

1 Thursday, 2 December 2021
2 [Defence Preparation Conference]
3 [Open session]
4 [The accused entered court]
5 [The accused Haradinaj appeared via videolink]
6 --- Upon commencing at 9.30 a.m.

7 PRESIDING JUDGE SMITH: Madam Court Officer, you may call the
8 case.

9 THE COURT OFFICER: Good morning, Your Honours. This is
10 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
11 Nasim Haradinaj.

12 PRESIDING JUDGE SMITH: Good morning, everyone. Welcome. I
13 would ask the parties to introduce themselves, starting with the
14 Specialist Prosecutor's Office.

15 MR. PACE: Good morning to the Panel and everybody here and
16 joining us remotely. For the SPO today, we have Ms. Valeria Bolici,
17 Prosecutor; Line Pedersen, Case and Evidence Manager; Matt Halling,
18 Associate Prosecutor; and I am James Pace, Associate Prosecutor.

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 MR. REES: Your Honour, I appear on behalf of Mr. Gucati. I am
21 assisted by co-counsel Mr. Huw Bowden and Ms. Eleanor Stephenson. I
22 am also assisted today by Ms. Faye Wigmore, Mr. Joseph Bowden, and
23 Mr. Muharem Halilaj. Thank you.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. CADMAN: Good morning. I appear for Mr. Nasim Haradinaj who

1 is appearing remotely. In the court with me today is Mr. Omar
2 Soliman, Ms. Clarissa Rodio, Mr. Admir Berisha, and joining us
3 remotely is Ms. Miriam Boxberg.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MR. ROCHE: Good morning, Panel. Good morning, everyone else.
6 My name is Ralph Roche from Judicial Services Division in the
7 Registry. Thank you.

8 PRESIDING JUDGE SMITH: I also note that Mr. Gucati is present
9 in the courtroom and Mr. Haradinaj is following the hearing remotely,
10 as Mr. Cadman indicated.

11 Today we hold the Defence Preparation Conference which precedes
12 the opening of the Defence case. And before we start, for the
13 benefit of the public, I recall that the Prosecution opened its case
14 on 7 October and presented evidence between 18 October and
15 5 November. The Prosecution formally closed its case on 10 November
16 of this year.

17 On 26 November, the Panel decided not to dismiss any of the
18 Prosecution charges at this stage. That decision opened the way for
19 the Defence case to start, if the accused so elected.

20 On 29 November, pursuant to Rule 119, both accused filed their
21 lists of proposed witnesses. The Gucati Defence also filed a list of
22 proposed exhibits.

23 On 30 November, the Panel issued a Scheduling Order for the
24 Defence Preparation Conference to be held today and, if necessary,
25 tomorrow.

1 The purpose of this conference is to prepare for the Defence
2 case. We will go through the agenda set out in our Scheduling Order
3 and also address some other issues, including those flagged by the
4 parties as late as yesterday.

5 The first item on the agenda is the opening statements.

6 Can the Defence confirm that they will be making opening
7 statements; and, if so, would they both be made on Monday,
8 6 December, or would the Haradinaj opening statement be made after
9 the Gucati Defence finishes its case? Also, I'd like you to address
10 how much time you expect to take up with the statements.

11 Mr. Rees.

12 MR. REES: We will make an opening statement, Your Honour. I
13 anticipate it will be something in the region of up to 45 minutes.
14 We can make it on 6 December. We can make it earlier, if the
15 Trial Panel so wishes.

16 I think that answers the request as far as Mr. Gucati's case is
17 concerned.

18 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.

19 Mr. Cadman.

20 MR. CADMAN: Your Honours, I did file a very short note this
21 morning. It may not have made its way to you yet because it was only
22 filed this morning, in relation to some of these points. It is the
23 intention of the Haradinaj Defence to --

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. CADMAN: It is the intention of the Haradinaj Defence to

1 make an opening statement, but it is the intention to make it at the
2 conclusion of the Gucati Defence case.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 THE INTERPRETER: Microphone, please.

5 PRESIDING JUDGE SMITH: The next topic is the accused's
6 attendance in the courtroom during the Defence presentation of
7 evidence.

8 In light of the COVID-19 situation, we need to take into
9 consideration scenarios where the accused cannot be present in the
10 courtroom. Just to clarify, it is the clear preference of the Panel
11 that the accused attend in person, but we know that this is not
12 always feasible because of COVID-related restrictions.

13 I will first give the floor to the Registry.

14 Mr. Roche, what the Panel wants to know is whether the accused
15 can follow the proceedings from the Detention Unit in the event they
16 cannot be present in the courtroom, including in quarantine
17 situations.

18 MR. ROCHE: Thank you, Your Honour.

19 In the event that, based on medical advice, an accused is not
20 able to attend court and is required to quarantine, we have
21 facilities in place for the accused to follow and participate in the
22 proceedings, as necessary, from the detention facilities, including
23 direct access to evidence and other materials.

24 So the answer is yes, it can be facilitated.

25 PRESIDING JUDGE SMITH: Even if he's in quarantine?

1 MR. ROCHE: Yes, because Mr. -- yes, that is the case.

2 PRESIDING JUDGE SMITH: Also, could you please tell the Panel
3 whether any restrictions apply to the possibility for counsel to have
4 access to their client at this stage; and, if so, what are those
5 restrictions?

6 MR. ROCHE: Currently in-person visits are not yet resumed at
7 the detention facilities. They will be as of Monday, 6 December.
8 The accused have been able to maintain telephone contact with their
9 counsel at all times as of the implementation of the self-isolation,
10 on medical advice. And we are also able to facilitate Zoom meetings
11 upon request, and we have offered those to counsel and their accused.

12 PRESIDING JUDGE SMITH: Thank you, Mr. Roche.

13 MR. ROCHE: Thank you.

14 PRESIDING JUDGE SMITH: I presume that the preference of the
15 Defence is -- of course, is to have the accused in the courtroom, but
16 I will give the floor to you to speak in this regard.

17 Mr. Rees, I don't know if you have anything to add.

18 MR. REES: Mr. Gucati is here. He has been here throughout the
19 trial, and we intend that he will continue to do so, save for any
20 unforeseen events that may preclude that.

21 PRESIDING JUDGE SMITH: Thank you.

22 Mr. Cadman, your turn. And can you also tell the Panel whether
23 the problem you flagged yesterday with the secure Electronic
24 Disclosure System has been resolved by now?

25 MR. CADMAN: Dealing with it in reverse order, yes, it has been

1 resolved. We are able to transfer documents securely now.

2 What I would say is for Mr. Haradinaj the situation is slightly
3 different, because he is still displaying symptoms of COVID. As
4 you've heard from Mr. Roche, we don't have any direct access other
5 than through secure electronic communications. It does cause
6 difficulties as far as being able to take instructions during the
7 trial. For that reason, I think it would be advisable, as we have
8 suggested, for the Gucati Defence to go first and then the Haradinaj
9 Defence to follow. That will enable me to be able to have greater
10 contact with Mr. Haradinaj when we present our Defence case.

11 At the moment, we've been informed that he has to remain in
12 quarantine until at least tomorrow. We don't know -- they haven't
13 taken a test, because he's still displaying symptoms. Once we know
14 the position, then we will continue. What Mr. Haradinaj has
15 instructed is that he does not want his inability to be physically in
16 the court to delay matters any further, bearing in mind he's been in
17 custody for 14, 15 months now. He really wants this matter to press
18 on.

19 So those are my instructions. But, obviously, it will limit the
20 ability to properly present his case if I don't have contact with
21 him.

22 PRESIDING JUDGE SMITH: Thank you very much. We do appreciate
23 everyone's cooperation and patience, which you've been showing, and
24 it is, of course, our intention to try to keep going forward in this
25 case to reach a conclusion as soon as it is possible.

1 And, Mr. Haradinaj, we thank you for your presence today, and we
2 hope you are feeling better soon.

3 The next topic is the SPO challenge --

4 THE ACCUSED HARADINAJ: [Via videolink] [Interpretation] Thank
5 you.

6 PRESIDING JUDGE SMITH: The next topic is the SPO challenges
7 against Defence witnesses. This issue also goes into the Panel's
8 authority to determine the number of Defence witnesses during this
9 conference, as provided in Rule 119(3) (a).

10 Before we go into this topic, a brief procedural background is
11 warranted.

12 On 12 July 2021, the Defence filed their respective pre-trial
13 briefs together with provisional lists of proposed witnesses. The
14 two lists were identical except for an additional proposed witness on
15 the Haradinaj list.

16 On 21 July, the Panel ordered the Defence to file a summary of
17 facts or circumstances in relation to which each witness, on the
18 Defence provisional witness list, would testify.

19 On 27 August, pursuant to the 21 July order, the Defence made
20 additional submissions regarding the purported relevance of the
21 proposed witnesses.

22 On 15 September, the SPO filed a request to remove five
23 witnesses from the Defence list and limit the testimony of five other
24 witnesses to matters relevant to the charges.

25 On 27 September, the Defence responded to the SPO request.

1 On 15 October, the Haradinaj Defence filed the expert report of
2 the first proposed expert witness.

3 On 22 October, the SPO filed its challenge to this report.

4 On 9 November, the Haradinaj Defence filed the expert report of
5 a second proposed expert witness.

6 On 16 November, the SPO filed its challenge to this report as
7 well.

8 On 29 November, the Defence submitted their Rule 119 filings as
9 follows: The Gucati Defence submitted a list of eight proposed
10 witnesses, of whom two are new in the sense that they are not
11 mentioned in the provisional witness list. One of these new
12 witnesses is Mr. Gucati.

13 The Gucati Defence also submitted a list of proposed exhibits.

14 The Haradinaj Defence submitted a list of seven proposed
15 witnesses, of whom two are new, and one of those new witnesses is
16 Mr. Haradinaj.

17 Having reviewed the new list of witnesses, the Panel notes that
18 the Defence no longer intend to call eight witnesses who were listed
19 on both initial lists of witnesses. Five of these witnesses were
20 challenged by the SPO, so those challenges are moot.

21 On 1 December, the SPO submitted a new challenge requesting the
22 Panel to remove Defence Witness 1248 from the Gucati witness list and
23 not authorise improper opinion evidence in relation to five other
24 witnesses; four on the Gucati list and one on the Haradinaj list.

25 The Panel further notes that there is an outstanding issue

1 regarding the classification of the Gucati list of exhibits, that is,
2 F460, Annex 2. The Panel invites the SPO to address this matter, if
3 need be, in private session.

4 Mr. Prosecutor, I invite you to make any additional submissions
5 you might have on the question of the witnesses that the Defence may
6 call. Since you made a filing yesterday, I presume you don't have
7 much to add, but the floor is yours if you do have something to add
8 at this time.

9 MR. PACE: Thank you, Your Honour. And with your indulgence,
10 I'll just briefly go back to the issue of opening statements in light
11 of what the Defence for Mr. Haradinaj said.

12 I note that it doesn't seem to be a situation envisioned under
13 Rule 126(2) that there's a staggered Defence opening. 126(2) refers
14 to either following the opening statement of the
15 Specialist Prosecutor or after the conclusion of presentation of
16 evidence of the Specialist Prosecutor and before the presentation of
17 evidence by the Defence.

18 The presentation of evidence by the Defence will commence next
19 week, and the Defence is -- for the witnesses who are being called in
20 relation to both of them, I understand the Haradinaj Defence will be
21 leading direct examinations, if necessary, of the witnesses called by
22 Mr. Gucati. So, in that regard, it's not clear to us that the
23 proposal put forward by the Haradinaj Defence is actually acceptable
24 or logical.

25 But, of course, it's up to the --

1 PRESIDING JUDGE SMITH: [Microphone not activated] Are you
2 raising an objection?

3 MR. PACE: Your Honour, I'm noting that it doesn't seem to be
4 envisioned as a possibility under the rules. Of course, Your Honours
5 could prefer that or deem it acceptable. But in terms of
6 compatibility to the rules, it doesn't seem to be compatible. Our
7 preference, yes, the SPO's position, is to have both the opening of
8 the Gucati and Haradinaj Defence at the same time, which would be
9 before the start of any Defence case.

10 But, of course, as I said, if the Trial Panel doesn't see an
11 issue with it, then it's, of course, within your discretion.

12 I'll turn next to the current agenda item. The SPO maintains
13 requests set out in relation to Defence witnesses, to the extent they
14 are not moot, by the virtue, as Your Honour has already mentioned, of
15 the Defence having decided not to call certain witnesses.

16 I will make brief additional submissions without repeating what
17 we set out in filings F312, F388, F438, and F466, which is
18 yesterday's filing.

19 On 30 November and 1 December, the Defence disclosed statements
20 of witnesses addressed in our filing F312. These statements make the
21 relevance of the proposed testimony of certain witnesses and their
22 inability to assist the Trial Panel in the determination of any
23 relevant matter even more clear than they were at the stage when the
24 Prosecution opposed such testimony.

25 Before I go into the next few points, I seek some clarity from

1 either the Defence or the Panel. I want to address a couple of
2 issues specifically raised in statements which have now been provided
3 to the Prosecution. I note that the witness statements annexed to
4 the Haradinaj submissions were filed confidentially. I could not,
5 myself, find a classification for the statements disclosed by the
6 Gucati team.

7 And I also note that, of course, no protective measures are
8 being sought, so the guidance I would like is as to whether I can
9 refer to specific parts of Defence witness statements in open
10 session, or whether it would require me to go into private session.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MR. REES: We have, throughout, encouraged and urged openness
13 and transparency. We have no issue with these matters being dealt
14 with in public.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. CADMAN: Likewise, Your Honour.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 THE INTERPRETER: Microphone, please.

19 PRESIDING JUDGE SMITH: Does that answer your question,
20 Mr. Pace?

21 MR. PACE: Certainly, Your Honour, and I appreciate the
22 Defence's clarification on the matter.

23 So as I was saying, a number of the disclosed witness statements
24 make the irrelevance of the proposed Defence witness testimony and
25 their inability to assist the Panel even more clear than they were

1 before.

2 And I'll be brief, I'll mention a few examples. I'll first
3 address the statement of DW1251. The statement doesn't seem to have
4 an ERN, but it's contained on pages 11 to 36 of Annex 2 of filing
5 F461.

6 The statement expressly says it contains some of the evidence
7 that this witness would provide to the Kosovo Parliament. The KSC is
8 not the Kosovo Parliament, and this Trial Panel is not dealing with
9 matters in any way relating to what the parliament may be or may in
10 the future deal with. The KSC is a judicial institution, and this
11 Trial Panel is seized with a specific case where two persons have
12 been accused of committing several crimes. This case and this
13 courtroom is not an alternative forum for someone to air their
14 personal grievances.

15 Indeed, this witness's statement amounts to a list of
16 complaints, criticisms, and delegations by the witness about EULEX, a
17 separate institution to the one we are in today. The statement bears
18 no relevance to this case whatsoever.

19 In its 26 pages and 125 paragraphs, the statement only makes
20 mention of the KSC, the SPO, or the accused when the witness provides
21 unfounded allegations and irrelevant opinion about the KSC, the SPO,
22 or the accused, and that's in about 10 of the 125 paragraphs.
23 Opinion by non-experts, which is not grounded in fact, cannot assist
24 the Trial Panel in this case.

25 Similar considerations apply to the 29-page, 117-paragraph

1 statement of DW1250. I won't delve into that in further detail
2 because, as I said, the arguments are the same or similar at least.

3 The last example I will give, which really bears out the
4 irrelevance and the inability to assist the Trial Panel by certain
5 Defence witnesses, is in relation to DW1246. In his statement, which
6 is DHG0181 to DHG0183, the witness seems to assert that he wasn't
7 even in the country when the relevant events to this case happened,
8 and he specifically acknowledges he has no knowledge or competence to
9 address any investigations which may have been undertaken by the SPO
10 in relation to relevant events.

11 He also offers what he terms as "personal opinion" about the
12 manner in which the SPO conducted the search and seizure and arrests,
13 which opinion is both improper from a fact witness and entirely
14 irrelevant to the charges.

15 I also would like to note -- and, Your Honour, if you deem this
16 more appropriate to address at a later stage, I can do so. I think
17 it falls within the current agenda item. That rather than providing
18 in relation to any witness a summary of facts on which the witnesses
19 for the Defence are expected to testify, which is required by
20 Rule 119(2)(a)(iv), the Defence has merely referred to witness
21 statements provided.

22 So at this stage, the SPO seeks confirmation from the Defence
23 that this means that no matters, other than those specifically
24 addressed in each of the statements, will be raised during direct
25 examination. That's one request.

1 And in this regard, we note that despite seeking admission of
2 all or all but one -- at the moment it's unclear, of admission of all
3 but one statement by Defence witnesses pursuant to Rule 154, whereas,
4 for certain witnesses, the Defence estimates a few minutes in direct
5 examination, we have an estimate of two or three hours for the direct
6 examination of the accused and then of 45 minutes to an hour in
7 relation to certain other witnesses.

8 So, again, the clarity we seek is in this lengthier direct
9 examination, is the expectation that the witnesses are going to be
10 sticking only to matters strictly addressed in the statement or are
11 they going beyond?

12 And, to be clear, our position, in fairness, is the one we set
13 out during our own case, which is, you can go beyond matters
14 addressed in a statement. The issue which arises then is of notice
15 to the other party, which would be through a summary of issues to be
16 addressed, which we do not have. If the Defence gives its assurance
17 that it is going to stick in direct examination to the statement and
18 the topics addressed therein, perhaps no summary is required, even
19 though technically it is required under the rules.

20 One last point is in relation to exhibits, which I believe also
21 falls under this agenda item.

22 In relation to this Gucati exhibit list, F460/A02, we note that
23 a number of items on that list are clearly irrelevant and/or have no
24 decipherable link to any witness the Defence intends to call.

25 As such, in the interest of the expeditiousness of the

1 proceedings, we would like to know whether the Defence intends to
2 request or to submit a bar table motion; and, if so, we can then
3 factor that into our estimates for time and our work planning.

4 I note that Your Honour also mentioned the issue we raised
5 yesterday with CMU in F460/A02. I'm happy to address it in private
6 session now or later, if you want, but we really don't have anything
7 to add other than what we put in our e-mail, which I believe was also
8 an update to the Panel as to the need for the redaction of, I think,
9 it's just two words.

10 So if Your Honour has no more questions about that, or if you
11 don't think I need to go into that any further, those are our
12 submissions.

13 Thank you.

14 PRESIDING JUDGE SMITH: No need to go into that at this time.

15 Mr. Rees, do you wish to respond to any of this, especially the
16 issue about the witness statements and going beyond the terms of the
17 witness statement, and also on the bar table motions?

18 MR. REES: Firstly, the Defence for Mr. Haradinaj will not be
19 leading direct examination of any witnesses that I call, and I do not
20 understand where Mr. Pace has got that impression from.

21 In relation to DW1251, 1250, and 1246, which Mr. Pace refers to,
22 they are not witnesses on our witness list, so I will leave
23 Mr. Cadman to address the position in relation to those witnesses.
24 But in general, we do support the position of Mr. Haradinaj's team in
25 relation to their witnesses, but it is their witness list and it is

1 their case.

2 And I mention in passing, because it has already been raised,
3 even though we haven't reached it, perhaps, on the Scheduling Order,
4 we object to any suggestion that the calling of witnesses, as part of
5 Mr. Haradinaj's case, is interposed before the end of the Defence
6 case for Mr. Gucati. We object to that as a proposition. We intend,
7 and we maintain it is our right under the rules, to call Mr. Gucati
8 first, in his own Defence, and then to complete the Gucati Defence
9 case before there are any moves to Mr. Haradinaj's Defence case and
10 evidence.

11 We have made full disclosure of detailed witness statements for
12 each of the witnesses we propose to call. We do not need, and we do
13 not take any lessons on disclosure, particularly in relation to the
14 issue as to advanced disclosure of witness statements, from the
15 Prosecution in this matter.

16 We have set out in our witness statements the issues upon which
17 a witness is intended to testify. And if there are to be any
18 additional issues that require further disclosure, we will make such
19 disclosure. But the bundle that we have disclosed containing
20 detailed witness statements sets out fully and in detail the scope of
21 the Defence case for Mr. Gucati to be called through the witnesses on
22 that list.

23 In relation to the times that we've proposed for direct
24 examination, we intend to take Mr. Gucati through his witness
25 statement in some detail. In relation to the other witnesses, we

1 intend to make use -- as we do with Mr. Gucati, but to make fuller
2 use, as it were, of the provision within the rules to adduce the
3 witness statement by calling the witness to effectively confirm the
4 contents of the witness statement, and tender the witness for
5 cross-examination.

6 We have provided some time for any additional questions,
7 perhaps, to -- if necessary, to flesh out any particular area of the
8 witness statement, but that's why we've given short times for direct
9 examination for the other witnesses. We submit that is the proper
10 way of using the rules to make sure that proceedings are efficient
11 and dealt with expeditiously.

12 In relation to any particular sentence that is included in the
13 witness statement that the Prosecution takes objection to, our
14 position is this. One doesn't need to go through those witness
15 statements with a fine tooth comb looking for any particular sentence
16 that the SPO may object to.

17 You are, of course, Your Honours, a professional Trial Panel,
18 and the statements can be admitted properly with the witness being
19 called and tendered for cross-examination, and then such weight as is
20 appropriate to any part of that witness statement will be determined,
21 of course, by the Trial Panel in due course.

22 The only witness to which there is objection in the sense of, to
23 use the shorthand, application to strike off the list, we understand
24 is the objection in relation to the statement of DW1248. I won't use
25 the pseudonym. It's Mr. Bowden who is present in court, of course.

1 And the reason why he wasn't on the original list is because the
2 issue arose during the course of cross-examination of the Prosecution
3 witnesses.

4 The Trial Panel will recall that we were permitted, as a
5 relevant line of questioning, to establish with the witness
6 Zdenka Pumper, whether -- and, indeed, with Mr. Halil Berisha,
7 whether articles to which the attention of the Trial Panel had been
8 drawn by the SPO were still publicly available on web sites. The
9 witness was not able to confirm that and declined to do so.

10 The witness statement of Mr. Bowden confirms that those web
11 sites are still publicly available, and as I understand there is no
12 challenge factually to that from the Prosecution. So perhaps the
13 matter can be dealt with by way of an agreed fact. But it was a
14 relevant line of questioning, we were permitted to ask it, and we're
15 permitted, it seems to us, to answer it. But I will -- we will
16 perhaps address that with a proposed agreed fact to the SPO and see
17 if it can be dealt with in that way.

18 In relation to the exhibit list. That is, of course, a list of
19 proposed exhibits. None of them have been tendered for admission as
20 of yet. We are cognisant of the encouragement from the Trial Panel
21 at an earlier stage to make use of bar table motions, and we are
22 considering that. The extent to which the list of possible exhibits
23 appears on that bar table motion, in full or in part, is yet to be
24 determined, but we will make that motion as soon as we are in a
25 position to make that determination.

1 Unless there's anything further in the circumstances, I think
2 that does answer the requests of the Gucati team at this stage.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 Mr. Cadman.

5 MR. CADMAN: I'll try not to repeat anything that Mr. Rees has
6 already said. Just to say that I support the position that he's put
7 forward. In particular, just to clarify the point, it is not the
8 intention of the Haradinaj Defence to lead any of the witnesses that
9 Mr. Rees has put on his witness list.

10 What was put in the written submissions was that in the event
11 that there are additional questions that need to be put to those
12 witnesses in order for Mr. Haradinaj's Defence to be put, then those
13 questions will be put at the conclusion of Mr. Rees's direct
14 examination. But certainly, I will not be leading any of those
15 witnesses. That's for Mr. Rees to deal with.

16 In terms of the challenge to the witnesses that has been made,
17 the three witnesses that fall on the Haradinaj list, 1250 -- 1251, to
18 deal with that first, we have set out previously why we consider
19 those witnesses to be relevant and necessary to present
20 Mr. Haradinaj's Defence of public interest. We maintain the position
21 that we have previously advanced.

22 Obviously, the SPO has set out their objections that have been
23 previously responded to. I don't intend to go into a great detail on
24 that now. You now have those statements to consider as to whether
25 they are relevant for the question of determining the public

1 interest. Our position is that it sets out the state of mind of
2 Mr. Haradinaj at the relevant or during the relevant time-period.
3 That's also set out also in the summary that we have submitted on his
4 behalf, and a fuller statement will obviously be submitted by 1600
5 tomorrow as ordered by the Trial Panel.

6 We maintain that those two witnesses are relevant to the Defence
7 of setting out the public interest.

8 As far as Witness 1246, DW1246 is concerned, who also appears on
9 the Haradinaj Defence. It is relevant to the point as to whether the
10 Kosovo police were directed to conduct any investigation or were
11 actively prevented from carrying out any investigation. For that
12 matter, it's quite clear from that witness's statement what the
13 position was in terms of the SPO providing direction to the Kosovo
14 police. He was a senior member of the Kosovo police at the relevant
15 time, and the fact that he was not in the country at the time of the
16 disclosures does not affect the evidence that he can present. He can
17 present, as a senior member of the police force, what instructions
18 were given to his police force and those officers under his command.
19 Certainly we don't intend to go any further than what's already set
20 out in his statement.

21 In terms of the timings that have been set out. We take the
22 position, as Mr. Rees has already stated, that it will require us to
23 go very briefly through the statements that have already been
24 tendered. There may be additional questions that arise, but we
25 certainly do not extend passed those time-periods that have already

1 been set out in the 119 filing.

2 The only question is possibly an underestimation of the time
3 allocated for Mr. Haradinaj's evidence. I think it was put on the
4 119 as two to three hours. I think it would be more -- it would be
5 ambitious to suggest that we would be able to complete that within
6 two to three hours. I can submit an amended filing. It's likely to
7 take up to a full day. But certainly for all of the other witnesses,
8 we maintain the positions that have already been set.

9 In terms of -- I may be jumping the gun slightly. But in terms
10 of any exhibits that the Haradinaj Defence is going to be submitting.
11 Certainly, we will be adopting the exhibitlist submitted by the
12 Gucati Defence. The additional exhibits are in relation primarily to
13 the two expert witnesses and reports that have been referred to
14 within those expert reports. But, of course, that exhibit list can
15 be submitted by the close of business today.

16 Unless Your Honours would like me to address anything further.

17 PRESIDING JUDGE SMITH: Thank you very much, Mr. Cadman.

18 The Panel will issue an oral order at the end of the hearing on
19 the classification of the Gucati list of exhibits. The decision on
20 the Defence witnesses will be issued tomorrow, with an oral summary
21 to be provided today.

22 Mr. Pace.

23 MR. PACE: Yes, Your Honour. I'd like to briefly respond to
24 three issues raised in the Defence submissions.

25 The first is that raised by counsel for Mr. Gucati in terms of

1 the need or otherwise to go through statements tendered for
2 submission pursuant to Rule 154 with a fine tooth comb.

3 Our position is that Rule 154 should not be used to circumvent
4 the requirements of Rule 138 and should not be used to circumvent
5 what, in essence, would be inadmissible *viva voce* testimony by, let's
6 say, to use the colloquial term, sneaking that in in written form.
7 So as we would object to certain excerpts from statements were they
8 to be elicited *viva voce* in terms of relevance, we would object and
9 we do object to those parts of the statements which are patently
10 irrelevant being admitted through Rule 154. We are not saying the
11 entire statement should not go in if there is a relevant opinion in
12 it, but certainly those excerpts which are about irrelevant opinion
13 should not go in through Rule 154.

14 In terms of Witness 1248, we maintain the irrelevance, and we've
15 heard nothing about why the information therein is relevant to the
16 case. However, and in terms of the alternative offered, we did offer
17 an alternative in our submissions. If the Trial Panel does deem that
18 evidence relevant, we think it should just be admitted through
19 Rule 153. We do not think it's relevant. If the Trial Panel does,
20 Rule 153 would be more adequate if the Trial Panel or the Defence, or
21 both, feel an agreed fact would be more appropriate, then we could
22 also discuss that, but we did offer an alternative.

23 And the last thing, very briefly, is that it now does seem that
24 the Defence will file a bar table motion, so we would ask the Panel
25 to set a deadline. I'm not saying to set a deadline now or even to

1 set it for next week, but it's just one of many things which have to
2 happen before the end of the case, and it's one of the things which
3 could require some time in terms of, obviously, Defence submissions,
4 our response, and a decision, and we would not want that to weigh
5 down or unnecessarily prolong the proceedings.

6 Thank you, Your Honour.

7 PRESIDING JUDGE SMITH: Mr. Cadman, you have the floor.

8 MR. CADMAN: Sorry, Your Honour, there was just one other matter
9 that I had omitted to raise earlier, and that's in the timing of one
10 of our experts. We have been in contact with CMU as to the timing.
11 Obviously, the expert currently resides in Australia, which is,
12 obviously, proving a challenge to organise the video-link of his
13 testimony.

14 But in terms of the timing, he would not be able to testify
15 before the 17th. I think the 17th would be the earliest day in which
16 he would be available, for reasons outside of our control.
17 Obviously, the sooner that we can notify him whether he will be
18 giving evidence or not, the sooner we can get him to firm up his
19 schedule.

20 PRESIDING JUDGE SMITH: Thank you very much, Mr. Cadman. We
21 will address that.

22 Moving on to the next topic, which is cross-examination
23 estimates. The Panel notes the submission of the Haradinaj Defence
24 that it does not intend to question the Gucati witnesses unless that
25 appears necessary following their examination-in-chief. The Panel

1 also notes the pending SPO challenges but, nevertheless, asks for
2 these estimates in the event that these challenges fail.

3 So first, Mr. Rees, do you intend to question the Haradinaj
4 witnesses, or is your submission similar to Mr. Cadman's?

5 MR. REES: In relation to Witness DW1246, I would have, I think,
6 some short cross-examination, perhaps no more than 20 minutes. In
7 relation to the remaining witnesses then, my position would be that
8 any cross-examination would only be in relation to any additional
9 matters that had arisen during direct examination.

10 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.

11 Mr. Prosecutor, what are your cross-examination estimates for
12 the proposed Defence witnesses?

13 MR. PACE: Thank you, Your Honour. For the cross-examination of
14 Mr. Gucati, we estimate ten hours for cross-examination. I'll get
15 into a little bit more detail in a minute.

16 For the cross-examination of DW1241, 1242, 1243, 1244, 1245, and
17 1247 we estimate two hours for each of those witnesses. For 1248,
18 this, of course, depends on the motion that we filed where we said if
19 the Trial Panel does want to hear that evidence it can go in through
20 Rule 153, which means there would be no cross-examination required.

21 In terms of Mr. Haradinaj's testimony, this very much depends.
22 We received this morning a summary, a common draft statement by
23 Mr. Haradinaj. It looks quite lengthy. We, of course, have not had
24 time to look at it properly in any way. We understand, although I'm
25 a little confused, that the deadline is set for a full statement by

1 tomorrow -- or at least that seems to be what the counsel for
2 Mr. Haradinaj has undertaken to do.

3 We do seek some more clarity about the mode of testimony for
4 Mr. Haradinaj, which is whether it remains as stated in the Defence
5 submissions that it is also a Rule 154 admission. So when or if such
6 statement is disclosed, that the intention is to admit that statement
7 pursuant to Rule 154, because that, of course, will have an impact on
8 our estimates for cross-examination.

9 We also, while we're on the matter of the statement or summary
10 of Mr. Haradinaj, it is very important that we do receive any further
11 information before, and ideally as much before as possible, the
12 testimony of his co-accused, in terms of preparation.

13 I'll continue on the estimates for other witnesses. For 1254,
14 we estimate a cross-examination of four hours. For witnesses 1246,
15 1250, 1251, and 1252, if they are authorised to testify, which we
16 submit they should not be, our cross-examination would be of about
17 two hours for each of them. And for the last witness, D1253, again,
18 if authorised to testify, which we submit he should not be, the
19 cross-examination would be of around four hours.

20 And as I said, these are, of course, estimates. In particular,
21 we know that we have not received any notice of what, if any,
22 exhibits are going to be used with any of the witnesses. So, again,
23 that's something that we would like to receive some clarity about.
24 It could be we have no notice, because no exhibits, other than the
25 statements, will be used. That would be good to know.

1 And in terms, like I said a little earlier, in relation to the
2 cross-examination of the accused, we said ten hours each, which may
3 change, in particular in relation to Mr. Haradinaj, his mode of
4 testimony, and whatever is going to be contained in any forthcoming
5 statement. But, of course, the estimates really will depend on the
6 level of responsiveness to the specific questions put by the SPO. We
7 would like nothing more than to wrap up cross-examination of the
8 accused and any other witness as quickly as possible.

9 Yes, those are our submissions, unless Your Honour has any
10 further questions.

11 PRESIDING JUDGE SMITH: Thank you, Mr. Pace.

12 We can move on to the next topic, which is any further
13 submissions on the elements of offences and modes of liability.

14 Before I give the floor to Judge Barthe, who has some questions,
15 I just want to note that the Panel raises these questions because
16 they did not come up in the current form at the Trial Preparation
17 Conference but they were raised in the submissions under Rule 130.
18 So these are just clarifications that the Panel seeks of the parties'
19 positions on the law.

20 Judge Barthe, the floor is yours.

21 JUDGE BARTHE: Thank you, Judge Smith.

22 First, can the parties clarify whether there is any dispute on
23 the specific intent requirement under Count 4, that is retaliation;
24 and in this regard, can the SPO please explain how the evidence it
25 adduced under this count ties into this definition.

1 Mr. Prosecutor, you have the floor.

2 MR. PACE: Thank you, Your Honour.

3 In relation to -- well, in relation to the applicable law, both
4 on the elements of the crimes and modes of liability, in general we
5 rely on the Confirmation Decision and our previous submissions.

6 Addressing the specific question put by Your Honour. We rely,
7 in particular, on paragraphs 52 to 57 of the Confirmation Decision.
8 And our submission is that the specific intent required for Count 4
9 is that to retaliate, and that is clearly set out in articles 388 --
10 in Article 388(1).

11 I also take the opportunity to clarify what the Trial Panel
12 asked us to do in our final trial brief now. And here I'm referring
13 to paragraph 65 of the Rule 130 decision, F450, and that is to
14 clarify that the subjects of the retaliation within the meaning of
15 Article 388 are those persons identified in the indictment as
16 "witnesses." I'm using quotes because, as everybody knows, witnesses
17 has a specific term, which I remind you for the SPO are any persons
18 likely to have information about a crime, the perpetrator, or
19 important circumstances relevant to SC proceedings.

20 Now, in terms of how the evidence supports the specific intent.
21 Your Honour, for us the evidence fully supports the specific intent.
22 I will refer to one category of evidence, which is the statements
23 made by the accused as captured on numerous videos, press
24 conferences, and media appearances in which they are demonstrating
25 that they want to retaliate against persons who have provided

1 information, who have cooperated with the SPO, and they do this in
2 the various manners which we have set out in our pre-trial brief and
3 also in our Rule 130 submissions.

4 But one way of the retaliation against them is basically through
5 a form of intimidating them, which is to call them out. The act of
6 even making the information available to the media, of making it
7 public, these are all measures which we say demonstrate that they
8 intended to retaliate against people. There is no need for any more
9 direct or specific act than the ones which we have captured in
10 evidence, so our submission is that the evidence fully supports the
11 specific intent required.

12 And those are our submissions at the moment.

13 JUDGE BARTHE: Thank you, Mr. Prosecutor.

14 Mr. Rees, any comment from your side.

15 MR. REES: Well, I won't respond to the submissions made on the
16 evidence that Mr. Pace has just done. We will reserve that until our
17 closing final trial brief and closing statement.

18 On the specific question that Your Honour raised. We do submit
19 that specific intent requires the SPO to identify the individual who
20 it claims were subject to retaliation.

21 I'm not sure that I need to go any further than that at this
22 stage.

23 JUDGE BARTHE: Thank you, Mr. Rees.

24 Mr. Cadman.

25 MR. CADMAN: Your Honour, I would just say, I would just support

1 what's been said, and it's actually set out in our previous filing on
2 the elements of crime and modes of liability.

3 JUDGE BARTHE: Thank you.

4 And the second question is: Can the parties clarify what their
5 position on whether proof is required under Count 6, that the
6 protective measures were still valid and in force at the time of the
7 alleged commission of the offences, that is, in September 2020, and
8 I'm especially asking in relation to protective measures allegedly
9 granted by courts other than this Court.

10 Mr. Prosecutor.

11 MR. PACE: Thank you, Your Honour.

12 On this subject and on these counts, the SPO relies on
13 paragraphs 34 to 50 of the Confirmation Decision. In particular, on
14 the definition of protected information for Count 5, that's at
15 paragraph 37; and of protected persons, for Count 6, and that's at
16 paragraph 44. And these show that these notions are broad ones.

17 In particular, Article 392(2) and (3) do not specifically
18 require any specific or formal protective measures of protection or a
19 protection order as such. So court-ordered protective measures from
20 this or other courts are one way for persons to qualify as protected
21 persons. But even if such measures did not exist, the witnesses in
22 this case would still be protected within the meaning of the law
23 because of the definition provided, which is, we submit, the correct
24 one.

25 All that is required under the relevant subarticles is that the

1 unauthorised revelation of information on the identity or personal
2 data of a person under protection in criminal proceedings are in a
3 special programme of protection. So the wording itself supports what
4 we're saying and what the Pre-Trial Judge said, that no specific
5 court-ordered protective measure is required.

6 Nevertheless, I will make a few points in relation to
7 court-ordered protective measures, bearing in mind the question put
8 by the Panel.

9 The Trial Panel has admitted relevant evidence showing that
10 certain KSC-ordered protective measures have not been varied. Those
11 related to Cases 04 and 05 before this very Court. And those are
12 cases, one of which is at pre-trial, and one is at trial.
13 Furthermore, the Court has also -- the Panel, this Panel, has also
14 admitted evidence that SPO requests for protective measures were
15 pending before the Pre-Trial Judge in other proceedings. The
16 evidence I'm here referring to are P151, P152, and P154. And this
17 latter request is a further indicator that formal measures of
18 protection were being adopted.

19 In relation to relevant protective measures ordered by Kosovo
20 courts. The SPO was not aware of any relevant rescission of such
21 orders at the time the charges were brought. If we were, we would
22 not have brought the charges or mentioned those specific factors.
23 Neither does it have any information indicating that at present. And
24 we also note that proof that these measures have not been varied for
25 certain specific witnesses would inevitably identify witnesses, who

1 testified under protection in previous proceedings, and who the SPO
2 intends to rely on in other cases.

3 And those are our submissions on this matter at the moment,
4 Your Honour.

5 Thank you.

6 JUDGE BARTHE: Thank you, Mr. Prosecutor.

7 Mr. Rees.

8 MR. REES: Again, I won't address the evidence that the
9 Trial Panel has heard. We will reserve our position to do that in
10 our final trial brief and our closing submissions. Moreover, I will
11 ignore the attempt by Mr. Pace, then, to give further evidence on the
12 point. Of course, the Prosecution's case has closed and no other
13 evidence from the SPO is to be admitted.

14 In relation to the specific point that you asked, whether proof
15 is required. That the confidential classification and/or protective
16 measures are still valid and in force at the time of the alleged of
17 the commission of the offences, we have submitted that previously and
18 we maintain that position, and that will be our position in our final
19 trial brief and closing statement.

20 JUDGE BARTHE: I thought so. Thank you, Mr. Rees.

21 Mr. Cadman.

22 MR. CADMAN: Regarding the evidence, the same position is taken.
23 And just to refer back to what I'd said previously, essentially,
24 F00342, which is the Haradinaj filing, under paragraphs 6 onwards, we
25 deal specifically with that issue.

1 JUDGE BARTHE: Thank you, Mr. Cadman.

2 Judge Smith.

3 PRESIDING JUDGE SMITH: Mr. Cadman, one other question. It
4 doesn't have anything to do with this, but this is just for planning
5 purposes.

6 At this time, do you intend to have Mr. Haradinaj give his
7 testimony -- his direct testimony in-chief orally or by submission of
8 the document?

9 MR. CADMAN: He will be giving oral evidence.

10 PRESIDING JUDGE SMITH: Okay, thank you.

11 The next topic concerns the outstanding videolink application.
12 The Panel notes that the witness in relation to whom the application
13 is made is also subject to an SPO challenge, and that's Defence
14 Witness 1253. Nevertheless, the Panel inquires with the Prosecution
15 whether it wants to make any further submissions in relation to the
16 videolink application of this witness.

17 MR. PACE: Thank you, Your Honour. I briefly read the
18 Registry's on this matter, which were notified this morning. And
19 from my brief reading thereof, it seems that the requirements, which
20 we had initially requested for video-conference evidence of this
21 witness, could be met.

22 And just to reiterate those, it would be that we would not
23 oppose -- obviously, we oppose the testimony. But if the testimony
24 is going to happen, we would not oppose videolink for that witness on
25 the terms that we do intend, more likely than not, to show

1 confidential documents, so it has to be a secure link. We do want
2 the witness to be able to look at the confidential documents, and
3 that the security of these documents is maintained. And we do
4 envision the possibility of going into private session, so that is
5 also an important requirement.

6 Again, from what I read this morning very quickly before I came
7 to court, it seems that the Registry is well on top of this, and that
8 all those issues can be met.

9 So those are our submissions at the moment. Thank you.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. CADMAN: I would just concur that the Registry is taking
12 care of matters as best they can in the circumstances. I agree that
13 there will be certain aspects of the witness's evidence that would
14 need to go into private session. There may even be -- we obviously
15 haven't made an application on that basis yet, but some of the video
16 footage that would need to be in private session as well. Once Your
17 Honours make a decision on whether the witness can be called, then we
18 can make a decision as to the course of his testimony.

19 PRESIDING JUDGE SMITH: Thank you, Mr. Cadman.

20 The Panel will now address some of the matters raised by the
21 parties yesterday via e-mail.

22 The Gucati Defence raises a question regarding the outstanding
23 assessment of the necessity of Mr. Gucati's continued detention to be
24 carried out upon receipt of the responses from the Kosovo police and
25 the Registry, in accordance with paragraph 34 of filing F390. The

1 Panel welcomes this question and takes this opportunity to provide
2 information on the further steps to be taken.

3 The Panel notes that the Kosovo police filed its report on
4 25 November 2021 and that the Registry submitted its report on
5 26 November 2021.

6 The Panel was informed this morning that the English translation
7 of the Kosovo police report is ready and will be distributed shortly,
8 if it hasn't been already.

9 The Panel will review the police report and then order the
10 parties to comment on both reports, if they so wish. In view of the
11 approaching two-month deadline, the Panel will also order the SPO to
12 make its submissions regarding continued detention. The Panel
13 expects to issue this order to the parties either tomorrow or on
14 Monday.

15 Any questions or comments at this time from either of the -- any
16 of the parties?

17 Nothing from the Prosecution.

18 Mr. Rees, anything?

19 Mr. Cadman?

20 MR. CADMAN: Just it wasn't clear when the order for the SPO to
21 respond is to be? You said you want to make a decision.

22 PRESIDING JUDGE SMITH: Either tomorrow or Monday.

23 MR. CADMAN: So it is for the SPO to file their submissions?

24 PRESIDING JUDGE SMITH: No, we will order them to file their
25 submissions.

1 MR. CADMAN: Okay.

2 PRESIDING JUDGE SMITH: We haven't set the date yet. To be
3 clear, the order setting out the timeframe will be issued tomorrow or
4 Monday.

5 The Panel notes that the second question raised by the Gucati
6 Defence, which reads as follows: "Who do the SPO intend to tender as
7 a witness for cross-examination to deal with the recently received
8 and outstanding disclosure as to how the batches arrived at the
9 offices of the KLA WVA?"

10 If the Panel understands your question, you are referring to the
11 outstanding matter regarding item 202. The Panel notes that no
12 decision as yet has been rendered on this item. Moreover, even when
13 a decision is rendered, the Panel's oral order was that the Defence
14 indicate whether it requests further cross-examination.

15 The Defence should, at that juncture, indicate which of the
16 three SPO staff who testified in this case it wants to cross-examine
17 further.

18 Mr. Rees, do you have any further submissions to make at this
19 point?

20 MR. REES: I do. And the request, just for clarification
21 purposes, not only in relation to the outstanding item on the
22 Rule 102(3) notice that's yet to be ruled on, but also in relation to
23 the two matters of disclosure that we did receive post-closure of the
24 Prosecution's case.

25 So we're conscious that the oral order previously made about any

1 request for further cross-examination of Prosecution witnesses that
2 have thus been called, that the trigger point has not yet been
3 reached because there is still outstanding Rule 102(3) matter. But I
4 raise a point -- I am conscious I have raised it before, but I repeat
5 it in light of the disclosure that we have received.

6 None of the three witnesses the SPO have called thus far can
7 assist with the matters that are being disclosed. They made that
8 clear when they gave their evidence directly in response to questions
9 as to what extent they could assist with matters about the
10 investigation as to how the documents were -- the process by which
11 the documents arrived at the KLA WVA.

12 Matters have been disclosed to us, and it seems to us, we would
13 submit, only fair that the SPO, even if they weren't to call a
14 witness, to tender a witness for cross-examination, gave us a name of
15 a witness within their ranks that we could witness summons to attend
16 for us to ask questions about this disclosure, because the choice
17 about further cross-examination of Ms. Pumper or Mr. Jukic or
18 Mr. Moberg is no choice at all, really, because they made it clear
19 they cannot assist with these matters. They don't have the
20 knowledge. They're not in a position to.

21 So we repeat our submission that the SPO should put forward an
22 officer from their ranks who is able to assist on questions as to the
23 SPO's knowledge or the process by which the documents arrived at the
24 KLA WVA. That doesn't require them, for example, to give a witness
25 statement or a declaration or to have direct examination but at least

1 to give us a name that, if necessary, either they can be tendered and
2 we can cross-examine them on the disclosure that's been made, or they
3 can give us a name and we can apply for a witness summons for that
4 person and we'll have to call them as a witness ourselves.

5 That's the issue that I raise, Your Honour.

6 PRESIDING JUDGE SMITH: Understood. Thank you. Thank you for
7 the clarification.

8 Mr. Cadman, anything to add to that? Thank you.

9 Mr. Pace, do you wish to respond?

10 MR. PACE: Thank you, Your Honour.

11 First of all, the items being discussed were disclosed pursuant
12 to Rule 102(3). We did not tender them for admission, neither do we
13 ever intend to do so. We maintain and repeat our submissions that
14 these relate to matters irrelevant to the case. Of course, we
15 respect the decision of the Judges and we disclosed them.

16 But at that end, the SPO has closed its case and does not intend
17 to call any witnesses in relation to these matters in particular or
18 otherwise.

19 The counsel for Mr. Gucati makes an argument about fairness, but
20 there is no legal or jurisprudential basis for an obligation for the
21 Prosecutor to call a witness for the purposes of the Defence
22 cross-examining that witness. And more specifically, there is
23 certainly nothing to support a request that the Prosecution identify
24 a potential witness for the Defence. That is not something we should
25 or need to do or that we intend to do.

1 So again, Your Honour, very briefly, we've closed our case, and
2 we do not intend to call any witnesses in relation to these issues.
3 At the moment in relation to others either; but, of course, the
4 situation may change because the Defence case has yet to start.

5 Thank you.

6 PRESIDING JUDGE SMITH: The Panel wants to hear the parties on
7 some of the upcoming deadlines.

8 In line with Rule 134, after hearing rebuttal or rejoinder
9 evidence, the Panel must announce the closing of the evidentiary
10 proceedings and invite the parties to file their final trial briefs
11 within 30 days.

12 According to the same rule, closing arguments are to be heard
13 within 21 days after the filing of the final trial briefs.

14 Now, keeping in mind that this is a case falling under Rule 72
15 and expedited proceedings are allowed, the Panel is minded to shorten
16 these deadlines, but it first wants hear from the parties on how
17 short the deadlines could be. So we ask you to think about that just
18 for a moment.

19 And we'll start with the Prosecution. If you need a minute,
20 take the minute. That's fine. The same with the Defence counsel.

21 MR. PACE: Apologies, Your Honour, yes, I need a minute. Thank
22 you.

23 PRESIDING JUDGE SMITH: All right. That's no problem.

24 [Specialist Prosecutors confer]

25 PRESIDING JUDGE SMITH: Ready, Mr. Pace?

1 MR. PACE: Yes, thank you very much, Your Honour.

2 The SPO would be in a position to file its final trial brief
3 within three weeks of an order to close the case. To be clear, that
4 is either when the Defence is not calling any more witnesses, if
5 there are no further witnesses, and no further pending decisions -
6 for example, a bar table motion - or after any bar table motions or
7 rebuttal witnesses. So we need a three-week timeframe for the
8 pre-trial brief [sic].

9 After that, we would like, at a minimum, one week for us to
10 prepare our closing submissions.

11 Thank you.

12 PRESIDING JUDGE SMITH: Thank you.

13 Mr. Rees.

14 MR. REES: As an introduction, I say that we do not accept that
15 this is a case that does fall within Rule 72 and expedited
16 proceedings, but we nevertheless accept that there is a wider power
17 to shorten time limits that are within the rules for good cause, and
18 we are as anxious as anyone that these matters proceed expeditiously
19 and are resolved as soon as possible.

20 We would, therefore, agree with the Prosecution that the limit
21 for final trial briefs could be reduced to 21 days. We would agree
22 with that.

23 In terms of, thereafter, scheduling a hearing. Again, we would
24 ask for a minimum of a week thereafter to prepare the closing
25 statement.

1 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.

2 Mr. Cadman.

3 MR. CADMAN: Well, let me expedite my submissions on this and
4 say that I think 21 days for the final trial brief and a further
5 seven days thereafter for closing arguments is entirely reasonable
6 and completely doable.

7 PRESIDING JUDGE SMITH: Thank you.

8 We have reached the end of our agenda. The Panel is going to
9 adjourn briefly. I think we'll be back here at 11.30. It will give
10 us time to take care of some small orders.

11 Before that, does any party have anything else they want to
12 raise at this time?

13 Mr. Pace.

14 MR. PACE: Thank you, Your Honour.

15 The first will be just to repeat that if the Defence intends to
16 use any exhibits with witnesses, we do expect notice thereof as soon
17 as possible. And that applies to both Defence teams, because the
18 requirements in the Order on the Conduct of Proceedings have a
19 requirement that a tentative list of proposed evidence to be used
20 with witnesses is provided well in advance.

21 We know that the presentation queue is to go in, I believe it's
22 24 hours before, so that's not what I'm talking about right now.

23 The other matter I would like to raise is that we note that in
24 the statement by DW1242 to the Gucati Defence, the witness makes
25 reference to having conducted -- been part of an interview with the

1 Haradinaj Defence. So we would like disclosure if there's any
2 statement arising from that interview, and that is because the
3 witness is being called to testify so that is a relevant statement
4 for us. It's not clear from the paragraph if a statement was taken.
5 Perhaps it was a meeting. We understand that if no statement was
6 taken, there is no disclosure obligation. So that is what we seek to
7 clarify.

8 In our *inter partes* request a couple of days ago, we did request
9 disclosure of any statements. And other than the exhibit list issue
10 which I mentioned for the witnesses, and this one particular
11 statement, that's what we have for the moment.

12 Thank you.

13 PRESIDING JUDGE SMITH: Can you clarify on this?

14 MR. CADMAN: What's quite clear from the witness's statement is
15 that an initial discussion took place as to whether she had any
16 information that was relevant to the case. A subsequent statement
17 was taken by our investigator.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. CADMAN: It's -- well, I can obviously file a submission to
20 that effect. But in the witness's statement, it says that an initial
21 discussion had taken place with me. And then the statement was then
22 taken at a later date. An initial statement wasn't taken on that
23 first occasion. It was really to identify whether she had any
24 information that was relevant to these proceedings.

25 PRESIDING JUDGE SMITH: So there was no statement.

1 MR. CADMAN: No.

2 PRESIDING JUDGE SMITH: All right. Thank you very much.

3 Does that satisfy you, Mr. Pace?

4 MR. PACE: And if there is no statement or not, I do not know
5 that. But just to clarify what the Gucati Defence statement says in
6 paragraph 1 is:

7 "I have been interviewed previously in the capacity of a witness
8 in the case of Nasim Haradinaj, the president of the KLA War Veterans
9 Association, from Lawyer Toby Cadman" and the name of the translator.

10 So it appears that there was an interview in the capacity of a
11 witness.

12 Again, I repeat, we understand that it could be no statement was
13 taken, and if that's the case, there is no disclosure obligation
14 arising from the Defence. If a statement was taken, which could be
15 or could not be, then not. If Mr. Cadman --

16 PRESIDING JUDGE SMITH: [Overlapping speakers] ... I believe he
17 just said there was no statement taken.

18 MR. PACE: Yes. If there was no statement taken, then fine. I
19 just wanted to clarify that it does seem that there was an interview
20 in the capacity of a witness, per the statement itself.

21 PRESIDING JUDGE SMITH: Mr. Cadman.

22 MR. CADMAN: Well, I can say it again, Your Honour. There was
23 no statement taken initially. It was merely a scoping exercise. A
24 subsequent statement was taken by our investigative team which has
25 been disclosed.

1 PRESIDING JUDGE SMITH: Thank you. That's clear to me.

2 MR. PACE: And sorry to rise again, Your Honour, but what has
3 been disclosed is a statement, if I'm not mistaken, by the Gucati
4 Defence. I have not seen -- I may be missing it. It's very
5 possible. In the last few days, there's been a lot of disclosure.
6 But I have not seen a statement by the Haradinaj Defence of this
7 witness.

8 So do I seek some clarity on this matter because it does, in
9 fact, appear that there is a statement by the Haradinaj Defence for
10 this witness.

11 MR. CADMAN: It is her statement that was taken which has been
12 tendered by the Gucati Defence team.

13 PRESIDING JUDGE SMITH: Thank you.

14 So we will have you back here at 11.30.

15 MR. REES: Can I raise one matter, Your Honour?

16 PRESIDING JUDGE SMITH: Yes, Mr. Rees.

17 MR. REES: Relatively briefly.

18 Obviously, we've -- we did touch upon the scheduling of a
19 further hearing for closing statements. We did so with a view to
20 looking at the timetable set out in Rule 134 for the preparation of
21 final trial briefs and then, thereafter, the scheduling of the
22 hearing.

23 But, of course, the scheduling of the hearing itself is a matter
24 which doesn't necessarily follow as easily as saying you only need at
25 least a week after the service of the final trial brief. There are

1 commitments involved that mean that the scheduling of the hearing
2 itself is an exercise that we would, obviously, wish to participate
3 in the discussion of.

4 I understand that Your Honours will be looking at setting out a
5 proposed provisional schedule for the presentation of evidence up to
6 17 December. If the Trial Panel is considering setting dates beyond
7 17 December, we would like to address the Trial Panel because -- and
8 we are conscious that some preliminary indications have already been
9 requested as to availability, but we would like to expand upon that
10 further if the Trial Chamber is going to consider setting dates down
11 beyond 17 December.

12 PRESIDING JUDGE SMITH: Why don't you go ahead and state what
13 your concerns are for that. Let's assume the first part of January,
14 for example.

15 MR. REES: Well, the Trial Panel knows already that my
16 professional commitments are such that I am not available until
17 28 February because of a commitment that I begin on 4 January.

18 We have, from the very outset, set down a timetable, at a point
19 in which the SPO was suggesting the matter could have been heard in
20 three days in March, I think. From the very earliest stage, we set
21 out what we thought was a realistic timetable that led to the trial
22 being able to start and be completed in the autumn term of this year.
23 And I hope the Trial Panel recognises that there has been no delay
24 caused by us. We've given time estimates that we have bettered in
25 the event. The only delays that have been occurred, and continue to

1 occur, are to do with disclosure issues that the SPO have, we say,
2 and the Trial Panel knows this, never properly engaged with, despite
3 the fact that we raised those at the earliest stage so that, with
4 proper engagement, they could have been resolved well in advance of
5 the beginning of this trial in September.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MR. REES: So I -- firstly, I'm concerned that any date for
8 closing statements is set down a day which I am available to attend
9 and present the closing statement for. I would also wish, if we
10 continue with evidence past 17 December, that I am in a position to
11 attend that hearing.

12 Now, I know that involves some delay, but my availability as
13 such is that I would ask the Trial Panel to consider that period with
14 the week commencing February 28th for us to return to continue with
15 any hearings before this Trial Panel.

16 PRESIDING JUDGE SMITH: How firm is your commitment in January
17 and February?

18 MR. REES: Very firm.

19 PRESIDING JUDGE SMITH: No way of changing that?

20 MR. REES: No.

21 PRESIDING JUDGE SMITH: You have co-counsel.

22 MR. REES: I do have co-counsel. And, obviously, we are in the
23 Trial Panel's hands. I've made the request. Certainly for closing
24 statement, my submission would be that's a matter that should be done
25 by counsel. So I certainly ask the Trial Panel to take into account

1 my availability when setting a date for any closing statement.

2 We are, of course, as we always are, in the Trial Panel's hands
3 as to all dates. But I've made my request.

4 PRESIDING JUDGE SMITH: So to be clear, after 17 December your
5 next available date is 28 March? Your personal --

6 MR. REES: 28 February.

7 PRESIDING JUDGE SMITH: I'm sorry, 28 February.

8 MR. REES: Yes.

9 PRESIDING JUDGE SMITH: Okay. Anybody else want to weigh in on
10 these issues? I mean, I'm assuming right now that we're not going to
11 be finished with everything by the 17th, even though we had hoped
12 ourselves that we would be.

13 MR. REES: Well, we --

14 PRESIDING JUDGE SMITH: I mean, that is, I've listened to you
15 estimate the times to examine your witnesses, and it's going to take
16 a certain amount of time.

17 MR. REES: Yes, well, absolutely. And despite the fact that we
18 gave full notice of the overall shape of our Defence cases at an
19 early stage. We were dealing with Defence witnesses list as part of
20 the Prosecution Trial Preparation Conference the Trial Panel will, of
21 course, recall.

22 But it's, nevertheless, complete news to us that the SPO intends
23 to take ten hours with Mr. Gucati. That's the first time we've had
24 any sort of indication as to the length of time the SPO intends to
25 take with the witnesses of which they have had notice for weeks and

1 weeks now.

2 We have, throughout, urged that this trial, the evidential
3 proceedings at least, be concluded by 17 December. We did that at
4 the Prosecution preparation conference, the Trial Preparation
5 Conference, and we still urge it now.

6 PRESIDING JUDGE SMITH: Well, if everyone would be cooperative,
7 maybe we could still do that. And I'm not willing to just forego
8 that at this time. I think that's still what our aim was. And I
9 would ask everyone's cooperation in trying to finish the evidentiary
10 stage by the 17th.

11 Mr. Pace.

12 MR. PACE: Thank you, Your Honour. I'll start by the more
13 recent submissions by counsel for Mr. Gucati.

14 First of all, the compete news of our time estimates is entirely
15 right, it's complete news, because the first time we were required to
16 provide those estimates is a couple of minutes ago.

17 Second of all, being on notice of weeks of testimony of evidence
18 in no way has an impact on the length of the cross-examination. In
19 particular, although very minimalistic summaries of anticipated
20 evidence were provided, no statements were provided until one or two
21 days ago, at most, and it is only on the basis of those statements
22 which enabled us to prepare an estimate for cross-examination.

23 I fail to see how anybody in this courtroom could be surprised
24 by our estimate to spend ten hours on the cross-examination of the
25 accused in this case. That certainly cannot be surprising,

1 especially when we have, for Mr. Gucati, a detailed statement, we
2 have a lot of relevant material, and at the end of the day it is the
3 accused's choice to take the stand. So that should not surprise
4 anybody. And we certainly, while we intend to be as efficient as
5 possible, do not intend to truncate our cross-examination or our case
6 to make things go quicker.

7 The estimates for the other witnesses, we think, are valid. We
8 think they're reasonable. Again, we could try to do our best to keep
9 those cross-examinations shorter. We also have every intention of
10 finishing this phase of the proceedings and the proceedings overall
11 as soon as possible.

12 I will turn to the submissions in terms of availability. While
13 it is unfortunate that counsel for Mr. Gucati may not be available
14 until the end of February, that is absolutely not a reason to in any
15 way delay the proceedings. It is unfair to the SPO. It is also,
16 frankly, unfair to the accused, who should not be made to wait an
17 extra two months in detention pending proceedings simply because
18 counsel has other engagements.

19 We do note, as the Presiding Judge has noted, that there are
20 co-counsel in the case. In terms of being present at least for
21 closing arguments, that's a little premature. It may be that that
22 aligns well. It could be the closing arguments would be after
23 28 February. But our submission is that the unavailability of
24 counsel because of another engagement is absolutely not a reason to
25 delay anything in the schedule as set forth.

1 It does seem possible that most of the Gucati witnesses could be
2 completed in the next two weeks. Possible. I cannot guarantee that.
3 I don't think anybody here is in a position to guarantee that. And
4 that, of course, would make things perhaps a little bit better, which
5 would mean at least counsel would be able to finish the direct
6 examinations of his own witnesses. But even if that were not to be
7 the case and counsel would not be available for direct examination of
8 his team's own witnesses, that is not a reason to delay that
9 examination, Your Honour.

10 Those are our submissions and thank you.

11 PRESIDING JUDGE SMITH: Thank you.

12 MR. REES: One thing, Your Honour.

13 I make the submission conscious that there is the forthcoming
14 review on detention and conscious that, although we look forward to
15 receiving the English translation of the Kosovo police report, from
16 what I understand of the report there are very sensible, concrete
17 proposals which give a real alternative to detention within the DMU
18 here. And we will be pressing for Mr. Gucati's release in light of
19 that report under the conditions envisaged by that report in due
20 course.

21 PRESIDING JUDGE SMITH: I will only say that I expect everyone
22 to do their best to limit their questioning to relevant material,
23 because I have seen some instances already where it has not been
24 always relevant material. I know I haven't been around as much maybe
25 as you people have, but ten hours cross-examination is a long

1 cross-examination, and the best cross-examinations I've ever seen are
2 a lot faster than that with very targeted questions.

3 So I want you to think about doing this. And not only the
4 cross-examination, but I think, Mr. Cadman, you indicated all day for
5 Mr. Haradinaj's, which might also be a bit excessive. So let's try
6 to all think about getting this evidence in in the appropriate
7 time-period.

8 I'm not picking you on, Mr. Cadman. I'm just telling you that
9 that's a long time also. So go ahead. If you have a comment, make
10 it.

11 MR. CADMAN: I'd rather overestimate than underestimate.

12 PRESIDING JUDGE SMITH: Well, I know, But now we're to the point
13 that we're trying to plan so I want you to rethink your estimates.

14 MR. CADMAN: Understood, Your Honour. The only point that I
15 would make. I think that gives further force to the argument that
16 the entirety of the Gucati Defence should go first in light of the
17 difficulties that Mr. Rees may have. Of course, we will do
18 everything we can to have everything finished by the 17th.

19 PRESIDING JUDGE SMITH: I understand what your position is.
20 And, frankly, with Mr. Haradinaj having some difficulty being here, I
21 don't disagree with you.

22 MR. CADMAN: I'm grateful.

23 PRESIDING JUDGE SMITH: [Microphone not activated]. We are
24 adjourned.

25 --- Recess taken at 10.55 a.m.

1 --- On resuming at 12.00 p.m.

2 PRESIDING JUDGE SMITH: The Panel will now issue a number of
3 oral orders.

4 The first oral order. This is, in fact, a summary of the
5 Panel's decision on the motions filed by the SPO to strike witnesses
6 from the Defence list of witnesses and seeking other related relief.
7 A fully reasoned written decision will follow tomorrow.

8 Regarding the Prosecution's first application, that is, F312.

9 The Panel will only address the witnesses who are still proposed
10 to be called by the Defence.

11 In relation to the Gucati Defence Witnesses 1241 and 1242.
12 While the Panel considers that some aspects of their statements are
13 of questionable relevance, it is not satisfied that their testimony,
14 as such, should not be allowed as there are aspects of their proposed
15 evidence that are clearly relevant to this case.

16 This Panel, therefore, allows these witnesses to be called but
17 directs the Gucati Defence to ensure that evidence elicited from
18 those witnesses is strictly relevant to these proceedings.

19 In relation to the Haradinaj Defence Witness 1246. The Panel is
20 satisfied that the proposed evidence of this witness appears to be
21 relevant to the claim of entrapment advanced by the Defence. The
22 Panel, therefore, allows this witness to be called on that basis
23 without prejudice to the question of the availability of an
24 entrapment defence under the applicable legal regime.

25 In relation to the Haradinaj Defence Witnesses 1250 and 1251.

1 The Panel finds that the Defence has failed to demonstrate the
2 relevance of their proposed evidence. The Panel, therefore, declines
3 to hear these witnesses and will not permit the Haradinaj Defence to
4 call them.

5 Regarding the Prosecution's challenge against Haradinaj's
6 Defence Witness 1252, an expert witness, that is, F388. The Panel
7 finds that parts of the witness's proposed evidence are objectionable
8 on the grounds, *inter alia*, that they overstep the boundaries of
9 permissible expert evidence and impermissibly stray into the
10 territory and responsibilities of the Panel. The Panel will,
11 therefore, disregard the following paragraphs of the witness's expert
12 report as being impermissible: Paragraphs 23 through 25;
13 paragraph 32 and 34, second sentence; paragraph 36, second sentence;
14 and paragraph 40.

15 For this reason, the Panel allows Defence Witness 1252 to be
16 called but will only permit testimony in respect of certain general
17 legal propositions contained in those parts of her report that do not
18 constitute impermissible evidence.

19 Regarding the Prosecution's challenge against Haradinaj's
20 Defence Witness 1253, a second expert witness, that is, F438. The
21 Panel has no doubt that the proposed expert is an experienced and
22 highly qualified criminal investigator. However, the Panel finds
23 that the proposed evidence of this witness relates to issues which
24 the Panel can determine for itself without the assistance of expert
25 evidence. They are legal, factual, and evidential issues that the

1 parties have raised as part of their case. The proposed evidence
2 would therefore usurp in several respects the Panel's
3 responsibilities. The Panel therefore declines to hear Defence
4 Witness 1253 and will not permit the Haradinaj Defence to call him.

5 Regarding the Prosecution's challenge filed yesterday, that is,
6 F466. In relation to the Gucati Defence Witness 1248, the Panel
7 finds that there is no dispute between the parties that the articles
8 referred to in this statement of this witness were still available
9 online at the time relevant to his account. Therefore, the Panel can
10 take note of the fact as agreed between the parties without the need
11 to call Defence Witness 1248. If the Defence wishes, however, to
12 tender that statement in evidence, it can offer it for admission
13 pursuant to Rule 153, as suggested by the SPO.

14 In relation to Gucati Defence Witness 1243, 1244, 1245, and
15 1247, and the Haradinaj Defence Witness 1254. The Panel agrees that
16 some parts of their statements constitute opinion evidence and some
17 of it might not be relevant to these proceedings. However, the Panel
18 considers that this evidence has yet to be elicited or offered into
19 evidence. If and when this was to occur, the Prosecution can object
20 to the evidence being elicited or to the statements, or parts
21 thereof, being admitted in evidence. The Panel, therefore, finds
22 that it is premature to rule on their admissibility at this stage.

23 This concludes this oral order.

24 At this point, I want to stop with the oral orders for a moment
25 and ask the Prosecution and Mr. Rees a question. The Panel intends

1 to grant leave to the Defence to appeal part of the Panel's decision,
2 should they wish to do so. This would be set out in the Panel's
3 decision to be issued tomorrow, if so decided.

4 The *proprio motu* certification would concern the Panel's
5 findings in relation to Defence Witnesses 1250, 1251, and 1253.
6 Would the SPO object to such a decision on certification without
7 application? In the interests of expediency.

8 MR. PACE: Your Honour, we would like to see an application,
9 because we want to see how the issue is framed.

10 PRESIDING JUDGE SMITH: Knowing that that will extend these
11 proceedings quite some time?

12 MR. PACE: I don't see why it would extend them significantly.
13 A request for leave to appeal from a decision could be provided
14 within a few hours, but we should be granted the benefit of seeing
15 how the issue is framed. That is very relevant.

16 PRESIDING JUDGE SMITH: So we will determine this matter in our
17 decision tomorrow. Thank you.

18 Mr. Rees, having heard the gist of our decision to be issued
19 tomorrow, are you in a position to make your opening statement
20 tomorrow morning? You do not have to. You can elect to wait until
21 the decision, but we are offering this option to you based on your
22 submission earlier today.

23 MR. REES: Yes, I would be.

24 PRESIDING JUDGE SMITH: All right, thank you.

25 Now we will continue with the oral orders.

1 Second oral order.

2 After having heard the parties and pursuant to Rule 119(4), the
3 Panel sets the date of the opening of the Defence case to be
4 3 December 2021. The Panel notes that the Gucati Defence will make
5 its opening statement on 3 December 2021.

6 The presentation of the Gucati Defence evidence is expected to
7 begin on 6 December 2021. The Panel authorises the Haradinaj Defence
8 to make its opening statement after the end of the Gucati case. The
9 presentation of the Haradinaj Defence evidence is expected to begin
10 immediately after its opening statement.

11 The evidence in these two cases will be heard between 6 and 10
12 and on 16 and 17 of December of this year. And if need be, between
13 11 and 17 January 2022.

14 The Panel reminds the Defence of its obligations under
15 paragraph 59 and 62 to 65 of the Order on the Conduct of Proceedings.
16 The SPO is reminded of its obligations under paragraphs 66 and 67 of
17 the same order.

18 This concludes the oral order.

19 The third oral order. In connection to the previous oral order
20 and the decision to be issued tomorrow, the Panel finds it necessary
21 to issue the following warnings to the Defence.

22 The Panel reminds Defence counsel that as the calling party it
23 is their obligation to lead the questioning in a responsible and
24 relevant manner, bearing in mind prior decisions of the Panel. In
25 this regard, the Panel notes with concern that a number of documents

1 appearing on the Defence exhibit list do not appear to be relevant to
2 these proceedings.

3 The Panel reiterates that the justness of the war or the
4 commission of crimes by any party during that conflict are not issues
5 relevant to this case and the Panel will not allow the eliciting or
6 tendering of such evidence. Testimony about the character of the war
7 or illegal acts allegedly attributed to any party, to the conflict,
8 or individuals, are not relevant to the charges in this case.
9 Questions along those lines or answers given by the accused or
10 witnesses on those subjects will be interrupted and stopped as
11 irrelevant.

12 The Panel also notes that several of the items appearing on the
13 Defence list of proposed exhibits are lengthy documents. In line
14 with paragraph 19 of the Order on the Conduct of the Proceedings, the
15 Defence should be prepared to identify specifically which parts or
16 sections of those documents are being relied upon in respect of their
17 case. The Panel will not allow the records of these proceedings to
18 be unnecessarily loaded with material that is not relied upon by the
19 parties.

20 Fourth oral order.

21 After having heard the parties and pursuant to Rule 119(4), the
22 Panel sets as target date for the closing of the Defence case
23 17 January 2022. This date is set out in an abundance of caution in
24 order to allow ample time for the Defence case and accommodate any
25 interlocutory appeals. The Panel stresses that this target date is a

1 mere indication of its estimates. It can be brought forward or
2 extended as necessary.

3 This concludes this oral order.

4 Fifth oral order.

5 The Panel notes that on 8 September 2021 at the Prosecution's
6 preparation conference, the Panel set 17 December 2021 as a target
7 date for the closing of the case. The Panel now wishes to revisit
8 that indication and to set a new target date, taking into
9 consideration the current stage of the proceedings and the steps that
10 still need to be followed.

11 The Panel stresses that these target dates are a mere indication
12 of the Panel's estimates, but they are subject to the development of
13 the proceedings and to the principle of a fair and expeditious trial.
14 At this stage, the Panel still needs to hear the Defence case, decide
15 whether it wishes to invite or call further evidence, plan for any
16 rebuttal or rejoinder evidence, set a deadline and receive the final
17 trial briefs, and hold a hearing for closing statements.

18 The Panel, accordingly, sets as a target date for the closing of
19 the case as 1 March 2022. Again, the Panel stresses that this target
20 date is a mere indication of its estimates. It can be brought
21 forward or extended as necessary. The Panel will invite submissions
22 from the parties on interim deadlines in due course.

23 This concludes this oral order.

24 Sixth oral order.

25 The Panel, having heard the parties, finds that the Gucati list

1 of proposed exhibits - that is, F460, Annex 2 - may retain its
2 current public classification. The Panel finds that while the name
3 of the entity in question appears under item 25, the generic manner
4 in which the subject is identified raises no concerns as to the
5 disclosure of confidential information. This is without prejudice to
6 the Panel's position regarding the classification of the extract
7 under item 25 and the manner in which the evidence therein may be
8 elicited during public sessions.

9 This concludes this oral order.

10 Seventh oral order.

11 The Panel orders both Defence to file an updated exhibit list
12 conforming to paragraph 60(e) on the Order on Conduct of Proceedings
13 by Monday, 6 December 2021, at 1600 hours. This is without prejudice
14 to the Haradinaj Defence filing its exhibit list today.

15 This concludes the oral order.

16 The eighth oral order.

17 The Panel orders the Defence to file a bar table motion, if any,
18 by 10 December 2021, and for the SPO to respond, if it so wishes, by
19 15 December 2021.

20 This concludes the last oral order.

21 As indicated by Mr. Rees, we will begin with opening statements
22 tomorrow, so I will expect to see all of you here at 9.30 tomorrow.
23 And thank you for your attention today. Thank you for the
24 translators and interpreters, court reporter, and all other assembled
25 parties that have helped make this day.

1 We'll see you tomorrow.

2 --- Whereupon the hearing adjourned at 12.15 p.m.

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