ms. Nataliia Ryzhenko,  
11 case manager; and our intern, Ms. Sara Jusufi. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 And now I turn to Ms. Alagendra, please.

14 MR. YOUNG: And, forgive me, also Dr. Rudina Jasini who is  
15 joining us virtually.

16 JUDGE GUILLOU: Yes, online, on the screen.

17 Ms. Alagendra, please.

18 MS. ALAGENDRA: [via videolink] Good afternoon, Your Honour.  
19 Venkateswari Alagendra appearing for Mr. Jakup Krasniqi. And in  
20 court today are Mr. Aidan Ellis, Mr. Victor Baiesu, Ms. Laura Abia,  
21 and Ms. Jessica Zhou, and appearing on videolink together with me is  
22 Mr. Mentor Beqiri.

23 JUDGE GUILLOU: Thank you very much. And for the record, I note  
24 that Mr. Thaci, Mr. Veseli, Mr. Selimi, and Mr. Krasniqi are not  
25 physically present in the courtroom but attend this hearing via

1 videoconference.

2 Now I turn to the counsel for victims, Ms. Radziejowska. And  
3 forgive me if I mispronounce your last name.

4 MS. RADZIEJOWSKA: That was perfect. Good afternoon,  
5 Your Honour. Good afternoon, everyone. Maria Radziejowska on behalf  
6 of victims participating in this case.

7 JUDGE GUILLOU: Thank you very much.

8 And now I turn to the Registry. Madam Registrar.

9 MS. DONLON: Good afternoon, Your Honour. Fidelma Donlon,  
10 Registrar, together with Maria Manolescu, legal officer of the  
11 Registry.

12 JUDGE GUILLOU: Thank you, Madam Registrar.

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

15 On 1 July 2022, I scheduled this 13th Status Conference. As  
16 usual, I asked for the parties to provide written submissions if they  
17 so wished.

18 On 8 July 2022, the SPO and the four Defence teams submitted  
19 their written observations.

20 The purpose of our hearing today is to review the status of the  
21 case and to discuss the topics in our agenda; specifically,  
22 disclosure, Defence investigations, and proposals for streamlining  
23 the case. I invite the parties to present their views in a concise  
24 fashion about each item.

25 But before we move to the first topic in our agenda, I would

1 like to briefly discuss a preliminary matter in relation to the  
2 Rule 109(C) charts, which is filing F663.

3 I note that the Rule 109(C) charts were filed on 28 January  
4 2022. But since that time, I have issued a few decisions - for  
5 example, F727, F779, and F876 - authorising further Rule 102(1)(b)  
6 material to be added to the exhibit list. Accordingly, I find it  
7 necessary for a supplement to be provided to the Rule 109(C) chart  
8 once all requests for amendments to the exhibit list have been dealt  
9 with.

10 I would like to know if the SPO would be in a position to  
11 provide such a supplement by 30 September 2022.

12 Madam Prosecutor.

13 MS. LAWSON: Yes, Your Honour. We can do that. Thank you.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 I will now issue my first oral order, unless the Defence wants  
16 to take the floor, but I think it's quite straightforward. No, I  
17 don't see any hand.

18 I will now issue my first oral order.

19 In light of the SPO's submissions, I order the SPO to supplement  
20 its Rule 109(C) chart by 30 September 2022. This supplement shall  
21 include material having been added to the exhibit list and shall  
22 include all Rule 102(1)(b) material on the exhibit list which is not  
23 currently included in the Rule 109(C) chart.

24 This concludes my first oral order.

25 Let us now move to the first topic in our agenda, which is

1 disclosure. I will give the floor to the parties on the disclosure  
2 of each category of remaining evidentiary material separately.

3 First, the Rule 103 material, which was not in the agenda, but I  
4 would like to hear the parties on a request from the Krasniqi Defence  
5 in their written submissions for the Status Conference.

6 Second, the Rule 102(3) material, which is the material relevant  
7 to the case as listed by the SPO.

8 And third, the Rule 107 material, which is protected material  
9 for which the consent of the provider is requested.

10 So let us start with the Rule 103 material, and especially with  
11 the Krasniqi Defence request to set a deadline for targeted searches  
12 for exculpatory material.

13 At the last Status Conference, I ordered the SPO to complete its  
14 review of material obtained after January 2022 and to file a  
15 protective materials request or disclose material falling under  
16 Rule 103.

17 On 30 June 2022, the SPO indicated that it had completed its  
18 review of material registered between 31 January 2022 and  
19 16 June 2022, and that it had disclosed those items containing  
20 Rule 103 information, with the exception of the nine items concerned  
21 by a pending request for protective measures.

22 I take note that the disclosure of exculpatory material has been  
23 finalised by the SPO, with the exception of the items concerned by  
24 pending protective measures requests.

25 However, I remind the SPO that any new evidentiary material

1 obtained by the SPO shall be scrutinised as disclosure of exculpatory  
2 material is a continuous obligation.

3 I also note that, in its written submissions, the Krasniqi  
4 Defence requests that I set a deadline for the SPO to complete  
5 additional targeted searches for exculpatory material. The Krasniqi  
6 Defence recalls that the SPO has previously submitted that further  
7 targeted searches for exculpatory material are required.

8 The Krasniqi Defence considers that exculpatory disclosure  
9 cannot be delayed any further and requests the SPO to conduct  
10 additional searches as soon as possible.

11 I will first give the floor to the Krasniqi Defence on this  
12 request. And I also remind the parties that the other requests filed  
13 by the Defence related to Rule 103 material will be dealt with  
14 written rulings, so we'll not discuss about these requests at the  
15 hearing today.

16 So I first turn to Ms. Alagendra, unless you want me to give the  
17 floor to Mr. Ellis.

18 MS. ALAGENDRA: [via videolink] Mr. Ellis, please, Your Honour.

19 JUDGE GUILLOU: Mr. Ellis, you have the floor for this request.

20 MR. ELLIS: Thank you, Your Honour. This was not a request for  
21 additional searches from the Prosecution but a request for the  
22 searches that were indicated were already in progress.

23 The genesis for this, from our point of view, was the  
24 submissions made by the Prosecution at the Status Conference in  
25 March, on 24 March 2022. The submission there made was, at

1 page 1089, that in addition to the item-by-item review, the  
2 Prosecution were conducting targeted searches as an additional  
3 measure to ensure that material is identified and is disclosed, and  
4 they anticipated further disclosures will be generated from those  
5 searches, and remained happy to keep both the Court and Defence  
6 apprised on progress.

7 Later at page 1107, the Prosecution confirmed that the targeted  
8 searches were initiated in line with the finalisation of the witness  
9 and evidence lists.

10 So our position on this is that it's been very clear up to now  
11 that in addition to the review, there was a separate process of  
12 targeted searches. And entirely sensibly, those targeted searches  
13 were linked to the witness lists and the exhibits lists that had then  
14 been prepared.

15 If that's right, we seek a deadline for getting the results of  
16 those targeted searches. That we would not anticipate being a  
17 problem, given that they've been ongoing since at least March 2022,  
18 and we know that because the Prosecution told us they were ongoing at  
19 that time.

20 But what we are anxious to avoid is a situation where the fact  
21 that exculpatory disclosure is an ongoing obligation, and the fact  
22 that the Prosecution will need to review new documents as they come  
23 in, is not used as a smokescreen to get away from the obligation to  
24 disclose exculpatory material immediately where the Prosecution  
25 already have it.

1           If it's a definitional issue, we would suggest that rather than  
2     tying it to additional targeted searches, what we would be looking  
3     for is the targeted searches that the Prosecution referred to in  
4     their earlier submissions, so those directly linked to the witness  
5     list and the exhibit list. And given that the obligation is to  
6     provide exculpatory material immediately, we invite Your Honour to  
7     set a deadline for that.

8           JUDGE GUILLOU: Thank you, Mr. Ellis.

9           Does any of the other Defence team want to add on what has been  
10    mentioned?

11          Mr. Kehoe.

12          MR. KEHOE: We certainly support the Krasniqi application on  
13    behalf of President Thaci. We have some other 103 issues that  
14    haven't been answered. I don't know if Your Honour wants to hear  
15    them now or at some other point.

16          JUDGE GUILLOU: Thank you, Mr. Kehoe.

17          Ms. O'Reilly.

18          MS. O'REILLY: Your Honour, just to the extent that we would  
19    support that as well. We had raised the same issue in our written  
20    submissions for the last Status Conference. And, indeed,  
21    Mr. Emmerson had covered that in his oral submissions as well.

22          My only slight difference with the Krasniqi Defence, I suppose,  
23    is they're proposing 30 September for the deadline, whereas our  
24    pre-trial brief is to be filed on 21 October. So I would propose a  
25    deadline of around the middle of September. Thank you.

1 JUDGE GUILLOU: Thank you, Ms. O'Reilly.

2 Mr. Young, please.

3 MR. YOUNG: Your Honour, briefly, we support the submission and  
4 have nothing to add. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Let me turn to the Prosecution.

7 Mr. Prosecutor.

8 MR. HALLING: Thank you, Your Honour. On this issue, the  
9 Defence is misapprehending the nature of what our Rule 103 continuing  
10 obligations are as we understand them. They were operating under the  
11 same misapprehension at the last Status Conference, and we addressed  
12 the point that Mr. Ellis just made now quite clearly on page 1245 of  
13 the transcript.

14 On the targeted searches -- I'm now quoting from that May  
15 hearing:

16 "On the targeted searches, there is not an initial review phase  
17 and a targeted search phase of what we are doing. The targeted  
18 searches, they are going on now, they will continue into the future,  
19 they're not just limited to witnesses. This is about vigilance."

20 And that's exactly our same view today. As Your Honour  
21 mentioned in the initial remarks, we have disclosed and reviewed all  
22 of our Rule 103 material through 16 June 2022.

23 Any discussion about late disclosures or a targeted search  
24 deadline misapprehends what those searches are. Even with the very  
25 intense Rule 102(3) obligations the SPO has to date, the SPO is

1 always devoting some resources to make sure all of its Rule 103  
2 disclosures are up to date, consistent with Your Honour's direction  
3 that this is a continuing obligation.

4 At the end of the day, the Defence shouldn't want a cut-off date  
5 for these kinds of searches for Rule 103 material. Searches are  
6 being run. They will be re-run. New searches will present  
7 themselves across the proceedings.

8 What the SPO is doing with targeted searches is nothing more  
9 than standard second-level obligations of ensuring that everything  
10 that's been disclosed is labelled correctly, and it's in no one's  
11 interest to limit the SPO's efforts in this regard.

12 JUDGE GUILLOU: Let me ask a couple of follow-up questions,  
13 because I understand your point, but I also understand the Defence  
14 point that they do not want the Prosecution to use this to disclose,  
15 at a later stage, documents that should have been disclosed before.  
16 And, of course, it's always in the interest of the Defence to get  
17 exculpatory material, even if it's at a later stage, but it doesn't  
18 dispense you from disclosing this earlier. So I think that's the key  
19 point.

20 And my second question is: Do you consider that you have  
21 fulfilled your obligation? In which case, basically, you have  
22 reviewed all the documents for exculpatory material. Or do you  
23 consider that this task is not completed until you do these  
24 additional specific searches that you consider part of your  
25 obligations? I think that's the main point.

1           And subsidiary, the question is if you disclose a document that  
2           you haven't identified before but that was in your possession before,  
3           do you consider that this would be a disclosure violation or not a  
4           disclosure violation? Because at the end of the day, that's also  
5           what the Defence is probably questioning here.

6           MR. HALLING: I follow. I'll turn to each of Your Honour's  
7           questions in turn.

8           The first question is basically related to the possibility that  
9           we're using this as a way of somehow deferring our Rule 103  
10          obligations. We are not. We have a Rule 103 review. We have done  
11          that review for every item in our collection, and at any given moment  
12          it is a snapshot of what we have done through 16 June 2022.

13          We have fulfilled our Rule 103 obligations. We are mindful that  
14          lots of things can happen, items can be reassessed, proceedings can  
15          evolve, and we have set up a system in place to make sure that we are  
16          continuously reviewing the collection to make sure that we maintain  
17          fulfilment with our Rule 103 obligations.

18          But we aren't using this as some sort of smokescreen to delay  
19          our Rule 103 compliance. We have complied with our Rule 103  
20          obligations. And if we see anything that requires adjustment to make  
21          sure the Defence has full Rule 103 disclosure, we are responding to  
22          that immediately.

23          As we said in the last Status Conference, this doesn't  
24          necessarily mean that there will be no more Rule 103 disclosures for  
25          older materials. And since the last Status Conference to now, there

1 have been, indeed, some Rule 102(3) reassessments where items were  
2 disclosed under 103 that were previously identified as not. In our  
3 submission, that is ordinary course of a well-functioning  
4 Prosecutor's Office. And all we are asking is to continue with this  
5 process throughout the proceedings. There is no point in cutting it  
6 off, and there is also no point in setting an artificial limit for  
7 something which we are obliged to continue doing.

8 In relation to Your Honour's last question about whether a late  
9 disclosure of an item would constitute a disclosure violation,  
10 obviously we would say not necessarily. There are plenty of reasons,  
11 including Rule 107 clearance issues, new Defence arguments, that  
12 would necessitate later disclosures that couldn't be reasonably  
13 understood to be a violation. Should any item be disclosed under  
14 Rule 103 where the Defence considers it to be delayed or wrongful for  
15 any reason, the proper recourse is to seize Your Honour with a  
16 request for a remedy rather than imposing a targeted search cut-off.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Mr. Kehoe, please.

19 MR. KEHOE: May I just respond briefly. And perhaps counsel was  
20 not familiar with some of the prior proceedings in this regard.

21 But vigilance in producing Rule 103 material is not an adjective  
22 or an adverb that can be used to describe the SPO's efforts when one  
23 goes into Rule 103 disclosures.

24 We have be through with Your Honour on several occasions where  
25 significant 103 material was in the possession of the SPO for years

1 in several cases. I'm looking at one right now where it was almost  
2 six months of Rule 103 material that the statement was taken before  
3 it was turned over. So "vigilance" is not a word that can be used to  
4 accurately describe the SPO's efforts in this regard.

5 What my learned friend is asking for is: Please, look through  
6 what we're entitled to. And Your Honour has noted this on numerous  
7 occasions, that 103 material has to be turned over immediately, not  
8 when they get around to it, which is what the track record of this  
9 case has been, but immediately. And "immediately" means now.

10 As a matter of fact, Judge, that is what you emphasised on at  
11 least three different occasions, that "immediately" is now.

12 So circling back around to the 103 ongoing targeted searches,  
13 that should be done now as opposed to later. That should not be done  
14 when the SPO gets around to it, which is -- accurately defines the  
15 efforts in this regard to date that the SPO has exhibited. When they  
16 get around to it or they're put in an uncomfortable position, then  
17 they turn over exculpatory material. And we had a hearing on that as  
18 well, where I brought that before you.

19 It's quite simple. That this is a case that's fraught with a  
20 lot of problems with the Prosecution, and there are exculpatory items  
21 in their possession right now. Putting aside the motion that we  
22 filed today concerning the Serb documents that I know Your Honour has  
23 taken a look at. We have a litany of other items that have not been  
24 addressed as well.

25 If it be done and that it be done, better it be done quickly.

1 The words of Macbeth. But they have to do it now. And my learned  
2 friend is just saying let's move this along so, Your Honour, we can  
3 expeditiously move this case to trial, which is what our clients want  
4 to do.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Mr. Ellis, please.

7 MR. ELLIS: Your Honour, I'll respond briefly.

8 Firstly, I'm not talking about the new searches that will need  
9 to be carried out as proceedings are ongoing. We all appreciate that  
10 if a new line of defence becomes apparent to the Prosecution, they'll  
11 have to carry out new searches for exculpatory material relevant to  
12 that. That's not what I'm talking about in seeking this disclosure.

13 What I am talking about is the specific category of targeted  
14 searches on the witness list, on the exhibit list, which we were told  
15 was ongoing back in March of this year. If those searches were  
16 ongoing in March of this year, why is there such resistance from the  
17 Prosecution to a deadline being set to providing us with the results  
18 of those searches?

19 What we want to avoid here is the situation which,  
20 unfortunately, has happened in many other tribunals, where it gets to  
21 shortly before a witness' testimony and then searches are carried out  
22 and then material comes out that we would be better off knowing now  
23 before we have to come to file the pre-trial brief.

24 And we simply can't understand why the Prosecution object to  
25 providing this material.

1 JUDGE GUILLOU: Thank you, Mr. Ellis.

2 It is my understanding that the SPO considers that it has  
3 finalised its search for exculpatory material, whether you call it by  
4 specific additional searches or -- but you maintain, Mr. Prosecutor,  
5 that this has been done. So what Mr. Ellis is referring to, these  
6 additional searches, you have finalised them during your review. But  
7 when you're talking about additional searches, it doesn't refer to  
8 documents that you haven't screened yet; am I correct?

9 MR. HALLING: I would say yes to the way Your Honour just  
10 characterised it. The distinction we're making is between reviewing  
11 the items for Rule 103, which is looking at new items as they come  
12 in, and targeted searches, where we look within our existing  
13 collection for something specific.

14 To Mr. Ellis' point, for any targeted search that yields any  
15 Rule 103 material, that material is then disclosed immediately. We  
16 are not waiting for some moment where it's complete, but we are  
17 running these searches on all kinds of different topics across the  
18 proceedings as the potentiality arises that there may be Rule 103  
19 material somewhere in our collection.

20 This is why we're saying that having some sort of arbitrary  
21 cut-off isn't going to change our behaviour and it's why we consider  
22 it to be unnecessary.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 Mr. Ellis, please.

25 MR. ELLIS: Your Honour, no doubt I'm being slow this afternoon.

1 Have the Prosecution completed the targeted searches on the witness  
2 list, on the exhibit list, that they referred to in the Status  
3 Conference in March? I still don't know if we've got an answer to  
4 that.

5 JUDGE GUILLOU: Mr. Prosecutor, on the question of Mr. Ellis.

6 MR. HALLING: Every targeted search that we have completed since  
7 March, all of the Rule 103 has been disclosed. At the moment in  
8 March where all of those targeted searches were discussed, some of  
9 them have fractured into subrequests and other issues, such that it's  
10 actually deceptively complicated to be able to declare them all to be  
11 closed. But everything that has been done since March on the  
12 targeted searches, including for witnesses and particular exhibits,  
13 has been disclosed under Rule 103.

14 JUDGE GUILLOU: But do you consider that you need additional  
15 targeted searches to fulfil your disclosure obligations?

16 MR. HALLING: Yes. The reason why is not because we haven't  
17 currently fulfilled our obligations but because Rule 103 is a  
18 continuing obligation, and we need to set in motion some continuing  
19 process in order to make sure that our obligation is up to date and  
20 complete at any given moment.

21 It's not that the targeted searches are needed to get it over  
22 the line. It's that we need the targeted searches to keep it over  
23 the line.

24 JUDGE GUILLOU: Yes, but this is, I think, where I don't really  
25 understand your position, Mr. Prosecutor.

1 I think we have to make a distinction between different types of  
2 exculpatory material. I mean, there is the material that you're  
3 going to obtain after the June deadline. For this material, you will  
4 have to perform searches because it's new material. So that, I set  
5 it aside.

6 Then there is material that you already have but that could  
7 become exculpatory, like Mr. Ellis said, because there is a new line  
8 in the defence reasoning or because of additional information. So  
9 things that couldn't be considered exculpatory when you performed the  
10 searches would now become exculpatory. And then I understand that  
11 targeted searches would be necessary, and that would not be a  
12 disclosure violation because at the time of the initial review, it  
13 wouldn't have been considered exculpatory.

14 But what I don't really understand is something that would  
15 already -- should be considered exculpatory now, this is where I  
16 don't understand why this targeted search cannot be performed now. I  
17 mean, if it is obvious that it's exculpatory now, it should be  
18 disclosed. Full stop.

19 The way you do it, your methods, in a way, the Defence is not  
20 concerned. The Defence wants to have what it is entitled to, which  
21 is all exculpatory material that are in your possession. So this is  
22 where, again, I set aside the two categories that I identified  
23 before, because I think this is a different question.

24 What I am here concerned with is when you say, "We need to  
25 perform additional targeted searches," does it mean that you haven't

1 completed your work? This is what I don't understand.

2 MR. HALLING: Your Honour, maybe it's better to describe it as a  
3 hypothetical, involving a particular witness. We'll call them  
4 Witness 1.

5 At this moment, every witness, like Witness 1, that has Rule 103  
6 material, that material has been disclosed to the Defence or it's  
7 covered in a protective measures motion. The status of those items  
8 is resolved. And as of this moment, we're not aware of any further  
9 information in relation to Witness 1 that needs to be disclosed under  
10 Rule 103. And that's true for every witness in our list.

11 The question becomes what happens if we look at the collection  
12 again with new information, with different assessments, things may  
13 change in the course of the proceedings, and we look at the  
14 information in relation to Witness 1, and we realise at some point  
15 that some information that we had previously considered not  
16 exculpatory might be. Then we would need to disclose it at that  
17 moment immediately under Rule 103, and it would be something that we  
18 would catch as a result of a targeted search, but it's a targeted  
19 search that's designed to catch Rule 103 material beyond that which  
20 we have initially collected.

21 It's not that there are witness-related information under  
22 Rule 103 that we have delayed or are holding on to. It's that the  
23 information under Rule 103 relating to a specific witness is a moving  
24 target, and so we need to put in a moving procedure to catch it. I  
25 hope that clarifies Your Honour's question.

1 JUDGE GUILLOU: Again, I am not saying that you should not  
2 perform these additional searches, because for the two categories I  
3 identified before, I think it's necessary. But what I wouldn't want  
4 to see is disclosure of documents that you consider suddenly at a  
5 later stage of the proceedings exculpatory that was already  
6 exculpatory six months before.

7 You see what I mean? I mean, if there is a new line of  
8 reasoning from the Defence or if there has been new things that have  
9 been said at some point during the proceedings that changes how you  
10 read, again, a witness testimony, I perfectly understand. But if  
11 this thing was already obvious before, there is no justification for  
12 you.

13 You see? It cannot be a carte blanche where you reassess and  
14 then you find something new and then -- if you could have considered  
15 that this was exculpatory before the deadline of the disclosure of  
16 the Rule 103 material, I don't see why you would be entitled to  
17 disclose it at a later stage. You see what I mean?

18 MR. HALLING: We follow you fully, Your Honour. And that  
19 question is different. That question goes to the quality of our  
20 Rule 103 review, and it's not about the targeted searches per se, but  
21 it's whether or not a Rule 103 disclosure at some later point in the  
22 proceedings is justified or not.

23 And what we would say in relation to that is hold us to the  
24 appropriate standard on a case-by-case basis as these issues arise.  
25 Mr. Kehoe and I are not going to agree on the level of vigilance

1 exercised thus far, but we believe that we can be properly held to  
2 account if there's a late Rule 103 disclosure. But there are no late  
3 Rule 103 disclosures that are currently under litigation at the  
4 moment.

5 If there is a Rule 103 request beyond the one filed yesterday,  
6 the Defence can file it and we can respond to it on a case-by-case  
7 basis.

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 Mr. Kehoe, please.

10 MR. KEHOE: Just briefly, Judge. Is that an answer, with all  
11 due respect, to your question? Your question is: When are you going  
12 to turn over this 103 material from the targeted disclosures? And  
13 maybe I missed it, Judge, but I don't think that question that you  
14 asked was answered.

15 JUDGE GUILLOU: My understanding is that the SPO considers that  
16 it has already been done, but that the targeted searches will only be  
17 for material that was not legitimately considered exculpatory when  
18 they performed their initial review. And they say that they consider  
19 that they should be accountable for any exculpatory evidence  
20 disclosure that will fall after the deadline if they had missed this  
21 in their initial Rule 103 disclosure.

22 MR. KEHOE: Yes, Judge. I think the key word that you noted was  
23 "accountability." It's accountability. And as of this point,  
24 they're attempting to leave themselves a bailout position by saying  
25 that, "Oh, you know, we missed this during the initial review, and we

1 just found out about it now. But don't hurt us, Judge, because, you  
2 know, we're really trying to do this." Well, I think the past  
3 history of the SPO in this regard belies that position. But,  
4 nevertheless, it leaves us not in a place where counsel for  
5 Mr. Krasniqi is being answered, nor did it answer the question that  
6 Your Honour raised, that: Is this going to be done, and is it going  
7 to be done now.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Mr. Prosecutor, do you want to add anything?

10 MR. HALLING: No, Your Honour accurately summarised our  
11 position.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Let us move to the Rule 102(3) material. I remind the parties  
14 at the last Status Conference held on 20 May 2022, I ordered the SPO  
15 in relation to currently pending Defence requests for the disclosure  
16 of Rule 102(3) material to, first, finalise its processing of these  
17 requests; second, request protective measures or submit materiality  
18 challenges; and, third, to disclose all material not subject to  
19 protective measure requests or materiality challenges by 30 September  
20 2022.

21 Since the last Status Conference, the SPO indicated that it has  
22 disclosed over 45.000 Rule 102(3) items in response to Defence  
23 requests.

24 According to the SPO, approximately 65 per cent of the total  
25 number of selected Rule 102(3) items across Defence requests have now

1 been resolved. The SPO also indicated that materiality challenges  
2 and requests for protective measures will be necessary in respect of  
3 certain Rule 102(3) requests in the near future.

4 The SPO also indicated that it will meet the 30 September 2022  
5 deadline both for the items which had been selected from the  
6 Rule 102(3) notice by the day of the last Status Conference and all  
7 corresponding materiality and protective measures requests.

8 The Thaci Defence indicated that it has made three further  
9 limited requests for material from the Rule 102(3) notice, comprising  
10 approximately 80 documents. It also remains concerned about the  
11 delay in receiving the material it has requested and requests that  
12 the SPO continues to disclose all requested material on a rolling  
13 basis.

14 The Thaci Defence also indicated that it intends to make further  
15 requests for Rule 102(3) material for items that have become material  
16 because of ongoing investigations.

17 The Veseli Defence indicated that it submitted its last bulk of  
18 requests for Rule 102(3) documents on 22 June 2022. It indicated  
19 that only 263 of the documents it has requested since 20 May 2022 had  
20 not been requested by any of the teams prior to the last Status  
21 Conference.

22 I invite the SPO to indicate if it can disclose these additional  
23 evidentiary documents by the 30 September deadline.

24 The Veseli Defence also indicated that it has not yet received  
25 an updated Rule 102(3) notice, so I invite the SPO to clarify its

1 intention on this matter.

2 The Selimi Defence indicated that it has received more than half  
3 of the items it had requested, but, and I quote, "in a chaotic and  
4 inconsistent manner," notably because the item numbers were missing  
5 and the lack of consolidated spreadsheets on the disclosure history  
6 of the Rule 102(3) items. The Selimi Defence is also concerned that  
7 it will be flooded with 102(3) measures and challenges to materiality  
8 just before the expiration of the Rule 102(3) deadline. And it is  
9 concerned that it will have to respond at the same time that the  
10 Defence is completing its pre-trial brief, which is due by 21 October  
11 2022.

12 The Selimi Defence specifically requests a spreadsheet  
13 cross-referencing disclosed items with the item numbers from the  
14 Rule 102(3) list; the SPO to prioritise requests for protective  
15 measures or challenges to materiality for documents requested by more  
16 than one team; and all SPO requests for protective measures or  
17 challenges to materiality be submitted by 26 August 2022 at the  
18 latest, consolidated Defence response to all such requests to be  
19 filed by 16 September 2022, and decisions on this request to be  
20 issued by 30 September 2022.

21 I also invite the SPO to answer these requests from the Selimi  
22 Defence.

23 And, finally, in its written submissions, the Krasniqi Defence  
24 indicated that it still awaits more than 25.000 disclosure items. It  
25 requests the SPO to engage with the Defence on materiality and

1 protective measures sufficiently in advance of 30 September deadline  
2 to allow for meaningful *inter partes* discussions and so that the  
3 ongoing timetable is not disrupted.

4 I will first give the floor to the SPO on this category of  
5 material and all the requests from the Defence teams that I mentioned  
6 in my presentation.

7 Mr. Prosecutor.

8 MR. HALLING: Thank you, Your Honour. I will make a submission  
9 that will, in turn, hit every point that you raised.

10 As seen from the reported numbers in our Status Conference  
11 submissions, the SPO has greatly accelerated its Rule 102(3)  
12 disclosures since the last Status Conference. This has been  
13 accomplished, in large part, by having every SPO staff who can review  
14 or process disclosure across all its investigations and cases working  
15 on the Rule 102(3) materials in this case.

16 The surge of resources keeps us on track to meet the Court's  
17 deadline but at a cost of capacity to take on additional  
18 resource-intensive tasks over the next two and a half months. This  
19 doesn't include tasks arising from Rule 103, as we just discussed, or  
20 tasks in the ordinary course of litigation, such as the written  
21 response to yesterday's disclosure request.

22 But in order to meet this deadline, it is imperative that our  
23 obligations stay as previously ordered. And this goes into things  
24 like early protective measures requests requested by the Selimi  
25 Defence, and these additional 263 items requested by Veseli. There

1 are multiple Defence submissions that are effectively asking to  
2 reconsider aspects of the 30 September deadline.

3 The protective measures and materiality challenges set by  
4 Your Honour seven weeks ago were for these to be filed on  
5 30 September. There is nothing that has happened in the intervening  
6 seven weeks that would justify changing that deadline. The SPO has  
7 announced in its submissions that it will be filing such protective  
8 measures requests on a rolling basis, and, further, can announce that  
9 we are intending to send in some *inter partes* correspondence to the  
10 Defence about the materiality of certain Rule 102(3) selected items.

11 But there is no basis to reconsider the 30 September deadline.

12 On the 263 items specifically requested by the Veseli Defence,  
13 this is another example of a reconsideration, and we need to point  
14 out on this that the Veseli Defence mischaracterises the nature of  
15 the 22 June 2022 Rule 102(3) request that they made. They don't  
16 mention this number squarely in their filing. But on that date, a  
17 month after the 12th Status Conference, the Veseli Defence requested  
18 over 23.000 items off the Rule 102(3) notice.

19 There is, indeed, a great overlap between the items that are  
20 requested and the work that's already being done to meet the  
21 30 September deadline. Although, the Veseli Defence doesn't give  
22 specifics and leaves it to the SPO to match the requests to see if  
23 that number is, in fact, 263.

24 But when the Veseli Defence says, in paragraph 2 of its  
25 submissions, it's only received over 19.000 items out of 54.000 items

1 requested, they're counting the 23.000 items they requested after the  
2 deadline. And as Your Honour recalls, the way that deadline was set,  
3 we specifically asked - and this was granted - that the Rule 102(3)  
4 requests be frozen and processed from the moment that that order was  
5 made.

6 If you take the Rule 102(3) eligible requests of the Veseli  
7 Defence, it's actually a number much closer to over 70 per cent of  
8 their requested items have been resolved as of this moment.

9 On the updated relevance list. The SPO is aware that it needs  
10 to file an updated relevance list. It's going to need to continue  
11 doing so. This is an obligation that runs across the proceedings,  
12 and these updates will need to be periodically filed.

13 Preparing an updated relevance list is different in nature from  
14 the Rule 109 order that Your Honour previously made. It is quite a  
15 time-consuming project, and it involves many of the same people who  
16 are critical towards complying with the 30 September deadline. It's  
17 not just a list of ERNs. All relevant items since the previous  
18 Rule 102(3) notice in July 2021, they need to be organised; time  
19 permitting, they should be checked for duplicates against items that  
20 already been noticed and disclosed; and a description needs to be  
21 written for every single one of them. And those descriptions need to  
22 be sufficiently complete to comply with the requirements of  
23 Rule 102(3), but they can't be so detailed as to be compromising  
24 necessary protective measures, which means that the list also  
25 requires review, like sensitive disclosure items as well.

1 A consequence of the way the 30 September deadline is  
2 structured, in that it only applies to items that were requested as  
3 of the 12th Status Conference, is that the SPO is permitted to  
4 disclose items selected after May 2022 after September 30th. And as  
5 a practical proposition, the SPO can't really accommodate any new  
6 Rule 102(3) requests until that moment anyway.

7 So what the SPO would propose is for it to file an updated  
8 relevance list in October, after the 30 September deadline and at a  
9 moment when the SPO would actually be in a position to process the  
10 items selected from that list. The SPO would then be processing  
11 updated relevance list items selections on an expedited basis.

12 As to the point about spreadsheets. You also see this in the  
13 Defence submissions about SPO e-mails in relation to disclosure  
14 packages. Defence submissions in relation to SPO e-mail requests for  
15 information go above and beyond the SPO's statutory obligations. The  
16 SPO provides its disclosure with metadata required by all the  
17 relevant policies and protocols.

18 The Defence may want further information accompanying  
19 disclosures, and the SPO has promised to provide certain further  
20 information when it can do so, but any such steps must be  
21 subordinated to the judicial deadline of the kind that we are working  
22 under now.

23 This said, and as the Defence had to acknowledge in their  
24 written submissions, even with the intense demands on our office, we  
25 have been making time to provide such e-mails when possible.

1 And, Your Honour, unless there are any other questions off of  
2 our submissions, this was all that we had on this item.

3 JUDGE GUILLOU: Just before I give the floor to the Defence, a  
4 follow-up question related especially to the documents requested by  
5 the Veseli Defence team.

6 Is it time-consuming for the SPO to disclose the documents that  
7 have already been requested by the other Defence teams? Because I  
8 understand that for the 263 or X number of documents, you have to  
9 perform a specific review. But for the items that have already been  
10 disclosed to any of the other Defence teams, I wouldn't anticipate  
11 that it would be very time-consuming. Am I wrong?

12 MR. HALLING: You're not wrong, Your Honour. In candour, our  
13 submission about the Veseli Defence was that they misrepresented the  
14 number of items that we had actually provided as a percentage of  
15 their request. It is not particularly time-consuming for us to  
16 redisclose items that are already resolved, but those 263 items, as  
17 Your Honour mentioned, are different in kind.

18 JUDGE GUILLOU: No. But if the Veseli Defence team can get  
19 close to 21.000 items, I think it's already a big improvement for the  
20 preparation of the case, even if they don't get the 263. So I think  
21 that would be a major demonstration of your willingness to help the  
22 Defence in preparing their case, Mr. Prosecutor.

23 MR. HALLING: I see where this is going. Your Honour, we can  
24 accommodate that part by September 30th if you so wish.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Kehoe, please.

2 MR. KEHOE: Yes, just to contextualise this, Judge. Of course,  
3 we are still talking about 102(3) disclosures. And we're not here to  
4 relitigate, Judge, your order for the 30 September deadline. But,  
5 again, to put this in context, we are talking about these document  
6 disclosures when the SPO said they were ready for trial in May 2021,  
7 more than a year ago, which it makes me laugh just a bit to talk  
8 about the vigilance that's involved here.

9 But nevertheless, what we're asking for here, and I'll let my  
10 colleagues speak for their individual clients, is some type of  
11 rolling basis and akin to what Your Honour was talking about. If  
12 you've finished with something and -- or you have some type of  
13 materiality objections to it, or there are protective measures  
14 concerning this particular item that we've requested, why not turn  
15 that over now so we can start dealing with it as opposed to getting a  
16 rash of these on 30 September, and the Court and everybody else has  
17 to deal with them immediately while we're doing our pre-trial brief?

18 Ought it not to be more propitious to take those documents and  
19 provide them on a rolling basis? It's not relitigating the  
20 30 September order. It's just trying to give some order to these  
21 disclosures so we can move this along and get this thing to trial, as  
22 our clients want to do. That's the simple proposition I believe all  
23 of my colleagues are asking for.

24 JUDGE GUILLOU: Thank you, Mr. Kehoe.

25 Ms. O'Reilly or Mr. Emmerson? Ms. O'Reilly, please.

1 MS. O'REILLY: Thank you, Your Honour.

2 With respect to the 263 documents, it appears that the SPO is  
3 not in a position to confirm that figure. I personally would have  
4 thought that they would have been, because one would assume that  
5 records are being kept of what is being disclosed to each team.

6 But if that's not the case, and it will help them to disclose  
7 those documents faster, then we can, of course, share our records  
8 with them to help expedite that process. But I'll wait for an  
9 indication as to whether that will actually help them with that.

10 We still believe it would be reasonable -- you know, it's not a  
11 very large number of documents to disclose by the 30 September  
12 deadline. Had we finished running those searches and there were, you  
13 know, 5,000 documents that hadn't been requested by anybody else, of  
14 course, we would have proposed a later deadline. But it seemed such  
15 a small number in the global scheme of things, and we are all, I'm  
16 sure, very keen to get the bulk of disclosure done with so that we  
17 can move forward, so it did seem a reasonable request under those  
18 circumstances.

19 But, anyway, I appreciate that it appears the SPO will disclose  
20 the previously requested documents at least by 30 September. Thank  
21 you.

22 JUDGE GUILLOU: Thank you, Ms. O'Reilly.

23 And regarding these 263 documents, if we do the math and we  
24 analyse the pace of disclosure of the SPO at the moment, it should be  
25 a question of days, if not two or three weeks, but I wouldn't

1 anticipate more than that.

2 Mr. Young, please.

3 MR. YOUNG: I invite Mr. Roberts to address you. Thank you.

4 JUDGE GUILLOU: Mr. Roberts, please.

5 MR. ROBERTS: Thank you, Your Honour.

6 Obviously, we set out in some detail our submissions on  
7 Rule 102(3), so I obviously won't repeat those now. And I,  
8 obviously, take into account what my friend has explained about the  
9 pressures on the Prosecution and the work they have to do to complete  
10 Rule 102(3) disclosure.

11 I refer simply back to the Status Conference, I think we're up  
12 to about eight months ago now, when we requested simply that they  
13 give us everything. And maybe, Your Honour, it would have been a lot  
14 easier had they just done so rather than dealing with multiple  
15 separate requests and the problems that that seems to cause.

16 But we are where we are. And the situation where we are now, I  
17 would suggest, is that we still don't know how many of the remaining  
18 documents will be subject to materiality challenges and will be  
19 subject to requests for protective measures. And that's my concern.

20 My concern, much like departing British prime ministers, is that  
21 if you don't give them a date, they will hang on forever and ever  
22 until they are forced out. So until we give the Prosecution a date  
23 to actually complete this, then this will carry on and carry on and  
24 carry on.

25 And I'm not being flippant. I'm being serious. This is

1 important information that we need to conduct our investigations.  
2 This list of documents -- and I think this is where it gets  
3 interesting in relation to the spreadsheets. What we are requesting  
4 in relation to the spreadsheets -- and I do note the day before,  
5 again, interestingly, the day before the deadline for submissions, I  
6 think everyone knows why that was disclosed then, the Prosecution did  
7 provide us with a significant number of spreadsheets detailing the  
8 different documents disclosed under Rule 102(3).

9 So we were given some information that we've been requesting for  
10 a while. That helped.

11 One additional piece of information is when they have disclosed  
12 the same documents under a different rule previously. Because, quite  
13 often, when the Prosecution has looked at our requests under  
14 Rule 102(3), they've noted that these documents should have been  
15 disclosed under 103 already. Quite often that's the case. So when  
16 they created the initial 102(3) list, it would appear that it was not  
17 reviewed with the necessary level of detail. But for us to track  
18 when documents have been disclosed before and to work out what's  
19 still missing, we do need a bit more information. So an extra column  
20 together with the information that's been disclosed before, or when  
21 that document's been disclosed before, the rule, would assist us  
22 greatly in terms of matching up the documents.

23 And this is when we say it's been chaotic. It's an ongoing  
24 challenge for us to try and match which documents out of the number  
25 we have requested have actually been disclosed, and that's what we

1 want to do, and I'm sure that's what the Prosecution wants us to do  
2 as well. It's in their interests for us to know what they've given  
3 us so we're not constantly contacting them and saying, "What's this?"  
4 And when we get partial translations, when we get documents disclosed  
5 under different ERNs, that's, obviously, somewhat complicated. So  
6 that's all we want.

7 We've received half, I believe, the number of spreadsheets, and  
8 I am sure my colleague from the Prosecution will correct me if I'm  
9 wrong, I think we've received 20 spreadsheets out of approximately 41  
10 batches of Rule 102(3) material. We'd like the rest of the  
11 spreadsheets as soon as possible and, obviously, preferably with that  
12 extra information.

13 In terms of the remaining protective measures and requests or  
14 challenges to materiality, what could assist now, I think, the  
15 Prosecution has mentioned that they've completed or resolved  
16 65 per cent of the documents requested.

17 Now, by my rudimentary maths, that leaves around about 22.000  
18 documents, approximately, that have yet to be resolved. How many of  
19 those, approximately, will be subject to materiality challenges? If  
20 my friend tells me there are actually only 50, or there are 20, or  
21 somewhere in that figure, then, obviously, waiting until later in  
22 September is one thing. If he otherwise suggests, actually, it's  
23 going to be 2.000, or 3.000, or 10.000, that, obviously, makes a big  
24 difference, and also which documents they refer to. So the earlier  
25 we get that information, the better.

1           One presumes that the Prosecution has already identified certain  
2 documents that it will challenge the materiality of or will request  
3 protective measures of, based on protective measures that have  
4 already been granted or the fact that it relates to a salamander in a  
5 dugout hole, as I'm sure he referred to last time.

6           The implication he gave last time was that there are multiple  
7 documents that we'd requested that were similar. And yet we've  
8 received little, if any, indication that they would be challenging  
9 the materiality. So in all reality, if they are able to do so, I  
10 don't understand why they don't do so now. And, obviously, the  
11 reference to documents being disclosed -- sorry, challenges being  
12 made in the near future on a rolling basis, those terms could mean  
13 different things to different people.

14           On a rolling basis could mean 27, 28, and 29 September; or it  
15 could be one filed next week, one filed a few week afterwards, one in  
16 August, one in the end of August. In which case, we would make some  
17 progress on those.

18           So I think a little bit more clarity in terms of numbers of  
19 documents, in terms of types of documents, and also in terms of when  
20 exactly "near future" and "rolling basis" means I think would really  
21 assist the Defence teams and Your Honour to move these proceedings  
22 forward and allow us to actually take account of these documents  
23 before we complete the pre-trial brief.

24           And that was -- in my understanding, the purpose of you setting  
25 the deadline of 30 September was that we would, in theory, at least

1 have these documents before we filed the pre-trial brief. Obviously,  
2 if a large number of them will not be given to us because they are  
3 subject to materiality challenges, then that's not really going to  
4 help us, I'm afraid.

5 So, as I say, I'm trying to come up with concrete proposals to  
6 assist the Prosecution and to help you to help us to move this  
7 forward. So hopefully the Prosecution will take that in the spirit  
8 in which it's intended.

9 JUDGE GUILLOU: Thank you, Mr. Roberts. And I appreciate your  
10 constructive efforts. I am not the Speaker of the House of Commons  
11 or the Chairman of the 1922 Committee, but I have the power to set  
12 deadlines and that should be enough for the Prosecution to do its  
13 best to help you in that matter.

14 I will give the floor to Mr. Ellis, first, but remember,  
15 Mr. Prosecutor, to answer the two main points of the Selimi Defence,  
16 which is the possibility to provide them with spreadsheets on a  
17 rolling basis as soon as you can and especially before the deadline,  
18 and also a ballpark figure on the materiality challenges. I don't  
19 ask you to come up with a number today but at least a percentage.  
20 Are we looking at 0.1 per cent, 1 per cent, 10 per cent, or  
21 50 per cent of the remaining documents to be disclosed? I think that  
22 would help very much the Defence teams.

23 But before I give you the floor, let me turn to Mr. Ellis,  
24 please.

25 MR. ELLIS: Your Honour, let me take a moment at the start to

1 put these disclosure issues in context.

2 My client, Mr. Krasniqi - indeed, all the accused - have been in  
3 detention now for more than 20 months. What have we got in return  
4 for those 20 months? We have disclosure still ongoing. We're still  
5 in the pre-trial phase because disclosure is still ongoing. And we  
6 still can't set a trial date because disclosure is still ongoing.

7 Be in no doubt Mr. Krasniqi is keen to get this case before a  
8 Trial Panel so that he can get on with establishing his innocence  
9 before this Court.

10 So when we hear the Prosecution say that they've been able to  
11 greatly accelerate their disclosure in the last few weeks, of course,  
12 we welcome that disclosure is being completed, but what it really  
13 highlights is how little progress had been made up till then. These  
14 disclosure issues have been around for a long time, and it is  
15 disappointing that they are still ongoing in that context.

16 I don't propose to make long submissions on this today,  
17 Your Honour. We do very much support the proposals that were made by  
18 the Selimi Defence. We are also concerned that if materiality  
19 challenges come late in the timescale, it will impede on the ongoing  
20 work of the Defence.

21 Whether an order is required on that or whether it's sufficient  
22 that we give that indication clearly, given that it's in the  
23 interests of all parties and participants to move this case forwards  
24 now.

25 And we would also see the need for this updated relevance list

1 and updated Rule 102(3) notice. I note that the 102(3) notice that  
2 we're all working from was provided in July, I think, of last year,  
3 so it's coming up for a year old. There must be other documents that  
4 have come into the Prosecution's possession that should be on it. Of  
5 course, updated 102(3) notices need to be provided throughout the  
6 proceedings, but we haven't had one yet, and so we would seek a  
7 deadline for that to be imposed today.

8 Of course, the difficulty with what the Prosecution is proposing  
9 of doing it in October is that there is no chance whatsoever that  
10 we'll get those documents before our pre-trial brief deadline. So,  
11 again, we would like to see disclosure wrapped up as far as possible  
12 in September in order that we can get on with meeting our pre-trial  
13 brief deadline.

14 JUDGE GUILLOU: Thank you, Mr. Ellis.

15 I will give the floor to Mr. Prosecutor, and I will add one more  
16 question to the one that I mentioned before, is: When would you be  
17 in a position to update the Rule 102(3) notice realistically? I  
18 think you touched upon this in your first -- when you took the floor  
19 earlier, but if you can probably give an estimate of when it would be  
20 feasible for you without delaying the disclosure process.

21 Mr. Prosecutor.

22 MR. HALLING: Thank you, Your Honour. And then just turning to  
23 that last question first. We said October in our submission for when  
24 we could file that updated relevance list. That would be the same  
25 month that we would be in a position to actually process and disclose

1 any of the items actually selected.

2 What Mr. Ellis is saying, that they may not get them by the time  
3 their pre-trial briefs are due, is correct, but that was baked into  
4 the 30 September deadline. Everything on the Rule 102(3) notice  
5 would be provided and disclosed, and that would be the overwhelming  
6 bulk of 102(3) material. We understand that Your Honour spaced the  
7 deadlines in that way, and we're going to comply with that  
8 30 September deadline.

9 So the overwhelming majority of the 102(3) material they will  
10 have in hand for their pre-trial briefs.

11 To the questions that Your Honour asked earlier. As --

12 JUDGE GUILLOU: Sorry, Mr. Prosecutor. When you say October, do  
13 you mean 1, 15, or 31st?

14 MR. HALLING: Well, if you let me pick, then I know what I would  
15 pick, but realistically I would say we need at least one full week  
16 after the Rule 102(3) September deadline to be able to provide an  
17 updated relevance list.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19 MR. HALLING: To the point about spreadsheets.

20 This is one of the things that we have promised. It's not one  
21 of our disclosure obligations as such. But taking what the Selimi  
22 Defence has made its submissions about, we are sending these  
23 spreadsheets.

24 The spreadsheets are only sent to the Defence teams when a  
25 Rule 102(3) request by a Defence team is completed, so the number of

1 spreadsheets the Defence teams have are slightly different numbers.  
2 The Selimi Defence, for instance, has one Rule 102(3) request with  
3 over 42.000 items in it, which is over half of the original 102(3)  
4 notice. That spreadsheet is not available yet because that one is  
5 not closed yet. But as these are closed, when we have time, we are  
6 intending to provide them.

7 In terms of challenges to materiality. As of this moment, the  
8 SPO has not made any challenges to materiality in this case. It has  
9 also been generally striving to resolve these matters *inter partes*  
10 and has some success in getting Defence teams to withdraw Rule 102(3)  
11 requests in certain instances after certain information about the  
12 document has been provided.

13 So I think that our conduct to date shows that we are not going  
14 to flood this Court with materiality challenges. It's hard to know  
15 exactly what the ballpark will be, given that, as I said, we intend  
16 to engage *inter partes* with the Defence in relation to certain items'  
17 materiality, but it will be a number much closer to something like  
18 1 per cent than 10 per cent or these higher numbers that were  
19 advanced.

20 Your Honour, unless there is any other questions that you have  
21 in relation to our submissions, this is all that we had on this item.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 For the spreadsheets. I mean, I understand that you didn't  
24 commit to any specific deadline, but do I understand correctly that  
25 you will do your best to provide the Defence teams with the

1 spreadsheets between now and 30 September on a rolling basis?

2 MR. HALLING: That's correct, Your Honour. We may not be able  
3 to get every last spreadsheet by September 30th, but the idea is that  
4 at least shortly thereafter they would have them all.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Let me turn to the Defence. Mr. Roberts.

7 MR. ROBERTS: Sorry, Your Honour, that's not quite good enough.

8 Closer to 1 per cent? 1 per cent of 60.000 is even, with my  
9 maths, about 600 documents. Is that 600 interviews? I don't know.  
10 And I think the Prosecution would help you and help us a lot if we  
11 could actually get a bit more clarity on that question.

12 I'm not wishing to put my colleague on the spot now and ask him  
13 to tell us exactly, but I would like you, with all due respect, to  
14 order the Prosecution to give a lot more information on that by the  
15 end of this week as to exactly what types of documents we're dealing  
16 with. Because if it really is significantly more than that -- and I  
17 understand this is a very difficult task for them to identify all of  
18 these, I'm somewhat sympathetic. But if it is more, than we may need  
19 to actually formally request deadlines for these to be provided.

20 So I think -- I'm sorry to be pushy, but just saying it's closer  
21 to 1 per cent, when that's 1 per cent of 60-odd thousand, is not  
22 enough, I'm afraid.

23 JUDGE GUILLOU: Thank you, Mr. Roberts.

24 Mr. Prosecutor, are you in a position to give more detail about  
25 this material, or if not, would you be willing to inform the Defence

1 teams and myself by next week, for example?

2 MR. HALLING: The way that Your Honour's question is posed, the  
3 answer is no and yes, depending on which part of the question I'm  
4 addressing.

5 As for the part where I would say that the answer is no, we  
6 cannot predict with precision which items we're going to challenge  
7 materiality on now. It is not September 30th yet. We are still  
8 reviewing these items. We are still reaching conclusions as to their  
9 materiality. This is why it's difficult for me to give an estimate.

10 But in terms of what we can inform the Defence, and if  
11 Your Honour is so inclined, Your Honour as well, is that for items  
12 where we have identified a potential issue with materiality, what we  
13 have been doing is first sending an *inter partes* correspondence to  
14 the Defence giving, when we can, additional information about the  
15 item and asking if they're willing to withdraw their request such  
16 that maybe no materiality challenge is necessary.

17 And as we've announced, we were intending to send a message to  
18 that effect with a number of items for which materiality is a  
19 potential issue. And so the Defence will be getting more information  
20 from us on this topic relatively soon. If Your Honour wants to set a  
21 deadline in that regard, we'll comply.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor. I don't see any  
23 request for the floor, so let us move to the Rule 107 material.

24 I note the SPO's submission that it is continuing to actively  
25 progress discussions with relevant Rule 107 providers with a view to

1 completing outstanding matters as expeditiously as possible.

2 The SPO indicated that there are approximately 400 items for  
3 which clearance remains pending. The vast majority of these pending  
4 items are with one provider which is processing a final batch of  
5 material.

6 The SPO also foresees an application in respect of items for  
7 which clearance decisions have already been made and for an item that  
8 has been denied clearance. And this might be a request that is  
9 currently finalised.

10 The SPO has indicated that it awaits the conclusion of  
11 discussions with an individual state in respect of a further filing.  
12 So I invite the SPO to make submissions on this topic; notably, on  
13 the timeline for the upcoming requests. I also invite the SPO to  
14 state which rules this document would fall under. In particular,  
15 whether they would fall under Rule 102(1)(b) or Rule 103.

16 The Selimi Defence specifically requests the provision of,  
17 first, a supplementary Rule 102(3) list by 31 August 2022, to include  
18 any additional documents falling under Rule 107 which were not  
19 previously included in the original Rule 102(3) list; as well as any  
20 documents that should have been included in the original list or  
21 which have been acquired by the SPO since the list was produced.

22 And, second, an update on the status of documents falling under  
23 Rule 107 which were included in the Rule 102(3) list.

24 The Krasniqi Defence requests an order requiring the SPO to  
25 complete Rule 107 disclosure by 30 September 2022. It avers that

1 disclosure should be completed in sufficient time so that the Defence  
2 can review and analyse the material prior to submitting a pre-trial  
3 brief.

4 So I invite the SPO to make an oral submission on the disclosure  
5 of Rule 107 material, and specifically on the requests by the Defence  
6 that I just summed up.

7 Mr. Prosecutor.

8 MR. HALLING: Thank you, Your Honour.

9 In relation to the application mentioned in the initial remarks.  
10 On Friday, and as referenced in the Status Conference submissions,  
11 that application was filed. It covers 28 items, some being Rule 103  
12 and some being Rule 102(3). We acknowledge that the confidential  
13 redacted version of that application isn't ready yet. It's being  
14 prepared and will be filed in the near future.

15 As regards questions about putting Rule 107 items on the  
16 Rule 102(3) notice. This is not an obligation that the SPO has.  
17 Rule 107 items are not noticeable. There are certain items falling  
18 under Rule 107 that we did put on the Rule 102(3) notice where we  
19 felt that there was a high probability that they would be cleared,  
20 but this is not something that the Defence is entitled to.

21 The same goes for other Defence submissions about categorising  
22 or giving further descriptions of Rule 107 items, some of which may  
23 actually betray the very item's information that Rule 107 is designed  
24 to protect.

25 As to the cut-off, a Rule 107 cut-off. Other outstanding

1 Rule 107 items will be disclosed under the applicable rules once  
2 they're cleared. In particular, Rule 107 items of the kind I just  
3 mentioned that are covered by the 30 September deadline because they  
4 were on the Rule 102(3)'s initial notice, they will be disclosed by  
5 30 September as long as the clearance can be accomplished  
6 sufficiently in advance.

7 And to the extent that further clearance decisions are reached  
8 denying clearance, additional Rule 107 filings will be made.

9 In terms of timing. It's in the interests of all parties that  
10 as many of the remaining items get cleared and disclosed, and for the  
11 number of items requiring litigation to be kept to a minimum where a  
12 denial decision is reached. The imposition of a deadline for  
13 Rule 107 disclosure which can't bind the providers in question that  
14 we are engaging with is not going to meaningfully advance the  
15 process.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 Mr. Kehoe, please.

18 MR. KEHOE: This is yet an ongoing problem, Judge. We are in  
19 the dark concerning these documents. There have been some issues  
20 here concerning 103 material, and, lo and behold, on the 28 items  
21 that have recently been brought before Your Honour there is, in fact,  
22 exculpatory material, Rule 103 material.

23 There has to be a point when this ends as well. And if we're  
24 going to move this case along, which we all want to do, when will  
25 these 107 clearances be obtained? I mean, is the Prosecutor -- did

1 they promptly put forward this? Is this just happening now? Are  
2 they waiting for the particular agency? Would an order from this  
3 Court to expedite that matter to the providers assist? But any steps  
4 that the Court can take to go back to these providers and say,  
5 "Please, expedite this process. These men have been in jail for over  
6 a year and a half," would be helpful, because clearly there is  
7 Rule 103 material here. We don't know what it is. We don't know  
8 what is entailed in these 28 items. We do know that some Rule 103  
9 material is there.

10 But again it's this time element that keeps creeping through  
11 this that is very disconcerting and is not helping to move this case  
12 along, which is what we all want to do.

13 JUDGE GUILLOU: Thank you, Mr. Kehoe.

14 Mr. Emmerson, please.

15 MR. EMMERSON: I am going to ask Ms. O'Reilly to comment in  
16 detail on the substance. But may I say one general observation which  
17 cuts across all of these late disclosure problems, but perhaps  
18 particularly is exemplified by the Rule 107 difficulties, which is  
19 the impact that it has on the Defence deadline for its pre-trial  
20 brief. Now, we are very anxious to keep that deadline where it is  
21 because it's one of those milestones which significantly affects the  
22 future conduct of the proceedings. And so we're not anxious to be  
23 returning to Your Honour at the next Status Conference and saying  
24 that deadline needs to be extended because the Prosecution has failed  
25 to achieve a satisfactory resolution of its disclosure obligations.

1           Now, what is a particularly acute problem with the 107 material  
2           is that, as Mr. Kehoe says, it will undoubtedly contain 103 material,  
3           but it may also contain -- well, will also likely contain a mixture  
4           of material of potentially very considerable importance to the  
5           Trial Chamber, coming as it does from sources independent of the  
6           conflict or, rather, sources that are outside the two key  
7           protagonists.

8           As Your Honour knows, we have collectively filed the submission  
9           directed to the need to identify what evidence has emanated from the  
10          various corrupted and suspect sources associated with Serbia, all of  
11          whom have been involved and are involved with the Prosecution in  
12          supplying evidence, much of which in the past under forensic  
13          examination has proved to be fraudulent, fabricated, and a deliberate  
14          attempt to manipulate and mislead.

15          And so that is the position as regards parties to the conflict,  
16          but this material is important because it emanates from parties who  
17          can be at least presumed to be approaching it without a partisan  
18          perspective.

19          Now, my understanding, and you've seen it in our written  
20          submission, is that the volume of material which still has not yet  
21          been processed and authorised for release is in the region of 400  
22          documents. Well, one can see very easily what type of an impact that  
23          volume of documentation emanating in the way that it does from  
24          governmental or intergovernmental sources could have on the shape of  
25          the case. So we have to devise a solution - and that relates to all

1 of these late disclosures, but perhaps it's especially well  
2 exemplified by this 107 material - to enable the Defence to file  
3 their pre-trial briefs in a way that does not render them effectively  
4 either redundant or very significantly missing their target because  
5 such an important volume of key material has not yet been disclosed.

6 And it may be that that's something that's capable of being  
7 handled by reference to the consequences of the pre-trial brief. I  
8 mean, if we are putting in a pre-trial brief in October, it obviously  
9 follows that the level of detail that the Defence are able to go into  
10 will be severely compromised by the Prosecution's failure, in some  
11 cases, inability in others, to meet its disclosure obligations. And  
12 we cannot have a situation where, for example, the Defence are  
13 applying or having to apply to file a new or amended pre-trial brief  
14 in the light of this material.

15 So I'm putting that on the agenda today without a specific  
16 request for an order because it may be something that we need to  
17 revisit at the next Status Conference.

18 One solution may be for Your Honour to translate the current  
19 deadline into a deadline for us to submit a provisional pre-trial  
20 brief or something along those lines, or for a direction that no  
21 inference can be drawn from any difference between the pre-trial  
22 brief and any subsequent amended brief based on the fact that the  
23 disclosure obligations had not been complete.

24 But I wanted to make that general submission at this point, but  
25 hand over to Ms. O'Reilly to deal in detail with the 107 issues.

1 JUDGE GUILLOU: Thank you, Mr. Emmerson.

2 Just before I give the floor to Ms. O'Reilly. I think the next  
3 Status Conference will be the right moment to assess this, because  
4 things can move forward in the next two months. And so depending --

5 MR. EMMERSON: Absolutely.

6 JUDGE GUILLOU: -- on how many documents, I think early  
7 September, because I think we pinned down 8 September, would be a  
8 good moment --

9 MR. EMMERSON: Absolutely.

10 JUDGE GUILLOU: -- that would give you enough time to -- but I  
11 totally see your point, and this will be added to the agenda.

12 MR. EMMERSON: Yes, and we very much don't want that deadline to  
13 slip, for obvious reasons.

14 JUDGE GUILLOU: Absolutely.

15 Thank you, Mr. Emmerson.

16 Ms. O'Reilly, please.

17 MS. O'REILLY: I've only got one point to make, Your Honour, and  
18 it relates to those 400 documents.

19 So that figure arose out of *inter partes* correspondence  
20 initiated by the Veseli Defence, and at the last Status Conference we  
21 were invited to do so, so that we could get some further clarity on  
22 what Rule 107 material was outstanding.

23 In that e-mail, we had requested a breakdown of whether the  
24 outstanding material was inculpatory, exculpatory, or otherwise  
25 material. We have been told in response to that e-mail, 400

1 documents, great, but not which rule those documents fall under.

2 Now, of course, having that information isn't like a perfect  
3 guarantee because we -- in our experience, there is some confusion as  
4 to whether documents are actually 102(3) or 103. Nonetheless, it  
5 would still provide us some more clarity, some more guidance to know  
6 whether we're talking about, you know, 300 103 documents or, indeed,  
7 whether it's material they intend to rely on at trial.

8 It seems to us perfectly reasonable to be able to provide that  
9 information. One assumes that they reviewed it, determined it was  
10 disclosable, and then went and sought clearance. So we'd greatly  
11 appreciate it if we could get this breakdown. Unless, of course, the  
12 documents are all going to be with us by next week. But if that's  
13 not the case, we'd like more information. Thank you.

14 JUDGE GUILLOU: Thank you, Ms. O'Reilly.

15 Mr. Emmerson --

16 MR. EMMERSON: Just one --

17 JUDGE GUILLOU: -- briefly.

18 MR. EMMERSON: -- sentence, which is the relationship between  
19 the point Ms. O'Reilly has just made and the point that Your Honour  
20 was discussing with me earlier is, obviously, it would be essential  
21 to know by the time of the next Status Conference at the very latest  
22 whether we are looking at a majority of exculpatory material or what  
23 the Prosecution believes to be a majority of inculpatory material and  
24 how the boundary lies in order for us to be able to consider what the  
25 next step should be and its implications for the pre-trial brief.

1 JUDGE GUILLOU: Thank you, Mr. Emmerson. I will ask the SPO to  
2 touch upon these questions in its response.

3 Let me give the floor to Mr. Roberts.

4 MR. ROBERTS: Thank you, Your Honour.

5 Very briefly, because, obviously, we've addressed this, again,  
6 in written submissions. And there is a significant amount of overlap  
7 between this request in paragraph 16(4) and, obviously, the previous  
8 request that you addressed in relation to the supplementary 102(3)  
9 list.

10 The request relates to 107 documents which have since been  
11 cleared but also other documents that the SPO has acquired. Now, my  
12 understanding is, obviously, that a decision on that is pending, but  
13 it would appear to be that you are looking towards October for a  
14 deadline for that.

15 I've already made my position clear as to the importance of  
16 deadlines for focusing the SPO's mind. I would suggest that it would  
17 assist greatly if any deadline is brought forward with the  
18 understanding that that may also assist the SPO in their negotiations  
19 with the providers of the material. As my understanding, if they  
20 have no deadline that they perceive they need to respond by, they may  
21 take their time. Obviously, if the SPO is able to say that  
22 Your Honour has suggested or ordered them that they need to do so by  
23 a certain date, that may assist in moving things forward. And if it  
24 doesn't move things forward, then at least we know. And if we know,  
25 then we can make our submissions accordingly.

1           And I share fully my colleagues' concerns about any resulting  
2           delays on the deadline for the pre-trial brief. We fully intend to  
3           comply with that deadline but are concerned where things beyond our  
4           control will cause that to slip. So the earlier we have any  
5           information on this, and I note the e-mail back from the Prosecution  
6           to the Veseli Defence which gave them some information about the 400  
7           documents, but, again, that's part of the way there. It's not all  
8           the way there.

9           So the earlier we get much more clarity, and I would suggest  
10          that includes a deadline for at least a provisional outcome of their  
11          Rule 107 negotiations, would actually assist all parties to move  
12          forward in this regard. Thank you.

13          JUDGE GUILLOU: Thank you, Mr. Roberts.

14          Mr. Ellis, please.

15          MR. ELLIS: Yes, Your Honour. We very much support those  
16          submissions.

17          This has been a standing item on agendas at, I think, every  
18          Status Conference going as far back as the written submissions on  
19          13 November 2020, when the Prosecution assured us they were actively  
20          seeking clearances for Rule 107 items.

21          As with all disclosure, there has to come a point where we can  
22          be satisfied that this is complete so that we can move forwards.  
23          Imposing a deadline might not be binding on the providers, but it may  
24          at least focus minds. It may give a date for them to focus on. And  
25          we can't conclude that it won't help until we have tried it. And we

1 are very much at the point now, with the pre-trial brief date fixed,  
2 where we need this information.

3 And we are talking about 400 documents, not one or two  
4 documents. We don't know how many pages, but it's easy to imagine  
5 this could be a substantial volume of material, some of which we've  
6 heard is 103 and exculpatory. So we would say a deadline would  
7 assist, and we seek that, Your Honour.

8 JUDGE GUILLOU: Thank you, Mr. Ellis.

9 Mr. Prosecutor.

10 MR. HALLING: Thank you, Your Honour. Turning to the Defence  
11 submissions.

12 We would preliminarily note that the Veseli Defence's  
13 submissions today on the pre-trial brief are a little different than  
14 what they said at paragraph 20 of their written submissions or at the  
15 last Status Conference, on page 1289, where a compliance with the  
16 Rule 107 disclosure was not a condition to a pre-trial brief that it  
17 now appears to be, even though, as the Veseli Defence itself  
18 acknowledged, the information about the 400 documents was known to  
19 the Veseli Defence before those written submissions were made.

20 JUDGE GUILLOU: I'm not sure it is in your interest,  
21 Mr. Prosecutor, to challenge the changes of timeline of the Defence  
22 given the provisional timelines that were announced in the first  
23 Status Conference by the Prosecution.

24 But please proceed. Let's not waste time on this, please.

25 MR. HALLING: Turning to the categorisation question brought up

1 by the Defence.

2 Categorising uncleared Rule 107 items is another request from  
3 the Defence that goes above and beyond the SPO's obligations. The  
4 Defence is not entitled to know anything about Rule 107 items before  
5 they are cleared, and categorising or collecting further information  
6 about them is not a task that the SPO can accommodate at present.

7 What really matters for the Defence's preparations is the  
8 contents of the Rule 107 items, and this is why the Rule 107  
9 resources are being used to secure clearances by the SPO right now  
10 and not describe items which, as of this moment, cannot be disclosed.

11 In terms of the number of outstanding items, the scale of the  
12 issue we wanted to emphasise. There are 400 items that are being  
13 discussed now. The SPO has disclosed over 22.000 unique items in the  
14 last seven weeks alone. This is not an enormous volume of material  
15 relative to what's already been disclosed. And calling it critical  
16 or key, as has been done by the Veseli Defence, is completely  
17 speculative. They don't and can't know what's in those documents at  
18 the moment.

19 What Your Honour suggested, that at 8 September this issue be  
20 revisited, that makes sense to us and we are available to give an  
21 update on the status of the clearances at the next Status Conference.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 I see Mr. Kehoe -- no.

24 MR. KEHOE: Just briefly, Judge. And let me remind my learned  
25 friend that he did tell us that in this batch that he presented to

1 your item, there is Rule 103 material. Lest we forget, Rule 103  
2 material equals exculpatory.

3 JUDGE GUILLOU: I have noted that, Mr. Kehoe.

4 Mr. Emmerson, please.

5 MR. EMMERSON: I'd just like -- and I don't normally rise to  
6 correct Mr. Halling, despite the fact that he has a habit of making  
7 pathetic nitpicking points as such the one he's just made, but  
8 nothing has changed about the Veseli position. As I said earlier on,  
9 we are anxious not to lose the date for the service of the pre-trial  
10 brief. Nothing has changed in relation to that, as I said to you  
11 only just a few moments ago.

12 And might I, therefore, respectfully, through the Court, ask  
13 Mr. Halling to refrain from rather poor point scoring and focus on  
14 the issues.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 Do the other Defence teams want to add anything? Mr. Roberts,  
17 no. Mr. Ellis, no. Mr. Prosecutor, no.

18 I see that it's 3.00, so we will have a break, especially for  
19 the interpreters, and we will reconvene at 3.20, in 20 minutes.

20 The hearing is adjourned.

21 --- Recess taken at 3.00 p.m.

22 --- On resuming at 3.22 p.m.

23 JUDGE GUILLOU: Let us now move to the next item in our agenda  
24 which is Defence investigations.

25 I will give the floor to the parties separately on each category

1 related to the Defence investigations. First, the status of the  
2 Defence investigations; second, on any potential request for unique  
3 investigative opportunities; third, on any notice of an alibi or  
4 grounds for excluding responsibility; fourth, on points of agreement  
5 on law and/or facts; fifth, on objections to the admissibility of  
6 evidentiary material disclosed; and, finally, whether and when the  
7 parties expect to be able to identify a list of issues subject to  
8 dispute and one with issues not subject to dispute.

9 And I will invite the parties to be concise for each item.

10 Let us start with the general status of the Defence  
11 investigations.

12 In its written submissions, the Thaci Defence indicated that its  
13 investigations are ongoing but are hampered by a number of factors  
14 outside the control of the Defence and, notably, the witness  
15 protocol.

16 The Veseli Defence indicates that its investigation remains  
17 ongoing, and it expects that its investigation will continue beyond  
18 the opening of the SPO's case.

19 According to the Selimi Defence, its investigations are hampered  
20 by the witness protocol and the extensive redactions in the  
21 indictment which significantly reduces the capacity of the Defence to  
22 meet with SPO witnesses.

23 To mitigate the impact on Defence investigations, the Selimi  
24 Defence indicates that it needs clarity on which statements relate to  
25 which redactions in the indictment and SPO pre-trial brief, and when

1 these redactions to statements or documents will be lifted.

2 The Krasniqi Defence intends to conduct further investigative  
3 missions before the filing of its pre-trial brief. It indicated that  
4 it sent 11 requests for assistance to states, five to international  
5 organisations, and two to other entities. It also anticipates  
6 seizing me with an application to request assistance and cooperation  
7 from an international organisation under Rule 208(2) of the rules.

8 I invite the parties to give an overview of their  
9 investigations, starting with Mr. Kehoe, please.

10 MR. KEHOE: Yes, thank you, Your Honour. Your Honour accurately  
11 summarised some of the points that we put forth in our document.  
12 Obviously, the extensive redactions have hampered us tremendously. I  
13 mean, even in the most recent iteration where SPO said there were  
14 supposed to be matters involving my client, for instance,  
15 paragraph 141 of their new complaint: "In" redacted "in 1998"  
16 redacted "were abducted and brought" redacted. I mean, how is  
17 somebody supposed to investigate four redactions in two lines that  
18 redact the location, they redact the people, and they redact  
19 operative items about the event.

20 And this is replete not only in the indictment, but I am sure  
21 Your Honour has reviewed the witness statements that we have seen  
22 that in many cases are just blank. I showed you blank sheets of  
23 paper previously on the SPO disclosures. We've got quite a few of  
24 that throughout that.

25 Does that, obviously, hamper our investigation? Of course.

1 That in conjunction with delayed disclosures. We are still waiting  
2 for 102(3) material. We now have to jump through these hoops with  
3 the Registrar on OSCE and the UN to get documents. The UN and OSCE  
4 has mandated that we go through the Registrar's Office in order to  
5 get documents in part of their dossier. Of course, the SPO didn't  
6 have to do that; we do.

7 I've been trying to do this, literally, Your Honour, for months.  
8 For months I have been trying to access these archives so that we can  
9 move this case along. Our clients want to move this case along. But  
10 there are witnesses in the OSCE that we have spoken to that want to  
11 see the documents in the OSCE. And based on that, we have been  
12 able -- we have been trying to do it and we have been unable to do  
13 so, notwithstanding all the efforts of my team and most admirably by  
14 Ms. Menegon, who has been on it constantly.

15 Obviously, we have the non-disclosure of witnesses. We have  
16 91 anonymous witnesses out of 326, 326 including the dead ones, some  
17 of which are going to testify viva voce, which will be remarkable.  
18 But of the 326, we have 91 that are non-disclosed, I believe, 68 30  
19 days before trial and 23 prior to trial. An enormous undertaking to  
20 get into and conduct this investigation which we are doing  
21 notwithstanding these restrictions.

22 In addition, the witness protocol has virtually handcuffed us in  
23 any number of ways. We had interviews scheduled for the latter part  
24 of June and early July. And after Your Honour's order came down on  
25 24 June, so I was not operating contrary to Your Honour's orders, I

1 had to cancel all of those interviews. So we have a situation now  
2 with internationals -- and I'm not talking about the 91 protected  
3 witnesses, and I'm not talking about anybody that is even residing in  
4 Kosovo. I'm talking about former US State Department individuals  
5 that live in Virginia, who I've been speaking to for months, in  
6 conjunction with the United States Department, who, by the way, are  
7 on the SPO witness list, although they're never going to call them.  
8 And based on this order I had to stop discussing this matter  
9 completely until I bring the SPO in and have them at the party and  
10 give them notice for it and the whole item is filmed.

11 This is a witness -- a diplomat living in the United States for  
12 which the United States State Department is participating.  
13 Nevertheless, the protocol requires us to bring the SPO in with  
14 notice, and the interview has to be filmed, et cetera.

15 You can understand the scheduling -- put aside the content of  
16 this. You can understand the scheduling difficulties in all of this  
17 with these international witnesses. It is causing any number of  
18 problems, which I will tell you that -- and I have not contacted any  
19 of these witnesses after 24 June other than to say that we can't  
20 proceed at this time. They can't understand why this has even come  
21 into play. I have not given it to them. I have not explained it to  
22 them. I assume that the State Department counsel has, but it has  
23 caused any number of difficulties if we want to move this case along.

24 But those are the problems that we are currently having -- I'm  
25 having today with those witnesses that we can no longer move forward

1 with.

2 [REDACTED] Pursuant to In-Court Redaction Order F879RED

3 [REDACTED] Pursuant to In-Court Redaction Order F879RED

4 [REDACTED] Pursuant to In-Court Redaction Order F879RED

5 [REDACTED] Pursuant to In-Court Redaction Order F879RED

6 [REDACTED] Pursuant to In-Court Redaction Order F879RED

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7 Significant problems.

8 We will continue with this investigation because we want to push  
9 this along. Consistent with what my good friend Mr. Emmerson said,  
10 we want to keep the date to get the pre-trial brief in, but I would  
11 be remiss if I didn't bring to your attention these enormous problems  
12 that have come up, especially the witness protocol as it pertains to  
13 the international witnesses.

14 JUDGE GUILLOU: Thank you Mr. Kehoe.

15 Mr. Emmerson, please.

16 MR. EMMERSON: I am going to ask Mr. Strong to deal with the  
17 detailed points. But the overarching position of the Veseli Defence  
18 is that the sequential process of reaching agreement at various  
19 stages identified in the status of investigations, unique  
20 investigative opportunities and so forth, needs to be maintained so  
21 far as possible so that the Defence are as fully informed as they can  
22 be by the disclosure obligations that are currently resting on the  
23 Prosecution.

24 JUDGE GUILLOU: Sorry, Mr. Kehoe, your microphone is on.

25 MR. KEHOE: I'm sorry, Judge. My apologies. My apologies,

1 Mr. Emmerson.

2 MR. EMMERSON: Not at all.

3 Two other sort of general overarching points. First of all, as  
4 regards the new witness protocol, as you will appreciate, all Defence  
5 teams are party to an appeal against that, and I would echo what  
6 Mr. Kehoe has said about certain additional obstacles that that  
7 places on the speed of the investigation.

8 But we are making good progress, and we certainly will be, we  
9 hope, still on time for filing our pre-trial brief on the date  
10 identified, bearing in mind the statutory requirements for a  
11 pre-trial brief.

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18 [REDACTED] Pursuant to In-Court Redaction Order F879RED

19 JUDGE GUILLOU: Thank you, Mr. Emmerson.

20 Mr. Strong, please.

21 MR. STRONG: Sorry, I'll be very brief, Your Honour.

22 Just to say that the Defence investigations are ongoing. One  
23 point that I want to call to your attention is that in spite of the  
24 obstacles that we are facing, our objective is to move as quickly as  
25 possible. We want to get this case to trial. We want to make sure

1 that there are no delays in doing that through the investigation.

2 The size of the task, 326 witnesses, 17.000 exhibits need to be  
3 assessed, is formidable, and it is why we have asked the Prosecution  
4 to give us some indication of how they're going to start our case, so  
5 we can allocate resources effectively and not be delaying the start  
6 of trial.

7 I know we'll talk about that in the streamlining session, but I  
8 just to want flag it here so that the SPO has a minute to think about  
9 it. Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Strong.

11 Mr. Young, please.

12 MR. YOUNG: Yes. Your Honour, I'm going to invite Mr. Roberts  
13 to deal with Defence investigations.

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24 *[REDACTED] Pursuant to In-Court Redaction Order F879RED*

25 JUDGE GUILLOU: Then we will go back after the item on

1 streamlining the procedure, and I will give the floor to the  
2 Registrar.

3 MR. YOUNG: Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Young.

5 Then Mr. Roberts, please.

6 MR. ROBERTS: Thank you, Your Honour. I won't repeat what  
7 Mr. Kehoe and Mr. Emmerson have set out in detail, but, obviously, we  
8 subscribe very much to what they've said in relation to the impact of  
9 the recent decision on the contact protocol and the collective  
10 decisions of protective measures that you've issued over the course  
11 of these proceedings.

12 And just to be very clear, before the Prosecution stands up and  
13 say that we're trying to seek reconsideration of those decisions,  
14 we're not at the present time, but it is important that you  
15 understand the consequences of those decisions for our preparations.  
16 And, certainly, the consequences of both of those, or the collection  
17 of those decisions, are detrimental to our ability to investigate.

18 We're trying to come up with ways to get round those problems,  
19 and that's not easy. Trying to understand information that's been  
20 redacted and trying to make sense of how we can allocate our  
21 investigative resources in relation to allegations that are hidden  
22 from us is very difficult. And that's why we've come up in our  
23 submissions with a couple of ideas in order to assist, hopefully, the  
24 Defence teams to move forward.

25 Firstly, very simply, obviously in relation to the contact

1 protocol, we now have 326 witnesses who if we want to speak to any of  
2 them we have to go through the Prosecution. Now, in my mind, it  
3 would be logical that the Prosecution would, therefore, tell their  
4 witnesses that they are witnesses for the Prosecution. That may help  
5 them to understand their position and, therefore, not be surprised if  
6 the Defence wishes to contact them, and, therefore, may speed up the  
7 potential delay caused when we have to go through the Prosecution.  
8 So one very simple step.

9 My understanding of the 326 witnesses is that it's likely a  
10 certain number of them will be blissfully unaware of their status.  
11 And so it would help them, and help the Prosecution in relation to  
12 potentially streamlining their case later on, if they take that step  
13 early on.

14 And my understanding is certainly that a lot of these witnesses  
15 were not informed that they were witnesses when protective measures  
16 were sought for them as well. Maybe I'm wrong on that, but my  
17 understanding is that's the case. So, therefore, I think this may  
18 well be the first time since they've been interviewed that they will  
19 be aware of their status. And the earlier that the Prosecution finds  
20 out from their communications with them what their views are on being  
21 Prosecution witnesses, and, therefore, the resulting impact on their  
22 scheduling of witnesses at trial, I think that would assist  
23 sufficiently.

24 Secondly, in relation to the redactions, and this is the  
25 redactions to the indictment, redactions to the pre-trial brief.

1 Your Honour has seen in our submissions, I believe paragraphs 24 and  
2 25, one very concrete, specific example of an allegation with the  
3 underlying evidence completely redacted. I won't reveal it now. I  
4 understand it's confidential. But that's an allegation specifically  
5 against my client. I cannot discuss that allegation in all  
6 usefulness because I have no idea what evidence underpins that  
7 allegation. That is far from the only example.

8 The consequence of that is that I cannot investigate that. My  
9 team cannot investigate that at all. And I don't know when that's  
10 going to be lifted. I don't know if that's in relation to, as  
11 Mr. Kehoe mentioned earlier, the 91 witnesses, if that's going to be  
12 a witness whose identity is lifted 30 days before trial, 30 days  
13 before one of the underlying witnesses testifies. It's potentially  
14 likely that one witness may testify within the first month of trial,  
15 another one six months later. Does that information all get lifted  
16 at a certain time?

17 What I'm trying to understand, and what I'm hoping Your Honour  
18 will assist us with, is identifying through the pre-trial brief and  
19 the indictment when these redactions will be lifted. Because we are  
20 aware from your previous decisions, your decision on the confirmation  
21 of the indictment, your decision on motions challenging defects in  
22 the indictment from July last year, and even your decision on  
23 amending the indictment from December, that these are all based, the  
24 redactions to the indictment and pre-trial brief are based on your  
25 decisions on protective measures. So that information is only

1 available to you and to the Prosecution.

2 So, therefore, it would assist us greatly if they would provide  
3 information in relation to each of these redactions about when  
4 specifically they will be lifted. If a redaction -- there's two  
5 paragraphs, 41 and 42 of the indictment, if they are based on two  
6 witness statements that will be provided to us 30 days before trial,  
7 the Prosecution should be able to tell us that. That shouldn't be  
8 information in and of itself that is confidential. They should be  
9 able to provide that to us now so that we can plan ahead and go,  
10 okay, we know that that's the case. We can plan that that's the time  
11 when that information will be provided.

12 It doesn't undercut, it doesn't undermine any of the protective  
13 measures, but it does allow us to plan accordingly.

14 And in relation to the -- obviously the impact of the contact  
15 decision and the impact of the protective measures decisions, we're  
16 hoping that that may help us to move forward, at least the Selimi  
17 Defence, to move forward in working out which of our investigations  
18 we prioritise and when.

19 And in relation to the rest of the Defence investigations, I'll  
20 deal with -- would you like me to deal with the issues of unique  
21 investigative opportunities and everything else? Everything else is  
22 set out in our submissions anyway.

23 But I just would like to refer back to the Rule 102(3) issue on  
24 this as well, and just to separate out disclosure and investigations  
25 are interlinked. It's not that disclosure is one thing and then is

1 completely separate.

2 Our investigations, to a significant extent, are conducted in  
3 part through the information the Prosecution gives us either under  
4 Rule 103 or under Rule 102(3). So, therefore, if we wish to speak to  
5 certain witnesses, there is a likelihood or a possibility the  
6 Prosecution has spoken to them already but does not consider that  
7 they are witnesses that they wish to call. And so, therefore, we  
8 have to, if we wish to interview that witness, or it would assist us  
9 greatly, if we have the evidence of that witness, the transcript of  
10 interview, the statement, whatever.

11 Obviously, what I'm trying to say is that our investigations are  
12 dependent on the pace of Rule 102(3) disclosure. And as a  
13 consequence, if Rule 102(3) disclosure is in line with deadlines or  
14 speeded up, that helps us to have information in a timely manner that  
15 we can then go and speak to the witnesses whose statements we've been  
16 disclosed.

17 So in that regard, there are a variety of competing factors, one  
18 of which -- or which affect each other. And so, therefore, I just  
19 wish to make the point that the Defence investigations are not  
20 separate. They are entirely dependent on the pace at which the  
21 Prosecution fulfils its disclosure obligations.

22 Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Roberts.

24 Mr. Ellis or Ms. Alagendra. Mr. Ellis, please.

25 MR. ELLIS: Your Honour, here I feel the benefit of speaking

1 fourth, because we are in the same position as our colleagues, and I  
2 can, for the most part, simply echo the comments that have already  
3 been made and associate ourselves with them completely.

4 May I simply say on our investigations, yes, they are ongoing.  
5 Given the size of the case, and given the delayed disclosure of  
6 witnesses, they will be ongoing until trial starts and probably  
7 beyond that point. But despite that, we are prioritising what we  
8 need to do in order to get our pre-trial brief in by the deadline of  
9 21 October.

10 JUDGE GUILLOU: Thank you, Mr. Ellis.

11 Mr. Prosecutor, do you want to respond to -- or  
12 Madam Prosecutor, please.

13 MS. LAWSON: Thank you, Your Honour. Just a couple of brief  
14 points.

15 With regard to interactions with international organisations or  
16 international witnesses. I can assure the Thaci Defence that,  
17 contrary to their submissions, the SPO had considerable procedural  
18 obstacles and consents that were required before we could approach  
19 anyone or obtain documents.

20 On the witness contact protocol. This is a necessary procedural  
21 safeguard which closely follows practice at other institutions and,  
22 indeed, before this Court. It does create additional procedural  
23 requirements. However, it only regulates contact with a narrow  
24 category of individuals, being those whom a party has already  
25 notified an intention to rely upon, and not any of the other many

1 individuals with whom the Defence presumably may wish to speak during  
2 the course of their investigations.

3 It is also something that -- it's a request that was filed in  
4 early December 2021. And, therefore, in terms of planning or  
5 preparation, it's not an unanticipated new development.

6 There is one important clarification that I would like to make  
7 arising from the Thaci Defence written submissions. That is  
8 paragraph 9 of those submissions indicate that the Defence cannot  
9 propose interview dates to the SPO without first talking to the  
10 witness concerned, and this reflects a fundamental misunderstanding  
11 of the protocol.

12 Based on Mr. Kehoe's oral submissions today, perhaps the filing  
13 was not intended to be phrased that way. But to be clear, the  
14 Defence may not contact witnesses whom the SPO has notified an  
15 intention to rely upon at all, not to check their availability or for  
16 any other purpose.

17 With regard to the Selimi Defence request on redactions. While  
18 we note their submission that they're not seeking reconsideration of  
19 authorised redactions, the remedies they seek would undermine their  
20 very purpose, such as the request for redactions to be correlated  
21 with the material that the redaction is designed to conceal. And  
22 this applies also to the specific paragraph the Defence have cited in  
23 their written submissions. I have reviewed that footnote and the  
24 citation in question is, indeed, covered by protective measures, and  
25 such requests should be rejected accordingly.

1           Finally, the Prosecution notes, just for the record, that it has  
2 not penetrated or interfered with legal professional privilege in any  
3 way. Thank you.

4           JUDGE GUILLOU: Thank you, Madam Prosecutor.

5           Mr. Kehoe, please.

6           MR. KEHOE: Your Honour, unanticipated? Of course, this is  
7 unanticipated. These gentlemen have been incarcerated since November  
8 of 2020. We have been doing an investigation in this matter for a  
9 significant period of time. Has there been any complaint by any  
10 witness that any witness was threatened, that any witness was  
11 intimidated? Certainly it hasn't come to the attention of anybody on  
12 the Defence side that any witness whatsoever has been somehow nervous  
13 or scared or disinclined to talk to the Defence. That is just simply  
14 nonsense.

15           With regard to other courts. The ICTY, the ICTR, the tribunals  
16 that have the longest history of cases, nothing remotely close to  
17 this protocol was ever set forth in all the years that I was before  
18 the ICTY. In fact, there was nothing concerning the redactions  
19 remotely close to what the Prosecution has attempted to do in this  
20 case.

21           Suffice it to say, Judge, we are now shackled dealing with  
22 witnesses, the witnesses that the Prosecution is going to present,  
23 that they put on their witness list. The Defence is entitled to talk  
24 to those people, to discuss with those people. And question, Judge:  
25 How do we deal with a witness that is on the Prosecution's witness

1 list that is going to be a Defence witness? That is clearly going to  
2 be a Defence witness and clearly the Prosecution is not going to  
3 call?

4 There are diplomats from the United States that they are  
5 definitely not going to call that we are going to call. Under those  
6 circumstances, we still have to follow this protocol and invite them  
7 into this discussion with the witness? In addition to that, it's the  
8 time factor involved to get this done and just bring other people in,  
9 in addition to the Registry.

10 This is going to significantly hamper that aspect of the case  
11 when it comes to dealing with the witnesses coming for the  
12 Prosecution, their witnesses that they put on the witness list. And  
13 I'm not talking about the protected witnesses, Judge. In fact, I'm  
14 not even talking about witnesses that are in Kosovo. I am talking  
15 about international witnesses, men and women of distinction that live  
16 throughout the world, held high positions.

17 And trust me, Judge, when Greg Kehoe sits down and talks to  
18 them, they're not afraid of me. Trust me. A senior military officer  
19 in the United Kingdom is not intimidated by a discussion with  
20 Greg Kehoe. And to think that anything has to be done to ensure that  
21 they're somehow protected belies the actual facts for these men and  
22 women.

23 So to say that these difficulties, these redactions, these  
24 delayed disclosure, this witness protocol is not significantly  
25 injuring the Defence? With all due respect, Judge, it merits a

1 rethinking of how the ripple effect of this is going to impact us as  
2 we move forward.

3 That being said, Judge, we are committed to moving this forward.  
4 We are committed to putting our pre-trial brief in. We are committed  
5 to trying this case. But the Court, and anybody that's listening to  
6 this, has to understand the difficulties that have now put into  
7 place, for whatever reason, that the Court happens to put them into  
8 place and how that impacts our clients.

9 JUDGE GUILLOU: Thank you, Mr. Kehoe.

10 I don't see any other Defence team requesting the floor.

11 Madam Prosecutor, do you want to add anything?

12 MS. LAWSON: Mr. Kehoe has an art for responding to submissions  
13 that have not been made. A large part of what he said was not  
14 responsive to anything that I stated. Thank you.

15 JUDGE GUILLOU: Mr. Kehoe, do you want to say something? Very  
16 briefly.

17 MR. KEHOE: It was, unfortunately, exactly in response to what  
18 she said.

19 JUDGE GUILLOU: Let us now move to requests for unique  
20 investigative opportunities.

21 In its written submissions, the Thaci Defence and the Veseli  
22 Defence confirmed their intention to file requests for unique  
23 investigative opportunities. However, they both indicated that they  
24 will not be in a position to make their request by 1 September 2022.

25 The Selimi Defence and the Krasniqi Defence indicated that no

1 unique investigative opportunities are envisaged. However, the  
2 Krasniqi Defence also submits that no deadline for making Rule 99  
3 request should be imposed.

4 I invite the Defence to indicate if it would be in a position to  
5 file such requests by September so as not to delay the transmission  
6 of the case to the Trial Panel, and especially if end of September  
7 would be a deadline that you could abide by, noting especially that  
8 if the case is to be transferred in the weeks following the Defence  
9 pre-trial brief, these measures have also to be finished by then.

10 Mr. Kehoe, please.

11 MR. KEHOE: Judge, I can't tell you at this point given the  
12 obstacles that are in our way that we can meet that deadline.  
13 Obviously, I was looking to meet this deadline, aware of what the  
14 rule was, and dealing with these international witnesses, especially  
15 the aged ones, and taking their depositions. Now because of these  
16 additional hurdles and protocols that we have to go through, I can't  
17 guarantee that this is going to be done. But not only with the  
18 protocols, but I'm also having these difficulties with OSCE and the  
19 UN. To get the information from the OSCE and the UN, I had to go  
20 through the Registrar, and, as I said, Ms. Menegon has been doing  
21 this.

22 So to put those restrictions on there, and what I'm talking  
23 about is depositions, to put those time restrictions on there by that  
24 limited timeframe, especially with August coming up, I can't commit  
25 to that date.

1 JUDGE GUILLOU: If you cannot commit to that date, are you  
2 willing to try as much as you can to file this request as early as  
3 possible?

4 MR. KEHOE: Your Honour, I will tell you now that if the OSCE  
5 allows us to get into their archive and the witness that I am dealing  
6 with on the OSCE has -- is enabled to go through the items in that  
7 archive, I will be able to move forward with taking his deposition at  
8 the appropriate time. But I can't even get into that file. And his  
9 position is, this is me paraphrasing his position: These dates  
10 are -- this is 23 years ago. These dates and times and events, I  
11 just want to go through the cable traffic that I was a part of during  
12 the period of time of 1998 and 1999, which is the timeframe of the  
13 indictment.

14 Will I certainly try to do it? It is in our interest to try to  
15 move this as quickly as possible, which is what I've been trying to  
16 do.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 Mr. Emmerson or Mr. Strong.

19 MR. EMMERSON: I can deal very briefly with all of the next few  
20 agenda items, that's to say, the unique investigative opportunities,  
21 alibi, and points of agreement, essentially by adopting the  
22 submissions that we have put in our written submissions on each of  
23 them, and indicating that we are anxious not to be put in a position  
24 where the cart is being put before the horse.

25 So, for example, on this matter and on alibi, we would need to

1 see the Prosecution's disclosure before any obligation of that nature  
2 can crystallise. Obviously, if we are aware of unique investigative  
3 opportunities that we certainly wish to pursue in advance of the  
4 transfer of the case, we will clearly notify you and the Prosecution  
5 at the earliest possible date, because we don't want to see any  
6 knock-on delay in the transfer of the case to the Trial Chamber.

7 But generally speaking, our position remains as set out, which  
8 is that we've taken matters as far as we can at this stage. The  
9 pre-trial brief will reveal fundamentally the points of dispute. And  
10 at the present time, we would be probably professionally derelict to  
11 start serving alibi notices without knowing what the case in detail  
12 is. So, for example, insofar as there are redacted allegations, how  
13 can we possibly meet it?

14 We also have, of course, the overarching question about how a  
15 notice of alibi is applicable or appropriate in the context of  
16 allegations of JCE or command responsibility.

17 So the position is as follows: We will endeavour and are very,  
18 very keen to keep to the date for the Defence pre-trial brief. It  
19 may be that the moment to review what remains outstanding in the  
20 sense of formal applications then needs to be considered at that  
21 stage, and we will certainly provide any information as soon as we  
22 have it if it arises before then.

23 JUDGE GUILLOU: Thank you, Mr. Emmerson.

24 Mr. Roberts, please.

25 MR. ROBERTS: Thank you, Your Honour. Very briefly. There's

1 very little to add to our written submissions. We've addressed each  
2 one of these points. I don't think it would assist to repeat them.  
3 But very little to add. Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Roberts.

5 Mr. Ellis, please.

6 MR. ELLIS: Yes, Your Honour. We also adopt our written  
7 submissions and endorse specifically the points made by Mr. Emmerson  
8 a moment ago.

9 Our focus is on trying to ensure that we can comply with the  
10 21 October deadline for the brief. And these other additional steps  
11 in the agenda items, in our submission, would be well revisited at  
12 that point. But adding additional steps at this stage is probably  
13 not going to be something we're able to do, and it may have an impact  
14 on our pre-trial brief.

15 JUDGE GUILLOU: Thank you, Mr. Ellis.

16 Madam Prosecutor, do you want to add anything on this point?

17 MS. LAWSON: Yes, thank you, Your Honour.

18 On alibi. A number of the Defence teams have indicated an  
19 inability to provide further information as to alibi on the basis of  
20 redactions to the indictment. That the Defence cannot respond to  
21 redacted information is clear.

22 However, for example, in the section of the indictment  
23 specifically addressing the liability of the accused, only four out  
24 of the 25 paragraphs in that section contain any redactions at all.  
25 The alibi notice requirement in Rule 95(5) is a clear obligation on

1 the part of the Defence. So should the Defence intend to raise an  
2 alibi defence in relation to any of the unredacted allegations, or,  
3 for that matter, rely on the other grounds for excluding liability  
4 under Rule 95(5), they should do so by a set deadline in accordance  
5 with the provisions of the rule.

6 I don't know if you want me to say anything further on agreed  
7 facts.

8 JUDGE GUILLOU: No, we'll come back to that later.

9 MS. LAWSON: We'll come to that. Okay. Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 We are supposed to be talking about unique investigative  
12 opportunities at this stage.

13 MR. KEHOE: It seems like we bled into the alibi, which I have a  
14 comment on.

15 JUDGE GUILLOU: Yes.

16 MR. KEHOE: Especially in light of what counsel has just said,  
17 but I'll ...

18 JUDGE GUILLOU: Then let me move to the notice of alibi or  
19 grounds excluding responsibility. In their written submissions, the  
20 Defence reserve their right to give notice of an alibi or grounds for  
21 excluding responsibility.

22 The Thaci Defence intends to give a notice of alibi once further  
23 clarity is provided regarding the dates and locations of alleged  
24 incidents. However, it remains unable to provide further information  
25 in light of the continued substantive redactions in the indictment

1 and the evidentiary material disclosed by the SPO.

2 The Veseli Defence just recalled this position with  
3 Mr. Emmerson, who has just summed up its position on this matter.

4 The Selimi Defence indicated that it currently envisages  
5 potentially needing to give notice of an alibi or grounds for  
6 excluding responsibility, subject to the redacted allegations in the  
7 indictment being unredacted.

8 And the Krasniqi Defence intends to address a defence of alibi  
9 or grounds excluding responsibility in its pre-trial brief to the  
10 extent that the Defence is able to do it at that point of time.

11 So I will invite the Defence teams to expand on their  
12 submissions on this, and I will also ask them if they would be able  
13 to give this notice of an alibi or grounds for excluding  
14 responsibility by the date of their pre-trial brief, if they cannot  
15 do it earlier.

16 Mr. Kehoe.

17 MR. KEHOE: Yes, Your Honour. You've accurately summarised what  
18 our position is. Obviously, just harkening back to Mr. Robert's  
19 quoting of paragraph 41 and 42, and me talking about paragraph 141,  
20 where the redactions have times, places, dates, people, events, 41  
21 and 42 are completely redacted. It is impossible for my client to  
22 say anything about those items at this point without information as  
23 to what the Prosecution is talking about. I don't know what  
24 Ms. Lawson was talking about concerning alibis. The alibi is: Were  
25 you present at this particular location? It's not a theory of

1 liability. It's are you present at a particular location.

2 We can't tell when these events actually took place. As I said  
3 during the course of several other hearings before Your Honour that  
4 my client was travelling throughout Europe, trying to promote peace  
5 and reconciliation, in the United States, in Belgium, in the UK, in  
6 Norway, Germany, you know, in France, a significant amount of time in  
7 Paris, talking to international leaders, during this entire  
8 timeframe, with a variety of other Kosovo leaders during this  
9 timeframe, including Mr. Rugova, I will add, during the time-period  
10 of the indictment.

11 So how are we supposed to -- I ask, how are we supposed to give  
12 an alibi defence to events when he may be in heaven knows where? Or  
13 is he supposed to be dictating KLA operations on the ground when he's  
14 in Washington, D.C., or Virginia?

15 It's just a specious position and we can't do it at this point.  
16 And unless we get the disclosures, Your Honour, and I would -- with  
17 regard to our pre-trial brief, I would like to put in the pre-trial  
18 brief the alibi aspect of it, but without additional information,  
19 it's impossible to do.

20 JUDGE GUILLOU: Thank you, Mr. Kehoe.

21 Mr. Emmerson, do you want to add anything to your previous  
22 submissions on this?

23 MR. EMMERSON: No. Simply to say that in response to  
24 Your Honour's question, it seems a sensible course just to -- for us,  
25 at least, voluntarily to make such 95 -- Rule 95 representations as

1 we are able to make at the time currently listed for the service of  
2 the Defence pre-trial brief.

3 That, as we've said before, is subject to the caveat that if  
4 disclosure in full is not available by then - not simply in relation  
5 to redactions, but in relation to exculpatory material and in  
6 relation to 107 material - that one could find oneself in the  
7 position of responding in the pre-trial brief to an incomplete case  
8 as it's being put.

9 And so with all of the caveats that I mentioned earlier on, we  
10 still intend to pursue a pre-trial brief on the date that Your Honour  
11 has specified. So that being the case, we will do our best to comply  
12 according to the level of detail and information and the completeness  
13 of the information that the Prosecution has by then provided with the  
14 requirements of Rule 95 in our pre-trial brief.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 Mr. Roberts, do you want to add anything?

17 MR. ROBERTS: No, Your Honour. Simply to say that what  
18 Mr. Emmerson has eloquently put forward was what we intended in  
19 paragraph 32 of our written submissions. I think that's a very  
20 sensible proposal and is the best we can do in these circumstances at  
21 this juncture. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Roberts.

23 Mr. Ellis, please.

24 MR. ELLIS: Yes, we agree with that as well, Your Honour.

25 JUDGE GUILLOU: Thank you, Mr. Ellis.

1 Let us now move to points of agreement on law and fact.

2 In its written submissions, the SPO indicated that there has  
3 been a degree of further progress with respect to agreed facts.  
4 According to the SPO, agreement has been reached with one or more  
5 Defence teams on 22 facts from over the 300 proposals made by the SPO  
6 in March 2021.

7 According to the Thaci Defence, it has agreed to a further nine  
8 reworded facts with the SPO. However, it remains unable to reach  
9 agreement on the other facts proposed by the SPO in light of the  
10 extensive redactions to the indictment and materials disclosed by the  
11 SPO.

12 In its written submissions, the Veseli Defence indicated that it  
13 notified the SPO of its acceptance of four proposed agreed facts and  
14 offered six counterproposals that later have been agreed by the SPO.

15 The Veseli Defence indicated that it agrees to a 1 September  
16 deadline for the disposition of two remaining counterproposals. It  
17 also expects further agreement on the remainder of the SPO's  
18 proposals to be limited.

19 The Selimi Defence is reviewing facts to determine whether or  
20 not it can agree to them, and notes the exchange of correspondence on  
21 certain facts between other teams which may facilitate agreement on  
22 such issues.

23 And, finally, the Krasniqi Defence has agreed to eight proposals  
24 of agreed facts. It will continue to review the SPO's proposed  
25 agreed facts and does not intend to complete that review by

1 1 September 2022.

2 I will invite the parties to try to give a timeline on this  
3 issue, and I will start with the Prosecutor's Office on this, because  
4 the Prosecution made the initial proposals.

5 Madam Prosecutor.

6 MS. LAWSON: Yes, thank you, Your Honour. You accurately  
7 summarised our submissions reflecting the current status on agreed  
8 facts. There are many remaining proposals addressing contextual or  
9 other matters that have no connection to redacted evidence or  
10 protective measures which we consider potentially ripe for agreement.  
11 And we remain available and willing to engage in further discussions  
12 with the Defence teams, including on any proposals the Defence may  
13 wish to present themselves. To the extent agreement is reached,  
14 notice of this can be provided to the Pre-Trial Judge by 1 September.  
15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Mr. Kehoe, please.

18 MR. KEHOE: Yes, Your Honour.

19 As Your Honour accurately outlined, we did in fact agree to an  
20 additional nine facts, which takes us to 18 facts. We are unable to  
21 agree to -- at this point we're unable to agree with any of the other  
22 facts proposed by the Prosecutor for the lack of disclosures and all  
23 the items that we've spoken about before.

24 We do plan on giving a series of proposed facts to the SPO  
25 concerning crimes committed by the Serbs, to ask for their agreement

1 on that. And that certainly will curtail much of the trial, so we  
2 don't have to go into the litany of crimes that were perpetrated by  
3 the Serbs on the Kosovo Albanian population, which was quite  
4 extensive. So we would hope that they would look at these crimes  
5 committed by the people that are giving them documents and agree that  
6 many, many crimes and thousands of Kosovar Albanians were killed at  
7 the hands of the Serbs, and we can cut through a lot of time that  
8 way.

9 JUDGE GUILLOU: Thank you, Mr. Kehoe.

10 Mr. Emmerson, please.

11 Mr. Kehoe, microphone, please.

12 MR. KEHOE: Oh, sorry.

13 MR. EMMERSON: We've nothing to add to our written submission.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Mr. Roberts, please.

16 MR. ROBERTS: Thank you, Your Honour. Just to add that we do  
17 consider that we would be in a position to agree or not to any  
18 Prosecution-proposed facts by 1 September, and similarly would wish  
19 to propose our own facts, similar but not limited to what -- those  
20 which were put forward by Mr. Kehoe. But, obviously, those ones we  
21 would put forward would not be by 1 September. It would be much more  
22 likely they would be concomitant or after the filing of the Defence  
23 pre-trial brief.

24 But in relation to the other facts, I think we would want to put  
25 it to bed one way or the other with the Prosecution by the end of

1 August, certainly.

2 JUDGE GUILLOU: Thank you, Mr. Roberts.

3 Mr. Ellis, please.

4 MR. ELLIS: Yes. Your Honour, nothing to add to our written  
5 submissions. But just to be clear, we do intend to complete the  
6 process of reviewing the Prosecution's proposed agreed facts by  
7 1 September. We do intend to do that.

8 JUDGE GUILLOU: Thank you, Mr. Ellis. This is noted.

9 Madam Prosecutor, do you want to add anything?

10 MS. LAWSON: No, thank you, Your Honour.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Let us now move to the objections to the admissibility of  
13 evidentiary material disclosed.

14 In its written submissions, the Thaci Defence indicated that it  
15 is not able to file objections to the admissibility of evidence by  
16 8 September 2022.

17 The Veseli Defence indicated that it would only be able to file  
18 objections to the admissibility of evidence if its request for  
19 Rule 103 material is adjudicated and if the material requested are  
20 disclosed to the Defence.

21 The Selimi Defence considers that objections to the  
22 admissibility of disclosed evidentiary material remains premature.  
23 However, it is willing to enter into preliminary discussions with the  
24 SPO on which documents the Defence may not oppose being admitted  
25 during trial proceedings if the SPO can provide relevant information

1 on which documents it will seek to rely upon and why.

2 And, finally, the Krasniqi Defence considers that its ability to  
3 identify objections to the admissibility of the evidentiary material  
4 is necessarily contingent upon the SPO informing the Defence which of  
5 the exhibits on its exhibit list the SPO actually intends to rely on  
6 and the modalities of introducing its evidence.

7 I invite the parties to further substantiate their submissions,  
8 if needed.

9 Mr. Kehoe.

10 MR. KEHOE: Yes, Your Honour, just to clarify or just comment on  
11 the last point concerning the modalities of admission.

12 We need some clarification from the SPO with regard to any  
13 number of these documents. Do they intend to tender these documents  
14 across the bar or is it going to be a witness that's involved? That  
15 makes a dramatic difference concerning any agreement on  
16 admissibility.

17 Certainly with many, many of these documents, we have no idea  
18 how they bear into the indictment because of all the redactions, not  
19 only in the indictment but also in the witness statements. And,  
20 likewise, and we've talked about this before, any number of documents  
21 the Serb War Crimes Office and Serb intelligence has been providing  
22 to the Office of the Prosecutor, and we have a motion pending before  
23 Your Honour, which I'm not going to argue right now, but it goes to  
24 what's the provenance of those documents. What documents have you  
25 received from Serb governmental organs or governmental authorities or

1 NGOs, and what documents are you intending to use that you got from  
2 those. Those are 103 issues and certainly issues that we need to  
3 have answers to before we can agree to any type of admissibility.

4 So, again, I think the argument by counsel about the cart being  
5 before the horse is applicable here.

6 JUDGE GUILLOU: Thank you, Mr. Kehoe.

7 Mr. Emmerson --

8 MR. KEHOE: If I may, Judge, I have the out-of-court evidence.  
9 I don't know if Your Honour wants to talk about that.

10 JUDGE GUILLOU: Yes.

11 MR. KEHOE: But in the same score, with regard to, you know,  
12 deceased witnesses or for evidence that comes into play before the  
13 KSC came into being, there has to be an application by the SPO to  
14 attempt to admit those so it can be litigated. And certainly without  
15 some knowledge as to which of the evidentiary items falls into those  
16 categories, we simply can't agree.

17 I know that they have deceased witnesses on the witness list,  
18 but they have to make an application before the Court in order for  
19 those to be litigated. And maybe this is something for the  
20 Trial Panel. But, nevertheless, it has to be litigated, and we're  
21 certainly not going to agree to any facts based on those issues.

22 JUDGE GUILLOU: Thank you, Mr. Kehoe.

23 Mr. Emmerson, please.

24 MR. EMMERSON: Just picking up from that point.

25 Clearly, if there are witnesses who are deceased or unable to

1 attend, then all of the usual requirements will apply before their  
2 evidence can be admitted, which include the full disclosure to the  
3 Defence and the Trial Panel of any material that could be adverse to  
4 that individual's credibility so that the Court is in a position to  
5 assess the materiality and reliability of the evidence, all of which  
6 should then be the subject of litigation.

7 Now, there's been no indication of anything of that kind at this  
8 stage. But perhaps more broadly, there's been no indication of the  
9 provenance of a lot of documents that have been served. Some of  
10 them, apparently, quite important, where there's no indication of who  
11 wrote them, or how they came to be in the possession of the SPO. And  
12 Your Honour will understand that how that relates also to the  
13 Rule 103 motion that you have before you concerning documents that  
14 have been provided to the SPO by the notoriously corrupt Serbian  
15 intelligence and prosecution services, which we know, provably, in  
16 the past have submitted to international prosecutors evidence which  
17 has been obtained by torture, evidence which has been fabricated and  
18 forged.

19 So, I mean, the two principal objections - and there will be  
20 others, of course - but the two principal objections to admissibility  
21 that are likely to figure significantly in this litigation are, first  
22 of all, provenance. I mean, the SPO footnotes in its brief documents  
23 for which there is absolutely no provenance whatsoever. There is  
24 evidence provided by the SPO which we already know to be forged,  
25 having spoken to the people who provided their passports and

1 signatures who are purportedly the authors of these documents.

2 So there is amongst the Prosecution material a great deal of  
3 potentially important corrupted material. Now, clearly, the  
4 Trial Chamber will want to examine that, but we're not in any way in  
5 a position to move forward with that whilst the Prosecution still  
6 hasn't completed its disclosure. I mean, because, as we've been told  
7 today, it's prioritising its resources to deal with the disclosure  
8 obligations that it's currently so far behind on, never mind  
9 considering a modification of its absolute refusal to assist on  
10 provenance.

11 So we are a very, very long way away from any proper  
12 investigation of this material. At the very minimum we need to know  
13 who the Prosecution is intending to actually call live, what witness  
14 evidence they wish to tender, and what documents they are proposing  
15 to tender from the bar table. Because until we know that, we'll have  
16 no way of knowing what the objections are likely to be.

17 Realistically, I would have thought that that sort of granular  
18 examination is not and should not be allowed to delay the referral of  
19 the case to the Trial Chamber, because, realistically, seeing the  
20 progress that the Prosecution generally has been making, it's  
21 inconceivable that they will have provided evidence and answers to  
22 these questions on a document-by-document basis any time in the  
23 reasonable future.

24 We'll simply have to deal with it as a document-by-document  
25 issue during the trial.

1 JUDGE GUILLOU: Thank you, Mr. Emmerson.

2 Mr. Roberts, please.

3 MR. ROBERTS: Thank you, Your Honour.

4 Again, very briefly, and fully, again, subscribe to the comments  
5 of Mr. Emmerson and Mr. Kehoe. I just wish to correct a tiny typo in  
6 my submissions where we suggested that there are only actually 16.298  
7 documents on the Prosecution list. As we know, it's actually 18.000,  
8 so it's even worse than we had suggested.

9 As we had proposed in our written submissions, we are trying to  
10 work out and are willing to engage constructively, as always, in  
11 trying to identify, as Mr. Emmerson also alluded to, which documents  
12 actually matter to the Prosecution case. It's not 18.000, it's  
13 probably not 12.000. To be honest, it's probably not 5.000.

14 The same thing with witnesses. It's not 326. I would suggest,  
15 ultimately, it's probably in the region of 120, 130, but we don't  
16 know which ones, and the only party that does is the Prosecution.  
17 And the earliest they can assist us in identifying that, the  
18 witnesses that they're going to call, the exhibits they're going to  
19 rely on, how they're going to get those exhibits into the case is  
20 fundamental information that they should be turning their minds to.  
21 And the earlier they can share that with us, the better situation we  
22 would be in.

23 The problem we face is, obviously, as we set out in our  
24 submissions, it is premature to ultimately take a decision on this  
25 because we don't know what rules of procedure or, specifically, what

1 system the Trial Chamber will adopt. And, obviously, until we know  
2 that, whether they're potentially adopting a submission system of  
3 evidence, whether it's admission, how these are going to be dealt  
4 with, how they deal with documents from the bar table, it's very  
5 limited.

6 However, in terms of trial management, in terms of identifying  
7 issues, and this does lead into the next category of streamlining,  
8 which Mr. Young will address, the earlier that the Prosecution does  
9 identify which documents from its lists do really matter and which  
10 witnesses it will really call, that is what will help us and help  
11 everybody to move forward.

12 And I think this is the elephant in the room, as to how long  
13 otherwise it will take if we don't take those steps now. And I think  
14 those are very much within your authority to order the Prosecution to  
15 move forward with. Thank you.

16 JUDGE GUILLOU: We will discuss that in a second in the next  
17 item in the agenda.

18 But before that, Mr. Ellis, please.

19 MR. ELLIS: Thank you, Your Honour.

20 Again, very little to add to our written submissions. We're in  
21 the same position as the other teams, the other Defence teams on  
22 this.

23 We appreciate, of course, that Your Honour may be thinking of  
24 what can be included in the handover document ultimately to go to the  
25 Trial Panel in relation to admissibility issues. But, unfortunately,

1 given where we are, and given that these issues are going to have to  
2 be litigated on a granular basis as we learn how the Prosecution  
3 intends to adduce the evidence, whether through a witness, whether  
4 through bar table motion, these are likely to be issues that need to  
5 be addressed by the Trial Panel as and when they arise.

6 It may not be that we can take this further forwards at this  
7 stage. That won't impede the deadline for the pre-trial brief,  
8 though.

9 JUDGE GUILLOU: Thank you, Mr. Ellis.

10 Madam Prosecutor, do you want to respond?

11 MS. LAWSON: To the extent the Defence is in a position to  
12 indicate objections to the admissibility of evidence, it is pursuant  
13 to Rule 95, being invited to do so by Your Honour. Such submissions  
14 can, of course, assist in providing clarity to the subsequent  
15 efficiency and conduct of proceedings, including to evidentiary and  
16 case presentation choices of the Prosecution. But otherwise,  
17 ultimately such matters will be resolved during the trial process.

18 There are matters under Rule 95(5) which the Defence is invited  
19 to do, and there are matters they're required to do at this stage,  
20 such as the alibi or other Defence notices that I mentioned  
21 previously. The requirement should be met, and to the extent the  
22 Defence is not in a position to give indications on certain of the  
23 other matters, that can be reflected in the record and the case  
24 should be proceed.

25 So, in fact, we agree with the Defence that, indeed, many of the

1 issues regarding admissibility may need to be addressed on an  
2 individualised basis during trial.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor. This is noted.

4 Let us now move to the last topic on our agenda, which is  
5 related to efficiency and expeditiousness of the proceedings.

6 In the Scheduling Order, I asked the parties to provide their  
7 views on six proposals concerning the streamlining of trial  
8 proceedings. I will give the floor to the parties separately on each  
9 proposal.

10 First, the update of the number of witnesses to be called and  
11 their intended mode of testimony. Second, the communication of the  
12 list of witnesses the SPO intends to call for the first three months.  
13 Third, reducing the scope of the case. Fourth, setting time limits  
14 for all parties to question witnesses, and whether the Defence can  
15 streamline cross-examinations. Fifth, whether the Defence can  
16 indicate how many hours per day and weeks per month they would be  
17 ready to sit. And, sixth, the possibility to set global time limits  
18 for each parties' case.

19 First of all, the update of the witness list, which is not  
20 really a proposal to streamline the case but more a question to the  
21 SPO.

22 In its written submissions, the SPO indicated that its witness  
23 list remains up to date in terms of the number of witnesses the SPO  
24 intends to rely upon. However, the SPO indicated that it is  
25 continuing its internal review of witness and exhibit lists and case

1 preparation proposals with a view to streamlining its overall hours  
2 estimate.

3 It anticipates redactions through a variety of means, including  
4 the mode of presentation and questioning time. It indicated that it  
5 will be in a position to provide a concrete and consolidated  
6 streamlining proposal in advance of the transfer of the case to a  
7 Trial Panel, and would envisage being in a position to provide such  
8 proposal by mid-October 2022.

9 I invite the SPO to give as much detail as it can on this topic  
10 as it is essential for streamlining proposals to a Trial Panel.

11 I would also like the SPO to indicate if it would be in a  
12 position to provide its updated estimate earlier; for example, before  
13 the next Status Conference.

14 And I inform the parties that I intend to issue an oral order on  
15 the timeline of the updated witness list at the end of the hearing  
16 today.

17 Madam Prosecutor.

18 MS. LAWSON: Thank you, Your Honour.

19 Starting with the status of the witness list. As indicated in  
20 our written submissions, that remains up to date and current in terms  
21 of the witnesses that we intend to rely upon. And should there be  
22 any change to that, we would promptly notify the Defence of that in  
23 advance of anymore consolidated streamlining proposals being made.

24 There may -- it's a little bit hard to disconnect the different  
25 issues on the agenda item because, of course, there may be changes to

1 the mode of testimony, and certainly there will be changes to the  
2 hours estimates for witnesses resulting from the overall review  
3 exercise, which is ongoing and is aimed towards streamlining the  
4 overall hours estimate in the case. As Your Honour mentioned, we  
5 anticipate that that will result in significant reductions, but it's  
6 an exercise that needs to be done in a wholistic manner, having  
7 regard to the individual circumstances of the witnesses and, in  
8 particular, the rights and interests of victims, the interaction of  
9 different elements in the case, and, of course, the relevant standard  
10 of proof.

11 So it is a matter of careful balancing. And the SPO is, of  
12 course, entitled to a fair opportunity to present its case as charged  
13 and confirmed.

14 Your Honour asked if we could provide the proposals earlier than  
15 October as indicated in our written submissions. And taking into  
16 account the care with which this needs to be done, and the fact that  
17 we're aiming to present a consolidated proposal that reflects  
18 significant streamlining, that is not the case. We do not envisage  
19 being able to provide that proposal earlier than mid-October, when we  
20 would also file an updated witness list which would reflect any  
21 resulting changes.

22 But as I indicated, should there be other changes, such as  
23 witnesses being dropped from the case in advance of that, we would  
24 certainly provide notice before then.

25 JUDGE GUILLOU: And, Madam Prosecutor, do I understand correctly

1 that at the moment you do not anticipate to reduce the number of  
2 witnesses, but you already anticipate that there will changes related  
3 to the mode of testimony and the estimated number of hours per  
4 witness? Did I understand correctly?

5 MS. LAWSON: Yes, Your Honour. Largely that's correct. It is  
6 case presentation proposals, including the hours estimates  
7 specifically and use of the various other rules provided for in the  
8 framework that would be changing.

9 Now, we don't exclude the possibility that during the review we  
10 may decide not to rely on certain witnesses after the analysis has  
11 been done that I mentioned, which requires a considerable degree of  
12 care and consultation with a number of individuals, including in some  
13 cases witnesses themselves. But no decisions have been made that  
14 indicates that at this stage, and as soon as any such decision is  
15 made, we would notify the parties and the Defence. Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Let me turn to the Defence.

18 Mr. Kehoe, please.

19 MR. KEHOE: Your Honour, at the last conference we were advised  
20 that the Prosecution has reduced their hours for witnesses from 1.856  
21 to 1500. That's a significant reduction in hours. Is it the  
22 Prosecutor's position that we have that 300-plus hour reduction, yet  
23 there is no witness to be removed from the 326 that they have listed  
24 in their witness list? That seems to defy logic.

25 It would appear at this point that the Prosecution, when it made

1 that reduction of 350-plus, made some decisions about witnesses.  
2 It's incumbent upon the Prosecution to tell us now who they are so  
3 we're not wasting any time with them.

4 This also plays into the witness protocol. Because if they've  
5 made a decision on some of the individuals that we want to talk to  
6 and possibly have depositions before because of their age, and they  
7 have -- then the Prosecution has elected to drop them from the  
8 witness list - and I can tell you one right off the bat that they're  
9 not going to call - it's incumbent upon the Prosecution to take them  
10 off the list, the witness protocol doesn't apply, we can move ahead  
11 with the depositions and move this case along, and not wait until  
12 mid-October.

13 There's a very, very practical, reasonable way to move this case  
14 along with a witness that we intend to take the deposition of, as I  
15 mentioned, because of his advanced age.

16 So primarily looking at who are these witnesses is the most  
17 important thing that we have before us time-wise, and then that plays  
18 into the individual items of evidence. As counsel noted, they're not  
19 going to put all these items into evidence. They have 18.000  
20 documents on their exhibit list. They're not going to put 18.000  
21 documents in. Let's talk about a reasonable approach now as to what  
22 they're going to introduce into evidence.

23 All of this has a knock-on effect to reduce this case  
24 dramatically. Witnesses, exhibits, et cetera. Then we talk about  
25 who they intend to present over the bar table. That will take yet

1 more witnesses off. So do we need to wait to on the eve of our --  
2 actually, it's actually the same time as our pre-trial brief in  
3 mid-October in order to find out this information, or are we going to  
4 waste the next two months spinning our wheels on witnesses that we  
5 know that they're not going to call?

6 It just defies logic at this point, Judge, that with that type  
7 of reduction in hours that not one witness is off the list. Please,  
8 there has to be. And if we're going to move this thing along, and  
9 move it along efficiently, that is an easy way to streamline this  
10 case today. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Kehoe.

12 Mr. Emmerson, please.

13 MR. EMMERSON: First of all, may I clarify --

14 JUDGE GUILLOU: Mr. Kehoe, your microphone is on, please.

15 MR. KEHOE: I always want to listen to Mr. Emmerson through the  
16 microphone.

17 MR. EMMERSON: May I just clarify, Your Honour is looking to  
18 hear submissions on all of these issues in one go?

19 JUDGE GUILLOU: No. Now I just want your submissions on the  
20 update of the witness list by the SPO.

21 MR. EMMERSON: Yes.

22 JUDGE GUILLOU: Then we're going to go to the different items in  
23 different rounds of submissions.

24 MR. EMMERSON: Very well. Thank you very much for that  
25 clarification.

1           One thing I would suggest is obvious to all who are observing  
2 these proceedings with an authentic open mind is that the SPO has  
3 bitten off more than they can chew. We know that because of the, I  
4 would suggest, inordinate and unprecedented delay that has already  
5 occurred in their meeting disclosure obligations that they knew that  
6 they had when they made a decision to seek an indictment, to seek to  
7 have it confirmed, and to proceed to arrests, at which time, as  
8 Your Honour will remember, the estimate was that it would be six  
9 months until this trial could start, in March or April of last year.

10           We're now nearly two years behind time, and they still haven't  
11 completed the obligations that they knew at the beginning. So one  
12 thing that's absolutely certain is that the Prosecution has bitten  
13 off evidentially much more than it can process.

14           And we know it also because that has resulted in a complete lack  
15 of focus in their case. And we see that with the submission made by  
16 Mr. Halling at the last Status Conference, and faintly echoed by  
17 counsel just a moment ago, that the balance is not about finding the  
18 witness list that they need of essential witnesses they think to  
19 prove their case, or even important witnesses, but it must take  
20 account of the interests of victims generally, which last Status  
21 Conference Mr. Halling specifically suggested meaning that each  
22 victim should be entitled to have their day in court, each person who  
23 claims to be a victim of crimes committed by these accused.

24           And you'll remember Mr. Laws, although he was slightly  
25 embarrassed when he realised the consequences, for the Victims, was

1 quite clear in saying his clients were not claiming their day in  
2 court. This was not a right that the victims were seeking to assert.  
3 Indeed, one might imagine that since a significant number of them  
4 don't even know that they are witnesses, that there is likely to be a  
5 position where the scope and scale of the case which has so  
6 bedevilled the Prosecution that it doesn't have the resources now to  
7 do its job after however many broken deadlines, it becomes clear we  
8 have a Prosecution that's bitten off more than it can chew and is  
9 reluctant to do anything significant about it.

10 Simply saying we'll keep the same number of witnesses, but we'll  
11 do them on a fast-forward speed. It's rather, having bitten off more  
12 than they can digest, they then, like a mother bird, seek to  
13 regurgitate it and shove it down the throats of the Trial Chamber but  
14 at maximum speed.

15 Now it doesn't, with respect, conform with the notion of a  
16 responsible and disciplined guiding mind behind the Prosecution. It  
17 doesn't conform with the notion of a Prosecutor who, two years down  
18 the line, is not able to put forward a realistic list of witnesses  
19 and even have any idea who they propose to call in the first three  
20 months of the trial. They don't know. And they can't even tell it  
21 to us any time soon because they don't know.

22 Now, I'm not how Your Honour envisions the role of the process  
23 of getting this case ready to hand over to the Trial Chamber. But  
24 all you're being told by the Prosecution is, "We don't want any  
25 discipline imposed on us. We want to go in front of the Trial

1 Chamber with the same number of witnesses, knowing we can't handle  
2 what we've already got," because no one on that side of the  
3 courtroom, or those who sit above them, has exercised a really  
4 disciplined approach to deciding what their case is and how they want  
5 to present it at trial.

6 And for them to be two years down the line with four defendants  
7 in custody and not yet have a trial plan is almost the most shocking  
8 of the things that have gone wrong in the way that the Prosecution  
9 has handled itself.

10 So with that general comment, we would invite you no longer --  
11 you've given a great deal of leeway to this Prosecution. We would  
12 invite you to now start drawing a line, to forcing them into reaching  
13 some serious decisions over the summer. Instead of going away on  
14 holiday, as I'm sure is the explanation for the staff shortages,  
15 cancel the holidays, do some work, get this case into a shape where  
16 by the beginning of September, by the time of the next Status  
17 Conference, they can tell us who are going to be called and in what  
18 order for the first three months, and who the first 107 witnesses, in  
19 approximately the right order, are for the first order of witnesses  
20 thereafter. Really exercise some proper professional discipline.

21 Because if you're not in a position to put that on them, you  
22 will just have this grossly unprofessional, overambitious, absolutely  
23 lazy profligate use of resources to try and put forward a case which  
24 hasn't been reduced in scope at all. And we all know if that  
25 happens, the estimated trial length is about somewhere between five

1 and seven years.

2 So, I mean, obviously it's up to you to decide when the point  
3 has been reached at which you need to finally draw a line. But we  
4 would suggest it's no good doing it in September for it yet to creep  
5 on for another three months beyond the date when you could have been  
6 referring it to the Trial Chamber just because, yet again, the  
7 Prosecution hasn't done its job.

8 So, I mean, it's not as though they can come before you claiming  
9 any credit. And, you know, beyond criticism, it doesn't really  
10 matter whether they -- you know, it's not my job to try and force  
11 them to behave like responsible prosecutors. I've given up on that.  
12 But it is our job to defend our clients and to ensure that we are  
13 able to invite Your Honour at the appropriate times to say enough is  
14 enough, come on. We can't give this Prosecution, chaotic as it is,  
15 the latitude that they have been given on a good-faith basis up until  
16 now.

17 We need to know what is the case we have to meet. And above  
18 all, we need to -- you're quite rightly asking us, "When can you be  
19 ready to do this? When can you finish your investigation?"  
20 Your Honour needs to keep an overall view, I'm sure you know this, of  
21 how different rulings are going to impact on both fairness and speed.  
22 And it's obvious that the ruling which currently stands on witness  
23 interviews, unless it's set aside on appeal that will be the protocol  
24 that governs the process of interviewing witnesses, it's obvious and  
25 inevitable that that places a handicap on Defence investigations and

1 slows things down.

2 To counterbalance that, we would suggest the right thing to do  
3 is to give the Defence some help, which only the Prosecution can do,  
4 they will not do, and therefore Your Honour, in our submission, must  
5 do it for them.

6 So we need to know by the next Status Conference, in advance of  
7 the next Status Conference, who the witnesses they are intending to  
8 call in the first three months are and in what order. Secondly, we  
9 need to know the first 107, that's one-third, 30 per cent of their  
10 witness list, that are going to be called. But there we don't  
11 necessarily need a strict order. And then we can focus our  
12 investigations and, if necessary, make the requests through the  
13 Registry to interview witnesses without having to -- to have no idea  
14 who the witnesses are that are going to be called in the first three  
15 months.

16 So, in a sense, you know, it's quite right it's a delicate  
17 ecosystem, but it's not just a delicate ecosystem in which the  
18 Prosecution gets to choose how to run its case. It's a delicate  
19 ecosystem in which one handicap needs to be counterbalanced by an  
20 easing of the burden on the Defence in another area if we're going to  
21 be able to move forward. Your Honour can see, I think, a concerted  
22 position on behalf of the Defence to move this towards trial, and,  
23 frankly, a concerted reluctance by the Prosecution to do anything  
24 decisive to shape the way the trial is going to go.

25 And with the greatest respect, and I know Your Honour is very

1 much aware of this, there's nothing more the Defence can do than what  
2 we have already agreed to do to make this case trial ready. It's the  
3 Prosecution that are standing in the way by insisting on maintaining  
4 this chaotic stance that they don't even know who their witnesses are  
5 going to be, but they're determined to put all of these people who  
6 have no need to be giving evidence in relation to the crimes on the  
7 indictment in front of the Trial Chamber in -- and the best that they  
8 can offer is to give them half the time in which to give their  
9 accounts, which, of course, will compress the evidence in a way that  
10 makes it unmanageable for the Trial Chamber because they'll be  
11 running along at a speed which makes it impossible to properly  
12 examine any witness.

13 So this is not professional prosecution, and we'd invite you to  
14 set a deadline in full for the -- in advance, seven days in advance  
15 of the next Status Conference, for those two witnesses lists, first  
16 of all, and with a view to streamlining its case. To at least work  
17 towards 12 months as the maximum.

18 Now, obviously, depending on the number of sitting days and  
19 periods and so forth, that will have to be revisited. But to at  
20 least have in mind that they will be able - realistically able, not  
21 theoretically able - realistically able to present the case they're  
22 going to present within a year. And if you can't present a case  
23 that's sufficient within a year, you end up in a situation like the  
24 doomed prosecution of Mr. Milosevic, which just goes on endlessly and  
25 is an ultimate failure for all sorts of reasons.

1           And so we've learned, those of us in the international criminal  
2 law community, from the experiences that have happened thus far. We  
3 were told by the Prosecution at the beginning of this case, by  
4 Mr. Smith himself, that the Prosecution was being designed to be  
5 faster than the prosecutions of the other tribunals had been,  
6 learning from their experience to speed things up. And he accused  
7 us, you remember, the Defence, of inflating how long it would take  
8 the Prosecution to be trial ready in order to advance a claim -- an  
9 application for provisional release. That was a serious and totally  
10 unfounded allegation, but, again, water under the bridge.

11           What's not water under the bridge is that over and over and over  
12 again this Prosecution team have violated the trust and good faith  
13 that you have placed in them, and we are now in a situation where we  
14 should be at the closing stages of you referring it to trial, to  
15 Trial Chamber, being pretty much trial ready.

16           But we're nowhere near that because they won't even say. Why  
17 won't they say who their Prosecution witnesses are? Because they  
18 don't know. They don't have any idea who it is they're going to call  
19 and what order, what documents they're going to submit from the bar,  
20 what the provenance of those documents are. They're at the stage now  
21 that they should have been at two years ago.

22           So we would respectfully invite you to say seven days before the  
23 next Status Conference we have all of that information as requested  
24 in our written submissions.

25           JUDGE GUILLOU: Thank you, Mr. Emmerson.

1 Mr. Young, please.

2 MR. YOUNG: Yes, I can be very brief. Your Honour, we very much  
3 support the submissions made already, and we strongly support  
4 Your Honour's proposal that the SPO prepare an updated witness list  
5 before the next Status Conference.

6 Given the SPO's written submissions that the witness list  
7 remains the same, presumably the Prosecution know who their witnesses  
8 they intend to call will be. Indeed, I don't need to remind  
9 Your Honour that in 2020, the Prosecution then suggested they were  
10 confident enough to say that they knew who their witnesses would be  
11 and what their case was because they then told the Court they'd be  
12 ready for trial in June 2021, over one year ago.

13 And so they now have two months. Your Honour's proposal of  
14 having the updated list before the September Status Conference is  
15 eminently sensible. And one thing I would also add is the point and  
16 stresses the point that we made in our written submissions, and  
17 alluded to by Mr. Roberts earlier, that we do strongly ask  
18 Your Honour, submit that Your Honour should make an order that the  
19 Prosecution notify those on the SPO witness list that they are, in  
20 fact, SPO witnesses.

21 With respect, this could significantly affect the list and  
22 significantly affect the process, so we do ask that you make that  
23 order. Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Young.

25 Mr. Ellis, please.

1 MR. ELLIS: Your Honour, my client has been in prison now for  
2 20 months. On his behalf, I cannot hide my frustration that he has  
3 sat there in prison watching this hearing, and he hears the  
4 Prosecution come to court and say they cannot commit to an earlier  
5 date to update their witness list because they're looking at it in a  
6 wholistic manner, because it interacts with other issues, because  
7 it's a difficult question. After 20 months they cannot do that any  
8 earlier.

9 How many Status Conferences have we be talking about  
10 streamlining issues? It's been on the agenda now for months. This  
11 is not a new issue. We cannot be in a position where, in  
12 mid-October, one week before the Defence pre-trial brief, the  
13 Prosecution suddenly produces an updated list which could change the  
14 content of that which the Defence need to respond to.

15 This has gone on too long with men in detention spending their  
16 lives. We say the Court can confidently set a deadline, and we adopt  
17 the deadline proposal by Mr. Emmerson.

18 JUDGE GUILLOU: Thank you, Mr. Ellis.

19 Madam Prosecutor, do you want to respond?

20 MS. LAWSON: Thank you, Your Honour. Your initial questions on  
21 witness reductions was clear, and my answer on it was very clear.  
22 There have been no such decisions not to rely upon witnesses to date.  
23 So, yes, the hours reduction indication given at the last hearing,  
24 which, incidentally, was already 500 hours, not 300 as the Thaci  
25 Defence mentioned, did not include witness reductions.

1           And similarly, the suggestion that the SPO does not know who its  
2 witnesses are going to be is simply inaccurate. The witness list was  
3 provided over six months ago, in December, and as I indicated, it  
4 remains accurate in terms of the persons intended to be relied upon.  
5 Should there be any change in that, we have undertaken to promptly  
6 notify the Defence teams accordingly.

7           Equally, the suggestion that the Defence do not know the case  
8 they need to meet, which the counsel for Mr. Veseli mentioned. This  
9 is a repeated allegation but, again, it's an unambiguously misleading  
10 one. In fact, the Defence have been provided with an extraordinary  
11 degree of guidance to the Prosecution's case and at very early stages  
12 of proceedings.

13           I've mentioned some of these figures before. But in the context  
14 of the submissions just made, they bear repeating. The Defence  
15 received over 1.800 items of indictment-supporting material in  
16 December 2020, along with a Rule 86 outline setting out the  
17 Prosecution's case in narrative form and the Confirmation Decision.  
18 Over 90 per cent of the material the Prosecution intends to rely upon  
19 at trial was provided almost one year ago, by mid-August 2021. This  
20 evidence was categorised and subcategorised in Legal Workflow by  
21 reference to the charges in this case at the time of its disclosure.  
22 A preliminary witness list was provided in October 2021, followed by  
23 the actual witness list, exhibit list, and a footnoted pre-trial  
24 brief in December.

25           In January, a further detailed categorisation of the evidence

1 the Prosecution intends to rely upon was provided by way of the  
2 Rule 109 chart, which Your Honour has requested an updated version of  
3 at the start of this hearing.

4 Further, the Defence's attempts to portray the SPO's case as  
5 unprecedented in size, as chaotic, as otherwise unwieldy, are simply  
6 not accurate. As clearly outlined at the last Status Conference, the  
7 Defence submissions on, for example, the exhibit list figures were  
8 supported by misleading statistics and misleading comparisons. And  
9 despite the unreliability of that data having been pointed out, these  
10 submissions persist in being made but now simply putting them forward  
11 here as unsupported assertions.

12 Equally, the somewhat glib reference to broken deadlines is  
13 inaccurate. Deadlines which may have been adjusted have been  
14 adjusted based on good cause, and that's a matter that's been  
15 previously discussed at length, so I won't belabour it here.

16 But what we're operating under is a framework governed by rules.  
17 The Defence is, on the one hand, simply refusing to respect rules and  
18 pre-trial Defence obligations while, on the other, attempting to  
19 impose further obligations not foreseen in the rules on the SPO case  
20 on a manner which has never been seen at other comparable  
21 institutions.

22 What I mentioned already remains the case. The Prosecution case  
23 is not going to change. The scope of the case, the nature of the  
24 case is not going to change by the streamlining proposals or the  
25 updated witness list. These are case presentation proposals and

1 reduction in hours proposals. If there are changes to witnesses in  
2 advance of that, we will notify them. Thank you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 Mr. Kehoe, very, very briefly.

5 MR. KEHOE: Very briefly, Judge. I am glad that the counsel has  
6 noted that this is a court of rules. And I ask, Your Honour, how  
7 many times did Your Honour give deadlines per the rules to the SPO  
8 that they failed to meet? 10? 20? At least. How many times has  
9 Your Honour asked to come up with proposals to streamline this case,  
10 which the Defence has done, and what is their response? Their  
11 response is, "Oh, we envisage being able to give you something in  
12 October," two months down the line.

13 I do believe, Judge, and you can correct me if I'm wrong, but  
14 you have raised this issue on at least two of the prior pre-trial  
15 conferences like this, looking for information. And after all of  
16 this time, months and months and months, their answer to you is, in  
17 July, that, "Oh, we'll give you something in October," these people  
18 that want to propound the rules, as opposed to now? And I stand  
19 corrected. I said there were 300 hours that were eliminated. 500  
20 hours.

21 Is it realistic to say that we are still dealing with 326  
22 witnesses when they have reduced their trial time by 500 hours and  
23 they can't tell the Defence today who the witnesses are that they  
24 took their witness list? It defies logic, Judge. It just defies the  
25 natural order of things in a courtroom.

1           And I wanted to bring those items turn your attention because  
2 the argument that was just advanced is baseless.

3           JUDGE GUILLOU: Thank you, Mr. Kehoe.

4           Now, we will briefly move to the other items in the streamlining  
5 of the case section of our Status Conference, and I invite every  
6 party to be very brief because I take it that your submissions on  
7 this first agenda were general and applied also to other subitems.

8           So now we're going to move to the communication of the list of  
9 witnesses to be called for the first three months that has already  
10 been raised by some of the parties.

11           In its written submission, the SPO indicated that it will  
12 provide the Defence with its intended order of witnesses for the  
13 first three months of trial in due course and sufficiently in advance  
14 of any trial commencement date, but that it is not in a position to  
15 do so at present.

16           In its submission, the Veseli Defence requests the SPO to  
17 provide the Defence with the first 32 witnesses it intends to call,  
18 the order it reasonably expects to call them, and the first 107  
19 witnesses it intends to call.

20           Before I give the floor to the parties, I stress that given the  
21 scope of the case, it is essential for good management of the trial  
22 that all parties and participants are informed sufficiently in  
23 advance of the order in which witnesses will be heard. It would also  
24 be useful for the Trial Panel and the parties to know in advance if  
25 the SPO intends to tender witness interviews according to Rule 153

1 and 154, if the SPO intends to file a request for adjudicated facts  
2 at the beginning of the trial, and how the SPO will structure the  
3 presentation of its case, for example, if it will start with specific  
4 crime scenes or if it intends to first present evidence regarding the  
5 armed conflict or the organisation of the KLA.

6 So I invite the SPO to give an indication on this topic. And if  
7 cannot provide submissions today, again, when it will be in a  
8 position to do so.

9 Madam Prosecutor.

10 MS. LAWSON: With regard to the order of witnesses that the SPO  
11 intends to call at trial. This is, as indicated in our written  
12 submissions, heavily dependent upon when the trial commences, the  
13 Trial Panel's sitting schedule, the availability of witnesses at the  
14 scheduled time. And it may also be influenced by review of the  
15 Defence pre-trial briefs as we would endeavour to focus case  
16 presentation on what appears to be truly contentious in the case.

17 It's entirely consistent with practice at other institutions  
18 addressing large-scale cases of this nature for the order of  
19 witnesses to be managed upon transfer of the case to the Panel  
20 controlling a greater degree of those variables. And while we are,  
21 and will, of course, be taking preparations to ensure that fair  
22 notice of such matters is provided in advance of trial, I've taken  
23 careful note of what you just said in relation to that, it is not  
24 something that we can do at this time.

25 Equally, I have taken note of Your Honour's comments regarding

1 mode of testimony, which will be addressed in the updated witness  
2 list that will be provided in advance of transfer. And the  
3 adjudicated facts and other matters that you have mentioned, we've  
4 taken note of those points. We'll factor them into the guidance that  
5 we provide to the Panel. Thank you.

6 JUDGE GUILLOU: Thank you, Madam Prosecutor.

7 Mr. Kehoe, please.

8 MR. KEHOE: Yes, Your Honour. I'll certainly endorse the  
9 providing of the witnesses for the first three months of trial.  
10 Every prosecutor's office knows how they're going to start the trial.  
11 Yes, there may be a witness here or a witness there that has to  
12 change because of scheduling, et cetera. But, again, it defies logic  
13 that a case of this size, that needs this amount of planning, hasn't  
14 been planned out as such that these are the array of witnesses that  
15 we intend to call in the first three months. Of course, they have.  
16 They just don't want to turn it over. If they don't have it, that's  
17 a separate problem.

18 But I submit to you, having been a prosecutor for a significant  
19 period of time, you cannot put a case on of this magnitude without  
20 having a very good idea of how you're going to start this case, and  
21 we ask the Court to order giving us the list of witnesses for the  
22 first three months as soon as possible.

23 JUDGE GUILLOU: Thank you, Mr. Kehoe.

24 Mr. Emmerson, please, but I think you've touched upon this in  
25 your earlier submissions.

1 MR. EMMERSON: Exactly, so I'm going to avoid duplication.

2 The Prosecution's offer, if I can put it that way, in this --  
3 what they assume to be a bargaining process, is that they will  
4 provide this information in due course, which means nothing, and  
5 before the trial, which is self-evident. Other than that, you should  
6 do nothing about it because it's a matter for the Trial Chamber.

7 Your Honour will appreciate my fundamental point is that having  
8 imposed, for reasons explained in the decision, the witness protocol,  
9 we now need to be very economical in focusing our Defence preparation  
10 in recognition of the fact that the preparation will -- and the  
11 investigation will necessarily be ongoing during the trial.

12 So, clearly, if the Prosecution have a vision of how they  
13 propose to present their evidence, we need to know about it as soon  
14 as possible so that we can structure our defence towards those  
15 witnesses who are going to be called earliest. It's just explain  
16 obstruction not to give us that information. It's obstructing the  
17 course of justice. That's what the Prosecution's stance amounts to.

18 I'm not suggesting that they can't alter their position. It may  
19 be that 10 per cent or 30 per cent of the witnesses they intend to  
20 call in the initial months, for one reason or another, are  
21 unavailable. But for their case to be presented coherently, they  
22 can't, as Your Honour notes earlier on, just be picking a witness  
23 from one area of the case and a witness from another area of the case  
24 and throwing it all up in another chaotic melange. They will have to  
25 have -- if they haven't got already, that's a shocking admission.

1 But they will have to have, by the time we reach the next Status  
2 Conference, a plan. How do we do this, guys? What are we starting  
3 with? Crime base? What are we doing here?

4 And if they have, they should be giving it to us as soon as  
5 possible so that we can structure the Defence resources  
6 appropriately. If they haven't, then they jolly well should have  
7 and should be made to formulate one over the summer holidays. But  
8 it's not something that can be left over to be managed by the  
9 Trial Panel, because at that stage, they ought to be in a position,  
10 the Trial Panel, where they're ready to make the orders necessary for  
11 the start and the final run up to trial.

12 So we will have lost all of that time in focusing our  
13 preparations so that we can be ready for the order in which the  
14 Prosecution are proposing to call their witnesses.

15 So clearly they don't want to play ball. Clearly they don't  
16 want to offer you anything useful, meaningful, or that would assist  
17 you to focus the case on the Trial Chamber, clearly they are  
18 obstructing the course of justice for that purpose. So in those  
19 circumstances, we will invite, as I said earlier on, seven days  
20 before the next Status Conference, to direct them that they must  
21 provide a list of the first -- we've suggested the first 32  
22 witnesses, that's 10 per cent, that they intend to call, in the order  
23 in which they intend to call them, and the further 107 witnesses that  
24 they intend to call next but they can decide the order of those by  
25 shuffling them.

1 Now, clearly if they've got good reason to depart from that  
2 plan, then nobody's going to stand in their way. But we must be  
3 enabled, as best we can, to focus our resources on the witnesses  
4 they're calling first.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Young, please.

7 MR. YOUNG: Yes, very briefly. We support what's been said,  
8 Your Honour. Clearly this is an important matter of case management.  
9 Even though there are variables, the Prosecution must have a plan.  
10 They must have a plan in mind, and they must have a good idea now  
11 about who they intend to call in the first three months.

12 So even if there are variables, and even if in the future, even  
13 if they were to make some amendments to the first three months, it's  
14 important that Your Honour does make an order so that we can plan and  
15 we can focus our preparations on the first three months of the trial.  
16 So I do, as strongly as I can, urge Your Honour to make an order.

17 JUDGE GUILLOU: Thank you Mr. Young.

18 Mr. Ellis, please.

19 MR. BAIESU: We --

20 JUDGE GUILLOU: Sorry, Mr. Baiesu.

21 MR. BAIESU: We also agree and support what was said by the  
22 other teams, especially Mr. Emmerson's proposal that this list should  
23 be submitted as soon as possible and not in due course, and that a  
24 firm deadline should be set for the SPO to submit this list.

25 JUDGE GUILLOU: Thank you, Mr. Baiesu.

1 Madam Prosecutor, do you want to respond?

2 MS. LAWSON: At least one of the Defence teams noted in their  
3 written submissions that there are a variety of factors which  
4 necessarily limit trial management issues that can be meaningfully  
5 resolved at this stage, and this is one of them.

6 For the reasons indicated in my earlier submissions, and in  
7 writing, first, the variables regarding timing and scheduling mean  
8 that simply from a practical perspective it's not something which can  
9 be confirmed at this point. And, second, there remain a considerable  
10 number of other factors which may influence decision-making,  
11 including review of the Defence briefs, notice of alibi, and other  
12 pending matters.

13 I would again like to re-emphasise the degree of notice that the  
14 Defence already has in this case regarding witnesses intended to be  
15 relied upon, including having received preliminary witness lists,  
16 including summaries already in October last year, and having already  
17 received disclosure of underlying material associated with those  
18 witnesses several months before that. That is almost a year ago.

19 Finally, submissions from the Veseli Defence counsel  
20 characterising ordinary course case management and conduct of  
21 proceedings matters, which I repeat are entirely consistent with  
22 relevant practice, as obstructing the course of justice, it's  
23 unacceptable. These type of characterisations are unprofessional and  
24 they're utterly irresponsible. Thank you.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Mr. Kehoe, do you want to reply? Just briefly --

2 MR. KEHOE: Just briefly, Judge.

3 JUDGE GUILLOU: -- and do not repeat yourself. We've already  
4 discussed about all this for a while.

5 MR. KEHOE: I will not repeat. But we seem to be talking past  
6 each other. And there's a large issue that the Prosecutor is  
7 missing: Time. Time. 326 witnesses. Who are they going to call?  
8 To move this case expeditiously, there's a certain timeframe that we  
9 have to operate on.

10 They certainly know the direction their case is going to go in.  
11 So to move this case along expeditiously, for you to pass it on to  
12 the Trial Panel, to move through this as quickly as possible, and to  
13 limit the time these gentlemen are spending in jail, it's incumbent  
14 upon them to give us the first three months of their witnesses. And  
15 the whole time element is completely absent from the argument that  
16 has been made by the counsel for the SPO.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 I see that it is now time for a break, because I think the  
19 interpreters have been working for nearly one hour and 45 minutes.  
20 So we will break for 24 minutes. We will reconvene at 5.30 for the  
21 remainder item of the Status Conference and the point that Mr. Young  
22 wanted to raise.

23 And I invite you to be brief in the last part of the  
24 Status Conference so we can finish, if possible, around 6.00 p.m.  
25 The hearing is adjourned.

1 --- Recess taken at 5.07 p.m.

2 --- On resuming at 5.30 p.m.

3 JUDGE GUILLOU: Let us now move to the third item in the third  
4 part of the Status Conference related to measures to streamline the  
5 case, and we're now going to discuss the reduction of the scope of  
6 the case.

7 In its written submissions, the SPO indicated that at this  
8 stage, no crime sites or witnesses have been dropped from the  
9 Prosecution case.

10 The Selimi Defence considers that the later any decision is  
11 taken on any of these reductions, the more time will be wasted by the  
12 Defence.

13 I invite the SPO to indicate if it is contemplating reducing the  
14 scope of its case and when it will be in a position to do so.

15 Madam Prosecutor.

16 MS. LAWSON: Thank you, Your Honour. As I mentioned previously,  
17 it is not so much the scope of the charged case that we are looking  
18 at as the manner of presentation and hours estimates.

19 So in terms of crime sites and/or witnesses, while we don't rule  
20 it out, and such possibilities are being factored into what we're  
21 doing, based on the review to date it's not currently envisaged. We  
22 recognise the potentially greater impact of any such changes on  
23 Defence preparations and the need for notice, and we will promptly  
24 notify any such changes.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Mr. Kehoe, please.

2 MR. KEHOE: So the answer is that they're not limiting any crime  
3 scenes and they're not limiting any witnesses and they're not  
4 limiting their trial at all.

5 So far as Your Honour's mandate or order to streamline the case,  
6 the SPO has basically refused. Do I have that right? Okay. Thank  
7 you.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Mr. Emmerson, please.

10 MR. EMMERSON: Just one observation over and above the  
11 submissions already made that touch on this issue.

12 On numerous occasions in response to a submission, whether in  
13 writing or orally, that essentially this is an attempt to put the  
14 Kosovo Liberation Army's independence war on trial, it has been the  
15 SPO's position that this is not a trial against the Kosovo Liberation  
16 Army but a trial against these four accused.

17 If that is right, then they should have no objection to dropping  
18 crime scenes where the only connection that has been alleged is a  
19 connection to somebody who is identified as a member of the KLA. In  
20 other words, where there's no connection directly to any one of these  
21 accused or no evidence to connect the crime scene to the accused.  
22 That would dramatically reduce the scope and scale of the case that  
23 needs to be presented and will avoid the Trial Chamber having to  
24 listen to weeks, probably months and months of evidence that, in the  
25 end, will be immaterial to its decision if the Prosecution is true to

1 its position that this is not a general attack on the KLA.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Mr. Young, please.

4 MR. YOUNG: No, thank you.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Mr. Baiesu, please.

7 MR. BAIESU: No further submissions on this agenda item.

8 JUDGE GUILLOU: Thank you, Mr. Baiesu.

9 Madam Prosecutor, do you want to add anything?

10 MS. LAWSON: The Veseli Defence have made submissions of that  
11 nature before. They're disingenuous. Indeed, it's not a case  
12 against the KLA. It's a leadership case based on a JCE mode of  
13 liability, as Defence counsel is fully aware. Thank you.

14 MR. KEHOE: May I respond to that last point, Your Honour.

15 JUDGE GUILLOU: Mr. Kehoe, very briefly.

16 MR. KEHOE: That argument is out and out specious. I invite  
17 Your Honour -- as Your Honour well knows, paragraph 35 that this  
18 office wrote incorporates virtually every member of the KLA. This is  
19 an attack on the KLA, plain and simple. They may not like it posed  
20 that way, but I invite everybody to look at the indictment that they  
21 drafted, paragraph 35, and who in the KLA is left out of this  
22 description.

23 JUDGE GUILLOU: Thank you, Mr. Kehoe.

24 Let us now move to the next item.

25 Madam Prosecutor, very, very briefly, please.

1 MS. LAWSON: Very briefly indeed, Your Honour. But we would  
2 also invite people to read paragraph 35 of the indictment in the  
3 context of the relevant jurisprudence and the specific language of  
4 that paragraph. Defence counsel is, again, making disingenuous  
5 submissions that he knows to be misleading from a legal perspective.  
6 Thank you.

7 JUDGE GUILLOU: Let us move to the time limits for questioning  
8 witnesses.

9 In its submission, the Thaci Defence indicated that it opposes  
10 the imposition of time limits for questioning witnesses and considers  
11 that it would be a clear violation of the rights of the accused. The  
12 Thaci Defence also opposes designating one common representative of  
13 the Defence for cross-examining certain witnesses.

14 The Veseli Defence indicated that it is not in a position to  
15 provide time limits for the questioning of witnesses at this point of  
16 the proceedings. It also considers that the designation of one  
17 representative to question certain witnesses cannot be made this far  
18 in advance of the trial.

19 The Selimi Defence does not object, in principle, to reasonable  
20 time limits being placed on the cross-examination of each witness,  
21 subject to several factors. The Selimi Defence also considers that  
22 appointing a single representative of the Defence teams to  
23 cross-examine certain witnesses is inherently problematic.

24 And, finally, the Krasniqi Defence also opposes any suggestion  
25 that the Defence should designate one representative for

1 cross-examining certain witnesses.

2 I will start with the Defence.

3 Mr. Kehoe, please.

4 MR. KEHOE: Yes, Your Honour. I'll be very brief at this point  
5 of the day.

6 At this point, it's just too early to limit those  
7 cross-examinations. We don't know enough about what the Prosecution  
8 is doing in their case.

9 On the subject of designation, I understand what Your Honour is  
10 trying to get at. What happens in the course of these cases with  
11 experienced counsel, it falls out with a particular witness that is  
12 focused on a particular accused, that that counsel will take the lead  
13 for that particular witness. And generally speaking, the rest of  
14 counsel is not going to repeat that.

15 So in the natural order of things, I can tell you as an officer  
16 of the court, Judge, having done this before, that that's how it will  
17 go with these Defence counsel, I am sure. I've talked it over with  
18 several of them, so I don't think at this point we have to worry  
19 about that issue.

20 The time constraints, until we get more information, we just  
21 can't agree.

22 JUDGE GUILLOU: Thank you, Mr. Kehoe.

23 Do I take from your submissions, Mr. Kehoe, that you do not want  
24 to commit to an agreement that one Defence team will be designated to  
25 interview one witness in particular, but, in practice, on a

1 case-by-case basis, you are in agreement to have *inter partes*  
2 discussions so that --

3 MR. KEHOE: Absolutely.

4 JUDGE GUILLOU: -- you do not double up the cross-examination of  
5 the witness; is that correct?

6 MR. KEHOE: That's correct.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 Microphone.

10 MR. KEHOE: Oh, sorry. I just want to hear you.

11 MR. EMMERSON: No one can hear me until you turn it off.

12 Simply to endorse that second proposition. In reality,  
13 repetition of questioning is a waste not only of everybody's time,  
14 but it's not good Defence counsel conduct either. So we will do  
15 our -- obviously, amongst the Defence teams, endeavour to ensure that  
16 there is a minimum of repetition, because it's not in anyone's  
17 interests.

18 As far as the first issue is concerned, I just want to ensure  
19 that our position is understood and summarised accurately. We have  
20 worked in the past on numerous occasions within time limits,  
21 providing they're not inflexible, to cross-examine witnesses. But in  
22 the sense that there can be a general rule, usually cross-examination  
23 should be focused around a rough time limit, let's say 45 minutes or  
24 a half an hour. But if there is a particular witness that counsel  
25 anticipates taking longer for, then notification will be given to the

1 Trial Chamber.

2 It's essentially a matter of trial management, really.

3 JUDGE GUILLOU: Thank you, Mr. Emmerson.

4 Mr. Young.

5 MR. YOUNG: Yes, Your Honour, in relation to the first point,  
6 time limits, we do say that it's far too early with respect to -- to  
7 start discussing that. That would have to be done on a  
8 witness-by-witness basis with the Trial Panel. There are too many  
9 uncertainties at this moment in time.

10 As to the second part, of a Defence representative, we would  
11 strongly object, and I totally endorse what Mr. Kehoe said. The  
12 reality is that experienced Defence counsel coordinate all the time  
13 on these matters so that there isn't any repetition, as Mr. Emmerson  
14 said, and that we -- it's so something that should be left  
15 organically to experienced Defence counsel so these things are worked  
16 out at trial.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Young.

19 Mr. Baiesu, please.

20 MR. BAIESU: We adopt our written submissions. As the other  
21 Defence teams, we do not agree with any suggestion that the Defence  
22 should designate one representative for cross-examining certain  
23 witnesses.

24 While the Defence is, of course, aware of the need to avoid  
25 duplication and of the need to avoid any delay in the proceedings,

1 unnecessary delay in the proceedings, appointing a representative to  
2 cross-examine witnesses at this stage is unnecessary and interferes  
3 with the fair trial rights. This is also a Trial Panel issue, in our  
4 submission.

5 JUDGE GUILLOU: Thank you, Mr. Baiesu.

6 Madam Prosecutor, do you want to say something?

7 MS. LAWSON: We also consider time limits for examination of  
8 witnesses to be a feasible potential means of proceeding, and we're  
9 indeed providing individualised hours estimates per witness. We're,  
10 basically, in agreement with the Defence as to this being a matter of  
11 sensible trial management.

12 With regard to the proposal for Defence teams to coordinate  
13 cross-examinations, we also consider this a sensible course of  
14 action. As Defence counsel themselves have indicated, the prospect  
15 of lengthy, repetitive cross-examinations is clearly not something  
16 that should be permitted, nor would it be in the interests of either  
17 fairness or efficiency. Thank you.

18 JUDGE GUILLOU: Thank you, Madam Prosecutor.

19 So I will mention in my handover document that the parties agree  
20 on the organic solution proposed by Mr. Young.

21 We will now move to the last subsection of this section, which  
22 is the average sitting time -- no, sorry, it's not the last,  
23 actually. It's the one before.

24 In its written submissions, the SPO anticipates being able to  
25 sit continuously at the Court's convenience.

1           The Thaci Defence proposes that the parties sit four days per  
2 week for regular court hours.

3           The Veseli envisages sitting for a maximum of four full days per  
4 week for four-week blocks followed by one-week break.

5           The Selimi Defence indicates that any schedule must fully  
6 respect the rights of an accused and that flexibility might assist in  
7 moving proceedings forwards. And it also indicates that court should  
8 be used solely for court activity, and that reading summaries of  
9 admitted written evidence or documents as occurred at other courts is  
10 not an effective use of court time.

11           And, finally, the Krasniqi Defence indicates that it does not  
12 believe that it is realistic to anticipate five days per week. It  
13 tentatively proposes that the trial schedule should be set to four  
14 sitting days per week, from Monday to Thursday, with Friday being a  
15 non-sitting day, and with a defined number of additional days per  
16 months as non-sitting days.

17           I remind the parties that this matter will be decided by a  
18 Trial Panel, but I intend to sum up the parties' views in the  
19 handover document.

20           Madam Prosecutor.

21           MS. LAWSON: Thank you, Your Honour. As indicated in our  
22 written submissions, the SPO anticipates being available to sit  
23 continuously at the Court's convenience once trial commences.

24           However, to the extent adjusted hours may be considered  
25 appropriate to facilitate fair and efficient proceedings, that is a

1 matter within the discretion of the designated Panel. Any such  
2 schedule should not unnecessarily break or elongate the time for  
3 which a witness is required to travel or to be available for  
4 testimony. Therefore, limitations of sitting days per week, in  
5 particular, is a matter which, if considered, would need to be  
6 implemented with a significant degree of flexibility. Thank you.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Mr. Kehoe, please.

9 MR. KEHOE: Nothing further in our submission, Judge.

10 JUDGE GUILLOU: Thank you, Mr. Kehoe.

11 Mr. Emmerson, please.

12 MR. EMMERSON: I would only ask Your Honour to record in the  
13 handover document that the reason where there seems to be a consensus  
14 on the Defence side that there should be sitting in blocks of four  
15 days at a time, subject, of course, to the point that my learned  
16 friend makes about witnesses who are halfway through their testimony,  
17 and why there should be a one-week break at the end of every  
18 four-week period, reflects the fact that we are necessarily playing  
19 catch-up in terms of our investigation.

20 And so to that extent, it's unsurprising that the Prosecution,  
21 with the resources at its disposal, and the state of play that one  
22 anticipates it will be at at the time of the trial beginning, should  
23 be in a position to sit consistently. But, plainly, we need to  
24 consult with our clients. But more important than that, we need to  
25 continue -- as important, I should say. We will need to continue

1 investigations and investigative strategies.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Mr. Young, please.

4 MR. YOUNG: Your Honour, we have nothing to add to the written  
5 submissions. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Young.

7 Mr. Baiesu, please.

8 MR. BAIESU: We agree with Mr. Emmerson, that the time will be  
9 needed for preparation during the trial process, also because of the  
10 need to investigate and prepare for the evidence of a substantial  
11 number of the delayed disclosure witnesses whose identities will be  
12 revealed only 30 days before trial or during trial. And, in  
13 addition, written motions will be frequently submitted during trial  
14 and will require time for the parties and participants to prepare and  
15 respond and for the Panel to determine.

16 Otherwise, we adopt our written submissions.

17 JUDGE GUILLOU: Thank you, Mr. Baiesu.

18 I turn to Ms. Radziejowska, Counsel for Victims. Do you have  
19 any submissions on the Court schedule?

20 MS. RADZIEJOWSKA: Thank you, Your Honour. No submissions on  
21 Court schedule. But maybe just to respond briefly to the suggestion  
22 made by Mr. Emmerson as to what was said by Mr. Laws during the last  
23 Status Conference.

24 I think the transcript of that Status Conference speaks for  
25 itself, on page 89, line 4, to page 91, line 25, and then later on

1 page 100, lines 1 to 14. I think this record of what was said by  
2 Mr. Laws during the last Status Conference is clear, that the  
3 suggestions made by Mr. Emmerson today are simply wrong.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Ms. Radziejowska.

6 Unless any submissions are needed on this matter, I will move to  
7 the last item, which is the global time limit for each party's case.

8 On this proposal, the SPO agrees that an overall hours limit  
9 being set for the presentation of a party's case. It considers that  
10 any such limit is best expressed as a number of hours rather than a  
11 particular calendar period.

12 While the Thaci Defence supports the imposition of global time  
13 limits for each party's case, it opposes the imposition of a time  
14 limit of three months for the presentation of each Defence case.

15 The Veseli Defence is willing to commit to global time limits  
16 for the presentation of evidence as set out in its proposal on  
17 streamlining.

18 And, finally, the Krasniqi Defence considers that it is  
19 premature to consider a time limit for the Defence case at this  
20 stage, and that this can only be considered at the conclusion of the  
21 SPO's case.

22 Madam Prosecutor.

23 MS. LAWSON: You've correctly summarised our position,  
24 Your Honour. I have nothing to add to our written submissions.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Mr. Kehoe, please.

2 MR. KEHOE: Yes, Your Honour. We do, in general, support global  
3 time limits. The problem with individual defendants is how much of  
4 the SPO's case is focused on a particular defendant or a particular  
5 accused.

6 I tried a case over at the ICTY where we had multiple  
7 defendants, but, literally, 75 per cent was directed towards my  
8 client. So it became somewhat difficult to limit it to that and just  
9 even it out. So that is a difficult thing to agree to, and I simply  
10 can't until I see how the SPO's case is going to unfold.

11 JUDGE GUILLOU: Do I take it from your oral submissions today  
12 that you are not opposed to an overall time limit, but that this can  
13 only be decided after the Prosecution's case? Is that correct?

14 MR. KEHOE: You've said that much better than I did, Judge.  
15 Yes, that's right.

16 JUDGE GUILLOU: So this can be included in the handover  
17 document?

18 MR. KEHOE: Yes, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Emmerson, please.

21 MR. EMMERSON: Nothing to add to our written submissions, save  
22 to say to -- to remind Your Honour that the position we advanced was  
23 a target of one calendar year. It can be expressed in hours, if  
24 that's more appropriate. But a target of one calendar year for the  
25 Prosecution, and one calendar year as a whole for the Defence.

1 Now, whether that's broken into three months, three months,  
2 three months, three months, is obviously something that would be more  
3 appropriately decided amongst the Defence once we know where we stand  
4 at the end of the Prosecution case, but we do adhere to the notion  
5 that no trial in this tribunal should go on for longer than two  
6 years.

7 JUDGE GUILLOU: That's the reason why I proposed three months  
8 for each Defence teams. It was to match your overall calculation.  
9 Mr. Young, please.

10 MR. YOUNG: Nothing to add to what Your Honour said, save that  
11 we do support the way Your Honour summarised Mr. Kehoe's submissions.

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 Mr. Baiesu, please.

14 MR. BAIESU: Just to add that in our proposal for streamlining  
15 the case, filing 810, we submitted that one calendar year should be a  
16 global time for the Prosecution's case, and we stand by this  
17 proposal.

18 We do accept the principle of equality of arms and the need for  
19 a relationship of proportionality between the length of Prosecution  
20 case and the length of the Defence case. However, those principles  
21 do not require strict mathematical equality. Instead of requiring  
22 the Trial Panel to consider all the circumstances of the case,  
23 including specific strategies of each Defence and the lines of  
24 defence of pursued, and we consider that this cannot be assessed at  
25 this time of the proceedings -- at this stage of the proceedings.

1 JUDGE GUILLOU: Thank you, Mr. Baiesu.

2 Ms. Radziejowska, do you have any submissions on this, on  
3 overall time limit for the parties' case?

4 MS. RADZIEJOWSKA: Your Honour, not at this point in time.  
5 Thank you.

6 JUDGE GUILLOU: Thank you.

7 Let us move now to the date of the next Status Conference.

8 I intend to schedule the next Status Conference on Thursday,  
9 8 September 2022, at 1330 Hague time. I invite the parties to  
10 confirm their availability.

11 Madam Prosecutor.

12 MS. LAWSON: Yes, Your Honour. The Prosecution will be  
13 available at the Court's convenience.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 Mr. Kehoe.

16 MR. KEHOE: Yes, Your Honour, we will be available.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 Mr. Emmerson.

19 MR. EMMERSON: Yes, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Emmerson.

21 Mr. Young.

22 MR. YOUNG: Yes.

23 JUDGE GUILLOU: Thank you, Mr. Young.

24 Mr. Baiesu.

25 MR. BAIESU: Yes, we will be available.

1 JUDGE GUILLOU: Thank you, Mr. Baiesu.

2 Ms. Radziejowska.

3 MS. RADZIEJOWSKA: We will be available.

4 JUDGE GUILLOU: Thank you very much.

5 At this point of time, we will now discuss the -- any other  
6 matter. And for this, we will go into private session.

7 Madam Court Officer, can you let me know when we're in private  
8 session.

9 MR. YOUNG: Your Honour, may I say -- sorry.

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13 [Open session]

14 THE COURT OFFICER: Your Honour, we're in public session.

15 JUDGE GUILLOU: Thank you, Madam Court Officer.

16 Before we conclude today's hearing, I will issue two oral  
17 orders.

18 I will now issue my second oral order on the updated witness  
19 list.

20 In light of the parties' submissions, I order the SPO to file a  
21 witness list which updates the mode of questioning and presentation  
22 time for each witness by 2 September 2022.

23 This concludes my second oral order.

24 I will now issue my third oral order.

25 In light of the parties' submissions, I order the SPO to

1 supplement its Rule 102(3) notice by 7 October 2022.

2 This concludes my third oral order.

3 And this concludes today's hearing. I thank the parties and  
4 participants for their attendance. As usual, I thank the  
5 interpreters, stenographers, audio-visual technicians, and security  
6 personnel for their attendance.

7 The hearing is adjourned. Thank you.

8 --- Whereupon the Status Conference  
9 adjourned at 6.20 p.m.

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