



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 26 October 2020

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on the Confirmation of the Indictment Against Hashim Thaçi,  
Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

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<b>I.</b>	<b>PROCEDURAL BACKGROUND .....</b>	<b>2</b>
<b>II.</b>	<b>SUBMISSIONS.....</b>	<b>5</b>
<b>III.</b>	<b>APPLICABLE LAW .....</b>	<b>6</b>
	A. Review of Indictment.....	6
	B. Crimes and Modes of Liability .....	7
	C. Maintaining Confidentiality.....	9
<b>IV.</b>	<b>JURISDICTION.....</b>	<b>10</b>
	A. Subject Matter Jurisdiction .....	10
	B. Temporal Jurisdiction .....	13
	C. Territorial or Personal Jurisdiction.....	13
<b>V.</b>	<b>LEGAL REQUIREMENTS .....</b>	<b>15</b>
	A. Nature and Scope of the Review .....	15
	1. Nature of the Review .....	15
	2. Scope of the Review .....	17
	B. Elements of Crimes.....	18
	1. Crimes Against Humanity .....	18
	2. War Crimes .....	37
	C. Modes of Liability.....	45
	1. Joint Criminal Enterprise .....	45
	2. Aiding and Abetting.....	50
	3. Superior Responsibility .....	51
<b>VI.</b>	<b>CHARGES .....</b>	<b>54</b>
	A. Contextual Requirements .....	54
	1. Contextual Requirements for Crimes Against Humanity .....	54
	2. Contextual Requirements for War Crimes .....	59
	B. The Crimes Charged .....	64
	1. Counts 2 and 3: Imprisonment and Arbitrary Detention .....	64
	2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment .....	96
	3. Counts 6 and 7: Torture.....	150
	4. Counts 8 and 9: Murder .....	158
	5. Count 10: Enforced Disappearance of Persons .....	182
	6. Count 1: Persecution.....	191
	7. Additional Requirements for Crimes Against Humanity and War Crimes .....	196
	C. The Modes of Liability Charged .....	199
	1. Joint Criminal Enterprise I.....	199
	2. Joint Criminal Enterprise III .....	212
	3. Aiding and Abetting.....	214
	4. Superior Responsibility .....	216
<b>VII.</b>	<b>RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY .....</b>	<b>230</b>
<b>VIII.</b>	<b>DISPOSITION .....</b>	<b>233</b>

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

## I. PROCEDURAL BACKGROUND

1. On 24 April 2020, the Specialist Prosecutor submitted for confirmation a strictly confidential and *ex parte* indictment ("Indictment") together with evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.<sup>2</sup>

2. On 28 May 2020, the Specialist Prosecutor submitted a request for: (i) the issuance of arrest warrants for Hashim Thaçi ("Mr Thaçi"), Kadri Veseli ("Mr Veseli"), Rexhep Selimi ("Mr Selimi") and Jakup Krasniqi ("Mr Krasniqi") (collectively, the "Suspects") and related transfer orders; (ii) authorisation for search and seizure, [REDACTED]; and (iii) the interim non-disclosure of the Indictment, related documents and the identities of witnesses and victims.<sup>3</sup>

3. On 2 June 2020, the Specialist Prosecutor requested to add further supporting material and submitted an updated detailed outline.<sup>4</sup>

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, confidential.

<sup>2</sup> KSC-BC-2020-06, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation* ("Initial Submission"), 24 April 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>3</sup> KSC-BC-2020-06, F00005, Specialist Prosecutor, *Request for Arrest Warrants and Related Orders* ("Submission on Related Orders"), 28 May 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>4</sup> KSC-BC-2020-06, F00006, Specialist Prosecutor, *Request to Present Additional Supporting Materials*, 2 June 2020, strictly confidential and *ex parte*, with Annex 1 and Annex 2 ("Updated SPO Outline"), strictly confidential and *ex parte*.

4. On 17 June 2020, the Pre-Trial Judge authorised the submission of additional supporting material and of the updated detailed outline.<sup>5</sup>
5. On 23 June 2020, the Pre-Trial Judge authorised, upon request of the Specialist Prosecutor,<sup>6</sup> that the following information from the Indictment is publicly disclosed, namely the: (i) identities of Mr Thaçi and Mr Veseli as charged suspects; and (ii) number of counts, legal characterisation and nature of the alleged crimes, approximate number of known victims, and their affiliation or ethnicity.<sup>7</sup>
6. On 2 July 2020, the Pre-Trial Judge issued an order in which he requested the Specialist Prosecutor to prepare a revised Indictment and to incorporate a detailed statement of facts, delineating with more specificity, a description of the factual allegations corresponding to each crime.<sup>8</sup> The Pre-Trial Judge also requested that the Specialist Prosecutor charge the four suspects solely under Articles 13, 14, and 16 of the Law.<sup>9</sup>
7. On 24 July 2020, the Specialist Prosecutor submitted a revised Indictment for confirmation (“Revised Indictment”), as requested.<sup>10</sup>
8. On 29 July 2020, the Specialist Prosecutor for the second time requested authorisation to submit additional supporting material.<sup>11</sup>

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<sup>5</sup> KSC-BC-2020-06, F00007, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Request to Present Additional Supporting Material*, 17 June 2020, strictly confidential and *ex parte*.

<sup>6</sup> KSC-BC-2020-06, F00008, Specialist Prosecutor, *Urgent Request for Authorisation to Disclose Information Relating to the Indictment*, 23 June 2020, strictly confidential and *ex parte*.

<sup>7</sup> KSC-BC-2020-06, F00009, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Urgent Request*, 23 June 2020, strictly confidential and *ex parte*.

<sup>8</sup> KSC-BC-2020-06, F00010, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules* (“Order Pursuant to Rule 86(4)”), 2 July 2020, strictly confidential and *ex parte*, paras 22 and 27(a).

<sup>9</sup> Order Pursuant to Rule 86(4), paras 23, 26, 27(b).

<sup>10</sup> KSC-BC-2020-06, F00011, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation* (“Second Submission”), 24 July 2020, strictly confidential and *ex parte* with Annex 1 (“Revised Indictment”), strictly confidential and *ex parte*.

<sup>11</sup> KSC-BC-2020-06, F00012, Specialist Prosecutor, *Second Request to Present Additional Supporting Materials*, 29 July 2020, strictly confidential and *ex parte*.

9. On 30 July 2020, the Pre-Trial Judge authorised the submission of additional supporting material and ordered the submission of a supplemental detailed outline.<sup>12</sup>

10. On 12 August 2020, the Specialist Prosecutor submitted the supplemental detailed outline, as ordered.<sup>13</sup>

11. On 18 September 2020, the Pre-Trial Judge issued an order in which he requested the Specialist Prosecutor to clarify discrepancies between the Revised Indictment and the detailed outline in relation to certain locations and individuals and, if need be, to submit a further revised indictment.<sup>14</sup>

12. On 21 September 2020, the President set the venue of the proceedings of this case and any related matters emanating therefrom to the Host State, the Netherlands.<sup>15</sup>

13. On 24 September 2020, the Specialist Prosecutor provided, as ordered, clarifications on the charges and informed the Pre-Trial Judge that he does not intend to submit a further revised indictment.<sup>16</sup>

14. On 19 October 2020, the Pre-Trial Judge issued an order setting a target date for the issuance of this decision.<sup>17</sup>

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<sup>12</sup> KSC-BC-2020-06, F00013, Pre-Trial Judge, *Second Decision on Specialist Prosecutor's Request to Present Additional Supporting Material*, 30 July 2020, strictly confidential and *ex parte*.

<sup>13</sup> KSC-BC-2020-06, F00014, Specialist Prosecutor, *Submission of Supplemental Rule 86(3)(b) Outline*, 12 August 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

<sup>14</sup> KSC-BC-2020-06, F00016, Pre-Trial Judge, *Second Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 18 September 2020, strictly confidential and *ex parte*.

<sup>15</sup> KSC-BC-2020-06, F00017, President, *Decision Invoking a Change of Venue to the Host State*, 21 September 2020, confidential and *ex parte*.

<sup>16</sup> KSC-BC-2020-06, F00018, Specialist Prosecutor, *Submission Pursuant to Order KSC-BC-2020-06/F00016*, 24 September 2020, strictly confidential and *ex parte*.

<sup>17</sup> KSC-BC-2020-06, F00023, Pre-Trial Judge, *Order Setting Target Date for a Decision Pursuant to Article 39(2)*, 19 October 2020, strictly confidential and *ex parte*.

## II. SUBMISSIONS

15. In the Revised Indictment, the Specialist Prosecutor's Office ("SPO") charges the Suspects with crimes against humanity, committed in the context of a widespread or systematic attack against the civilian population (Article 13 of the Law) and war crimes committed in the context of a non-international armed conflict (Article 14(1)(c) of the Law).<sup>18</sup> More specifically, the SPO alleges that the crimes of persecution (Count 1),<sup>19</sup> imprisonment/arbitrary detention (Counts 2 and 3),<sup>20</sup> other inhumane acts/cruel treatment (Counts 4 and 5),<sup>21</sup> torture (Counts 6 and 7),<sup>22</sup> murder (Counts 8 and 9)<sup>23</sup> and enforced disappearance of persons (Count 10)<sup>24</sup> were committed during the period from at least March 1998 through September 1999 ("Indictment Period")<sup>25</sup> in Kosovo and areas of northern Albania.<sup>26</sup> According to the SPO, the Suspects incur individual criminal responsibility for committing, between at least March 1998 through September 1999, through their participation in a joint criminal enterprise (in its basic and extended forms)<sup>27</sup> and/or having aided and abetted<sup>28</sup> the crimes under Counts 1-10. Additionally, the SPO contends that, in the alternative, the Suspects are individually criminally responsible as superiors for the crimes under Counts 1-10 pursuant to Article 16(1)(c) of the Law.<sup>29</sup>

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<sup>18</sup> Revised Indictment, paras 16-31, 173-174 [68].

<sup>19</sup> Revised Indictment, paras 57-58, 174 [68].

<sup>20</sup> Revised Indictment, paras 59-94, 174 [68].

<sup>21</sup> Revised Indictment, paras 95-134, 174 [68].

<sup>22</sup> Revised Indictment, paras 136, 174 [68].

<sup>23</sup> Revised Indictment, paras 137-171, 174 [68].

<sup>24</sup> Revised Indictment, paras 172, 174 [68].

<sup>25</sup> Revised Indictment, paras 16, 18, 57, 59, 95-96, 136-137, 172.

<sup>26</sup> Revised Indictment, paras 57, 59, 95-96, 136-137, 172, Schedules A-C.

<sup>27</sup> Revised Indictment, paras 32-51, 173, 174 [68]. The SPO alternatively alleges that the Suspects committed, in whole or in part, the crimes set forth in Counts 1-10 through the extended form of joint criminal enterprise. *See* Revised Indictment, para. 34.

<sup>28</sup> Revised Indictment, paras 52, 173, 174 [68].

<sup>29</sup> Revised Indictment, paras 53-55, 173, 174 [68].

16. In addition to the request for confirmation of the Revised Indictment,<sup>30</sup> the SPO requests the temporary non-disclosure of the Revised Indictment, related documents and information to the public and the accused until further order<sup>31</sup> as well as the interim non-disclosure of the identities of witnesses and victims until appropriate protective measures have been ordered.<sup>32</sup> The SPO submits that there are real risks of the Suspects' flight,<sup>33</sup> interference with witnesses and victims,<sup>34</sup> and the commission of further crimes<sup>35</sup> that demonstrate good cause justifying these requests.

17. To effectuate the non-disclosure of the identities of victims and witnesses, the SPO requests: (i) the non-disclosure of the name and identifying information of any witness and victim to the public; (ii) redactions of the identity and identifying information of and the assignment of provisional pseudonyms to witnesses and victims named prior to disclosure to the Suspects or the public; and (iii) the continuation of non-disclosure until further decision on application from the SPO or after hearing the SPO.<sup>36</sup>

### III. APPLICABLE LAW

#### A. REVIEW OF INDICTMENT

18. Article 39(1) and (2) of the Law and Rule 86(4) of the Rules provide that the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-

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<sup>30</sup> Initial Submission, para. 7(i).

<sup>31</sup> Initial Submission, paras 5, 7(ii); Submission on Related Orders, paras 2, 55, 60(e); Second Submission, para. 7.

<sup>32</sup> Initial Submission, paras 5, 7(ii); Submission on Related Orders, paras 2, 54, 60(d); Second Submission, para. 7.

<sup>33</sup> Submission on Related Orders, paras 31-33.

<sup>34</sup> Submission on Related Orders, paras 34-38.

<sup>35</sup> Submission on Related Orders, paras 39-40.

<sup>36</sup> Submission on Related Orders, para. 54(a)-(c).

grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed and specifically indicated as such. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

19. Pursuant to Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged. The indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

20. Upon confirmation of any charge(s) of the indictment, Rule 86(6) of the Rules provides that the suspect shall have the status of an Accused and the Pre-Trial Judge may issue any other decisions or orders provided for in Article 39(3) of the Law.

21. Rule 86(8) and (10) of the Rules provides that the Registrar shall retain and prepare certified copies of the confirmed indictment bearing the seal of the Specialist Chambers ("SC") and notify the President of the confirmed indictment.

#### B. CRIMES AND MODES OF LIABILITY

22. In addition to adjudicating in accordance with the Constitution of Kosovo, the Law, provisions of Kosovo law expressly incorporated in the Law, and international human rights law, Articles 3(2)(d), (3), and 12 of the Law provide that the SC shall apply customary international law, as applicable at the time the relevant crimes were committed. In determining customary international law at

the time the crimes were committed, a Judge may be assisted by sources of international law, including subsidiary sources such as the jurisprudence from the international *ad hoc* tribunals, the International Criminal Court, and other criminal courts.

23. Article 13 of the Law provides that for the purpose of this Law, under customary international law during the temporal jurisdiction of the SC, crimes against humanity means any of the following acts when committed as part of a widespread or systematic attack against any civilian population: (i) murder; (ii) extermination; (iii) enslavement; (iv) deportation; (v) imprisonment; (vi) torture; (vii) rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; (viii) persecution on political, racial, ethnic or religious grounds; (ix) enforced disappearance of persons; and (x) other inhumane acts.

24. Article 14(1)(c) of the Law provides that for the purpose of this Law, under customary international law during the temporal jurisdiction of the SC, war crimes means, in the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”), including any of the following acts committed against persons taking no active part in hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause: (i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture; (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) taking of hostages; and (iv) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

25. For crimes in Articles 13 and 14 of the Law, Article 16(1)(a) provides, *inter alia*, that a person who instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of such a crime shall be individually responsible for the crime. Article 16(1)(c) of the Law further provides that the fact that any of the acts or omissions were committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

#### C. MAINTAINING CONFIDENTIALITY

26. Article 39(11) of the Law stipulates that the Pre-Trial Judge may, where necessary, provide for the protection of victims and witnesses.

27. Rule 85(4) of the Rules provides that all documents and information submitted by the SPO to the Pre-Trial Judge during investigation shall remain at the least confidential and *ex parte*, subject to Rule 102 of the Rules.

28. Rule 88 of the Rules provides that the indictment shall be made public upon confirmation by the Pre-Trial Judge. However, in exceptional circumstances, upon a showing of good cause, the Pre-Trial Judge may order the temporary non-disclosure of the indictment, related documents or information to the public until further order. The indictment shall in any case be made public, with redactions, where necessary, no later than the Accused's initial appearance. The SPO may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

29. Rule 102(1)(a) of the Rules provides that the SPO shall make available to the Accused, as soon as possible, but at least within 30 days of the initial appearance

of the Accused, the supporting material to the indictment submitted for confirmation as well as all statements obtained from the Accused.

30. Rule 105(1) of the Rules provides that the SPO may apply to the Panel for interim non-disclosure of the identity of a witness or victim participating in the proceedings until appropriate protective measures have been ordered.

#### IV. JURISDICTION

31. In order to be confirmed, an indictment must fulfil the subject matter and temporal requirements, and must have either a territorial or personal basis for jurisdiction.

##### A. SUBJECT MATTER JURISDICTION

32. Article 6 of the Law provides that the Specialist Chambers shall have jurisdiction over crimes set out in Articles 12-15 of the Law. The crimes against humanity of persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance of persons (Counts 1, 2, 4, 6, 8 and 10), as pleaded by the Specialist Prosecutor, are listed in Article 13 of the Law and therefore fall within the subject matter jurisdiction of the Specialist Chambers. Equally, the war crimes of cruel treatment, torture and murder (Counts 5, 7 and 9), as pleaded by the Specialist Prosecutor, are listed in Article 14(1)(c)(i) of the Law and therefore fall within the subject matter jurisdiction of the Specialist Chambers.

33. In the Revised Indictment, the SPO submits that the Suspects are also criminally responsible for the war crime of arbitrary detention (Count 3), in violation of Article 14(1)(c) of the Law.<sup>37</sup> While this provision does not explicitly list arbitrary detention as a war crime in non-international armed conflict, it does

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<sup>37</sup> Revised Indictment, paras 59-94, 174 [68].

not limit the crimes falling under SC jurisdiction to those expressly enumerated therein. Nonetheless, in order to exercise jurisdiction over a war crime that is not listed in Article 14(1)(c)(i)-(iv) of the Law, such crime must: (i) constitute a serious violation of Common Article 3; and (ii) be prohibited by customary international law at the time of its commission, in conformity with Articles 3(2)(d) and 12 of the Law.

34. Common Article 3 provides that “persons taking no active part in hostilities, including [...] those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely [...]”. This protection, also stipulated in Article 4(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II) of 8 June 1977, must be enforced by all parties to the armed conflict and must be afforded to all detained persons, irrespective of the reason for deprivation of liberty.<sup>38</sup> The requirement of humane treatment constitutes a fundamental obligation of international humanitarian law (“IHL”) and reflects customary international law.<sup>39</sup> It is broader than the

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<sup>38</sup> ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2<sup>nd</sup> edition, 2016 (“2016 ICRC Commentary”) states regarding Common Article 3: “it is undisputed that the substantive provisions of common Article 3 bind all such armed groups when they are party to an armed conflict” (para. 508). See also ICRC, *Commentary on the Additional Protocols to the Geneva Conventions*, 1987 (“1987 ICRC Commentary to Additional Protocol II”) regarding Article 1 (paras 4460, 4470). Regarding Article 5, the 1987 ICRC Commentary to Additional Protocol II clarifies that the expression “those who are responsible for the internment or the detention” refers to “persons who are responsible de facto for camps, prisons, or any other places of detention, independently of any recognized legal authority” (para. 4582).

<sup>39</sup> See Rule 87, in Henckaerts J.-M., Doswald-Beck L., *Customary International Humanitarian Law* (“CIHL Study”), Vol. I (Rules), Cambridge University Press 2005, p. 306. See also ICJ, *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, *Judgment of 27 June 1986*, para. 218; ICTY, *Prosecutor v. Tadić*, IT-94-1-AR72, Appeals Chamber, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* (“Tadić Decision on Jurisdiction”), 2 October 1995, para. 98.

prohibitions expressly listed in Common Article 3, which serve as examples of conduct that is indisputably in violation of the provision.<sup>40</sup>

35. Deprivation of liberty without a legal basis or in violation of basic safeguards is not compatible with and violates the requirement of humane treatment of all persons placed *hors de combat*, including by detention, as enshrined in Common Article 3.<sup>41</sup>

36. Customary international law prohibits arbitrary deprivation of liberty. Extensive state practice, in the form of, *inter alia*, military manuals, criminal legislation, documents of international organisations and conferences, and international judicial and quasi-judicial bodies, establishes the applicability of this prohibition in both international and non-international armed conflicts.<sup>42</sup> This has also been confirmed by the ICRC in Rule 99 of its 2005 Customary International Humanitarian Law Study.<sup>43</sup>

37. In light of the foregoing, the Pre-Trial Judge finds that arbitrary detention constitutes a serious violation of Common Article 3 and was prohibited by customary international law at the time of commission of the crimes alleged in the Revised Indictment. The status of the law, at the national and international level, was sufficiently clear and foreseeable to anticipate that depriving someone of his

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<sup>40</sup> 2016 ICRC Commentary regarding Common Article 3, para. 555; ICTY, *Prosecutor v. Aleksovski*, I-95-14/1, Trial Chamber, *Judgement*, 25 June 1999, para. 49.

<sup>41</sup> Rule 99, CIHL Study, Vol. I (Rules), p. 344.

<sup>42</sup> See the practice referred to in Rule 99, CIHL Study, Vol. I (Rules), p. 347; Vol. II (Practice), pp. 2331-2344, in particular pp. 2331 (para. 2555), 2332 (para. 2563), 2333 (paras 2576, 2579, 2580), 2334 (para. 2593), 2335 (paras 2599, 2600, 2605), 2336 (paras 2606, 2607, 2608, 2611); UN Security Council Resolutions: 1019 (1995), U.N. Doc. S/RES/1019, 9 November 1995; 1034 (1995), U.N. Doc. S/RES/1034, 21 December 1995; UN General Assembly Resolution 50/193 (1996), U.N. Doc. A/RES/50/193, 11 March 1996; UN Commission on Human Rights, Situation of human rights in the Republic of Bosnia and Herzegovina, the State of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), U.N. Doc. E/CN.4/RES/1996/71, 23 April 1996; UN Commission on Human Rights, Situation of human rights in the Sudan, U.N. Doc. E/CN.4/RES/1996/73, 23 April 1996, para. 15. See also Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (1976) ("SFRY Criminal Code").

<sup>43</sup> Rule 99, CIHL Study, Vol. I (Rules), p. 344.

or her liberty in an arbitrary manner might give rise to individual criminal responsibility.<sup>44</sup>

38. Accordingly, the Pre-Trial Judge concludes that the SC may exercise jurisdiction over this war crime under Article 14(1)(c) in combination with Article 12 of the Law.

#### B. TEMPORAL JURISDICTION

39. Article 7 of the Law provides that the SC shall have jurisdiction over crimes within its subject matter jurisdiction, which occurred between 1 January 1998 and 31 December 2000. As the Specialist Prosecutor has alleged that the crimes under Counts 1-10 were committed between at least March 1998 and September 1999,<sup>45</sup> the Pre-Trial Judge finds that the crimes fall within SC temporal jurisdiction.

#### C. TERRITORIAL OR PERSONAL JURISDICTION

40. Pursuant to Article 8 of the Law, the SC shall have jurisdiction over crimes within its subject matter jurisdiction, which were either commenced or committed in Kosovo. Pursuant to Article 9(2) of the Law, the SC shall have personal jurisdiction when the suspect is a person having Kosovo/Federal Republic of Yugoslavia ("FRY") citizenship (active personality principle) or crimes are committed against persons of Kosovo/FRY citizenship (passive personality principle), wherever those crimes were committed. The territorial and personal jurisdictional bases are thus in the alternative. Satisfying one of these requirements is sufficient to reach an affirmative finding on jurisdiction.

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<sup>44</sup> See also Article 142 of the SFRY Criminal Code.

<sup>45</sup> Revised Indictment, paras 16, 18, 57, 59, 95-96, 136-137, 172.

41. In the present case, the majority of the crimes allegedly occurred in locations within Kosovo, such as: Likoc/Likovac and [REDACTED]; Jabllanicë/Jablanica; Llapushnik/Lapušnik and Berishë/Beriša mountains; Drenoc/Drenovac; Malishevë/Mališevo and Volljakë/Volujak Cave; [REDACTED]; Bare and Bajgorë/Bajgora; Llapashticë/Lapaštica, [REDACTED], Majac/Majance, Potok and [REDACTED]; Zllash/Zlaš; [REDACTED]; [REDACTED]; Kleçkë/Klečka and [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Prizren; Ferizaj/Uroševac; [REDACTED]; Gjilan/Gnjilane; Suharekë/Suva Reka; Rahovec/Orahovac; Novobërdë/Novo Brdo; [REDACTED]; and [REDACTED].<sup>46</sup> The Pre-Trial Judge therefore finds that the territorial jurisdiction requirement of Article 8 of the Law has been met.

42. Regarding the crimes that allegedly occurred on the territory of Albania, such as in the *Kukës* and *Has* districts, the Pre-Trial Judge notes that the Suspects, born in Kosovo,<sup>47</sup> were allegedly citizens of the FRY at all times relevant to the Revised Indictment.<sup>48</sup> The Pre-Trial Judge therefore finds that the active personal jurisdiction requirement of Article 9(2) of the Law has been met.

43. In light of the foregoing, the Pre-Trial Judge finds that the case falls within the jurisdiction of the SC.

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<sup>46</sup> Revised Indictment, paras 60-77, 80-94, 98-115, 119-134, 138-164, 166-171.

<sup>47</sup> Revised Indictment, paras 1, 4, 7, 10.

<sup>48</sup> Revised Indictment, paras 1, 4, 7, 10. *See also* [REDACTED]; [REDACTED]; [REDACTED]; IT-04-84 P00340, pp. 4, 6, 173 (3288, 3290, 3457).

## V. LEGAL REQUIREMENTS

### A. NATURE AND SCOPE OF THE REVIEW

#### 1. Nature of the Review

44. The confirmation of the indictment is an *ex parte* process without the involvement of the Defence. Judicial review ensures that only those charges are considered at trial for which sufficient evidence has been presented. It also ensures that the indictment provides the Accused with sufficient information to understand clearly and fully the nature and cause of the charges against him or her with a view to preparing an adequate defence.<sup>49</sup>

45. Pursuant to Article 38(4) of the Law and Rule 86(1) of the Rules, the Specialist Prosecutor submits the indictment, together with supporting material, for review by the Pre-Trial Judge. During the review process, the Pre-Trial Judge determines whether the indictment meets the requirements under Rule 86(3) of the Rules, in particular the sufficiency of information as regards the name and particulars of the suspect, the statement of facts and the statement of crimes,<sup>50</sup> and whether there is a need to revert to the Specialist Prosecutor, pursuant to Rule 86(4)(a)-(c) of the Rules. Notably, the Pre-Trial Judge may request or permit the Specialist Prosecutor to present additional material in support of any or all charges. Subsequently, pursuant to Article 39(2) of the Law and the chapeau of Rule 86(4) of the Rules, the Pre-Trial Judge examines the supporting material in relation to each charge in the indictment, to determine whether the SPO has established a well-grounded suspicion that the suspect committed or participated in the commission of a crime under the jurisdiction of the SC.

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<sup>49</sup> Order Pursuant to Rule 86(4), para. 9.

<sup>50</sup> In this respect, the Pre-Trial Judge must give due regard to the rights of the Accused set out in Article 21(4)(a), (c) and (d) of the Law, which echoes Article 6(1), (3)(a) and (b) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") and Article 14(3)(a), (b) and (c) of the International Covenant on Civil and Political Rights ("ICCPR").

46. While neither the Law nor the Rules define well-grounded suspicion, the threshold is clearly differentiated from other evidentiary standards provided in the SC's legal framework. The Law establishes four progressively higher evidentiary thresholds: (i) grounds to believe (in Article 38(3)(a) of the Law and Rule 43(1) of the Rules regarding the status of suspects); (ii) grounded suspicion (in Article 41(6) of the Law regarding arrest warrants by the SC or arrest orders by the SPO); (iii) well-grounded suspicion (in Article 39(3) of the Law and Rule 86(4) of the Rules regarding the confirmation of an indictment); and (iv) beyond reasonable doubt (in Article 21(3) of the Law and Rule 158(3) of the Rules regarding convictions). As the threshold for triggering proceedings against an Accused, well-grounded suspicion is necessarily more onerous than those required for ascertaining suspects and ordering arrests, and is evidently less demanding than the standard for conviction following trial.

47. The Pre-Trial Judge notes that, according to Article 19.1.12 of the Kosovo Criminal Procedure Code of 2012, No. 04/L-123 ("CPC"), well-grounded suspicion is reached when the evidence "would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence".<sup>51</sup> Notably, it is not sufficient, as required for grounded suspicion under Article 19.1.9 CPC, that the objective observer be satisfied that "the person concerned is more likely than not to have committed the offence".

48. Therefore, while falling short of the certainty of a proven fact, determining the existence of a well-grounded suspicion nevertheless requires a conviction on the part of the Pre-Trial Judge, beyond mere theory or suspicion, that: (i) the contextual elements of the crime (if any) are present; (ii) the underlying acts or

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<sup>51</sup> "Objective" is defined as "not influenced by personal feelings or opinions in considering and representing facts; impartial, detached", see *OED Online* (Oxford University Press, December 2019), available at <https://www.oed.com/view/Entry/129634?redirectedFrom=objective#eid> (last accessed 20 October 2020).

crimes have indeed occurred; and (iii) the suspect committed or participated in the commission of the crime through the alleged mode(s) of liability. The Pre-Trial Judge bases such findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment. In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.<sup>52</sup>

## 2. Scope of the Review

49. Pursuant to Rule 86(4) of the Rules, to determine whether a well-grounded suspicion exists, the Pre-Trial Judge examines the indictment, the detailed outline and the supporting material only, without regard to any extraneous information or material, albeit publicly available. Accordingly, the Pre-Trial Judge may confirm or dismiss the indictment based solely on the information and evidentiary material submitted by the SPO.<sup>53</sup>

50. As part of the review process, the Pre-Trial Judge conducts a preliminary assessment of the supporting material, without encroaching on the prerogatives of the Trial Panel in determining the admissibility and weight of the evidence, as set out in Rules 137-139 of the Rules.<sup>54</sup> That being said, the Pre-Trial Judge shall not rely on material that is manifestly (i) non-authentic or (ii) obtained by means of a violation of the Law, the Rules, or standards of international human rights

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<sup>52</sup> Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-803-tEN, Pre-Trial Chamber I, Decision on the Confirmation of Charges, 29 January 2007, para. 39; *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Pre-Trial Chamber I, Decision on the Confirmation of Charges Against Laurent Gbagbo (“Gbagbo Decision on Confirmation of Charges”), 12 June 2014, para. 22.

<sup>53</sup> Similarly, STL, *Prosecutor v. Ayyash et al.*, STL-17-07/I/AC/R176bis, Appeals Chamber, Interlocutory Decision on the Applicable Law: Criminal Association and Review of the Indictment, 18 October 2017, para. 111.

<sup>54</sup> Similarly, STL, *Prosecutor v. Ayyash et al.*, STL-11-01/I, Pre-Trial Judge, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011, para. 26.

law, or under torture or any other inhumane or degrading treatment, as provided in Rule 138(2)-(3) of the Rules.

## B. ELEMENTS OF CRIMES

### 1. Crimes Against Humanity

#### (a) Contextual Requirements for Crimes Against Humanity

51. The contextual requirements for crimes against humanity consist of: (i) a widespread or systematic attack directed against any civilian population; (ii) a nexus between the underlying act and the attack; and (iii) knowledge of the attack.<sup>55</sup>

##### (i) *Widespread or systematic attack directed against any civilian population*

52. *Attack*. The term “attack” refers to a campaign, operation or course of conduct involving the multiple commission of acts of violence and mistreatment of the civilian population, including those referred to in Article 13 of the Law.<sup>56</sup> The acts which constitute an “attack” need not themselves be punishable as crimes against

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<sup>55</sup> ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Trial Chamber, *Judgement* (“*Kunarac et al* Trial Judgment”), 22 February 2001, para. 410; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, *Public Redacted Version of Judgement Issued on 24 March 2016* (“*Karadžić* Trial Judgment”), 24 March 2016, para. 472; *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, *Judgment* (“*Mladić* Trial Judgment”), 22 November 2017, para. 3023.

<sup>56</sup> ICTY, *Kunarac et al. Trial Judgment*, para. 417; *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Appeals Chamber, *Judgement* (“*Kunarac et al. Appeal Judgment*”), 12 June 2002, para. 86; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber, *Judgement* (“*Blagojević and Jokić* Trial Judgment”), 17 January 2005, para. 543; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Chamber, *Judgement* (“*Akayesu* Trial Judgment”), 2 September 1998, para. 581; *Prosecutor v. Rutaganda*, ICTR-96-3-T, Trial Chamber, *Judgement and Sentence*, 6 December 1999, para. 70.

humanity,<sup>57</sup> nor does the “attack” itself need to constitute a military attack.<sup>58</sup> The concepts of “attack”, within the meaning of Article 13 of the Law, and “armed conflict”, within the meaning of Article 14 of the Law, are not identical.<sup>59</sup> Hence, the attack may precede, outlast, or continue during the armed conflict, but it need not be a part of it.<sup>60</sup> When establishing whether there was an “attack” on a particular civilian population, it is not relevant that the other side also committed atrocities.<sup>61</sup>

53. *Directed against any civilian population.* As the expression “directed against” specifies, the attack must target any civilian population, a collective that is the primary target of the attack and not its incidental victim.<sup>62</sup> The Specialist Prosecutor is not required to demonstrate that the entire population of the geographical area, in which the attack took place, must have been subjected to the attack.<sup>63</sup> Rather, it is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way that the attack was in fact directed against a civilian population, rather than against a limited and randomly selected group of individuals.<sup>64</sup> The term “civilian population” is interpreted broadly and refers to persons who are not taking part in hostilities, as

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<sup>57</sup> ECCC, *Co-Prosecutors v. Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Trial Chamber, *Judgement* (“*Duch Trial Judgment*”), 26 July 2010, para. 298; ICTR, *Prosecutor v Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, *Judgement* (“*Nahimana et al. Appeal Judgment*”), 28 November 2007, paras 915-918.

<sup>58</sup> ICTY, *Kunarac et al. Trial Judgment*, para. 416; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Pre-Trial Chamber II, *Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo* (“*Bemba Decision on Confirmation of Charges*”), 15 June 2009, para. 75.

<sup>59</sup> ICTY, *Mladić Trial Judgment*, para. 3024; *Kunarac et al. Trial Judgment*, para. 416.

<sup>60</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 86; *Karadžić Trial Judgment*, para. 473.

<sup>61</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 87.

<sup>62</sup> ICTY, *Mladić Trial Judgment*, para. 3026; *Kunarac et al. Appeal Judgment*, para. 92; ICC, *Bemba Decision on Confirmation of Charges*, para. 76; *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, *Judgment Pursuant to Article 74 of the Statute* (“*Katanga Trial Judgment*”), 7 March 2014, para. 1104.

<sup>63</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 90; ICC, *Bemba Decision on Confirmation of Charges*, para. 77.

<sup>64</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 90; *Mladić Trial Judgment*, para. 3026; ECCC, *Duch Trial Judgment*, para. 303; ICC, *Katanga Trial Judgment*, para. 1105.

opposed to members of armed forces and other legitimate combatants.<sup>65</sup> The presence of non-civilians in the midst of the population does not alter its civilian character.<sup>66</sup> The purpose of the attack is immaterial to determine if this attack is directed against any civilian population.<sup>67</sup> Moreover, the reference to “any” civilian population signifies that Article 13 of the Law is not limited to populations defined by a common nationality, ethnicity or other similar distinguishing features and may include the State’s own population.<sup>68</sup> Whether the attack was directed against the civilian population may be assessed by taking into account, for example: (i) the means and methods used in the course of the attack; (ii) the status of the victims and their number; (iii) the discriminatory nature of the attack; (iv) the nature of the crimes committed in the course of the attack; (v) the form of resistance to the assailants at the time of the attack; (vi) the extent to which the attacking force complied with the precautionary requirements with the laws of

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<sup>65</sup> Considering Common Article 3 and Articles 43 and 50 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I), of 8 June 1977 (“Additional Protocol I”), persons who are not taking part in hostilities includes members of armed forces who laid down their arms or those placed *hors de combat* by sickness, wounds, detention or any other cause, as well as members of a resistance movement and former combatants who no longer take part in hostilities when the crimes were committed. See e.g. ICTY, Kunarac et al. Trial Judgment, para. 425; Prosecutor v. Blaškić, IT-95-14-T, Trial Chamber, Judgement (“Blaškić Trial Judgment”), 3 March 2000, para. 214; Prosecutor v. Limaj et al., IT-03-66-T, Trial Chamber, Judgement (“Limaj et al. Trial Judgment”), 30 November 2005, para. 186; Mladić Trial Judgment, para. 3027; ICTR, Akayesu Trial Judgment, para. 582; ECCC, Duch Trial Judgment, para. 311; ICC, Bemba Decision on Confirmation of Charges, para. 78; Katanga Trial Judgment, para. 1102.

<sup>66</sup> ICTY, Blagojević and Jokić Trial Judgment, para. 544; ICTR, Akayesu Trial Judgment, para. 582. See also Article 50(3) of Additional Protocol I.

<sup>67</sup> SCSL, Prosecutor v. Moinina Fofana, Allieu Kondewa, SCSL-04-14-A, Appeals Chamber, Judgement, 28 May 2008, paras 299, 300.

<sup>68</sup> ICTY, Prosecutor v. Tadić, IT-94-1-T, Trial Chamber, Opinion and Judgment (“Tadić Trial Judgment”), 7 May 1997, para. 635; Kunarac et al. Trial Judgment, para. 423; ECCC, Duch Trial Judgment, para. 312; ICC, Katanga Trial Judgment, para. 1103; Prosecutor v. Ntaganda, ICC-01/04-02/06-2359, Trial Chamber VI, Judgment (“Ntaganda Trial Judgment”), 8 July 2019, para. 667.

war; and (vii) the propaganda and training of troops related to the targeting of civilians.<sup>69</sup>

54. *Widespread or systematic*. The disjunctive qualifiers “widespread” or “systematic” characterise the nature of the attack.<sup>70</sup> The term “widespread” connotes the large-scale nature of the attack and the number of targeted persons.<sup>71</sup> It may denote an attack carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians.<sup>72</sup> The term “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence.<sup>73</sup> The existence of a policy or plan can be indicative of the systematic character of the attack but it is not a distinct legal element.<sup>74</sup> Whether an attack is “widespread” or “systematic” may be assessed taking into consideration, for example: (i) the possible participation of officials or authorities or any identifiable patterns of crimes;<sup>75</sup> (ii) the repetition of discriminatory acts directed at certain members of the population;<sup>76</sup> (iii) the use of

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<sup>69</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 91; *Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A, Appeals Chamber, *Judgement* (“Mrkšić and Šljivančanin Appeal Judgment”), 5 May 2009, para. 30; ECCC, *Duch Trial Judgment*, para. 309; ICC, *Ntaganda Trial Judgment*, para. 671.

<sup>70</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 97; ICC, *Situation in the Republic of Kenya*, ICC-01/09-19-Corr, Pre-Trial Chamber II, *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an investigation into the Situation in the Republic of Kenya*, 31 March 2010, para. 94.

<sup>71</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 94; *Mladić Trial Judgment*, para. 3025; ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-717, Pre-Trial Chamber I, *Decision on Confirmation of Charges* (“Katanga and Ngudjolo Decision on Confirmation of Charges”), 30 September 2008, para. 394; *Gbagbo Decision on Confirmation of Charges*, 12 June 2014, para. 222.

<sup>72</sup> ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 395; *Bemba Decision on Confirmation of Charges*, para. 83.

<sup>73</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 94; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Appeals Chamber, *Judgement* (“Kordić and Čerkez Appeal Judgment”), 17 December 2004, para. 94; ICTR, *Akayesu Trial Judgment*, para. 580; ICC, *Gbagbo Decision on Confirmation of Charges*, para. 223.

<sup>74</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 98; *Mladić Trial Judgment*, para. 3025; ECCC, *Duch Trial Judgment*, para. 312; ICC, *Katanga Trial Judgment*, para. 301.

<sup>75</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 95.

<sup>76</sup> ICTY, *Prosecutor v. Krajišnik*, IT-00-39-T, Trial Chamber, *Judgement* (“Krajišnik Trial Judgment”), 27 September 2006, para. 708.

propaganda by the perpetrators;<sup>77</sup> and (iv) the consequences of the attack upon the targeted population.<sup>78</sup>

(ii) *Nexus between underlying act and attack*

55. The underlying act must be committed “as part of” the attack against the civilian population, but it need not be committed in the midst of that attack. A crime, which is committed before or after the main attack against the civilian population or away from it, could still, if sufficiently connected, be part of that attack.<sup>79</sup> In determining whether such nexus exists, the characteristics, the aims, the nature or consequences of the act must be considered.<sup>80</sup>

(iii) *Knowledge of the attack*

56. The perpetrator must be aware that a widespread or systematic attack directed against a civilian population is taking place and that his or her action is part of the attack, or at least must have taken the risk that his or her acts were part thereof.<sup>81</sup> The perpetrator does not need to know the details of the attack or share the purpose or goal behind the attack. It is also irrelevant whether the perpetrator intended his or her acts to be directed against the targeted population or merely against the victim.<sup>82</sup> The perpetrator’s awareness may be inferred from, *inter alia*:  
(i) the person’s position in the military hierarchy and role in the criminal

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<sup>77</sup> ICTY, *Kunarac et al. Trial Judgment*, para. 572.

<sup>78</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 95.

<sup>79</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 100; ECCC, *Duch Trial Judgment*, para. 318.

<sup>80</sup> ICC, *Bemba Decision on Confirmation of Charges*, para. 86; *Katanga Trial Judgment*, para. 1124.

<sup>81</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 102; *Prosecutor v. Šainović et al.*, IT-05-87-A, Appeals Chamber, *Judgement* (“*Šainović et al. Appeal Judgment*”), 23 January 2014, para. 271; *Mladić Trial Judgment*, para. 3029; ECCC, *Duch Trial Judgment*, para. 319; ICC, *Bemba Decision on Confirmation of Charges*, paras 87, 88.

<sup>82</sup> ICTY, *Kunarac et al. Appeal Judgment*, paras 102, 103; ECCC, *Duch Trial Judgment*, para. 319; ICC, *Katanga Trial Judgment*, para. 1125.

campaign; (ii) the perpetrator's presence at the scene of the crimes; and (iii) the general historical and political environment in which the acts occurred.<sup>83</sup>

## (b) Specific Requirements for Crimes Against Humanity

### (i) Imprisonment

57. *Material elements (actus reus)*. The crime of imprisonment as a crime against humanity, within the meaning of Article 13(1)(e) of the Law, is committed through an act or omission resulting in depriving a person of his or her physical liberty without due process of law, thus rendering the imprisonment arbitrary.<sup>84</sup> The imprisonment includes the unlawful captivity of a person in an enclosed environment, such as a prison or psychiatric institution, and the unlawful restriction of the person's movements to a specific area, such as a ghetto, camp or a house.<sup>85</sup>

58. The deprivation of liberty is considered arbitrary when no legal basis exists to justify it. Where a lawful basis of imprisonment exists, it must apply throughout the period of imprisonment; where it ceases to apply, continued imprisonment

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<sup>83</sup> ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 402.

<sup>84</sup> ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Trial Chamber, *Judgement* ("Kordić and Čerkez Trial Judgment"), 26 February 2001, para. 302; *Prosecutor v. Krnojelac*, IT-97-25-T, Trial Chamber, *Judgment* ("Krnojelac Trial Judgment"), 15 March 2002, paras 113-115; *Kordić and Čerkez Appeal Judgment*, para. 116; ECCC, *Duch Trial Judgment*, para. 347; *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007/ECCC/TC, Trial Chamber, *Case 002/02 Judgement* ("Case 002/02 Trial Judgment"), 16 November 2018, para. 689; ICTR, *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Trial Chamber, *Judgement and Sentence* ("Ntagerura Trial Judgment"), 25 February 2004, para. 702.

<sup>85</sup> ICC, *Situation in the Republic of Burundi*, ICC-01/17-9-Red, Pre-Trial Chamber, *Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-9-US-Exp, 25 October 2017"* ("Burundi Decision 25 October 2017"), 9 November 2017, para. 68; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Appeals Chamber, *Judgement Volume 1 Part 2* ("Prlić et al. Appeal Judgment"), 29 November 2017, para. 473; *Kordić and Čerkez Appeal Judgment*, para. 640; *Prosecutor v. Simić et al.*, IT-95-17/1-T, Trial Chamber, *Judgement* (*Simić et al*, Trial Judgment"), 17 October 2003, paras 534, 661; ECCC, *Duch Trial Judgment*, paras 464, 468; *Case 002/02 Trial Judgment*, paras 1160-1163.

may be considered arbitrary.<sup>86</sup> International human rights instruments are instructive when making the assessment whether the deprivation of liberty is arbitrary.<sup>87</sup> If a national law is relied upon as a justification for the imprisonment, it must be established that the relevant provisions do not violate international law.<sup>88</sup>

59. The arbitrariness of imprisonment may further result from an otherwise justified deprivation of physical liberty if the deprivation is being administered under serious disregard of fundamental procedural rights of the person deprived of his or her liberty as provided for under international law.<sup>89</sup> The fundamental procedural rights encompass, in particular: (i) the right to be informed of the reason for detention; and (ii) the right to prompt review of the lawfulness of detention by a court or an administrative board.<sup>90</sup>

60. The law does not require the imprisonment to be for a prolonged period. The brevity of the detention alone cannot be brought forward as an argument to deny the gravity or seriousness of the deprivation of physical liberty.<sup>91</sup> However, not every minor deprivation of liberty satisfies the material elements of imprisonment.<sup>92</sup>

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<sup>86</sup> ICTY, *Krnojelac Trial Judgment*, para. 114; ECCC, *Duch Trial Judgment*, para. 348; *Case 002/02 Trial Judgment*, paras 689, 691; ICTR, *Ntagerura Trial Judgment*, para. 702.

<sup>87</sup> For example, see Articles 9 and 10 of the Universal Declaration of Human Rights (GA/RES/217 A/(III) of 10 December 1948) (“UDHR”); Articles 5 and 6 of the ECHR; Articles 9 and 14 of the ICCPR; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (GA Res. 43/173 of 9 December 1999). ICTY, *Krnojelac Trial Judgment*, para. 113; ECCC, *Case 002/02 Trial Judgment*, paras 692-693; ICC, *Burundi Decision 25 October 2017*, fn. 169.

<sup>88</sup> ICTY, *Krnojelac Trial Judgment*, para. 114; ECCC, *Duch Trial Judgment*, para. 348; *Case 002/02 Trial Judgment*, paras 689; ICTR, *Ntagerura Trial Judgment*, para. 702.

<sup>89</sup> ICTY, *Krnojelac Trial Judgment*, fn. 347; *Kordić and Čerkez Trial Judgment*, para. 302; ICTR, *Ntagerura Trial Judgment*, para. 702.

<sup>90</sup> ICTY, *Krnojelac Trial Judgment*, para. 120; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber, *Judgement Volume 1* (“Prlić et al. Trial Judgment”), 29 May 2013, para. 66; ECCC, *Duch Trial Judgment*, para. 239.

<sup>91</sup> ICC, *Burundi Decision 25 October 2017*, para. 68.

<sup>92</sup> ICTR, *Ntagerura Trial Judgment*, para. 702; ECCC, *Duch Trial Judgment*, para. 349.

61. *Mental element (mens rea)*. The perpetrator must have intended to deprive the person of his or her physical liberty, or he or she acted in the reasonable knowledge that his or her act or omission is likely to cause arbitrary deprivation of the person's physical liberty.<sup>93</sup>

(ii) *Other inhumane acts*

62. *Material elements (actus reus)*. The crime of other inhumane acts as a crime against humanity, within the meaning of Article 13(1)(j) of the Law, is committed through an act or omission of similar gravity to the other enumerated acts under Article 13 of the Law, resulting in serious mental or physical suffering or injury, or constituting a serious attack on human dignity.<sup>94</sup> As the term "other" suggests, it is a residual crime which criminalises conduct that does not otherwise fall under any of the remaining crimes listed in Article 13 of the Law.<sup>95</sup>

63. Article 13(1)(j) of the Law is formulated openly allowing a range of acts or omissions to fall under it. In order to prevent a possible violation of the principle *nullum crimen sine lege*, its applicability must be limited to severe conduct that presents the same degree of gravity as the other crimes set out in Article 13 of the

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<sup>93</sup> ICTY, *Krnjelac Trial Judgment*, para. 115; ECCC, *Duch Trial Judgment*, para. 350; *Case 002/02 Trial Judgment*, para. 687.

<sup>94</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber, *Judgement* ("Popović et al. Trial Judgment"), 10 June 2010, para. 888; *Prosecutor v. Vasiljević*, IT-98-32-T, Trial Chamber, *Judgment* ("Vasiljević Trial Judgment"), 29 November 2002, para. 234; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Trial Chamber, *Judgement and Sentence* ("Bagosora et al. Trial Judgment"), 18 December 2008, para. 2218; ECCC, *Duch Trial Judgment*, para. 368.

<sup>95</sup> Similarly, ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Trial Chamber, *Judgement* ("Kvočka et al. Trial Judgment"), 2 November 2001, para. 206; *Vasiljević Trial Judgment*, para. 234; ICTR, *Bagosora et al. Trial Judgment*, para. 2218; ECCC, *Duch Trial Judgment*, para. 367; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 452; *Prosecutor v. Muthaura et al.*, ICC-01/09-02/11-382-Red, Pre-Trial Chamber II, *Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute*, 23 January 2012, para. 269; *Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, Pre-Trial Chamber I, *Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Al Hassan Decision on Confirmation of Charges"), 13 November 2019, para. 252.

Law.<sup>96</sup> The severity of the conduct must be assessed on a case-by-case basis with due regard for the individual circumstances of the case,<sup>97</sup> such as the: (i) nature of the act or omission; (ii) context in which it occurred; (iii) personal circumstances of the victim, including age, sex and health; and (iv) physical, mental and moral impact of the conduct upon the victim.<sup>98</sup> The detention or confinement of persons in inhumane conditions may amount to an inhumane act in certain circumstances,<sup>99</sup> but it does not, in and of itself, constitute an inhumane act.

64. There is no requirement that the suffering have long-term effects, although this may be relevant to the determination of the severity of the criminal conduct.<sup>100</sup>

65. *Mental element (mens rea)*. The act or omission must have been committed intentionally or with the knowledge that this act or omission was likely to cause such pain or suffering or to constitute a serious attack upon human dignity.<sup>101</sup>

*(iii) Torture*

66. *Material elements (actus reus)*. The crime of torture as a crime against humanity, within the meaning of Article 13(1)(f) of the Law, is committed through an act or

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<sup>96</sup> Similarly, ICTY, *Kordić and Čerkez Appeal Judgment*, para. 117; *Kvočka et al. Trial Judgment*, para. 206; ICTR, *Prosecutor v. Niyitegeka*, ICTR-96-14-T, Trial Chamber, *Judgement and Sentence*, 16 May 2003, para. 460; ECCC, *Duch Trial Judgment*, para. 367; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 448. Whether a specific conduct satisfies the threshold of severity may also be drawn from norms of international human rights law, in particular the ECHR and the ICCPR. See ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Chamber, *Judgement* (“*Kupreškić et al. Trial Judgment*”), 14 January 2000, para. 566; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 449; *Al Hassan Decision on Confirmation of Charges*, para. 252.

<sup>97</sup> ICTY, *Blaškić Trial Judgment*, para. 243; *Kordić and Čerkez Appeal Judgment*, para. 117; ECCC, *Duch Trial Judgment*, para. 369; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 253.

<sup>98</sup> ICTY, *Vasiljević Trial Judgment*, para. 235; ECCC, *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007/ECCC/TC, Trial Chamber, *Case 002/01 Judgement* (“*Case 002/01 Trial Judgment*”), 7 August 2014, para. 438; ICC, *Katanga and Ngudjolo Decision on Confirmation of Charges*, para. 449.

<sup>99</sup> ICTR, *Prosecutor v. Bagilishema*, ICTR-95-IA-T, Trial Chamber, *Judgement*, 7 June 2001, paras 490-492.

<sup>100</sup> ICTY, *Vasiljević Trial Judgment*, para. 235; ECCC, *Duch Trial Judgment*, para. 369; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 253.

<sup>101</sup> ICTY, *Vasiljević Trial Judgment*, para. 236; *Popović et al. Trial Judgment*, para. 888; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber, *Judgement*, 21 May 1999, para. 153.

omission inflicting severe pain or suffering, whether physical or mental, upon another person.<sup>102</sup>

67. Whether an act or omission qualifies as torture must be determined on a case-by-case basis,<sup>103</sup> taking into account, for example, the: (i) nature and context of the infliction of pain; (ii) premeditation and institutionalisation of the ill-treatment; (iii) physical condition of the victim; (iv) manner and method used; (v) position of inferiority of the victim; (vi) extent to which an individual has been mistreated over a prolonged period of time; and (vii) subjection to repeated or various forms of mistreatment that are inter-related, follow a pattern, or are directed to the same prohibited goal.<sup>104</sup> Conditions imposed during detention, such as beatings, sexual violence, prolonged deprivation of sleep, food, hygiene and medical assistance, as well as threats to torture, rape, or kill relatives have been considered sufficiently severe as to amount to torture.<sup>105</sup>

68. Further, the consequences of the act or omission need not be permanent or visible on the victim.<sup>106</sup> There is no requirement that the perpetrator acted in a public capacity or as person of authority.<sup>107</sup>

69. *Mental element (mens rea)*. The perpetrator must have inflicted the pain or suffering intentionally and in pursuance of such purpose as obtaining information

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<sup>102</sup> ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Trial Chamber, *Judgement* (“Brđanin Trial Judgment”), 1 September 2004, para. 481; *Kunarac et al. Appeal Judgment*, para. 142; ECCC, *Duch Trial Judgment*, para. 354.

<sup>103</sup> ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Appeals Chamber, *Judgement* (“Brđanin Appeal Judgment”), 3 April 2007, para. 251; *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, Appeals Chamber, *Judgement* (“Naletilić and Martinović Appeal Judgment”), 3 May 2006, para. 299; *Kunarac et al. Appeal Judgment*, para. 149.

<sup>104</sup> ICTY, *Simić et al. Trial Judgment*, para. 80, referring to *Krnojelac Trial Judgment*, para. 182. See also ECCC, *Duch Trial Judgment*, para. 355.

<sup>105</sup> ECCC, *Duch Trial Judgment*, para. 355, referring to ICTY, *Prosecutor v. Mucić et al.*, IT-96-21-T, Trial Chamber, *Judgement* (“Mucić et al. Trial Judgment”), 16 November 1998, para. 467; *Kvočka et al. Trial Judgment*, para. 151; *Kunarac et al. Appeal Judgment*, para. 150.

<sup>106</sup> ICTY, *Kvočka et al. Trial Judgment*, para. 148; ECCC, *Duch Trial Judgment*, para. 355.

<sup>107</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 148; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, *Judgement* (“Kvočka et al. Appeal Judgment”), 28 February 2005, para. 284.

or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person.<sup>108</sup> It is sufficient that one of the prohibited purposes forms part of the motivation behind the conduct; it need not be the “predominant or sole purpose” behind the infliction of severe pain or suffering.<sup>109</sup>

(iv) *Murder*

70. *Material elements (actus reus)*. The crime of murder as a crime against humanity, within the meaning of Article 13(1)(a) of the Law, is committed through an act or omission resulting in the death of a person.<sup>110</sup> It is not necessary to produce the body of the deceased person as proof of death; it suffices to rely on circumstantial evidence,<sup>111</sup> taking into account, for example: (i) incidents of mistreatment directed against the victim; (ii) patterns of mistreatment and disappearances of other victims; (iii) coincident or near-coincident time of death of other victims; (iv) the circumstances in which the victim was last seen; (v) the general climate of lawlessness in the area where the acts were committed and the general behaviour of soldiers in the vicinity; and (vi) the length of time which has elapsed since the person disappeared.<sup>112</sup>

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<sup>108</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 153; *Limaj et al. Trial Judgment*, paras 235, 239; ECCC, *Duch Trial Judgment*, para. 356.

<sup>109</sup> ICTY, *Kvočka et al. Trial Judgment*, para. 153; *Mucić et al. Trial Judgment*, para. 470; *Kunarac et al. Appeal Judgment*, para. 155; *Simić et al. Trial Judgment*, para. 81; ECCC, *Duch Trial Judgment*, para. 356.

<sup>110</sup> ICTY, *Krnjelac Trial Judgment*, para. 324; *Krajišnik Trial Judgment*, para. 715; ICTR, *Akayesu Trial Judgment*, para. 589; ECCC, *Duch Trial Judgment*, para. 331; ICC, *Bemba Decision on Confirmation of Charges*, para. 132.

<sup>111</sup> ICTY, *Tadić Trial Judgment*, para. 240; *Krnjelac Trial Judgment*, para. 326; *Karadžić Trial Judgment*, para. 446; ECCC, *Duch Trial Judgment*, para. 332; ICC, *Katanga Trial Judgment*, para. 768.

<sup>112</sup> ICTY, *Krnjelac Trial Judgment*, para. 327; *Prosecutor v. Halilović*, IT-01-48-T, Trial Chamber, *Judgement* (“*Halilović Trial Judgment*”), 16 November 2005, para. 37.

71. *Mental element (mens rea)*. The perpetrator must have killed the person intentionally or wilfully caused serious bodily harm, which the perpetrator should reasonably have known might lead to death.<sup>113</sup>

(v) *Enforced disappearance*

72. *Material elements (actus reus)*. The crime of enforced disappearance as a crime against humanity,<sup>114</sup> within the meaning of Article 13(1)(i) of the Law, is committed by State agents, or persons acting with the authorisation, support or acquiescence of a State or a political organisation,<sup>115</sup> through an act or omission

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<sup>113</sup> ICTY, *Kordić and Čerkez Trial Judgment*, para. 236; *Mladić Trial Judgment*, para. 3050; ECCC, *Duch Trial Judgment*, para. 333.

<sup>114</sup> The crime of enforced disappearance as a crime against humanity has been recognised in various legal instruments, such as Organisation of American States, Annual Report of the Inter-American Commission on Human Rights, AG/RES.666 (XIII-01/83), 18 November 1983, para. 4; Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, adopted on 18 December 1992 (“1992 Declaration”), fourth preambular paragraph; Inter-American Convention on Forced Disappearance of Persons, 9 June 1994, OAS Treaty Series No. 68, p. 33 (“1994 Inter-American Convention”), sixth preambular paragraph; International Law Commission, Draft Code of Crimes Against the Peace of Mankind, Yearbook ILC, 1996, vol. II (Part Two), p. 50; Article 7(1)(i) of the Rome Statute, 17 July 1998, UNTS, vol. 2187 (“Rome Statute”), p. 3; Article 5.1(i) and 5.2(h) of Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction Over Serious Criminal Offences, UNTAET/REG/2000/15, 6 June 2000; Report of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/66, 10 March 2005 (“2005 ISWG Report”), para. 12; International Convention for the Protection of All Persons from Enforced Disappearance, UNTS, vol. 2716, p. 3 (“2006 Convention on Enforced Disappearance”), fifth preambular paragraph and Article 5; Draft Articles on Prevention and Punishment of Crimes Against Humanity (“CAH Draft Articles”), Article 2(1)(i), contained in Report of the International Law Commission (2019), A/74/10, pp. 10-140.

<sup>115</sup> For the purposes of establishing criminal responsibility for the crime against humanity of enforced disappearance, the perpetrators may act in the context of the State or a political organisation. This has been acknowledged in ECCC, *Case 002/01 Trial Judgment*, para. 448; *Case 002/02 Trial Judgment*, para. 754; Article 7(2)(i) of the Rome Statute and related Elements of Crimes; Article 2(2)(i) of the CAH Draft Articles; this element has been supported in the Report entitled “Civil and Political Rights, Including Questions of: Disappearances and Summary Executions”, submitted by Mr. Manfred Nowak (“2002 Nowak Report”), E/CN.4/2002/71, 8 January 2002, paras 71, 73; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 10.1.1 (calling for a broad definition of enforced disappearance that includes acts “committed by non-state actors, such as paramilitary groups, death squads, rebel fighters or organised criminal groups”). The involvement of the State is also evinced in various human rights instruments, such as GA/RES/33/173 (“Disappeared Persons”), 20 December 1978, Preambular Paragraphs 2-4; 1992 Declaration, Preambular Paragraph 3;

resulting in the deprivation of a person's liberty, followed by the refusal to acknowledge such deprivation or to disclose information regarding the fate or whereabouts of such person.<sup>116</sup>

73. The deprivation of liberty covers comprehensively any form of deprivation of liberty of a person against his or her will in any place.<sup>117</sup> The deprivation of liberty

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Article II of the 1994 Inter-American Convention; Article 2 of the 2006 Convention on Enforced Disappearance (Article 3 of said Convention allows States to investigate instances of enforced disappearances committed by persons or groups of persons acting without the authorization, support or acquiescence of the State); Report of the Working Group on Enforced or Involuntary Disappearances ("1987 WGEID Report"), E/CN.4/1988/19, 31 December 1987, para. 17; Report of the Working Group on Enforced or Involuntary Disappearances ("1996 WGEID Report"), E/CN.4/1996/38, 15 January 1996, para. 55; Addendum to the Report of the Working Group on Enforced or Involuntary Disappearances ("2010 WGEID Report Addendum"), A/HRC/16/48/Add.3, 28 December 2010, paras 25-26 (accepting however the broadening of the definition in the Rome Statute by including "political organizations"); Council of Europe, Parliamentary Assembly, Resolution 828 (1984), para. 2. *See also* Inter-American Court of Human Rights ("IACtHR"), *Case of Velásquez-Rodríguez v. Honduras*, Judgment (Merits) ("Velásquez-Rodríguez v. Honduras Judgment"), 29 July 1988, para. 148; *Case of Gómez-Palomino v. Peru, Order (Monitoring compliance with Judgment)* (*Gómez-Palomino v. Peru Order*), 22 November 2005, para. 97; *Case of the Río Negro Massacres v. Guatemala*, Judgment (Preliminary objection, merits, reparations and costs), 4 September 2012, para. 115; *Case of Osario Rivera and Family Members v. Peru*, Judgment, 26 November 2013, para. 113.

<sup>116</sup> The elements of the crime are derived from customary international law as mirrored in legal instruments and the practice of international courts, including human rights bodies. In so doing, the Pre-Trial Judge is mindful of the difference between violations of human rights obligations and criminal responsibility, reflected in the nature of the instruments and the specific mandates of the courts or bodies whose decisions are relied upon. Documents, instruments and decisions on events dating after the temporal jurisdiction of the Specialist Chambers attest to the consolidation of previous definitions of enforced disappearance. ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber, Judgment, 15 April 2011, para. 1837; ECCC, Case 002/01 Trial Judgment, para. 448; Case 002/02 Trial Judgment, para. 754; War Crimes Chamber in the Court of Bosnia and Herzegovina, *Boban Šimšić*, X-KR-05/04, Verdict, 11 July 2006, para. 77; *Dragan Damjanović*, X-KR-05/51, Verdict, 15 December 2006, pp. 26-27; *Želko Lelek*, X-KR/06/202, Verdict, 23 May 2008, p. 26; ICC, Burundi Decision 25 October 2017, para. 118; IACtHR, *Case of García and Family Members v. Guatemala*, Serie C No. 258, Judgment ("García and Family Members v. Guatemala Judgment"), 29 November 2012, para. 115; *Case of González Medina and Family v. Dominican Republic*, Judgment, 27 February 2012, para. 128; 1987 WGEID Report, para. 17; 1996 WGEID Report, para. 55; Third Preambular Paragraph of the 1992 Declaration, A/RES/47/133, adopted on 18 December 1992; Article II of the 1994 Inter-American Convention; Article 2 of the 2006 Convention on Enforced Disappearance; Article 7(2)(i) of the Rome Statute (which relies to a great extent on the definition in the 1992 Declaration) and Article 2(2)(i) of the CAH Draft Articles.

<sup>117</sup> *See supra* paras 57-61 (Specific Requirements, Imprisonment). ICC, Burundi Decision 25 October 2017, para. 118; Third Preambular Paragraph of the 1992 Declaration ("persons are arrested, detained or abducted against their will or otherwise deprived of their liberty"); Article II of the 1994 Inter-American Convention ("act of depriving a person or persons of his or their freedom, in whatever way"); Article 7(2)(i) of the Rome Statute ("arrest, detention or abduction of persons"), together with related

as such may be unlawful from its initiation, or an initially justified deprivation of liberty may subsequently become unlawful.<sup>118</sup> It also covers the scenario where the person concerned was initially arrested and detained lawfully but, subsequently, “disappeared” in custody.<sup>119</sup>

74. The refusal to acknowledge or give information encompasses outright denial, the giving of false information about, or concealment of the fate or whereabouts of the victim.<sup>120</sup> In this context, it is noted that, whether or not the family of the victim lodged a formal complaint,<sup>121</sup> the State has the duty to carry out *ex officio* an effective investigation into the disappearance of the victim without delay;<sup>122</sup>

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Elements of Crimes (paragraph 1) and fns 25 and 26; Article 2(2)(i) of the CAH Draft Articles; Article 2 of the 2006 Convention on Enforced Disappearance (“arrest, detention, abduction or any other form of deprivation of liberty”); Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, 10 January 2008 (“2007 WGEID Report”), p. 11, para. 7 (part of the General Comment); 2010 WGEID Report Addendum, paras 22-24.

<sup>118</sup> See *supra* paras 57-61 (Specific Requirements, Imprisonment). See also fn. 25 of the Elements of Crimes to the Rome Statute.

<sup>119</sup> IACtHR, *Case of Trujillo-Oroza v. Bolivia*, *Judgment*, 26 January 2000; ICC, *Burundi Decision 25 October 2017*, para. 118. See also fn. 26 of the Elements of Crimes to the Rome Statute.

<sup>120</sup> ICC, *Burundi Decision 25 October 2017*, para. 118; 2010 WGEID Report Addendum, para. 28.

<sup>121</sup> Article 13(1) of the 1992 Declaration (“Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint”); the same language is employed in Article 12(2) of the 2006 Convention on Enforced Disappearance; similarly, ICC, *Burundi Decision 25 October 2017*, para. 118; IACtHR, *Velásquez-Rodríguez v. Honduras Judgment*, para. 177; *Case of Zambrano Vélez et al. v. Ecuador*, *Judgment*, 4 July 2007, para. 120; *Case of Heliodoro Portugal v. Panama*, *Judgment* (“*Heliodoro Portugal v. Panama Judgment*”), 12 August 2008, para. 145.

<sup>122</sup> ECtHR, *Case of Kurt v. Turkey*, 15/1997/799/1002, *Judgment*, 25 May 1998, para. 124; *Case of Cyprus v. Turkey*, 25781/94, *Judgment*, 10 May 2001, paras 147-148; *Case of Timurtaş v. Turkey*, 23531/94, *Judgment*, 13 June 2000, paras 89-90 and 103-105; *Case of Bazorkina v. Russia*, 69481/01, *Judgment*, 27 July 2006, paras 117-125, 148; IACtHR, *Velásquez-Rodríguez v. Honduras Judgment*, paras 174-177, 181; *Case of Blake v. Guatemala*, *Judgment (Merits)* (“*Blake v. Guatemala Judgment*”), 24 January 1998, para. 66; *Heliodoro Portugal v. Panama Judgment*, para. 144; *García and Family Members v. Guatemala Judgment*, para. 138; Human Rights Committee, *Bleier v. Uruguay*, Communication No. 30/1978, Decision, 29 March 1982, para. 15; *Quinteros Almeida v. Uruguay*, Communication No. 107/1981, Decision (“*Quinteros Decision*”), 21 July 1983, para. 15; *Arévalo Perez et al. v. Columbia*, Communication No. 181/1984, Decision, 3 November 1989, para. 10; *Laureano Atachahua v. Peru*, Communication No. 540/1993, Decision, 25 March 1996, para. 10; *Sarma v. Sri Lanka*, Communication No. 950/2000, Decision, 16 July 2003, para. 11; ICC, *Burundi Decision 25 October 2017*, para. 118. See also Article 13 of the 1992 Declaration; Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/16/48 (“2010 WGEID Report”), 26 January 2011, pp. 14-15, paras 4-5 (part of the General Comment).

equally, the political organisation has the obligation to account for missing persons and inform the families of their fate or whereabouts.<sup>123</sup>

75. As a result of the enforced disappearance, the victim is removed from the protection of the law, to wit, the victim has no longer access to judicial assistance and legal procedures, thus placing him or her in a situation of complete defencelessness.<sup>124</sup> The definition of enforced disappearance under customary international law does not establish a minimum period for the victim's removal from the protection of the law.<sup>125</sup>

76. The crime of enforced disappearance is considered a continuous crime as long as the perpetrators continue to conceal the fate and whereabouts of the person or persons who have disappeared and these facts remain unclarified.<sup>126</sup>

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<sup>123</sup> The prohibition of enforced disappearance in armed conflict, whether international or non-international, and the obligation to account for missing persons and provide their families with any information on their fate is also incumbent on all parties to the conflict, including armed groups, *see* Rules 98 and 117, CIHL Study, Vol. I (Rules), pp. 340-343 and 421-427; General Assembly, "Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts", Resolution 3220 (XXIX), 6 November 1974, Article 2 ("Calls upon parties to armed conflicts, regardless of their character or locations, during and after the end of hostilities and in accordance with the Geneva Conventions of 1949, to take such actions as may be within their power to help locate and mark the graves of the dead, to facilitate the disinterment and the return of remains, if requested by their families, and to provide information about those who are missing in action"). If these obligations exist for armed groups during armed conflict, then it can be expected that they exist outside of an armed conflict, including in the context of a widespread or systematic attack.

<sup>124</sup> Third Preambular Paragraph and Article 1(2) of the 1992 Declaration; Article II of the 1994 Inter-American Convention; Article 2 of the 2006 Convention on Enforced Disappearance; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 1; 2007 WGEID Report, p. 11, para. 5 (part of the General Comment); 2010 WGEID Report Addendum, para. 29; ICC, *Burundi Decision 25 October 2017*, para. 120; IACtHR, *Caso Anzualdo Castro v. Peru, Sentencia (Excepción Preliminar, Fondo, Reparaciones y Costas*, 22 September 2009, paras 94-99; *Chitay Nech et al. v. Guatemala, Judgment (Preliminary Objections, Merits, Reparations, and Costs)*, 25 May 2010, paras 99-100. Removing the person from the protection of the law typically and in particular violates the right to personal liberty, *see* Article 5 of the ECHR; Article 9 of the 1966 ICCPR; Article XI of the 1994 Inter-American Convention; Article 17 of the 2006 Convention on Enforced Disappearance.

<sup>125</sup> Definitions of the concept of enforced disappearance in international legal instruments do not include a temporal requirement. *See also* 2007 WGEID Report, p. 12, paras 8-9 (part of the General Comment).

<sup>126</sup> Article 17(1) of the 1992 Declaration; Article III-1 of the 1994 Inter-American Convention; Article 8(1)(b) of the 2006 Convention on Enforced Disappearance; Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2001/68, 18 December 2000, paras 25-32; 2010 WGEID

77. *Mental element (mens rea)*. The perpetrator must have: (i) intentionally deprived a person of his or her liberty and be aware that the deprivation of liberty would be followed by a refusal to acknowledge such deprivation of liberty or to give information on the fate or whereabouts of the victim; or (ii) intentionally refused to disclose information regarding the fate or whereabouts of the person concerned and be aware that such refusal was preceded or accompanied by that deprivation of liberty.<sup>127</sup> However, under customary international law as applicable at the relevant time, there is no need to demonstrate or even presume the special intention of the perpetrator to remove the victim from the protection of the law.<sup>128</sup>

*(vi) Persecution*

78. *Material elements (actus reus)*. The crime of persecution as a crime against humanity, within the meaning of Article 13(1)(h) of the Law, is committed through a specifically pleaded<sup>129</sup> act or omission that discriminates in fact and which denies

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Report, p. 11, para. 1 (part of the General Comment); 2010 WGEID Report Addendum, para. 33; ICC, *Burundi Decision 25 October 2017*, para. 121; Human Rights Committee, *Quinteros Decision*, para. 14; ECtHR, *Case of El-Masri v. Former Republic of Macedonia*, 39630/09, *Judgment*, 13 December 2012, para. 240; *Case of Varnava and Others v. Turkey*, 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, *Judgment*, 18 September 2009, para. 148; IACtHR, *Velásquez-Rodríguez v. Honduras Judgment*, paras 155, 181; *Blake v. Guatemala Judgment*, para. 65; *Case of Goiburú et al. v. Peru, Judgment (Merits, Reparations and Costs)*, 22 September 2006, para. 81; *Heliodoro Portugal v. Panama Judgment*, paras 34-35, 106-107; *García and Family Members v. Guatemala Judgment*, paras 95, 112.

<sup>127</sup> Similarly, Paragraph 3 of the Elements of Crimes of Article 7(1)(i) of the Rome Statute.

<sup>128</sup> Similarly, 2002 Nowak Report, para. 69; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 10.1.2; 2007 WGEID Report, p. 10; 2010 WGEID Report Addendum, para. 31; 2005 ISWG Report para. 25.

<sup>129</sup> ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, *Appeal Judgment* (“*Kupreškić et al. Appeal Judgment*”), 23 October 2001, para. 98; *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Chamber, *Judgment* (“*Blaškić Appeal Judgment*”), 29 July 2004, para. 139; *Prosecutor v. Stakić*, IT-97-24-T, Trial Chamber, *Judgment* (“*Stakić Trial Judgment*”), 31 July 2003, para. 735; *Popović et al. Trial Judgment*, para. 965.

or infringes upon a fundamental human right laid down in international customary or treaty law.<sup>130</sup>

79. The crime of persecution consists of one single act or omission or a series thereof<sup>131</sup> that are: (i) prohibited under any provision in Articles 13 and 14 of the Law, such as arbitrary detention/imprisonment, cruel treatment, torture, pillaging or murder;<sup>132</sup> or (ii) while not explicitly mentioned therein, they reach the same level of gravity as other crimes listed in Article 13 of the Law, whether considered in isolation or in conjunction with other underlying acts, in particular with their cumulative effect.<sup>133</sup> Such acts include harassment, humiliation, psychological abuse, forced labour assignments or other restrictive and discriminatory

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<sup>130</sup> ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, Appeals Chamber, Judgement (“*Krnojelac Appeal Judgment*”), 17 September 2003, para. 185; *Prosecutor v. Vasiljević*, IT-98-32-A, Appeals Chamber, Judgement (“*Vasiljević Appeal Judgment*”), 25 February 2004, para. 113; *Prosecutor v. Simić*, IT-95-9-A, Appeals Chamber, Judgement (“*Simić Appeal Judgment*”), 28 November 2006, para. 177; *Karadžić Trial Judgment*, para. 497; *Mladić Trial Judgment*, para. 3228; ICTR, *Bogosora et al. Trial Judgment*, para. 2208; *Nahimana et al. Appeal Judgment*, para. 985; ECCC, *Duch Trial Judgment*, para. 376; *Co-Prosecutors v. Kaing Guek Eav*, 001/18-07-2007-ECCC/SC, Supreme Court Chamber, Appeal Judgment (“*Duch Appeal Judgment*”), 3 February 2012, para. 257.

<sup>131</sup> ICTY, *Kordić and Čerkez Trial Judgment*, para. 199; *Vasiljević Appeal Judgment*, para. 113; *Simić Appeal Judgment*, para. 178; ECCC, *Duch Appeal Judgment*, para. 258.

<sup>132</sup> ICTY, *Kupreškić et al. Trial Judgment*, paras 594, 596, 600-605, 615(b), 617; *Kordić and Čerkez Trial Judgment*, para. 198; *Kvočka et al. Trial Judgment*, paras 185-186, 189; *Krnojelac Appeal Judgment*, para. 219; *Blaškić Appeal Judgment*, paras 143, 147-148, 155; *Brđanin Appeal Judgment*, para. 296; *Karadžić Trial Judgment*, paras 498, 502, 505, 509, 514, 521, 523-525, 527-529; *Mladić Trial Judgment*, paras 3229, 3231, 3234, 3240, 3253; ECCC, *Duch Trial Judgment*, para. 378; *Duch Appeal Judgment*, para. 253; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 668; *Ntaganda Trial Judgment*, para. 994.

<sup>133</sup> ICTY, *Kupreškić et al. Trial Judgment*, paras 615(e), 619, 622; *Kordić and Čerkez Trial Judgment*, paras 195, 199; *Krnojelac Trial Judgment*, para. 434; *Stakić Trial Judgment*, para. 736; *Kvočka et al. Appeal Judgment*, para. 321; *Simić Appeal Judgment*, para. 177; *Brđanin Appeal Judgment*, para. 296; *Karadžić Trial Judgment*, para. 499; *Mladić Trial Judgment*, para. 3229; ICTR, *Nahimana et al. Appeal Judgment*, para. 985; ECCC, *Duch Trial Judgment*, para. 378; *Duch Appeal Judgment*, paras 254, 257-258; ICC, *Ntaganda Trial Judgment*, para. 992.

measures.<sup>134</sup> The persecutory act or omission does not need to constitute a crime in international or national law.<sup>135</sup>

80. Not every infringement of human rights resulting from the persecutory act(s) and omission(s) is relevant, but only a severe deprivation of a person's fundamental rights, that is, a gross and blatant denial of those rights.<sup>136</sup> The fundamental human rights whose infringement may constitute persecution can be found in international standards on human rights,<sup>137</sup> and they include the right to life, the right not to be subjected to torture and cruel, inhumane or degrading treatment, the right not to be subjected to arbitrary arrest or detention, the right to private property and the right to a fair trial.<sup>138</sup> What matters is that the person cannot enjoy these rights, making it immaterial whether the infringement was caused by the State or members of a non-state armed group.<sup>139</sup>

81. The persecutory act(s) and/or omission(s) must discriminate in fact, which means that they must actually result in discriminatory consequences.<sup>140</sup> The

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<sup>134</sup> ICTY, Kupreškić et al. Trial Judgment, paras 594-605, 609-614, 615(c), 617; Kvočka et al. Trial Judgment, paras 185-186, 190, 192; Blaškić Appeal Judgment, para. 155; Kvočka et al. Appeal Judgment, paras 323, 325; Brđanin Appeal Judgment, paras 296-297; Karadžić Trial Judgment, paras 498, 510, 523-525, 536; Mladić Trial Judgment, paras 3229, 3242-3244, 3264-3266; ECCC, Duch Trial Judgment, para. 378; Duch Appeal Judgment, paras 253-254; ICC, Al Hassan Decision on Confirmation of Charges, para. 668.

<sup>135</sup> ICTY, Kupreškić et al. Trial Judgment, para. 614; Krnojelac Trial Judgment, para. 434; Kvočka et al. Appeal Judgment, paras 323; Brđanin Appeal Judgment, para. 296; Popović et al. Trial Judgment, para. 966; Mladić Trial Judgment, paras 3229; ICTR, Nahimana et al. Appeal Judgment, para. 985; ECCC, Duch Appeal Judgment, paras 261.

<sup>136</sup> ICTY, Kupreškić et al. Trial Judgment, paras 620-621; Kordić and Čerkez Trial Judgment, para. 196; Popović et al. Trial Judgment, para. 966; ECCC, Duch Trial Judgment, para. 378; Duch Appeal Judgment, paras 258.

<sup>137</sup> See e.g. UDHR; ICCPR; 1966 International Covenant of Economic, Social and Cultural Rights (UNTS, vol. 993, p. 3) and the ECHR.

<sup>138</sup> ICTY, Blaškić Trial Judgment, para. 232; ECCC, Duch Appeal Judgment, para. 254; ICC, Prosecutor v. Ntaganda, ICC-01/04-02/06-309, Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, para. 58; Ntaganda Trial Judgment, para. 991; Burundi Decision 25 October 2017, para. 132; Al Hassan Decision on Confirmation of Charges, para. 664.

<sup>139</sup> Similarly, ICC, Ntaganda Trial Judgment, para. 993.

<sup>140</sup> ICTY, Vasiljević Appeal Judgment, para. 113; Simić Appeal Judgment, para. 177; Krnojelac Trial Judgment, para. 432; Krnojelac Appeal Judgment, para. 185; Brđanin Trial Judgment, para. 993; ICTR,

persecutory act(s) and/or omission(s) are considered discriminatory when the victims are targeted because of their perceived membership to a group, as defined by the perpetrator on a political, racial, ethnic or religious basis.<sup>141</sup> While persecutory acts and/or omissions often form part of a discriminatory policy or pattern, the existence of such a policy is not a requirement for proving persecution.<sup>142</sup>

82. *Mental element (mens rea)*. The perpetrator must have carried out each persecutory act or omission<sup>143</sup> deliberately<sup>144</sup> and with the specific intent to discriminate on one of the listed grounds, specifically political, racial, ethnic or religious.<sup>145</sup> The discriminatory intent requirement is not a legal element of the attack in general<sup>146</sup> nor of the other underlying crimes against humanity.<sup>147</sup> It need not be the primary intent with respect to the act, but it must be a significant one.<sup>148</sup>

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Nahimana et al. Appeal Judgment, para. 986; ECCC, Duch Trial Judgment, paras 376-377; Duch Appeal Judgment, paras 263, 267.

<sup>141</sup> ICTY, *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Trial Chamber, Judgement (“*Naletilić and Martinović Trial Judgment*”), 31 March 2003, para. 636; Popović et al. Trial Judgment, para. 967; ECCC, Duch Trial Judgment, para. 377; Duch Appeal Judgment, paras 272, 275-276; ICC, Burundi Decision 25 October 2017, para. 133; Al Hassan Decision on Confirmation of Charges, para. 665.

<sup>142</sup> ICTY, Krnojelac Trial Judgment, para. 435; Stakić Trial Judgment, para. 739; Brđanin Trial Judgment, para. 996; Popović et al. Trial Judgment, para. 967; Karadžić Trial Judgment, para. 500.

<sup>143</sup> ICTY, Krnojelac Trial Judgment, para. 436; Krnojelac Appeal Judgment, para. 184; Blaškić Appeal Judgment, para. 164; Popović et al. Trial Judgment, para. 969.

<sup>144</sup> ICTY, Stakić Trial Judgment, para. 738; Vasiljević Appeal Judgment, para. 113; *Prosecutor v. Popović et al.*, IT-05-88-T, Appeals Chamber, Judgement (“*Popović et al. Appeal Judgment*”), 30 January 2015, para. 737; ICTR, Bagosora et al. Trial Judgment, para. 2208; Nahimana et al. Appeal Judgment, para. 985; ECCC, Duch Trial Judgment, para. 379; ICC, Al Hassan Decision on Confirmation of Charges, para. 670.

<sup>145</sup> ICTY, Kordić and Čerkez Trial Judgment, para. 212; Stakić Trial Judgment, para. 738; Krnojelac Appeal Judgment, para. 185; Vasiljević Appeal Judgment, para. 113; *Prosecutor v. Stakić*, IT-97-24-A, Appeals Chamber, Judgement (“*Stakić Appeal Judgment*”), 22 March 2006, paras 327-328; ICTR, Nahimana et al. Appeal Judgment, para. 985; Bagosora et al. Trial Judgment, para. 2208; ECCC, Duch Trial Judgment, paras 379; Duch Appeal Judgment, paras 236-240; ICC, Al Hassan Decision on Confirmation of Charges, para. 671.

<sup>146</sup> ICTY, Blaškić Trial Judgment, para. 260; Krnojelac Trial Judgment, para. 436.

<sup>147</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Appeals Chamber, Judgement (“*Tadić Appeal Judgment*”), 15 July 1999, para. 305; Karadžić Trial Judgment, para. 500; ECCC, Duch Trial Judgment, para. 379; Duch Appeal Judgment, para. 238.

<sup>148</sup> ICTY, Krnojelac Trial Judgment, para. 435.

Personal motives or any additional motive of pursuing a military goal do not exclude discriminatory intent.<sup>149</sup>

83. The discriminatory intent may be inferred from circumstantial evidence, taking into account for example the systematic nature of the crimes committed against the targeted group and the general conduct of the perpetrator as demonstrated by his behaviour.<sup>150</sup>

## 2. War Crimes

### (a) Contextual Requirements for War Crimes

84. The contextual requirements for war crimes committed in the context of an armed conflict not of an international character consist of: (i) the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organised armed groups or between such groups; (ii) a nexus between the underlying offence and the armed conflict; and (iii) knowledge of the existence of the armed conflict.

#### (i) *Existence of an armed conflict*

85. Article 14(2) of the Law provides that armed conflicts not of an international character take place in the territory of a state when there is protracted armed conflict between the organs of authority and organised armed groups or between such groups.<sup>151</sup>

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<sup>149</sup> ICTY, *Kvočka et al. Appeal Judgment*, para. 463; *Popović et al. Appeal Judgment*, para. 733; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 671.

<sup>150</sup> ICTY, *Krnojelac Appeal Judgment*, para. 184; *Kvočka et al. Appeal Judgment*, para. 460; *Popović et al. Trial Judgment*, para. 969; ICTR, *Bagosora et al. Trial Judgment*, para. 2208; ICC, *Al Hassan Decision on Confirmation of Charges*, para. 671.

<sup>151</sup> ICTY, *Tadić Decision on Jurisdiction*, para. 70; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Appeals Chamber, *Judgement* (“*Boškoski and Tarčulovski Appeal Judgment*”), 19 May 2010, para. 21. See

86. *Hostilities*. Armed conflicts are characterised by the outbreak of hostilities that take place in the territory of a state.

87. *Parties to the hostilities*. In relation to the parties to the hostilities, Article 14(2) of the Law mentions two categories of possible parties to the armed conflict that ought to be construed in compliance with customary international law. “Organs of authority” include governmental authorities, such as a state’s regular armed forces, police units, national guards or other authorities of a similar nature,<sup>152</sup> including armed groups and militias incorporated in armed forces.<sup>153</sup> “Organised armed groups” imply a degree of organisation but “do not necessarily need to be as organised as the armed forces of a State”.<sup>154</sup> They do not need to carry out sustained and concerted military operations, but they must be sufficiently organised to confront each other with military means.<sup>155</sup> When deciding whether a non-state entity can carry out protracted armed violence, the following indicative factors may be taken into account: (i) existence of a command structure, including headquarters, a general staff or high command, identifiable ranks and positions, and internal regulations; (ii) issuance of political statements or communiqués and the use of spokespersons; (iii) operational capacity and the ability to carry out military operations; (iv) logistical capacity, including the availability of weapons and equipment, and the capacity to move troops and to recruit and train personnel; (v) territorial control, including a division into zones of responsibility; (vi) an internal disciplinary system, including the

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also ICC, *Ntaganda Trial Judgment*, para. 701; *Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, Trial Chamber I, *Judgment Pursuant to Article 74 of the Statute* (“*Lubanga Trial Judgment*”), 14 March 2012, para. 533.

<sup>152</sup> ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber, *Judgment* (“*Boškoski and Tarčulovski Trial Judgment*”), 10 July 2008, paras 178, 195.

<sup>153</sup> Article 43(3) of Additional Protocol I.

<sup>154</sup> ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 195, 197; *Prosecutor v. Orić*, IT-03-68-T, Trial Chamber, *Judgment* (“*Orić Trial Judgment*”), 30 June 2006, para. 254; *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Chamber, *Judgment* (“*Haradinaj et al. Trial Judgment*”), 3 April 2008, para. 60; *Limaj et al. Trial Judgment*, para. 89.

<sup>155</sup> ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 197-198.

implementation of IHL through the armed group's ranks; and (vii) ability to speak with one voice on behalf of the armed group, for example in political negotiations or cease-fire agreements.<sup>156</sup>

88. *Intensity*. In relation to the level of intensity of the conflict, Article 14(2) of the Law requires that hostilities between the parties must reach a certain degree of intensity, exceeding internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature. In this context, the notion of "protracted armed violence" informs the intensity test as it refers "more to the intensity of the armed violence than its duration".<sup>157</sup> Intensity may be inferred from, for example: (i) the seriousness and frequency of attacks; (ii) their spread over the territory and over a period of time, and whether any ceasefire orders have been issued; (iii) the increase and number of forces deployed; (iv) the mobilisation and distribution of weapons amongst the conflict parties; (v) the type of weapons used, in particular the use of heavy artillery; (vi) the type of military equipment, in particular the use of tanks; (vii) whether the situation attracted the attention of the United Nations Security Council, or other international organisations; (viii) the effects on the civilian population, the extent of destruction and the number of persons killed or displaced; and (ix) the manner in which the armed group was treated by others and under which body of law it claimed to be operating.<sup>158</sup>

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<sup>156</sup> See also Article 1(1) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International armed Conflicts (Protocol II), of 8 June 1977 ("Additional Protocol II"). See also ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 194-203. However, the degree of organisation for an armed group to a conflict to which Common Article 3 applies, does not need to be at the level of organisation required for parties to Additional Protocol II armed conflicts, see ICTY, *Boškoski and Tarčulovski Trial Judgment*, para. 197.

<sup>157</sup> ICTY, *Haradinaj et al. Trial Judgment*, para. 49. See also *Kordić and Čerkez Appeal Judgment*, para. 341; *Tadić Trial Judgment*, para. 562.

<sup>158</sup> ICTY, *Boškoski and Tarčulovski Trial Judgment*, paras 177, confirmed by *Boškoski and Tarčulovski Appeal Judgment*, paras 22, 24; ICC, *Ntaganda Trial Judgment*, paras 703-704, 716; *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Trial Chamber III, *Judgment Pursuant to Article 74 of the Statute* ("Bemba Trial

89. *Scope*. The temporal and geographical scope of armed conflicts not of an international character must be assessed on the facts of the case. As a rule, it extends beyond the exact time and place of hostilities; the applicable rules apply beyond the cessation of hostilities until a peaceful settlement is achieved.<sup>159</sup> Thus, the norms of IHL apply regardless of whether actual combat activities are taking place in a particular location.<sup>160</sup> On the other hand, cease-fire or other agreements between the parties are not sufficient on their own to determine the end of armed conflicts. Rather, if armed confrontations of certain intensity continue after the conclusion of a peace (or other) agreement, an armed conflict continues to exist and the IHL rules remain applicable<sup>161</sup> up until there is a lasting absence of armed confrontations and the situation has sufficiently stabilised, so as to equate a peaceful settlement.<sup>162</sup> In case of persons whose liberty has been restricted, IHL continues to apply until such deprivation or restriction of liberty comes to an end.<sup>163</sup>

(ii) *Nexus to the armed conflict*

90. The alleged crimes must be sufficiently linked with the armed conflict. The armed conflict need not have been causal to the commission of the crime charged, but it must have played, at a minimum, a substantial part in the perpetrator's ability to commit that crime, his or her decision to commit it, the manner in which

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Judgment"), 21 March 2016, para. 137; Lubanga Trial Judgment, para. 538; Katanga Trial Judgment, paras 1186-1187.

<sup>159</sup> ICTY, Tadić Decision on Jurisdiction, paras 67-70; Limaj et al. Trial Judgment, para. 84; Vasiljević Trial Judgment, para. 25; Kunarac et al. Appeal Judgment, para. 57.

<sup>160</sup> ICTY, Orić Trial Judgment, para. 255; Tadić Decision on Jurisdiction, para. 70.

<sup>161</sup> ICTY, Boškoski and Tarčulovski Trial Judgment, para. 293; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2<sup>nd</sup> edition, 2017, ("2017 ICRC Commentary"), regarding Article 3, para. 512.

<sup>162</sup> 2017 ICRC Commentary, paras 516-518.

<sup>163</sup> 1987 ICRC Commentary to Additional Protocol II, regarding Article 2(2), paras 4491-4496.

it was committed, or the purpose for which it was committed.<sup>164</sup> In determining the nexus, heed may be paid to: (i) the status of the perpetrator and victim; (ii) whether the act serves the ultimate goal of a military campaign; or (iii) whether the act was committed as part of, or in context of, the perpetrator's official duties.<sup>165</sup>

*(iii) Awareness of the existence of the armed conflict*

91. The perpetrator must be aware of the factual circumstances establishing the armed conflict not of an international character.<sup>166</sup> Knowledge of the correct legal classification of the armed conflict is not necessary.<sup>167</sup>

*(b) Specific Requirements for War Crimes*

92. All crimes must be committed against protected persons. The chapeau of Article 14(1)(c) of the Law referring to Common Article 3(1) requires that the victim was not taking active part in the hostilities at the time the offence was committed.<sup>168</sup> Active participation in hostilities means carrying out acts as part of the conduct of hostilities intended by their nature or purpose to cause actual harm

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<sup>164</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 58; *Stakić Appeal Judgment*, para. 342; *Tadić Decision on Jurisdiction*, para. 70; ICTR, *Setako v. Prosecutor*, ICTR-04-81-A, Appeals Chamber, *Judgement*, 28 September 2011, para. 249; *Rutaganda v. Prosecutor*, ICTR-96-3-A, Appeals Chamber, *Judgement*, 26 May 2003, paras 569-570.

<sup>165</sup> ICTY, *Kunarac et al. Appeal Judgment*, para. 59; ICC, *Bemba Trial Judgment*, para. 143.

<sup>166</sup> ICTY, *Naletilić and Martinović Appeal Judgment*, paras 118-121; *Boškoski and Tarčulovski Trial Judgment*, para. 295. See also ICC, *Ntaganda Trial Judgment*, para. 698.

<sup>167</sup> ICTY, *Naletilić and Martinović Appeal Judgment*, para. 119; *Kordić and Čerkez Appeal Judgment*, para. 311.

<sup>168</sup> ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR73.9, Appeals Chamber, *Decision on Appeal from Denial of Judgment of Acquittal for Hostage-Taking* ("Karadžić Decision 11 December 2012"), 11 December 2012, paras 8, 21; IT-95-5/18-AR72.5, Appeals Chamber, *Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment*, 9 July 2009, paras 22-26; *Boškoski and Tarčulovski Appeal Judgment*, para. 66; *Prosecutor v. Strugar*, IT-01-42-A, Appeals Chamber, *Judgement* ("Strugar Appeal Judgment"), 17 July 2008, paras 172, 178; *Prosecutor v. Mucić et al.*, IT-96-21-A, Appeals Chamber, *Judgement* ("Mucić et al. Appeal Judgment"), 20 February 2001, paras 420, 424.

to the personnel or equipment of the adverse party.<sup>169</sup> Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, are protected under Common Article 3.<sup>170</sup> The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.<sup>171</sup>

(i) *Arbitrary detention*

93. *Material elements (actus reus)*. The crime of arbitrary detention as a war crime, within the meaning of Article 14(1)(c) of the Law, is committed through an act or omission resulting in depriving a person not taking active part in hostilities of his or her liberty without legal basis or without complying with basic procedural safeguards.

94. The deprivation of liberty is without legal basis when it is justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns make it absolutely necessary.<sup>172</sup>

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<sup>169</sup> ICTY, *Strugar Appeal Judgment*, para. 178; ICC, *Katanga Trial Judgment*, paras 789-790. See also Article 13(3) of Additional Protocol II.

<sup>170</sup> 2016 ICRC Commentary regarding Common Article 3, para. 539: “[p]ersons who are *hors de combat* by clearly expressing an intention to surrender are laying ‘down their arms’ in the sense of common Article 3 and come within the protective scope of the article. Common Article 3 then notes the following other factors potentially rendering a person *hors de combat*: ‘sickness, wounds, detention, or any other cause’. Sickness and wounds are typical incidences for members of armed forces during non-international armed conflict, as is detention, resorted to by both State and non-State Parties to the conflict. Other causes of being *hors de combat* could, for example, be shipwreck, parachuting from an aircraft in distress, or falling or otherwise being in the power of a Party to the conflict – for example at a checkpoint – even if the situation may not yet be regarded as amounting to detention. The addition of ‘any other cause’ indicates that the notion of ‘*hors de combat*’ in common Article 3 should not be interpreted in a narrow sense.”

<sup>171</sup> ICTY, *Mladić Trial Judgment*, para. 3017; *Karadžić Decision 11 December 2012*, para. 22; *Boškoski and Tarčulovski Appeal Judgment*, para. 66.

<sup>172</sup> ICTY, *Mucić et al. Appeal Judgment*, paras 320-322; *Kordić and Čerkez Appeal Judgment*, paras 72-73; ECCC, *Duch Trial Judgment*, para. 465.

95. The basic procedural safeguards encompass, in particular: (i) the obligation to inform a person who is arrested of the reasons for arrest; (ii) the obligation to bring a person arrested on a criminal charge promptly before a judge or other competent authority; and (iii) the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention.<sup>173</sup>

96. When assessing the compliance with basic procedural safeguards, it is irrelevant whether: (i) the initial deprivation of liberty was justified;<sup>174</sup> or (ii) the perpetrator is personally responsible for the failure to have the detainee's procedural rights respected.<sup>175</sup>

97. *Mental element (mens rea)*. The perpetrator must have acted intentionally in relation to his or her conduct. In addition, the perpetrator must have no reasonable grounds to believe that security concerns of the parties to the conflict make the detention absolutely necessary, or the perpetrator must know that the detainees have not been afforded the requisite procedural guarantees, or be reckless as to whether those guarantees have been afforded or not.<sup>176</sup>

(ii) *Cruel treatment*

98. *Material elements (actus reus)*. The crime of cruel treatment as a war crime, within the meaning of Article 14(1)(c)(i) of the Law, is committed through an act or omission, which causes serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.<sup>177</sup>

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<sup>173</sup> Rule 99, CIHL Study, Vol. I (Rules), pp. 349-350. See also Article 6, Additional Protocol II.

<sup>174</sup> ICTY, *Mucić et al. Appeal Judgment*, para. 322. See also ICTY, *Kordić and Čerkez Appeal Judgment*, para. 73; ECCC, *Duch Trial Judgment*, paras 465.

<sup>175</sup> ICTY, *Mucić et al. Appeal Judgment*, para. 379.

<sup>176</sup> ICTY, *Mucić et al. Appeal Judgment*, para. 378.

<sup>177</sup> ICTY, *Mucić et al. Appeal Judgment*, para. 424. See also ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Appeals Chamber, *Judgement* ("Haradinaj et al. Appeal Judgment"), 19 July 2010, paras 93-94; *Blaškić Appeal Judgment*, para. 595.

99. The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as: (i) the severity of the alleged conduct; (ii) the nature of the act or omission; (iii) the context in which the conduct occurred; (iv) its duration and/or repetition; (v) its physical and mental effects on the victim; and (vi) the personal circumstances of the victim, including age, gender, and health.<sup>178</sup> The detention or confinement of persons in inhumane conditions may amount to cruel treatment in certain circumstances,<sup>179</sup> but it does not, in and of itself, constitute cruel treatment.

100. The suffering inflicted by the act upon the victim does not need to be lasting, so long as it is real and serious.<sup>180</sup>

101. *Mental element (mens rea)*. The perpetrator must have acted intentionally or with the knowledge that the serious mental or physical suffering or injury, or the serious attack on human dignity, was a probable consequence of the act or omission.<sup>181</sup>

*(iii) Torture*

102. The material and mental elements of torture as a war crime under Article 14(1)(c)(i) of the Law are the same<sup>182</sup> as those for torture as a crime against

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<sup>178</sup> ICTY, *Popović et al. Trial Judgment*, fn. 3249; *Kvočka et al. Appeal Judgment*, paras 584-585; *Prosecutor v. Mrkšić et al.*, IT-95-13/1-T, Trial Chamber, *Judgement* (“*Mrkšić et al. Trial Judgment*”), 27 September 2007, paras 516, 525, 537; *Krnojelac Trial Judgment*, para. 131.

<sup>179</sup> ICTY, *Mucić et al. Trial Judgment*, paras 554-558.

<sup>180</sup> ICTY, *Krnojelac Trial Judgment*, para. 131.

<sup>181</sup> ICTY, *Popović et al. Trial Judgment*, para. 974; *Mrkšić et al. Trial Judgment*, para. 516; *Limaj et al. Trial Judgment*, para. 231; *Prosecutor v. Strugar*, IT-01-42-T, Trial Chamber, *Judgement* (“*Strugar Trial Judgment*”), 31 January 2005, para. 261.

<sup>182</sup> ICTY, *Krnojelac Trial Judgment*, para. 178; *Brdanin Trial Judgment*, para. 482; ECCC, *Duch Trial Judgment*, para. 439; *Case 002/02 Trial Judgment*, para. 759.

humanity under Article 13(1)(f) of the Law,<sup>183</sup> except for the contextual requirements and the protected status of the victim.

*(iv) Murder*

103. The material and mental elements of murder as a war crime under Article 14(1)(c)(i) of the Law are the same<sup>184</sup> as those for murder as a crime against humanity under Article 13(1)(a) of the Law,<sup>185</sup> except for the contextual requirements and the protected status of the victim.

## C. MODES OF LIABILITY

104. The Specialist Prosecutor pleads the following modes of liability: commission pursuant to a joint criminal enterprise, aiding and abetting, and superior responsibility.<sup>186</sup> The objective and subjective elements of these modes of liability are set out below.

### 1. Joint Criminal Enterprise

105. Joint Criminal Enterprise (“JCE”) as mode of liability encompasses three forms or categories (basic, systemic, and extended). In the basic form (“JCE I”), several perpetrators act on the basis of a common purpose; in the systemic form (“JCE II”), a variant of the first form, the crimes are committed within an organised system of ill-treatment, by members of military or administrative units, such as in

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<sup>183</sup> See *supra* paras 66-69 (Specific Requirements, Torture).

<sup>184</sup> ICTY, *Krnojelac Trial Judgment*, para. 323; *Naletilić and Martinović Trial Judgment*, para. 248; *Blagojević and Jokić Trial Judgment*, para. 556; ECCC, *Duch Trial Judgment*, para. 431; *Case 002/02 Trial Judgment*, para. 757.

<sup>185</sup> See *supra* paras 70-71 (Specific Requirements, Murder).

<sup>186</sup> Revised Indictment, paras 32-55, 173, 174 [68].

concentration or detention camps; in the extended form (“JCE III”), criminal responsibility is established for acts of a co-perpetrator that go beyond the common plan but which were a foreseeable consequence of the realisation of the plan.<sup>187</sup>

(a) Objective Elements

106. All forms of JCE require the following objective elements: (i) a plurality of persons who act pursuant to a common purpose; (ii) a common purpose which amounts to or involves the commission of a crime provided for in the Law; and (iii) participation of the perpetrator in furthering the common design or purpose.<sup>188</sup>

107. *Plurality of persons.* A JCE exists when a plurality of persons participates in the realisation of a common criminal objective.<sup>189</sup> The persons participating in the criminal enterprise need not be organised in a military, political, or administrative structure.<sup>190</sup> They must, however, be identified with specificity, for instance by name or by categories or groups of persons.<sup>191</sup>

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<sup>187</sup> ICTY, *Kvočka et al. Appeal Judgment*, paras 82-83; *Vasiljević Appeal Judgment*, para. 98; *Tadić Appeal Judgment*, paras 196, 202-203, 228. ICTR, *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Appeals Chamber, *Judgement* (“*Ntakirutimana Appeal Judgment*”), 13 December 2004, para. 464.

<sup>188</sup> ICTY, *Mladić Trial Judgment*, para. 3561; *Karadžić Trial Judgment*, para. 561, referring to *Tadić Appeal Judgment*, paras 227; *Stakić Appeal Judgment*, para. 64. See also ICTR, *Karemera and Ngirumpatse v. Prosecutor*, ICTR-98-44-A, Appeals Chamber, *Judgement*, 29 September 2014, para. 110; *Ntakirutimana Appeal Judgment*, paras 461-468; STL, *Prosecutor v. Ayyash et al.*, STL-11-O1/I, Appeals Chamber, *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging* (“*Ayyash et al. Decision on Applicable Law*”), 16 February 2011, paras 236-249.

<sup>189</sup> ICTY, *Haradinaj et al. Trial Judgment*, para. 138; *Kvočka et al. Trial Judgment*, para. 307.

<sup>190</sup> ICTY, *Mladić Trial Judgment*, para. 3561; *Tadić Appeal Judgment*, para. 227.

<sup>191</sup> ICTY, *Mladić Trial Judgment*, para. 3561; *Prosecutor v. Krajišnik*, IT-00-39-A, Appeals Chamber, *Judgement* (“*Krajišnik Appeal Judgment*”), 17 March 2009, paras 156-157; *Brđanin Appeal Judgment*, para. 430.

108. *Common purpose which amounts to or involves the commission of a crime.* There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.<sup>192</sup> A common purpose does not presume preparatory planning or explicit agreement among JCE participants, or between JCE participants and third persons.<sup>193</sup> Moreover, a JCE may exist even if none or only some of the physical perpetrators of the crimes are members of the JCE, yet are used by one or more members of the JCE to commit crimes pursuant to the common purpose.<sup>194</sup>

109. In JCE III, the perpetrator is responsible for crimes committed beyond the common purpose, but which are nevertheless an objectively foreseeable consequence of that common purpose.<sup>195</sup>

110. *Contribution.* The perpetrator must have participated in the furthering of the common purpose at the core of the JCE by assisting in or contributing to the execution of the common plan or purpose, but need not have performed any part of the *actus reus* of the crime charged.<sup>196</sup> The perpetrator's contribution to the JCE need not be, as a matter of law, necessary or substantial, but it should at least be a

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<sup>192</sup> ICTY, *Tadić Appeal Judgment*, paras 227; *Prosecutor v. Furundžija*, IT-95-17/1-A, Appeals Chamber, *Judgement*, 21 July 2000, para. 119.

<sup>193</sup> ICTY, *Haradinaj et al. Trial Judgment*, para. 138; *Brđanin Appeal Judgment*, para. 418; *Kvočka et al. Appeal Judgment*, paras 117-119.

<sup>194</sup> ICTY, *Mladić Trial Judgment*, para. 3561; *Krajišnik Appeal Judgment*, paras 225-226, 235-236; *Brđanin Appeal Judgment*, paras 410, 413.

<sup>195</sup> See reference to the "person of reasonable prudence" test in STL, *Ayyash et al. Decision on Applicable Law*, para. 242.

<sup>196</sup> ICTY, *Krajišnik Appeal Judgment*, paras 215, 218, 695; *Tadić Appeal Judgment*, para. 227.

significant contribution to the crimes for which he or she is found responsible.<sup>197</sup>

The contribution does not need to be criminal *per se*.<sup>198</sup>

#### (b) Subjective Element

111. The subjective elements differ according to the category of JCE under consideration.

112. With regard to JCE I, the perpetrator must share the intent with the other participants to carry out the crimes forming part of the common purpose, including the special intent.<sup>199</sup>

113. With regard to JCE II, personal knowledge of the system of ill-treatment is required as well as the intent to further this common concerted system of ill-treatment.<sup>200</sup>

114. With regard to JCE III, the perpetrator is responsible for crimes committed beyond the common purpose, if, under the circumstances of the case: (i) the perpetrator intended to participate in and contribute to the furtherance of the common purpose; (ii) it was foreseeable to the perpetrator that the extended crime might be perpetrated by one or more members of the group or by persons used by any member of the group, in carrying out the common purpose; and (iii) the perpetrator willingly took the risk that the extended crime might occur when participating in the common purpose.<sup>201</sup> Foreseeability occurs when the

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<sup>197</sup> ICTY, *Mladić Trial Judgment*, para. 3561; *Krajišnik Appeal Judgment*, paras 215, 662, 675, 695-696; *Brđanin Appeal Judgment*, para. 430; *Kvočka et al. Appeal Judgment*, para. 97-98.

<sup>198</sup> ICTY, *Krajišnik Appeal Judgment*, para. 695.

<sup>199</sup> ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-A, Appeals Chamber, *Judgement* (“*Đorđević Appeal Judgment*”), 27 January 2014, para. 468.

<sup>200</sup> ICTY, *Tadić Appeal Judgment*, para. 228; *Limaj et al. Trial Judgment*, para. 511; *Kvočka et al. Appeal Judgment*, para. 82.

<sup>201</sup> ICTY, *Tadić Appeal Judgment*, para. 228; *Šainović et al. Appeal Judgment*, para. 1557; *Brđanin Appeal Judgment*, paras 365, 411; *Stakić Appeal Judgment*, para. 65; *Kvočka et al. Appeal Judgment*, para. 83.

perpetrator was aware that the deviatory crime was a possible consequence in the execution of that common purpose.<sup>202</sup> The perpetrator willingly takes the risk when, with the awareness that such a crime was a possible consequence of the implementation of the enterprise, the perpetrator decides to participate in that enterprise.<sup>203</sup>

115. The following factors, among others, have been considered in determining whether the crime was foreseeable to the perpetrator: (i) knowledge of how the JCE is implemented on the ground;<sup>204</sup> (ii) awareness of the criminal background and propensity of members of the enterprise to commit crimes;<sup>205</sup> (iii) statements by the perpetrator;<sup>206</sup> (iv) time and location of the deviatory crimes;<sup>207</sup> (v) knowledge of personal motives of revenge of members of the enterprise or persons used thereby;<sup>208</sup> (vi) awareness of the ethnic hatred between the parties to the conflict;<sup>209</sup> and (vii) knowledge of the activities of the perpetrator-subordinates in the mistreatment of the prisoners.<sup>210</sup>

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<sup>202</sup> The possibility of the extended crime being committed must be sufficiently substantial as to be reasonably foreseeable, based on the information available to the perpetrator at the time. See ICTY, *Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, Appeals Chamber, *Judgement* (“*Stanišić and Župljanin Judgment*”), 30 June 2016, para. 627.

<sup>203</sup> ICTY, *Brđanin Appeal Judgment*, para. 411.

<sup>204</sup> ICTY, *Stanišić and Župljanin Judgment*, paras 627, 1002.

<sup>205</sup> ICTY, *Stanišić and Župljanin Judgment*, paras 628, 647, 1002.

<sup>206</sup> ICTY, *Šainović et al. Appeal Judgment*, para. 1090.

<sup>207</sup> ICTY, *Popović et al. Appeal Judgment*, para. 1434.

<sup>208</sup> ICTY, *Popović et al. Appeal Judgment*, para. 1434.

<sup>209</sup> ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Appeals Chamber, *Judgement* (“*Tolimir Appeal Judgment*”), 8 April 2015, para. 520; *Stanišić and Župljanin Judgment*, para. 1002.

<sup>210</sup> ICTY, *Tolimir Appeal Judgment*, para. 539.

## 2. Aiding and Abetting

### (a) Objective Elements

116. Aiding and abetting, either through an act or omission,<sup>211</sup> requires that the perpetrator assists, encourages, or lends moral support to the commission of a crime where this support has a substantial effect on the perpetration of the crime.<sup>212</sup> Aiding and abetting may occur before, during, or after the commission of the crime and in a different place from the crime.<sup>213</sup> It is unnecessary to establish that the crime would not have been committed without the contribution of the aider and abettor<sup>214</sup> or that there was a plan or agreement between the aider and abettor and the perpetrator.<sup>215</sup> There is also no requirement of a showing that the acts of the aider and abettor were specifically directed to assist, encourage, or lend moral support to the commission of the crimes.<sup>216</sup>

### (b) Subjective Element

117. The aider and abettor must have knowledge that his or her acts or omissions assist in the commission of the crime of the perpetrator.<sup>217</sup> In particular, the aider and abettor must be aware of the essential elements of the crime which was

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<sup>211</sup> ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, paras 49, 134, 154; *Blaškić Appeal Judgment*, para. 47.

<sup>212</sup> ICTY, *Tadić Appeal Judgment*, para. 229; *Vasiljević Appeal Judgment*, para. 102; *Prosecutor v. Aleksovski*, IT-95-14/1-A, Appeals Chamber, *Judgment* (“*Aleksovski Appeal Judgment*”), 24 March 2000, paras 162, 164; ICTR, *Kalimanzira v. Prosecutor*, ICTR-05-88-A, Appeals Chamber, *Judgment* (“*Kalimanzira Appeal Judgment*”), 20 October 2010, para. 74; *Nahimana et al. Appeal Judgment*, para. 482; SCSL, *Prosecutor v. Taylor*, SCSL-03-01-A, Appeals Chamber, *Judgment* (“*Taylor Appeal Judgment*”), 26 September 2013, para. 475.

<sup>213</sup> ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, para. 81; *Simić Appeal Judgment*, para. 85; *Blaškić Appeal Judgment*, para. 48; *Mucić et al. Appeal Judgment*, para. 352; ICTR, *Nahimana et al. Appeal Judgment*, para. 482.

<sup>214</sup> ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, para. 81; *Simić Appeal Judgment*, para. 85; *Blaškić Appeal Judgment*, para. 48.

<sup>215</sup> ICTY, *Brđanin Appeal Judgment*, para. 263; *Tadić Appeal Judgment*, para. 229.

<sup>216</sup> ICTY, *Šainović et al. Appeal Judgment*, paras 1649-1651.

<sup>217</sup> ICTY, *Vasiljević Appeal Judgment*, para. 102; ICTR, *Kalimanzira Appeal Judgment*, para. 86; SCSL, *Taylor Appeal Judgment*, para. 437.

ultimately committed,<sup>218</sup> including the perpetrator's state of mind and any relevant specific intent,<sup>219</sup> although he or she need not share that specific intent.<sup>220</sup>

### 3. Superior Responsibility

#### (a) Objective Elements

118. For a superior to incur criminal liability, the following objective elements must be established: (i) the existence of superior-subordinate relationship; and (ii) the superior's failure to take necessary and reasonable measures to prevent the crime(s) of his or her subordinate(s) or to punish the perpetrator(s) thereof.<sup>221</sup> For the purposes of Article 16 of the Law, there is no requirement of causality between the superior's failure to prevent and the occurrence of the crime.<sup>222</sup>

119. *Existence of a superior-subordinate relationship.* The perpetrator must be a superior with *de jure* or *de facto* authority<sup>223</sup> over subordinates who committed one or more crimes set out in Articles 13-14 of the Law. This relationship can be direct or indirect,<sup>224</sup> within a hierarchy that is formal or informal,<sup>225</sup> and civilian or military.<sup>226</sup> To incur liability, a superior must have the material ability to prevent

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<sup>218</sup> ICTY, *Mrkšić and Šljivančanin Appeal Judgment*, paras 49, 159; *Brđanin Appeal Judgment*, para. 484.

<sup>219</sup> ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Appeals Chamber, *Judgment*, 9 May 2007, para. 127; *Vasiljević Appeal Judgment*, para. 142; *Krnjelac Appeal Judgment*, para. 52.

<sup>220</sup> ICTY, *Simić Appeal Judgment*, para. 86; *Krnjelac Appeal Judgment*, para. 52; *Aleksovski Appeal Judgment*, para. 162.

<sup>221</sup> ICTY, *Aleksovski Appeal Judgment*, para. 72; ICTR, *Nahimana et al. Appeal Judgment*, para. 484.

<sup>222</sup> ICTY, *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-A, Appeals Chamber, *Judgment* ("*Hadžihasanović and Kubura Appeal Judgment*"), 22 April 2008, paras 38-40; *Blaškić Appeal Judgment*, paras 73-77.

<sup>223</sup> ICTY, *Mucić et al. Appeal Judgment*, paras 192-193, 195; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Appeals Chamber, *Judgment (Reasons)* ("*Kayishema and Ruzindana Appeal Judgment*"), 1 June 2001, para. 294.

<sup>224</sup> ICTY, *Prosecutor v. Halilović*, IT-01-48-A, Appeals Chamber, *Judgment* ("*Halilović Appeal Judgment*"), 16 October 2007, para. 59; *Mucić et al. Appeal Judgment*, paras 252, 303.

<sup>225</sup> ICTY, *Halilović Appeal Judgment*, para. 59; *Mucić et al. Appeal Judgment*, paras 197, 303; ICTR, *Kayishema and Ruzindana Appeal Judgment*, para. 294.

<sup>226</sup> ICTY, *Mucić et al. Appeal Judgment*, paras 195-196; ICTR, *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Appeals Chamber, *Judgment*, 23 May 2005, para. 85.

or punish the subordinate at the time of the commission of the crime (“effective control”).<sup>227</sup> Factors to be considered in assessing effective control include, *inter alia*: (i) the perpetrator’s position; (ii) the perpetrator’s capacity to issue orders and whether those orders were in fact followed; (iii) the authority to take disciplinary measures; and (iv) the power to promote or fire personnel.<sup>228</sup>

120. *Failure to take necessary and reasonable measures*. The superior has two distinct duties: the duty to prevent (future) crimes and the duty to punish the subordinate for (past) crimes.<sup>229</sup> The duty to prevent attaches to a superior from the moment he or she knows or has reason to know that a crime is about to be committed by the subordinate under his or her effective control, while the duty to punish arises after the subordinate has committed the crime.<sup>230</sup> The superior may be held liable for violating either duty. Consequently, failure to prevent a crime cannot be cured by subsequently punishing the subordinate for the crime.<sup>231</sup>

121. “Necessary” measures are measures appropriate for the superior to fulfil his or her duty to try genuinely to prevent or punish, and “reasonable” measures are those, which reasonably fall within the material powers of the superior.<sup>232</sup> What

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<sup>227</sup> ICTY, *Aleksvoski Appeal Judgment*, para. 76; *Halilović Appeal Judgment*, para. 59; *Mucić et al. Appeal Judgment*, paras 191-192, 196-198, 256, 266, 303; ICTR, *Prosecutor v. Ntawukulilyayo*, ICTR-05-82-T, Trial Chamber, *Judgement and Sentence* (“*Ntawukulilyayo Trial Judgment*”), 3 August 2010, para. 420; *Prosecutor v. Karera*, ICTR-01-74-T, Trial Chamber, *Judgement and Sentence*, 7 December 2007, para. 564; *Kayishema and Ruzindana Appeal Judgment*, para. 294.

<sup>228</sup> ICTY, *Prosecutor v. Perišić*, IT-04-81-A, Appeals Chamber, *Judgement*, 28 February 2013, para. 97; *Strugar Appeal Judgment*, para. 254; *Halilović Appeal Judgment*, para. 66; *Orić Trial Judgment*, para. 312; *Mucić et al. Appeal Judgment*, paras 190, 206.

<sup>229</sup> ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-T, Trial Chamber, *Public Judgement with Confidential Annex* (“*Đorđević Trial Judgment*”), 23 February 2011, para. 1888; *Prosecutor v. Delić*, IT-04-83-T, Trial Chamber, *Judgement* (“*Delić Trial Judgment*”), 15 September 2008, para. 69; *Hadžihasanović and Kubura Appeal Judgment*, para. 259; *Blaškić Appeal Judgment*, para. 83; *Mucić et al. Trial Judgment*, paras 333-334.

<sup>230</sup> ICTY, *Delić Trial Judgment*, paras 69, 72; *Strugar Trial Judgment*, para. 416; *Kordić and Čerkez Trial Judgment*, paras 445-446.

<sup>231</sup> ICTY, *Delić Trial Judgment*, para. 69; *Strugar Trial Judgment*, para. 373; *Blaškić Trial Judgment*, para. 336.

<sup>232</sup> ICTY, *Đorđević Trial Judgment*, para. 1887; *Prosecutor v. Orić*, IT-03-68-A, Appeals Chamber, *Judgement*, 3 July 2008, para. 177; *Halilović Appeal Judgment*, para. 63.

constitutes “necessary and reasonable” is a matter of evidence and must be assessed *in concreto*.<sup>233</sup> The duty to prevent may include measures such as to: (i) secure reports that military actions were carried out in accordance with international law;<sup>234</sup> (ii) issue orders aimed at bringing the relevant practices into accord with the rules of armed conflict;<sup>235</sup> (iii) take disciplinary measures to prevent the commission of atrocities; or (iv) insist before a superior authority that immediate action be taken.<sup>236</sup> The duty to punish may include, at a minimum: (i) the obligation to investigate possible crimes or have the matter investigated; and, (ii) if the superior has no power to sanction, to report them to the competent authorities.<sup>237</sup> The degree of effective control can be used to determine what measures are necessary and reasonable within the competence of the superior.<sup>238</sup>

#### (b) Subjective Element

122. According to Article 16(1)(c) of the Law, superiors must have actually known<sup>239</sup> or must have had reason to know that the subordinates were about to commit a crime or had done so. In determining whether the superiors “had reason to know”, it must be shown that they must have had information available to them

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<sup>233</sup> ICTY, *Dorđević Trial Judgment*, para. 1887; *Delić Trial Judgment*, para. 76; *Blaškić Appeal Judgment*, paras 72, 417.

<sup>234</sup> ICTY, *Delić Trial Judgment*, para. 76; *Strugar Trial Judgment*, para. 374.

<sup>235</sup> ICTY, *Delić Trial Judgment*, para. 76; *Strugar Trial Judgment*, para. 374.

<sup>236</sup> ICTY, *Strugar Trial Judgment*, para. 374.

<sup>237</sup> ICTY, *Dorđević Trial Judgment*, para. 1890; *Hadžihasanović and Kubura Appeal Judgment*, para. 154; *Halilović Appeal Judgment*, para. 182; *Blaškić Appeal Judgment*, para. 83.

<sup>238</sup> ICTY, *Dorđević Trial Judgment*, para. 1887; *Halilović Appeal Judgment*, para. 63; *Blaškić Appeal Judgment*, para. 72.

<sup>239</sup> Factors to reach a finding on the superior’s actual knowledge include, for example: the number of illegal acts, their scope, whether their occurrence is widespread, the timing of their occurrence, the type and number of subordinates involved, the means of available communication, the scope and nature of the superior’s position and location of the superior at the time and the geographical location of the crimes, *see* ICTY, *Dorđević Trial Judgment*, para. 1885; *Orić Trial Judgment*, para. 319; *Blaškić Trial Judgment*, para. 307; *Mucić et al. Trial Judgment*, para. 386; ICTR, *Ntawukulilyayo Trial Judgment*, paras 420-421.

that was sufficiently alarming to put them on notice of crimes committed or about to be committed by their subordinates and justifying further inquiry.<sup>240</sup> It is not necessary that the superior shares the same intent as the subordinate, notably special intent.<sup>241</sup> Knowledge requires an assessment of the specific situation of the superior at the time in question.<sup>242</sup>

## VI. CHARGES

123. Before examining the supporting material in relation to each charge and determining whether a well-grounded suspicion has been established against the Suspects, the Pre-Trial Judge notes that the SPO has complied with the requirements under Rule 86(3) of the Rules by submitting: (i) a revised indictment; (ii) evidentiary material supporting the facts underpinning the charges; and (iii) an updated detailed outline and supplement demonstrating the relevance of each item of evidentiary material to each allegation.

### A. CONTEXTUAL REQUIREMENTS

#### 1. Contextual Requirements for Crimes Against Humanity

124. In the Revised Indictment, the SPO alleges that during the Indictment Period<sup>243</sup> the crimes charged were part of a widespread or systematic attack directed against the civilian population of opponents in Kosovo and areas of northern Albania.<sup>244</sup> According to the SPO, opponents included those who were or

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<sup>240</sup> ICTY, *Dorđević Trial Judgment*, para. 1886; *Krnojelac Appeal Judgment*, para. 59, 155; *Mucić et al. Appeal Judgment*, paras 238-239, 241; ICTR, *Nahimana et al. Appeal Judgment*, para. 791; *Prosecutor v. Bagilishema*, ICTR-95-1-A, Appeals Chamber, *Judgement (Reasons)*, 3 July 2002, paras 28, 42.

<sup>241</sup> ICTY, *Brđanin Trial Judgment*, paras 720-721; *Krnojelac Appeal Judgment*, para. 155; ICTR, *Nahimana et al. Appeal Judgment*, para. 865.

<sup>242</sup> ICTY, *Krnojelac Appeal Judgment*, para. 156; *Mucić et al. Appeal Judgment*, para. 239.

<sup>243</sup> Revised Indictment, paras 16-17.

<sup>244</sup> Revised Indictment, paras 16-17.

were perceived to have been: (i) collaborating or associating with FRY forces or officials or state institutions; or (ii) otherwise not supporting the aims or means of the Kosovo Liberation Army (“KLA”) and later of the Provisional Government of Kosovo (“PGoK”), including persons associated with the Democratic League of Kosovo (“LDK”) and persons of Serb, Roma, and other ethnicities.<sup>245</sup>

125. In relation to the existence of an attack, the Pre-Trial Judge finds that the supporting material indicates that, between at least March 1998 and September 1999, KLA members carried out multiple acts of violence and mistreatment against hundreds of civilians throughout Kosovo and in northern Albania.<sup>246</sup> KLA members engaged in violent acts, such as arrests, detentions, mistreatment, torture and/or killings.<sup>247</sup> Civilians were apprehended at checkpoints, on the road, at their homes or places of employment, many of whom were mistreated at the time of their arrest. Most of them were then transferred to one or more detention locations, where they were intimidated, mistreated, questioned, tortured and/or killed.<sup>248</sup> This course of conduct suggests a campaign of violence and mistreatment amounting to an “attack”.

126. In relation to the target of the attack, the supporting material indicates that the aforementioned acts of violence and mistreatment were directed against civilians who were perceived to have been opponents of the KLA. Public statements had been calling for violence against opponents as early as 1994, often characterised as traitors, collaborators or pacifists,<sup>249</sup> and intensified in the wake of the armed

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<sup>245</sup> Revised Indictment, para. 32.

<sup>246</sup> IT-03-66 P212.4, pp. 4, 23-24 (00676473, 00676492-00676493); IT-04-84 P00931, paras 20, 22, 32, 37, 51, 62 (U0171203, U0171210, U0171213, U0171215, U0171221, U0171227); [REDACTED]; IT-03-66 P150, pp. 6-7 (K0350562-K0350563); [REDACTED]; IT-04-84 P00006, pp. 11, 17-19, 28-32 (00649677, 00649683-00649685, K0078704-K0078708). *See also infra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 362-417 (Counts 8-9).

<sup>247</sup> IT-03-66 P212.4, pp. 4, 23-24 (00676473, 00676492-00676493); IT-04-84 P00931, paras 51, 62 (U0171221, U0171227); [REDACTED]; IT-04-84 P00006, p. 11 (00649677).

<sup>248</sup> *See infra* paras 139-444 (Counts 2-3, 4-5, 6-7, 8-9, 10 and 1).

<sup>249</sup> [REDACTED].

conflict<sup>250</sup> in March 1998.<sup>251</sup> Those perceived as opponents of the KLA included: (i) the Serbian, Roma and Ashkali populations; (ii) Catholics; (iii) civilians allegedly collaborating with Serb authorities or allegedly interacting with Serbs; (iv) Albanians affiliated to or supporting the LDK or other parties perceived as anti-KLA; (v) Albanians not having joined or not supporting the KLA; and (vi) individuals with current or former employment perceived as anti-KLA (collectively, the "Opponents").<sup>252</sup> The supporting material shows that, while a small number of these individuals were employed by or were affiliated with the Serbian/Yugoslavian military or police, they were not taking active part in the hostilities at the time of their apprehension and they were targeted because of their perceived Opponent status.<sup>253</sup> Furthermore, KLA General Staff public statements and the Suspects' personal statements expressly indicated that the acts of violence and mistreatment were a warning to all other Opponents,<sup>254</sup> thereby also targeting and exerting pressure on the families and communities of the Opponents. Moreover, KLA members repeatedly declined to give accurate information about the detention and whereabouts of Opponents, thereby further affecting their families and communities.<sup>255</sup> The large number and diverse categories of people targeted show that the attack was in fact directed against a significant segment of Kosovo's civilian population.

127. In relation to the widespread nature of the attack, the supporting material shows that the acts of violence and mistreatment occurred on a large scale at more

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<sup>250</sup> See *infra* paras 131-137 (Contextual Requirements for War Crimes).

<sup>251</sup> [REDACTED].

<sup>252</sup> See *infra* para. 443 (Count 1). See also IT-04-84 P00931, paras 32, 62 (U0171213, U0171227); [REDACTED]; IT-04-84 P00006, p. 11 (00649677); IT-03-66 P150, pp. 6-7 (K0350562-K0350563); [REDACTED].

<sup>253</sup> Jabllanicë/Jablanica: *infra* para. 144. Llapushnik/Lapušnik: *infra* para. 147. Kleçkë/Klečka: *infra* fn. 462. [REDACTED], Prizren: *infra* para. 206. Former Boarding School/Dormitory, Gjilan/Gnjilane: *infra* para. 218. Former Police Station, Suharekë/Suva Reka: *infra* para. 221.

<sup>254</sup> See *supra* fns 249, 251. See also [REDACTED].

<sup>255</sup> See *infra* paras 419-436 (Count 10).

than 30 sites, some of which encompassed several (detention) locations,<sup>256</sup> in at least 16 municipalities of Kosovo and two districts of Albania.<sup>257</sup> The supporting material indicates a large number of abductions, detentions, executions and disappearances between early 1998 and the summer of 1999, perpetrated by KLA members against hundreds of Serbs, Romas and Albanians perceived as non-supportive of the KLA.<sup>258</sup> Moreover, in 1998-1999, it was well known in Kosovo that Opponents were being mistreated and/or killed.<sup>259</sup> The large number of victims and the geographical spread of the (detention) locations where the acts of violence, mistreatment and killings occurred demonstrate that there was a widespread attack against the civilian population.

128. In relation to the systematic nature of the attack, the supporting material indicates that the aforementioned acts of violence and mistreatment occurred in an organised manner and followed a consistent pattern. KLA General Staff public statements, regulations and other publications, as well as the Suspects' personal statements repeatedly and publicly called for or endorsed violence against Opponents, thereby indicating an orchestration of the violence from the top.<sup>260</sup> This is further corroborated by supporting material showing that senior KLA members, including the Suspects, other members of the General Staff and commanders, participated in the acts of violence and mistreatment.<sup>261</sup> Police and intelligence

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<sup>256</sup> See *infra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 362-417 (Counts 8-9);

<sup>257</sup> See *infra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 362-417 (Counts 8-9); paras 419-436 (Count 10), paras 438-444 (Count 1).

<sup>258</sup> IT-03-66 P212.4, pp. 23-25 (00676492-00676494); IT-03-66 P150, pp. 6-7 (K035-562-K035-563); [REDACTED]; IT-04-84 P00006, pp. 17-19, 28-32 (0064-9683-0064-9685, K007-8704-K0007-8708); [REDACTED].

<sup>259</sup> [REDACTED].

<sup>260</sup> See *supra* fns 249, 251.

<sup>261</sup> See *infra* paras 452-454 (Joint Criminal Enterprise I). See also e.g. Likoc/Likovac: *infra* para. 235. Llapushnik/Lapušnik: *infra* para. 148. Drenoc/Drenovac: *infra* paras 150, 375, 425. Malishevë/Mališevo: *infra* paras 153, 251, 384, 430. Bare and Bajgorë/Bajgora: *infra* para. 161. Zllash/Zlaš: *infra* para. 267. [REDACTED]: *infra* paras 169, 271, 359. [REDACTED]: *infra* para. 275. Kleçkë/Klečka: *infra* paras 175, 279, 359, 397, 401. [REDACTED]: *infra* paras 403, 434. Cahan: *infra* paras 183, 287. Kukës: *infra* paras 291, 359. [REDACTED]: *infra* para. 299. [REDACTED], Prizren: *infra* paras 207, 319. [REDACTED]: *infra*

structures were put in place by the KLA leadership and tasked with the identification and investigation of Opponents.<sup>262</sup> Some Opponents were named in KLA General Staff statements,<sup>263</sup> while many others were included in lists of alleged collaborators.<sup>264</sup> This demonstrates the organised and non-accidental targeting pattern of Opponents. Further, the KLA leadership considered [REDACTED], who deserved punitive measures, including killings.<sup>265</sup> Many Opponents were detained at KLA headquarters, bases or barracks throughout Kosovo and northern Albania,<sup>266</sup> and were also transferred between and held at multiple detention locations.<sup>267</sup> This shows that the acts of violence and mistreatment involved a significant degree of coordination, resources and facilities. Measures taken against Opponents were reported back to the KLA General Staff.<sup>268</sup> While some of these measures were publicly acknowledged by the KLA leadership as a warning to other Opponents,<sup>269</sup> many other acts of violence and mistreatment were concealed, with KLA members repeatedly denying

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para. 216. Novobërdë/Novo Brdo: *infra* para. 346. [REDACTED]: *infra* para. 413. [REDACTED]: *infra* para. 415.

<sup>262</sup> Around June 1998, the KLA General Staff established the G2 Intelligence Directorate, which was tasked to, *inter alia*, [REDACTED] and discover [REDACTED] inside and outside of the army. *See infra* paras 455-456 (Joint Criminal Enterprise I). [REDACTED]; *see also* para. 259 (Counts 4-5) [REDACTED].

<sup>263</sup> [REDACTED].

<sup>264</sup> [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED].

<sup>265</sup> [REDACTED].

<sup>266</sup> *See e.g.* Likoc/Likovac: *infra* para. 139. Jabllanicë/Jablanica: *infra* para. 142. Drenoc/Drenovac: *infra* para. 149. [REDACTED]: *infra* para. 156. Llapashticë/Lapaštica: *infra* para. 162. Kleçkë/Klečka: *infra* para. 175. Cahan: *infra* para. 181. Kukës: *infra* para. 184. [REDACTED]: *infra* para. 187. [REDACTED]: *infra* para. 190. [REDACTED], Prizren: *infra* para. 205. [REDACTED], Prizren: *infra* para. 208. Former Boarding School/Dormitory, Gjilan/Gnjilane: *infra* para. 217. Novobërdë/Novo Brdo: *infra* para. 223. [REDACTED]: *infra* para. 227.

<sup>267</sup> *See e.g.* Likoc/Likovac: *infra* para. 235. Malishevë/Mališevo: *infra* paras 251, 381, 382, 384. Llapashticë/Lapaštica: *infra* para. 263. Potok: *infra* para. 391. [REDACTED]: *infra* para. 271. Kleçkë/Klečka: *infra* para. 279. [REDACTED]: *infra* paras 178, 283, 403.

<sup>268</sup> [REDACTED].

<sup>269</sup> *See supra* fns 249, 251. *See also* [REDACTED].

knowledge of the whereabouts of victims.<sup>270</sup> The reporting, public acknowledgment and denial by KLA members is indicative of an organised context of the acts of violence. The multiple layers of organised conduct and the consistent pattern through which the aforementioned acts of violence and mistreatment unfolded demonstrate that there was a systematic attack against the civilian population.

129. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that, from at least March 1998 through September 1999, a widespread or systematic attack against the civilian population of Opponents was unfolding in Kosovo and northern Albania within the meaning of Article 13 of the Law.

## **2. Contextual Requirements for War Crimes**

130. In the Revised Indictment, the SPO alleges that during the Indictment Period<sup>271</sup> the war crimes charged took place in the context of and were associated with an armed conflict in Kosovo, between the KLA and forces of the FRY and Republic of Serbia, including units of the Yugoslav Army (“VJ”), police and other units of the Ministry of Internal Affairs (“MUP”), and other groups fighting on behalf of the FRY and Serbia (collectively, “Serbian forces”).<sup>272</sup>

131. In relation to the existence of hostilities, the Pre-Trial Judge finds, based on the supporting material, that armed violence between Serbian forces, on the one

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<sup>270</sup> See *infra* paras 419-436 (Count 10).

<sup>271</sup> Revised Indictment, paras 16, 18.

<sup>272</sup> Revised Indictment, para. 18.

hand, and the KLA, on the other hand, was ongoing on the territory of Kosovo from at least March 1998.<sup>273</sup>

132. In relation to the parties to the hostilities, the supporting material indicates that Serbian forces acted as organs of authority of the governments of the FRY and the Republic of Serbia.<sup>274</sup> The supporting material further indicates that the KLA was an organised entity with a command structure and a disciplinary regime, disposing of considerable operational capacity.<sup>275</sup> Significantly, the intensity of the KLA military operations required Serbian forces to step up their security and defence measures in some areas.<sup>276</sup> In addition, the KLA had a centralised command structure, comprising of a General Staff and a field structure consisting of operational zone commanders.<sup>277</sup> The KLA was in a position to speak with one voice at the political level,<sup>278</sup> and released communiqués and political declarations on a regular basis, giving updates about its military operations.<sup>279</sup> The KLA exercised solid territorial control in vast parts of Kosovo, which it implemented through its centralised command structure down to its field structure of operational zone commanders, which in turn resulted in its ability to carry out concerted military operations.<sup>280</sup> To this effect, it also had at its disposal weapons,

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<sup>273</sup> IT-05-87.1 P00738, pp. 18-23 (K0225278-K0225283); IT-04-84 P00931, paras 38 (U0171215-U0171216), 41 (U0171216-U0171217), 60-64 (U0171226-U0171228); [REDACTED]; IT-04-84 P01153.E, pp. 1-2; IT-05-87 5D00748-E, p. 1; IT-04-84 P01155.E, pp. 1-2; IT-04-84 P01157.E, p. 1; [REDACTED]; IT-05-87 1D00708-E, pp. 2-10 [REDACTED]; IT-05-87.1 P01369.E (whole document), for example, pp. 11-14 (03081359-03081362), 16-17 (03081364-03081365), 19 (03081367), 22-24 (03081370-03081372), 26-28 (03081374-03081376), 154 (03081502); and supporting material referred to in fn. 283.

<sup>274</sup> IT-05-87.1 P01369.E (the whole document refers to VJ and MUP operations); IT-04-84 P01153.E, p. 1; IT-05-87 5D00748-E, p. 1; IT-04-84 P01157.E, p. 1; IT-05-87.1 P01029, pp. 105 (03525372), 144 (03525440), 157 (03525485), 161 (03525491), 167 (03525506).

<sup>275</sup> IT-05-87.1 P00428, pp. 8-10 (5932-5934), 16-19 (5940-5943), 22-27 (5946-5951), 30-32 (5954-5956); IT-04-84 P01157.E, p. 1; IT-05-87.1 P01029, p. 4 (03524677); IT-04-84 P00931, paras 45-50, 61.

<sup>276</sup> IT-04-84 P01157.E, pp. 1-6; IT-05-87 5D00748-E, p. 1.

<sup>277</sup> IT-05-87.1 P00428, pp. 8 (5932), 32 (5956), 40 (5964), 43 (5967); [REDACTED].

<sup>278</sup> See e.g. [REDACTED].

<sup>279</sup> See e.g. [REDACTED].

<sup>280</sup> IT-04-84 P00931, paras 48 (U0171219-U0171220), 61 (U0171226-U0171227); IT-05-87.1 P00428, p. 44 (5968); [REDACTED].

including automatic and heavy weaponry, such as pistols, automatic rifles, machine guns, hand grenades, mortars and rocket launchers.<sup>281</sup> Lastly, the KLA had significant financial resources, and recruited and trained large numbers of new recruits, not only locally but also from various countries of Europe.<sup>282</sup>

133. In relation to the level of intensity, the supporting material shows that intense fighting occurred between Serbian forces and the KLA in various parts of Kosovo,<sup>283</sup> also due to the availability of a wide range of weaponry by both parties, including rocket launchers,<sup>284</sup> mortars,<sup>285</sup> automatic weapons,<sup>286</sup> armoured vehicles and artillery.<sup>287</sup> Sniper attacks<sup>288</sup> and burning of houses<sup>289</sup> have also been reported. On occasion, Serbian forces prepared to rely or had to rely upon air force, including shootings from helicopters.<sup>290</sup> Lastly, the supporting material reveals a

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<sup>281</sup> IT-04-84 P01153.E, p. 1; IT-05-87 5D00748-E, p. 1; IT-05-87 1D00708-E, p. 6 (1D08-0061); IT-05-87.1 P00428, pp. 55-56 (5979-5980); IT-04-84 P00931, paras 24-25 (U0171210-U0171211), 41-42 (U0171216-U0171217).

<sup>282</sup> IT-05-87.1 P00428, pp. 6-8 (5930-5932), 58-59 (5982-5983), 92 (6016); IT-05-87.1 P00738, pp. 18 (K0225278), 21 (K0225281); IT-04-84 P00931, para. 38 (U0171215-U0171216).

<sup>283</sup> IT-05-87.1 P00428, pp. 16-17 (5940-5941); IT-05-87.1 P00738, pp. 11-12 (K0225279-K0225280); IT-05-87.1 P01029, for example, pp. 19 (03524814), 23-25 (03524828-03524831), 30-31 (03524848-03524852), 40 (03525165), 52 (03525239), 74 (03525295), 84 (03525312), 110 (03525382), 115 (03525386), 124 (03525412), 125 (03525395), 126 (03525414), 162 (03525493); IT-05-87.1 P01369.E, p. 11 (03081359); IT-04-84 P00931, paras 41 (U0171216), 54 (U0171223), 60 (U0171226).

<sup>284</sup> IT-04-84 P00931, para. 61 (U0171226); IT-05-87.1 P01369.E, p. 10 (03081358); IT-04-84 P01153.E, p. 1.

<sup>285</sup> IT-05-87.1 P00428, pp. 55 (5979), 191 (6195); IT-05-87.1 P01029, for example, pp. 31 (03524852), 40 (03525165), 52 (03525239), 61 (03525264), 62 (03525265), 64 (03525270), 69 (03525286), 74 (03525295), 123 (03525396), 126 (03525414), 155 (03525480), 182 (03525541); IT-05-87.1 P01369.E, pp. 12 (03081360), 14 (03081362), 15 (03081363).

<sup>286</sup> IT-05-87 5D00748-E, p. 1; IT-05-87 1D00708-E, p. 6 (1D08-0061); IT-05-87.1 P00428 p. 55 (5979).

<sup>287</sup> [REDACTED]; IT-04-84 P01155.E, pp. 1-2; IT-04-84 P01157.E, pp. 3-4; 043850-043850-ET Revised; IT-05-87.1 P01029, pp. 17 (03524808), 21 (03524820), 31 (03524852), 36 (03524860), 40-41 (03525165-03525176), 64 (03525270), 74 (03525295), 84 (03525312), 95 (03525354), 134 (03525427), 141 (03525437), 156 (03525482).

<sup>288</sup> IT-05-87.1 P01029, pp. 61 (03525264), 143 (03525439); IT-04-84 P00931, paras 50 (U0171221), 54 (U0171223); IT-05-87.1 P01369.E, pp. 11 (03081359), 21 (03081368); IT-05-87.1 P00738, p. 10 (K0225278).

<sup>289</sup> IT-05-87.1 P01029, pp. 51 (03525238), 55 (03525246), 62 (03525265), 67 (03525280), 74 (03525295), 81 (03525321), 135 (03525428), 137 (03525432), 142 (03525439), 144 (03525440), 149 (03525461), 167 (03525506).

<sup>290</sup> IT-04-84 P01153.E, p. 1; IT-04-84 P01157.E, p. 3; [REDACTED].

significant exodus of displaced persons both within and outside of Kosovo, as a result of the hostilities.<sup>291</sup>

134. With regard to the end of the armed conflict and related applicability of IHL rules, the Pre-Trial Judge notes that, on 9 June 1999<sup>292</sup> and 20 June 1999,<sup>293</sup> respectively, the international security force (“KFOR”) reached two comprehensive ceasefire agreements with Serbian forces and the KLA. The first one, named the Military Technical Agreement (“MTA”), provided, *inter alia*, for the cessation of any hostile and provocative acts against any person in Kosovo as well as the phased withdrawal of Serbian forces from Kosovo.<sup>294</sup> The second one, named Undertaking of Demilitarisation and Transformation by the Ushtria Çlirimtare e Kosovës (“KLA Undertaking”), provided, *inter alia*, for the cessation of all hostile acts as well as the phased demilitarisation of the KLA over a total period of 90 days.<sup>295</sup> The supporting material indicates that, as a result of the progressive implementation of these agreements, in the subsequent months hostilities between the Serbian forces and the KLA progressively faded out. In the course of June 1999, Serbian forces prepared the retreat and began redeploying some of their units outside of Kosovo.<sup>296</sup> Serbian forces<sup>297</sup> and the KLA<sup>298</sup> were found to be in violation of their respective agreements on some occasions during the summer of 1999. The supporting material further indicates that an incident took place on 10 August 1999, when 10 rounds of mortars were fired into the Serb village of [REDACTED], which, according to the KLA, was used to hide Serb

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<sup>291</sup> [REDACTED]; IT-05-87.1 P01029, p. 130 (03525418); IT-05-87.1 P00738, pp. 12 (K0225280), 15 (K0225283).

<sup>292</sup> IT-05-87 6D00611-E.

<sup>293</sup> [REDACTED].

<sup>294</sup> IT-05-87 6D00611-E, pp. 2-4 (6D09-0141-6D09-0143).

<sup>295</sup> [REDACTED].

<sup>296</sup> IT-05-87.1 P01369.E, pp. 149 (03081497) (8 June 1999: drafting documents to prepare the retreat), 151-154 (03081499-03081502).

<sup>297</sup> [REDACTED].

<sup>298</sup> [REDACTED].

paramilitaries.<sup>299</sup> Attacks with mortars and explosives against Serb religious sites were also reported towards the end of August 1999.<sup>300</sup> According to the supporting material, on 16 September 1999 the KLA completed the process of demilitarisation,<sup>301</sup> as set out in the KLA Undertaking.<sup>302</sup>

135. Based on the supporting material, in the period when the MTA and the KLA Undertaking were being implemented, there existed the concrete risk of [REDACTED];<sup>303</sup> and increasing efforts were made [REDACTED],<sup>304</sup> who were in fear of attack by ethnic Albanians.<sup>305</sup>

136. The Pre-Trial Judge recalls that IHL applies beyond the cessation of hostilities, until a lasting absence of armed confrontations is achieved.<sup>306</sup> While the organisation of the Serbian forces and the KLA was not substantially altered by the implementation of the two agreements, the level of intensity of the hostilities progressively decreased without, however, eliminating a real risk of resumption of violence between the parties through the summer of 1999. Accordingly, in the view of the Pre-Trial Judge, a lasting absence of armed confrontation, so as to equate to a peaceful settlement, was achieved approximately at the time when the KLA completed its demilitarisation process, on 16 September 1999.

137. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that, from at least March 1998 to approximately 16 September

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<sup>299</sup> [REDACTED].

<sup>300</sup> [REDACTED].

<sup>301</sup> [REDACTED].

<sup>302</sup> [REDACTED].

<sup>303</sup> [REDACTED].

<sup>304</sup> [REDACTED].

<sup>305</sup> [REDACTED].

<sup>306</sup> See *supra* para. 89 (Contextual Requirements for War Crimes).

1999, a non-international armed conflict existed within the meaning of Article 14(2) of the Law between the Serbian forces and the KLA.

## B. THE CRIMES CHARGED

### 1. Counts 2 and 3: Imprisonment and Arbitrary Detention

138. In the Revised Indictment, the SPO alleges that during the Indictment Period several individuals were deprived of their liberty without due process at the detention sites set out below, constituting the crime of imprisonment as a crime against humanity under Article 13(1)(e) of the Law and arbitrary detention as a war crime under Article 14(1)(c) of the Law.<sup>307</sup>

#### (a) Material Elements

##### (i) *Likoc/Likovac*

139. The Pre-Trial Judge finds that the supporting material indicates that, between at least April 1998 and January 1999, at least 25 individuals were taken into custody by KLA members and detained in a former police station housing the KLA headquarters<sup>308</sup> and various other locations in or near Likoc/Likovac, Skënderaj/Srbica municipality.<sup>309</sup> The detainees concerned were tied up and kept in rooms with barred windows.<sup>310</sup> The detainees were kept in custody for varying periods of time, ranging from a few hours<sup>311</sup> to 40 days.<sup>312</sup>

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<sup>307</sup> Revised Indictment, paras 59-94, 174 [68], Schedule A.

<sup>308</sup> [REDACTED].

<sup>309</sup> [REDACTED].

<sup>310</sup> [REDACTED].

<sup>311</sup> [REDACTED].

<sup>312</sup> [REDACTED].

140. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>313</sup> [REDACTED],<sup>314</sup> [REDACTED]<sup>315</sup>, and [REDACTED].<sup>316</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>317</sup> [REDACTED];<sup>318</sup> friendship or interaction with Serbs;<sup>319</sup> and/or [REDACTED].<sup>320</sup>

141. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>321</sup>

*(ii) Jabllanicë/Jablanica*

142. The Pre-Trial Judge finds that the supporting material indicates that, between at least April and late July 1998, at least 13 individuals were taken into custody by KLA members and detained in the KLA guarded barracks compound with a four-room house,<sup>322</sup> at the exit of Jabllanicë/Jablanica, Gjakovë/Đakovica municipality.<sup>323</sup> While in custody, the detainees were tied [REDACTED].<sup>324</sup> The

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<sup>313</sup> [REDACTED].

<sup>314</sup> [REDACTED].

<sup>315</sup> [REDACTED].

<sup>316</sup> [REDACTED].

<sup>317</sup> [REDACTED].

<sup>318</sup> [REDACTED].

<sup>319</sup> [REDACTED].

<sup>320</sup> [REDACTED].

<sup>321</sup> [REDACTED].

<sup>322</sup> [REDACTED].

<sup>323</sup> IT-04-84bis P00119, pp. 4247-4253, 4262, 4265; [REDACTED].

<sup>324</sup> IT-04-84bis P00119, pp. 78-79 (4252-4253).

detainees were kept in custody for varying periods of time, ranging from [REDACTED]<sup>325</sup> to six weeks.<sup>326</sup>

143. [REDACTED],<sup>327</sup> [REDACTED].<sup>328</sup> [REDACTED],<sup>329</sup> [REDACTED],<sup>330</sup> [REDACTED].<sup>331</sup> [REDACTED].<sup>332</sup>

144. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned, which comprised [REDACTED],<sup>333</sup> [REDACTED]<sup>334</sup> and [REDACTED]<sup>335</sup> men, included [REDACTED]<sup>336</sup> and [REDACTED].<sup>337</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>338</sup> connections or links with Serbs [REDACTED];<sup>339</sup> [REDACTED].<sup>340</sup>

145. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>341</sup>

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<sup>325</sup> [REDACTED].

<sup>326</sup> [REDACTED].

<sup>327</sup> [REDACTED].

<sup>328</sup> [REDACTED].

<sup>329</sup> [REDACTED].

<sup>330</sup> [REDACTED].

<sup>331</sup> [REDACTED].

<sup>332</sup> [REDACTED].

<sup>333</sup> [REDACTED].

<sup>334</sup> [REDACTED].

<sup>335</sup> IT-04-84bis P00119, pp. 78-79 (4252-4253); [REDACTED].

<sup>336</sup> [REDACTED].

<sup>337</sup> [REDACTED].

<sup>338</sup> IT-04-84bis P00119, pp. 4255-4256, 4265; [REDACTED].

<sup>339</sup> [REDACTED].

<sup>340</sup> [REDACTED].

<sup>341</sup> [REDACTED].

(iii) *Llapushnik/Lapušnik*

146. The Pre-Trial Judge finds that the supporting material indicates that, between approximately late April and late July 1998, as many as 30 individuals were taken into custody by KLA members and detained in the KLA prison compound in Llapushnik/Lapušnik, Drenas (Glllogoc)/Glogovac municipality,<sup>342</sup> which was fenced and consisted of a cowshed, a small house, a second bigger house, and a garage.<sup>343</sup> The cowshed was guarded<sup>344</sup> and detainees were kept chained therein.<sup>345</sup> This detention site could accommodate up to 30 detainees at any given time.<sup>346</sup> The detainees were kept in custody for varying periods of time, ranging from [REDACTED]<sup>347</sup> to 85 days.<sup>348</sup>

147. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]<sup>349</sup> and [REDACTED].<sup>350</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>351</sup> and/or friendship or acquaintances with [REDACTED].<sup>352</sup>

148. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>353</sup> suggest that the KLA members did not inform the

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<sup>342</sup> [REDACTED].

<sup>343</sup> [REDACTED].

<sup>344</sup> [REDACTED].

<sup>345</sup> [REDACTED].

<sup>346</sup> [REDACTED].

<sup>347</sup> [REDACTED].

<sup>348</sup> [REDACTED].

<sup>349</sup> [REDACTED].

<sup>350</sup> [REDACTED].

<sup>351</sup> [REDACTED].

<sup>352</sup> [REDACTED].

<sup>353</sup> See *infra* paras 241-244 (Counts 4-5).

detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>354</sup>

*(iv) Drenoc/Drenovac*

149. The Pre-Trial Judge finds that the supporting material indicates that, between approximately May and July 1998, at least 38 individuals were taken into custody by KLA members and detained in a former school building and in a registration office in Drenoc/Drenovac, Rahovec/Orahovac municipality.<sup>355</sup> The detainees were kept in custody for varying periods of time, ranging between one night<sup>356</sup> and more than a month.<sup>357</sup>

150. [REDACTED]<sup>358</sup> [REDACTED]. [REDACTED].<sup>359</sup> [REDACTED].<sup>360</sup>

151. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>361</sup> [REDACTED],<sup>362</sup> [REDACTED],<sup>363</sup> [REDACTED],<sup>364</sup> [REDACTED],<sup>365</sup>

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<sup>354</sup> [REDACTED].

<sup>355</sup> [REDACTED].

<sup>356</sup> [REDACTED].

<sup>357</sup> [REDACTED].

<sup>358</sup> [REDACTED].

<sup>359</sup> [REDACTED].

<sup>360</sup> [REDACTED].

<sup>361</sup> [REDACTED].

<sup>362</sup> [REDACTED].

<sup>363</sup> [REDACTED].

<sup>364</sup> [REDACTED].

<sup>365</sup> [REDACTED].

[REDACTED],<sup>366</sup> and [REDACTED].<sup>367</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>368</sup> and/or friendship or dealings with Serbs.<sup>369</sup>

152. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>370</sup> – [REDACTED]<sup>371</sup> – suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>372</sup>

*(v) Malishevë/Mališevo*

153. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 17 and 26 or 27 July 1998, at least 48 individuals were taken into custody by KLA members and detained in a former police station compound with a two-storey building<sup>373</sup> in Malishevë/Mališevo, in Malishevë/Mališevo municipality.<sup>374</sup> The detainees included [REDACTED].<sup>375</sup> They were kept in locked rooms, with small windows<sup>376</sup> and iron bars,<sup>377</sup> and were guarded by KLA members.<sup>378</sup> The detainees were kept in custody for about 10 days.<sup>379</sup> [REDACTED].<sup>380</sup>

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<sup>366</sup> [REDACTED].

<sup>367</sup> [REDACTED].

<sup>368</sup> [REDACTED].

<sup>369</sup> [REDACTED].

<sup>370</sup> See *infra* paras 245-248 (Counts 4-5).

<sup>371</sup> [REDACTED].

<sup>372</sup> [REDACTED].

<sup>373</sup> [REDACTED].

<sup>374</sup> [REDACTED].

<sup>375</sup> [REDACTED].

<sup>376</sup> [REDACTED].

<sup>377</sup> [REDACTED].

<sup>378</sup> [REDACTED].

<sup>379</sup> [REDACTED].

<sup>380</sup> [REDACTED].

154. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned were [REDACTED],<sup>381</sup> [REDACTED],<sup>382</sup> and included [REDACTED],<sup>383</sup> [REDACTED],<sup>384</sup> [REDACTED],<sup>385</sup> [REDACTED],<sup>386</sup> and [REDACTED].<sup>387</sup> They were held on the basis of their alleged and unspecified spying activities,<sup>388</sup> [REDACTED],<sup>389</sup> and/or their [REDACTED] ethnicity.<sup>390</sup>

155. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>391</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>392</sup>

(vi) [REDACTED]

156. The Pre-Trial Judge finds that the supporting material indicates that, in or around [REDACTED] 1998, at least five individuals were taken into custody by KLA members and detained in the KLA headquarters in [REDACTED], Prizren

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<sup>381</sup> [REDACTED].

<sup>382</sup> [REDACTED].

<sup>383</sup> [REDACTED].

<sup>384</sup> [REDACTED].

<sup>385</sup> [REDACTED].

<sup>386</sup> [REDACTED].

<sup>387</sup> [REDACTED].

<sup>388</sup> [REDACTED].

<sup>389</sup> [REDACTED].

<sup>390</sup> [REDACTED].

<sup>391</sup> See *infra* paras 249-252 (Counts 4-5).

<sup>392</sup> [REDACTED].

municipality.<sup>393</sup> The detainees concerned were held in a locked room with iron bars.<sup>394</sup>

157. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>395</sup> [REDACTED]<sup>396</sup> and [REDACTED].<sup>397</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>398</sup> [REDACTED].<sup>399</sup>

158. The circumstances of the detainees' arrest and detention<sup>400</sup> and the mistreatment suffered<sup>401</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>402</sup>

*(vii) Bare and Bajgorë/Bajgora*

159. The Pre-Trial Judge finds that the supporting material indicates that, in August 1998, at least eight individuals were taken into custody by KLA members and detained in Bare,<sup>403</sup> and that between August and mid-September 1998, at least

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<sup>393</sup> [REDACTED].

<sup>394</sup> [REDACTED].

<sup>395</sup> [REDACTED].

<sup>396</sup> [REDACTED].

<sup>397</sup> [REDACTED].

<sup>398</sup> [REDACTED].

<sup>399</sup> [REDACTED].

<sup>400</sup> [REDACTED].

<sup>401</sup> See *infra* paras 253-256 (Counts 4-5).

<sup>402</sup> [REDACTED].

<sup>403</sup> [REDACTED].

16 individuals were taken into custody by KLA members and detained in Bajgorë/Bajgora, both in Podujevë/Podujevo municipality.<sup>404</sup> [REDACTED].<sup>405</sup>

160. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]<sup>406</sup> and [REDACTED].<sup>407</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>408</sup> and/or their Serb ethnicity.<sup>409</sup>

161. The circumstances of the detainees' arrest and detention, [REDACTED],<sup>410</sup> and the mistreatment suffered<sup>411</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>412</sup>

*(viii) Llapashticë/Lapaštica, [REDACTED], Majac/Majance, Potok, [REDACTED]*

162. The Pre-Trial Judge finds that the supporting material indicates that several individuals were taken into custody by KLA members and detained in various locations as follows: at least 52 individuals near the military police and KLA Llap Zone headquarters in Llapashticë/Lapaštica (at least November 1998-April 1999);<sup>413</sup> [REDACTED];<sup>414</sup> [REDACTED] in Majac/Majance (between

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<sup>404</sup> [REDACTED].

<sup>405</sup> [REDACTED].

<sup>406</sup> [REDACTED].

<sup>407</sup> [REDACTED].

<sup>408</sup> [REDACTED].

<sup>409</sup> [REDACTED].

<sup>410</sup> [REDACTED].

<sup>411</sup> See *infra* paras 257-260 (Counts 4-5).

<sup>412</sup> [REDACTED].

<sup>413</sup> [REDACTED].

<sup>414</sup> [REDACTED].

approximately 25 March and early April 1999);<sup>415</sup> [REDACTED] in Potok (early April 1999), all in Podujevë/Podujevo municipality;<sup>416</sup> and [REDACTED] in the KLA headquarters in [REDACTED], Prishtinë/Priština municipality (about [REDACTED] 1999).<sup>417</sup> [REDACTED].<sup>418</sup> Detainees in Llapashticë/Lapaštica were kept in a room that measured four by three metres, with a small window with metal bars, and which was originally a cowshed.<sup>419</sup> [REDACTED], the detainees concerned were held for varying periods of time, ranging from a few days to around five months.<sup>420</sup> The detainees included, [REDACTED].<sup>421</sup>

163. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>422</sup> [REDACTED],<sup>423</sup> [REDACTED],<sup>424</sup> and [REDACTED].<sup>425</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>426</sup> their Serb ethnicity;<sup>427</sup> [REDACTED];<sup>428</sup> and/or their relations with Serbs.<sup>429</sup>

164. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

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<sup>415</sup> [REDACTED].

<sup>416</sup> [REDACTED].

<sup>417</sup> [REDACTED].

<sup>418</sup> [REDACTED].

<sup>419</sup> [REDACTED].

<sup>420</sup> [REDACTED].

<sup>421</sup> [REDACTED].

<sup>422</sup> [REDACTED].

<sup>423</sup> [REDACTED].

<sup>424</sup> [REDACTED].

<sup>425</sup> [REDACTED].

<sup>426</sup> [REDACTED].

<sup>427</sup> [REDACTED].

<sup>428</sup> [REDACTED].

<sup>429</sup> [REDACTED].

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>430</sup>

*(ix) Zllash/Zlaš*

165. The Pre-Trial Judge finds that the supporting material indicates that, in September 1998 and between approximately 1 and 19 April 1999, at least eight individuals were taken into custody by KLA members and detained in [REDACTED] Zllash/Zlaš ([REDACTED]) [REDACTED] located in a KLA detention compound in Zllash/Zlaš (April 1999), Prishtinë/Priština municipality.<sup>431</sup> [REDACTED].<sup>432</sup> Those held in April 1999 were kept in a barn that was locked with chains and guarded.<sup>433</sup> The detainees were kept in custody for varying periods of time, ranging between 3<sup>434</sup> and 18 days.<sup>435</sup>

166. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]<sup>436</sup> and [REDACTED].<sup>437</sup> They were held on the basis of their alleged collaboration, friendship or interaction with Serbs;<sup>438</sup> [REDACTED].<sup>439</sup>

167. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

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<sup>430</sup> [REDACTED].

<sup>431</sup> [REDACTED].

<sup>432</sup> [REDACTED].

<sup>433</sup> [REDACTED].

<sup>434</sup> [REDACTED].

<sup>435</sup> [REDACTED].

<sup>436</sup> [REDACTED].

<sup>437</sup> [REDACTED].

<sup>438</sup> [REDACTED].

<sup>439</sup> [REDACTED].

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention. [REDACTED].<sup>440</sup> As for the [REDACTED] detainees, at the time of their release, on or around 19 April 1999 – the day of the Serbian offensive in the area<sup>441</sup> – [REDACTED],<sup>442</sup> [REDACTED].<sup>443</sup>

(x) [REDACTED]

168. The Pre-Trial Judge finds that the supporting material indicates that [REDACTED] 1998, [REDACTED], were taken into custody by [REDACTED] KLA members and [REDACTED] Skënderaj/Srbica municipality, and then detained at [REDACTED].<sup>444</sup>

169. [REDACTED],<sup>445</sup> [REDACTED] collected their identification cards.<sup>446</sup>

170. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. [REDACTED].<sup>447</sup> [REDACTED].<sup>448</sup>

171. The circumstances of the detainees' arrest and detention, and the mistreatment suffered<sup>449</sup> – [REDACTED]<sup>450</sup> [REDACTED]<sup>451</sup> – suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and

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<sup>440</sup> [REDACTED].

<sup>441</sup> [REDACTED].

<sup>442</sup> [REDACTED].

<sup>443</sup> [REDACTED].

<sup>444</sup> [REDACTED].

<sup>445</sup> [REDACTED].

<sup>446</sup> [REDACTED].

<sup>447</sup> [REDACTED].

<sup>448</sup> [REDACTED].

<sup>449</sup> See *infra* paras 269-272 (Counts 4-5).

<sup>450</sup> [REDACTED].

<sup>451</sup> [REDACTED].

detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>452</sup>

(xi) [REDACTED]

172. The Pre-Trial Judge finds that the supporting material indicates that between approximately [REDACTED] and [REDACTED] 1998, at least four individuals were taken into custody by KLA members and detained in [REDACTED], Lipjan/Lipljan municipality.<sup>453</sup> The detainees were kept under guard [REDACTED].<sup>454</sup>

173. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]<sup>455</sup> [REDACTED].<sup>456</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>457</sup> and/or [REDACTED].<sup>458</sup>

174. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>459</sup>

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<sup>452</sup> [REDACTED].

<sup>453</sup> [REDACTED].

<sup>454</sup> [REDACTED].

<sup>455</sup> [REDACTED].

<sup>456</sup> [REDACTED].

<sup>457</sup> [REDACTED].

<sup>458</sup> [REDACTED].

<sup>459</sup> [REDACTED].

*(xii) Klečkë/Klečka*

175. The Pre-Trial Judge finds that the supporting material indicates that between at least November 1998 and June 1999, at least 20 individuals were taken into custody by KLA members and detained near Klečkë/Klečka, Lipjan/Lipljan municipality,<sup>460</sup> in a two-storey building with a basement<sup>461</sup> (and surrounding buildings)<sup>462</sup> [REDACTED].<sup>463</sup> The detainees were held for varying periods of time.<sup>464</sup> On one occasion, Mr Veseli personally brought a detainee and handed him over to other KLA members.<sup>465</sup>

176. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>466</sup> [REDACTED],<sup>467</sup> [REDACTED],<sup>468</sup> and [REDACTED].<sup>469</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>470</sup> and/or their Serb ethnicity.<sup>471</sup>

177. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>472</sup>

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<sup>460</sup> [REDACTED]; IT-05-87 3D00140, p. 4; [REDACTED].

<sup>461</sup> [REDACTED].

<sup>462</sup> [REDACTED].

<sup>463</sup> [REDACTED].

<sup>464</sup> [REDACTED].

<sup>465</sup> [REDACTED].

<sup>466</sup> [REDACTED].

<sup>467</sup> [REDACTED].

<sup>468</sup> [REDACTED].

<sup>469</sup> IT-05-87 3D00140, p. 2.

<sup>470</sup> [REDACTED].

<sup>471</sup> [REDACTED].

<sup>472</sup> [REDACTED].

(xiii) [REDACTED]

178. The Pre-Trial Judge finds that the supporting material indicates that between approximately [REDACTED] 1999, at least 13 individuals were taken into custody by KLA members, detained in locked rooms and/or under armed guard, and [REDACTED]. More specifically, at least 13 individuals were held in [REDACTED] ([REDACTED] 1999),<sup>473</sup> [REDACTED] detained in [REDACTED] ([REDACTED]), both in Kaçanik/Kaçanik municipality.<sup>474</sup> [REDACTED],<sup>475</sup> all but five detainees were released.<sup>476</sup> [REDACTED] ([REDACTED] 1999),<sup>477</sup> [REDACTED] (about [REDACTED] 1999).<sup>478</sup> The detainees were restrained, held in locked rooms and under armed guard.<sup>479</sup>

179. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED].<sup>480</sup> They were held on the basis of their alleged and unspecified spying activities.<sup>481</sup>

180. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>482</sup>

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<sup>473</sup> [REDACTED].

<sup>474</sup> [REDACTED].

<sup>475</sup> [REDACTED].

<sup>476</sup> [REDACTED].

<sup>477</sup> [REDACTED].

<sup>478</sup> [REDACTED].

<sup>479</sup> [REDACTED].

<sup>480</sup> [REDACTED]

<sup>481</sup> [REDACTED].

<sup>482</sup> [REDACTED].

*(xiv) Cahan, Albania*

181. The Pre-Trial Judge finds that the supporting material indicates that between April and June 1999, at least 17 individuals were taken into custody by KLA members and detained at the KLA military barracks in Cahan, Albania.<sup>483</sup> The detainees were kept in locked makeshift cells under armed guard.<sup>484</sup> They remained in custody for varying periods of time.<sup>485</sup>

182. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>486</sup> [REDACTED],<sup>487</sup> [REDACTED]<sup>488</sup> and [REDACTED].<sup>489</sup> They were held on the basis of their alleged and unspecified spying activities,<sup>490</sup> and/or [REDACTED].<sup>491</sup>

183. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>492</sup>

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<sup>483</sup> [REDACTED].

<sup>484</sup> [REDACTED].

<sup>485</sup> [REDACTED].

<sup>486</sup> [REDACTED].

<sup>487</sup> [REDACTED].

<sup>488</sup> [REDACTED].

<sup>489</sup> [REDACTED].

<sup>490</sup> [REDACTED].

<sup>491</sup> [REDACTED].

<sup>492</sup> [REDACTED].

(xv) *Kukës, Albania*

184. The Pre-Trial Judge finds that the supporting material indicates that between May and June 1999, at least 12 individuals were taken into custody by KLA members and detained in guarded rooms with barred windows<sup>493</sup> at the Kukës Metal Factory, in Albania.<sup>494</sup> The detainees concerned were handcuffed,<sup>495</sup> guarded,<sup>496</sup> and escorted to the toilet.<sup>497</sup> They remained in custody for varying periods of time.<sup>498</sup>

185. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>499</sup> [REDACTED],<sup>500</sup> [REDACTED],<sup>501</sup> [REDACTED],<sup>502</sup> [REDACTED],<sup>503</sup> and [REDACTED].<sup>504</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>505</sup> [REDACTED];<sup>506</sup> [REDACTED].<sup>507</sup>

186. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

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<sup>493</sup> [REDACTED].

<sup>494</sup> [REDACTED].

<sup>495</sup> [REDACTED].

<sup>496</sup> [REDACTED].

<sup>497</sup> [REDACTED].

<sup>498</sup> [REDACTED].

<sup>499</sup> [REDACTED].

<sup>500</sup> [REDACTED].

<sup>501</sup> [REDACTED].

<sup>502</sup> [REDACTED].

<sup>503</sup> [REDACTED].

<sup>504</sup> [REDACTED].

<sup>505</sup> [REDACTED].

<sup>506</sup> [REDACTED].

<sup>507</sup> [REDACTED].

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>508</sup>

*(xvi) [REDACTED]*

187. The Pre-Trial Judge finds that the supporting material indicates that between approximately [REDACTED] 1999, at least 10 individuals were taken into custody by KLA members and detained as follows: three individuals in the KLA headquarters in [REDACTED], Malishevë/Mališevo municipality,<sup>509</sup> and seven individuals in [REDACTED], Suharekë/Suva Reka municipality, [REDACTED].<sup>510</sup> The detainees were held for varying periods of time.<sup>511</sup>

188. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]<sup>512</sup> and [REDACTED].<sup>513</sup> They were held on the basis of their alleged and unspecified spying activities,<sup>514</sup> [REDACTED].<sup>515</sup>

189. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>516</sup>

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<sup>508</sup> [REDACTED].

<sup>509</sup> [REDACTED].

<sup>510</sup> [REDACTED].

<sup>511</sup> [REDACTED].

<sup>512</sup> [REDACTED].

<sup>513</sup> [REDACTED].

<sup>514</sup> [REDACTED].

<sup>515</sup> [REDACTED].

<sup>516</sup> [REDACTED].

(xvii) [REDACTED]

190. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, [REDACTED] taken [REDACTED] by KLA members in different locations, [REDACTED],<sup>517</sup> [REDACTED],<sup>518</sup> [REDACTED]<sup>519</sup> [REDACTED], all in Drenas (Glllogoc)/Glogovac municipality.<sup>520</sup> [REDACTED].<sup>521</sup>

191. According to the supporting material, [REDACTED] justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of [REDACTED] liberty absolutely necessary. Notably, [REDACTED].<sup>522</sup> [REDACTED] held on the basis of [REDACTED] ethnicity.<sup>523</sup>

192. The circumstances of the [REDACTED] mistreatment suffered<sup>524</sup> suggest that the KLA members did not inform [REDACTED] of the reason [REDACTED], nor did they show any documentation in this regard, or give [REDACTED] opportunity to challenge the [REDACTED].<sup>525</sup>

(xviii) [REDACTED]

193. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, at least three individuals were taken into custody by KLA members and detained at locations in or around [REDACTED],

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<sup>517</sup> [REDACTED].

<sup>518</sup> [REDACTED].

<sup>519</sup> [REDACTED].

<sup>520</sup> [REDACTED].

<sup>521</sup> [REDACTED].

<sup>522</sup> [REDACTED].

<sup>523</sup> [REDACTED].

<sup>524</sup> See *infra* paras 297-300 (Counts 4-5).

<sup>525</sup> [REDACTED].

Prishtinë/Priština municipality.<sup>526</sup> The detainees were held under armed guard and tied up.<sup>527</sup>

194. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED]<sup>528</sup> [REDACTED].<sup>529</sup> [REDACTED];<sup>530</sup> [REDACTED].<sup>531</sup>

195. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>532</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>533</sup>

*(xix) [REDACTED]*

196. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, at least nine individuals were taken into custody by KLA members and detained in [REDACTED] locations in [REDACTED], Viti/Vitina municipality.<sup>534</sup> The detainees, some with their heads covered, were guarded [REDACTED].<sup>535</sup>

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<sup>526</sup> [REDACTED].

<sup>527</sup> [REDACTED].

<sup>528</sup> [REDACTED].

<sup>529</sup> [REDACTED].

<sup>530</sup> [REDACTED].

<sup>531</sup> [REDACTED].

<sup>532</sup> See *infra* paras 301-304 (Counts 4-5).

<sup>533</sup> [REDACTED].

<sup>534</sup> [REDACTED].

<sup>535</sup> [REDACTED].

197. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>536</sup> [REDACTED],<sup>537</sup> and [REDACTED].<sup>538</sup> They were held on the basis of their alleged knowledge of [REDACTED];<sup>539</sup> [REDACTED];<sup>540</sup> [REDACTED].<sup>541</sup>

198. The circumstances of the detainees' arrest and detention, and the mistreatment suffered<sup>542</sup> – [REDACTED]<sup>543</sup> [REDACTED]<sup>544</sup> – suggest that KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>545</sup>

(xx)[REDACTED], Prizren

199. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 15 and 23 June 1999, at least eight individuals were taken into custody by KLA members and detained in [REDACTED]<sup>546</sup> guarded by armed KLA members,<sup>547</sup> in [REDACTED] Prizren, in Prizren municipality.<sup>548</sup> [REDACTED].<sup>549</sup>

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<sup>536</sup> [REDACTED].

<sup>537</sup> [REDACTED].

<sup>538</sup> [REDACTED].

<sup>539</sup> [REDACTED].

<sup>540</sup> [REDACTED].

<sup>541</sup> [REDACTED].

<sup>542</sup> See *infra* paras 305-308 (Counts 4-5).

<sup>543</sup> [REDACTED].

<sup>544</sup> [REDACTED].

<sup>545</sup> [REDACTED].

<sup>546</sup> [REDACTED].

<sup>547</sup> [REDACTED].

<sup>548</sup> [REDACTED].

<sup>549</sup> [REDACTED].

200. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>550</sup> [REDACTED],<sup>551</sup> [REDACTED],<sup>552</sup> and [REDACTED].<sup>553</sup> They were held on the basis of their Serb ethnicity;<sup>554</sup> [REDACTED];<sup>555</sup> and/or [REDACTED].<sup>556</sup>

201. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>557</sup> suggest that KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>558</sup>

*(xxi) Former MUP Building, Prizren*

202. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 18 June 1999, at least 15 individuals were taken into custody by KLA members and detained in the former MUP building of Prizren, in Prizren municipality.<sup>559</sup> Several detainees were handcuffed [REDACTED].<sup>560</sup> [REDACTED].<sup>561</sup>

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<sup>550</sup> [REDACTED].

<sup>551</sup> [REDACTED].

<sup>552</sup> [REDACTED].

<sup>553</sup> [REDACTED].

<sup>554</sup> [REDACTED].

<sup>555</sup> [REDACTED].

<sup>556</sup> [REDACTED]; 060650-TR-ET Part 3, p. 27.

<sup>557</sup> See *infra* paras 309-312 (Counts 4-5).

<sup>558</sup> [REDACTED].

<sup>559</sup> [REDACTED].

<sup>560</sup> [REDACTED].

<sup>561</sup> [REDACTED].

203. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>562</sup> [REDACTED],<sup>563</sup> [REDACTED]<sup>564</sup> [REDACTED]<sup>565</sup> [REDACTED]. They were held on the basis of their alleged and unspecified spying activities;<sup>566</sup> their [REDACTED] ethnicity;<sup>567</sup> [REDACTED];<sup>568</sup> [REDACTED];<sup>569</sup> [REDACTED].<sup>570</sup>

204. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>571</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>572</sup>

(xxii) [REDACTED], Prizren

205. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 19 June 1999, at least two individuals were taken into custody by KLA members and detained in [REDACTED], Prizren municipality.<sup>573</sup> The detainees were handcuffed and held in a locked room.<sup>574</sup> [REDACTED].<sup>575</sup>

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<sup>562</sup> [REDACTED].

<sup>563</sup> [REDACTED].

<sup>564</sup> [REDACTED].

<sup>565</sup> [REDACTED].

<sup>566</sup> [REDACTED].

<sup>567</sup> [REDACTED].

<sup>568</sup> [REDACTED].

<sup>569</sup> [REDACTED].

<sup>570</sup> [REDACTED].

<sup>571</sup> See *infra* paras 313-316 (Counts 4-5).

<sup>572</sup> [REDACTED].

<sup>573</sup> [REDACTED].

<sup>574</sup> [REDACTED].

<sup>575</sup> [REDACTED].

206. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. [REDACTED]<sup>576</sup> [REDACTED].<sup>577</sup> They were held on the basis of their alleged and unspecified spying activities;<sup>578</sup> [REDACTED];<sup>579</sup> [REDACTED];<sup>580</sup> [REDACTED].<sup>581</sup>

207. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>582</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>583</sup>

*(xxiii) [REDACTED], Prizren*

208. The Pre-Trial Judge finds that the supporting material indicates that, on or about 26 June 1999, at least three individuals were taken into custody by KLA members and detained in [REDACTED] Prizren, in Prizren municipality.<sup>584</sup> [REDACTED].<sup>585</sup>

209. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty

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<sup>576</sup> [REDACTED].

<sup>577</sup> [REDACTED].

<sup>578</sup> [REDACTED].

<sup>579</sup> [REDACTED].

<sup>580</sup> [REDACTED].

<sup>581</sup> [REDACTED].

<sup>582</sup> See *infra* paras 317-320 (Counts 4-5).

<sup>583</sup> [REDACTED].

<sup>584</sup> [REDACTED].

<sup>585</sup> [REDACTED].

absolutely necessary. Notably, the detainees concerned included [REDACTED],<sup>586</sup> [REDACTED]<sup>587</sup> and [REDACTED].<sup>588</sup> They were held on the basis of [REDACTED]<sup>589</sup> and/or [REDACTED].<sup>590</sup>

210. The supporting material indicates that the detainees concerned were not informed of the reason for their arrest and detention, nor were they shown any documentation in this regard, or given the opportunity to challenge the lawfulness of their detention.<sup>591</sup>

*(xxiv) Ferizaj/Uroševac*

211. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, at least one individual was taken into custody and detained by KLA members in or around Ferizaj/Uroševac, in Ferizaj/Uroševac municipality.<sup>592</sup> The detainee was tied up, guarded, and held in a locked room.<sup>593</sup>

212. According to the supporting material, the apprehension and detention of this individual was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of his liberty absolutely necessary. Notably, the detainee concerned was held on the basis of his Serb ethnicity,<sup>594</sup> and for having allegedly committed crimes.<sup>595</sup>

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<sup>586</sup> [REDACTED].

<sup>587</sup> [REDACTED].

<sup>588</sup> [REDACTED].

<sup>589</sup> [REDACTED].

<sup>590</sup> [REDACTED].

<sup>591</sup> [REDACTED].

<sup>592</sup> [REDACTED].

<sup>593</sup> [REDACTED].

<sup>594</sup> [REDACTED].

<sup>595</sup> [REDACTED].

213. The circumstances of the detainee's arrest and detention, and the mistreatment suffered,<sup>596</sup> suggest that the KLA members did not inform the detainee concerned of the reason for his arrest and detention, nor did they show any documentation in this regard, or give him the opportunity to challenge the lawfulness of his detention.<sup>597</sup>

(xxv) [REDACTED]

214. The Pre-Trial Judge finds that the supporting material indicates that, between [REDACTED], [REDACTED] were taken into custody by KLA members and detained in a house in [REDACTED], Ferizaj/Uroševac municipality.<sup>598</sup> [REDACTED].<sup>599</sup>

215. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED].<sup>600</sup> They were held [REDACTED]<sup>601</sup> [REDACTED].<sup>602</sup>

216. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>603</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show

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<sup>596</sup> See *infra* paras 328-331 (Counts 4-5).

<sup>597</sup> [REDACTED].

<sup>598</sup> [REDACTED].

<sup>599</sup> [REDACTED].

<sup>600</sup> [REDACTED].

<sup>601</sup> [REDACTED].

<sup>602</sup> [REDACTED].

<sup>603</sup> See *infra* paras 332-335 (Counts 4-5).

any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>604</sup> [REDACTED].<sup>605</sup> [REDACTED].<sup>606</sup>

*(xxvi) Former Boarding School/Dormitory, Gjilan/Gnjilane*

217. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, at least three individuals were taken into custody by KLA members and detained at a KLA headquarters located in the former Boarding School/Dormitory in Gjilan/Gnjilane, in Gjilan/Gnjilane municipality.<sup>607</sup>

218. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included [REDACTED].<sup>608</sup> They were held on the basis of their [REDACTED] ethnicity,<sup>609</sup> their alleged commission of crimes against Kosovo Albanians,<sup>610</sup> and because [REDACTED].<sup>611</sup>

219. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>612</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>613</sup>

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<sup>604</sup> [REDACTED].

<sup>605</sup> [REDACTED].

<sup>606</sup> [REDACTED].

<sup>607</sup> [REDACTED].

<sup>608</sup> [REDACTED].

<sup>609</sup> [REDACTED].

<sup>610</sup> [REDACTED].

<sup>611</sup> [REDACTED].

<sup>612</sup> See *infra* paras 336-339 (Counts 4-5).

<sup>613</sup> [REDACTED].

*(xxvii) Former Police Station, Suharekë/Suva Reka*

220. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, at least one individual was taken into custody by KLA members and detained in a former police station in Suharekë/Suva Reka, in Suharekë/Suva Reka municipality, [REDACTED],<sup>614</sup> [REDACTED].<sup>615</sup> The detainee was in custody for approximately 11 days,<sup>616</sup> [REDACTED].<sup>617</sup>

221. According to the supporting material, the apprehension and detention of this individual was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of [REDACTED] liberty absolutely necessary. [REDACTED].<sup>618</sup> [REDACTED].<sup>619</sup>

222. The circumstances of the detainee's arrest and detention and the mistreatment suffered<sup>620</sup> suggest that the KLA members did not inform the [REDACTED] of the reason for [REDACTED] arrest and detention, nor did they show any documentation in this regard, or give [REDACTED] the opportunity to challenge the lawfulness of [REDACTED] detention.<sup>621</sup>

*(xxviii) Novobërdë/Novo Brdo*

223. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, at least four individuals were taken into custody by KLA members and

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<sup>614</sup> [REDACTED].

<sup>615</sup> [REDACTED].

<sup>616</sup> [REDACTED].

<sup>617</sup> [REDACTED].

<sup>618</sup> [REDACTED].

<sup>619</sup> [REDACTED].

<sup>620</sup> See *infra* paras 340-343 (Counts 4-5).

<sup>621</sup> [REDACTED].

detained in the KLA headquarters located [REDACTED] in Novobërdë/Novo Brdo, in Novobërdë/Novo Brdo municipality.<sup>622</sup>

224. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, they were held on the basis of their Serb ethnicity.<sup>623</sup>

225. The circumstances of the detainees' arrest and detention and the mistreatment suffered<sup>624</sup> suggest that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.<sup>625</sup>

*(xxix) Former Police Station, Rahovec/Orahovac*

226. The Pre-Trial Judge finds that the SPO has not provided sufficient supporting material to establish a well-grounded suspicion that, near the end of June 1999, at least one individual was taken into custody by KLA members and detained in the former police station in Rahovec/Orahovac, in Rahovec/Orahovac municipality. In particular, the supporting material concerning the incidents occurring in Rahovec/Orahovac in the second half of June 1999<sup>626</sup> indicates that the victims were mistreated at their own houses or nearby and were subsequently taken away by KLA members, but provides no further concrete information as to whether and where they were detained, and under what conditions and circumstances.

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<sup>622</sup> [REDACTED].

<sup>623</sup> [REDACTED].

<sup>624</sup> See *infra* paras 344-347 (Counts 4-5).

<sup>625</sup> [REDACTED].

<sup>626</sup> [REDACTED].

Accordingly, the Pre-Trial Judge does not consider these facts under Counts 2 and 3 of the Revised Indictment.

(xxx) [REDACTED]

227. The Pre-Trial Judge finds that the supporting material indicates that, in July or August 1999, at least one individual was taken into custody by KLA members and detained in a KLA base located in [REDACTED], Prishtinë/Priština municipality.<sup>627</sup> [REDACTED].<sup>628</sup>

228. According to the supporting material, the apprehension and detention of this individual was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of [REDACTED] liberty absolutely necessary. [REDACTED].<sup>629</sup> [REDACTED].<sup>630</sup>

229. The circumstances of the detainee's arrest and detention and the mistreatment suffered<sup>631</sup> suggest that the KLA members did not inform the detainee concerned of the reason for his arrest and detention, nor did they show any documentation in this regard, or give him the opportunity to challenge the lawfulness of his detention.<sup>632</sup>

#### (b) Mental Element

230. Regarding the mental element of the crimes, the intent of KLA members emerges from the deliberate manner in which they arbitrarily arrested and held the detainees at the aforementioned detention sites without affording any basic

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<sup>627</sup> [REDACTED].

<sup>628</sup> [REDACTED].

<sup>629</sup> [REDACTED].

<sup>630</sup> [REDACTED].

<sup>631</sup> See *infra* para. 415 (Counts 8-9).

<sup>632</sup> [REDACTED].

guarantees. As further indications of KLA members' intent, the supporting material suggests that: (i) the KLA had a strategy of detaining suspected collaborators, and KLA commanders took decisions to detain or release accordingly;<sup>633</sup> (ii) KLA members often executed arrests or interrogations based on lists of suspected collaborators or suspicious persons;<sup>634</sup> (iii) KLA members made derogatory remarks about the detainees' perceived political affiliation, ethnicity, or the reasons for which detainees were arrested, detained and punished;<sup>635</sup> (iv) [REDACTED];<sup>636</sup> (v) detainees were suddenly released or transferred only because of Serbian forces<sup>637</sup> [REDACTED]<sup>638</sup> approaching a particular detention site; (vi) detainees were threatened with death if they were to reveal what had happened to them,<sup>639</sup> or were asked to sign papers containing a commitment not to reveal what they had seen or heard during detention,<sup>640</sup> or containing an acknowledgment that they had been treated well;<sup>641</sup> and (vii) the KLA did not have a proper court structure to conduct investigations and issue decisions, which were instead taken by the headquarters authority<sup>642</sup> or by commanders in charge of detention sites.<sup>643</sup>

### (c) Conclusion

231. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-

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<sup>633</sup> [REDACTED].

<sup>634</sup> [REDACTED].

<sup>635</sup> [REDACTED].

<sup>636</sup> [REDACTED].

<sup>637</sup> [REDACTED].

<sup>638</sup> [REDACTED].

<sup>639</sup> [REDACTED].

<sup>640</sup> [REDACTED].

<sup>641</sup> [REDACTED].

<sup>642</sup> [REDACTED].

<sup>643</sup> [REDACTED].

grounded suspicion that imprisonment, a crime against humanity under Article 13(1)(e) of the Law, and arbitrary detention, a war crime under Article 14(1)(c) of the Law, were committed at the aforementioned detention sites throughout Kosovo and northern Albania against at least 392 individuals, from at least April 1998 until approximately August 1999.

## 2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment

232. In the Revised Indictment, the SPO alleges that during the Indictment Period other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against individuals apprehended and/or detained at the detention sites set out below.<sup>644</sup>

### (a) Material Elements

#### (i) *Likoc/Likovac*

233. The Pre-Trial Judge finds that the supporting material indicates that, between approximately April 1998 and January 1999, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained in a former police station housing the KLA headquarters and various other locations in or near Likoc/Likovac, Skënderaj/Srbica municipality.

234. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>645</sup> coupled with inadequate provision of food,<sup>646</sup> water,<sup>647</sup> sanitation and hygiene,<sup>648</sup> bedding<sup>649</sup> and medical care.<sup>650</sup>

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<sup>644</sup> Revised Indictment, paras 95-135, 174 [68].

<sup>645</sup> See *supra* paras 139-141 (Counts 2-3).

<sup>646</sup> [REDACTED].

<sup>647</sup> [REDACTED].

<sup>648</sup> [REDACTED].

<sup>649</sup> [REDACTED].

<sup>650</sup> [REDACTED].

235. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- On [REDACTED] 1998, KLA members apprehended [REDACTED].<sup>651</sup> [REDACTED]<sup>652</sup> [REDACTED].<sup>653</sup> [REDACTED],<sup>654</sup> [REDACTED],<sup>655</sup> [REDACTED].<sup>656</sup> [REDACTED], KLA members, [REDACTED],<sup>657</sup> took [REDACTED] to [REDACTED] the KLA headquarters in Likoc/Likovac.<sup>658</sup> [REDACTED] were severely beaten;<sup>659</sup> [REDACTED] was hit several times.<sup>660</sup> [REDACTED].<sup>661</sup> [REDACTED].<sup>662</sup> When the body [REDACTED] was found [REDACTED], it showed signs of beating.<sup>663</sup>
- Around [REDACTED] 1998,<sup>664</sup> while detained in [REDACTED] in Likoc/Likovac,<sup>665</sup> [REDACTED] was beaten, including with [REDACTED]<sup>666</sup> [REDACTED] baseball bats,<sup>667</sup> by several KLA members,<sup>668</sup> [REDACTED].<sup>669</sup> [REDACTED] was also [REDACTED] on at least one occasion<sup>670</sup> and

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<sup>651</sup> [REDACTED].

<sup>652</sup> [REDACTED].

<sup>653</sup> [REDACTED].

<sup>654</sup> [REDACTED].

<sup>655</sup> [REDACTED].

<sup>656</sup> [REDACTED].

<sup>657</sup> [REDACTED].

<sup>658</sup> [REDACTED].

<sup>659</sup> [REDACTED].

<sup>660</sup> [REDACTED].

<sup>661</sup> [REDACTED].

<sup>662</sup> [REDACTED].

<sup>663</sup> [REDACTED].

<sup>664</sup> [REDACTED].

<sup>665</sup> [REDACTED].

<sup>666</sup> [REDACTED].

<sup>667</sup> [REDACTED].

<sup>668</sup> [REDACTED].

<sup>669</sup> [REDACTED].

<sup>670</sup> [REDACTED].

threatened [REDACTED].<sup>671</sup> [REDACTED] KLA members released [REDACTED].<sup>672</sup>

- On [REDACTED] 1998,<sup>673</sup> while detained at the KLA headquarters in Likoc/Likovac,<sup>674</sup> [REDACTED] was held with his hands tied [REDACTED].<sup>675</sup> He was only allowed to use the bathroom [REDACTED], while his hands were still tied [REDACTED].<sup>676</sup>
- On [REDACTED] 1998,<sup>677</sup> KLA members [REDACTED] and [REDACTED] apprehended and beat [REDACTED] at the KLA headquarters in Likoc/Likovac, [REDACTED] screaming in pain.<sup>678</sup>
- On [REDACTED] 1998,<sup>679</sup> while being [REDACTED] held [REDACTED] by armed KLA members, [REDACTED], were beaten [REDACTED], including by [REDACTED].<sup>680</sup> [REDACTED] was threatened to be killed.<sup>681</sup> [REDACTED].<sup>682</sup> [REDACTED], they were transferred to the KLA headquarters in Likoc/Likovac, where they were again beaten, including in the presence of [REDACTED].<sup>683</sup> While having visible injuries from the beatings, [REDACTED].<sup>684</sup>
- [REDACTED] 1998, while being detained [REDACTED] at the KLA headquarters in Likoc/Likovac,<sup>685</sup> [REDACTED] was repeatedly taken

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<sup>671</sup> [REDACTED].

<sup>672</sup> [REDACTED].

<sup>673</sup> [REDACTED].

<sup>674</sup> [REDACTED].

<sup>675</sup> [REDACTED].

<sup>676</sup> [REDACTED].

<sup>677</sup> [REDACTED].

<sup>678</sup> [REDACTED].

<sup>679</sup> [REDACTED].

<sup>680</sup> [REDACTED].

<sup>681</sup> [REDACTED].

<sup>682</sup> [REDACTED].

<sup>683</sup> [REDACTED].

<sup>684</sup> [REDACTED].

<sup>685</sup> [REDACTED].

somewhere else, beaten, and then dragged back into the room, sometimes being kicked upon his return, [REDACTED].<sup>686</sup> [REDACTED].<sup>687</sup>

- Between [REDACTED] 1998,<sup>688</sup> while being detained at the KLA headquarters in Likoc/Likovac,<sup>689</sup> [REDACTED] was repeatedly beaten, [REDACTED],<sup>690</sup> by several KLA members, [REDACTED].<sup>691</sup> [REDACTED] was threatened several times [REDACTED],<sup>692</sup> [REDACTED].<sup>693</sup> [REDACTED] witnessed several of the aforementioned KLA members beating [REDACTED], who was also held at the KLA headquarters in Likoc/Likovac.<sup>694</sup> [REDACTED],<sup>695</sup> [REDACTED].<sup>696</sup> [REDACTED].<sup>697</sup>
- [REDACTED] 1998, [REDACTED],<sup>698</sup> [REDACTED] was brought to the KLA headquarters in Likoc/Likovac, where he saw many other individuals being tied up and beaten by KLA members [REDACTED].<sup>699</sup>
- [REDACTED] 1999,<sup>700</sup> armed KLA members apprehended [REDACTED],<sup>701</sup> and transported him to [REDACTED] Likoc/Likovac.<sup>702</sup> While being detained, [REDACTED] was severely beaten.<sup>703</sup>

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<sup>686</sup> [REDACTED].

<sup>687</sup> [REDACTED].

<sup>688</sup> [REDACTED].

<sup>689</sup> [REDACTED].

<sup>690</sup> [REDACTED].

<sup>691</sup> [REDACTED].

<sup>692</sup> [REDACTED].

<sup>693</sup> [REDACTED].

<sup>694</sup> [REDACTED].

<sup>695</sup> [REDACTED].

<sup>696</sup> [REDACTED].

<sup>697</sup> [REDACTED].

<sup>698</sup> [REDACTED].

<sup>699</sup> [REDACTED].

<sup>700</sup> [REDACTED].

<sup>701</sup> [REDACTED].

<sup>702</sup> [REDACTED].

<sup>703</sup> [REDACTED].

236. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises,<sup>704</sup> were bleeding,<sup>705</sup> were unable to eat,<sup>706</sup> lost weight,<sup>707</sup> had their teeth broken,<sup>708</sup> lost consciousness,<sup>709</sup> were seriously wounded,<sup>710</sup> sustained broken bones,<sup>711</sup> and had psychological and/or physical conditions that continued after their release.<sup>712</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(ii) *Jabllanicë/Jablanica*

237. The Pre-Trial Judge finds that the supporting material indicates that, between at least April and late July 1998, KLA members caused serious physical and psychological injury and suffering to at least 11 persons detained at the KLA barracks compound at the exit of Jabllanicë/Jablanica, Gjakovë/Đakovica municipality.<sup>713</sup>

238. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA barracks compound. These conditions were characterised by deprivation of liberty without

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<sup>704</sup> [REDACTED].

<sup>705</sup> [REDACTED].

<sup>706</sup> [REDACTED].

<sup>707</sup> [REDACTED].

<sup>708</sup> [REDACTED].

<sup>709</sup> [REDACTED].

<sup>710</sup> [REDACTED].

<sup>711</sup> [REDACTED].

<sup>712</sup> [REDACTED].

<sup>713</sup> Schedule A, 14.1.

due process of law,<sup>714</sup> coupled with inadequate provision of food,<sup>715</sup> water,<sup>716</sup> sanitation and hygiene,<sup>717</sup> bedding<sup>718</sup> and medical care.<sup>719</sup>

239. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular:

- In [REDACTED] 1998, while being detained at the KLA barracks compound, [REDACTED] were severely beaten by KLA members,<sup>720</sup> including by [REDACTED].<sup>721</sup>
- In [REDACTED] 1998, while being detained at the KLA barracks compound, [REDACTED] was severely beaten, including with baseball bats.<sup>722</sup>
- [REDACTED] 1998,<sup>723</sup> while being detained at the KLA barracks compound, [REDACTED] was repeatedly and severely beaten, including with baseball bats [REDACTED],<sup>724</sup> by several KLA members, including [REDACTED].<sup>725</sup> [REDACTED].<sup>726</sup> [REDACTED].<sup>727</sup>
- In [REDACTED] 1998,<sup>728</sup> while being detained at the KLA barracks compound, [REDACTED] men [REDACTED] were repeatedly and severely

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<sup>714</sup> See *supra* paras 142-145 (Counts 2-3).

<sup>715</sup> [REDACTED].

<sup>716</sup> [REDACTED].

<sup>717</sup> [REDACTED].

<sup>718</sup> [REDACTED].

<sup>719</sup> IT-04-84bis P00082.

<sup>720</sup> IT-04-84bis P00119, pp. 4248-4252, 4262, 4265; [REDACTED].

<sup>721</sup> IT-04-84bis P00119, p. 4262; [REDACTED].

<sup>722</sup> [REDACTED].

<sup>723</sup> [REDACTED].

<sup>724</sup> [REDACTED].

<sup>725</sup> [REDACTED].

<sup>726</sup> [REDACTED].

<sup>727</sup> [REDACTED].

<sup>728</sup> [REDACTED].

beaten,<sup>729</sup> including with baseball bats,<sup>730</sup> by several KLA members, including [REDACTED].<sup>731</sup> [REDACTED].<sup>732</sup> [REDACTED].<sup>733</sup>

- Around [REDACTED] 1998,<sup>734</sup> while being detained at the KLA barracks compound, [REDACTED] were severely beaten by KLA members.<sup>735</sup> [REDACTED].<sup>736</sup>

240. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>737</sup> were bleeding or spitting blood,<sup>738</sup> were unable to drink or eat,<sup>739</sup> or walk,<sup>740</sup> lost consciousness,<sup>741</sup> sustained broken bones,<sup>742</sup> and had psychological and/or physical conditions that continued after their release.<sup>743</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>729</sup> [REDACTED].

<sup>730</sup> [REDACTED].

<sup>731</sup> [REDACTED].

<sup>732</sup> [REDACTED].

<sup>733</sup> [REDACTED].

<sup>734</sup> [REDACTED]; IT-04-84bis P00119, p. 4255.

<sup>735</sup> IT-04-84bis P00119, pp. 4255-4256; [REDACTED].

<sup>736</sup> [REDACTED].

<sup>737</sup> [REDACTED].

<sup>738</sup> [REDACTED].

<sup>739</sup> [REDACTED].

<sup>740</sup> [REDACTED].

<sup>741</sup> [REDACTED].

<sup>742</sup> [REDACTED].

<sup>743</sup> [REDACTED].

(iii) *Llapushnik/Lapušnik*

241. The Pre-Trial Judge finds that the supporting material indicates that, between approximately late April and late July 1998, KLA members caused serious physical and psychological injury and suffering to several persons detained at the KLA prison compound in Llapushnik/Lapušnik, Drenas (Glllogoc)/Glogovac municipality.

242. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA prison compound. These conditions were characterised by deprivation of liberty without due process of law,<sup>744</sup> coupled with inadequate sanitation and hygiene,<sup>745</sup> and no medical care.<sup>746</sup> Detainees were kept tied up,<sup>747</sup> had to sleep on the floor of the cowshed, littered with old manure,<sup>748</sup> and had to urinate in a plastic fuel drum.<sup>749</sup>

243. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular, while being detained in the cowshed belonging to the KLA prison compound,<sup>750</sup> [REDACTED] were repeatedly and severely beaten,<sup>751</sup> including with sticks and rifles,<sup>752</sup> by KLA members, including [REDACTED].<sup>753</sup> [REDACTED].<sup>754</sup> KLA members would come from outside of the prison and severely beat the detainees.<sup>755</sup>

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<sup>744</sup> See *supra* paras 146-148 (Counts 2-3).

<sup>745</sup> [REDACTED].

<sup>746</sup> [REDACTED].

<sup>747</sup> [REDACTED].

<sup>748</sup> [REDACTED].

<sup>749</sup> [REDACTED].

<sup>750</sup> [REDACTED]

<sup>751</sup> [REDACTED].

<sup>752</sup> [REDACTED].

<sup>753</sup> [REDACTED].

<sup>754</sup> [REDACTED].

<sup>755</sup> [REDACTED].

244. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>756</sup> were bleeding,<sup>757</sup> were unable to eat<sup>758</sup> or walk,<sup>759</sup> sustained broken bones,<sup>760</sup> lost considerable weight,<sup>761</sup> lost their eyesight,<sup>762</sup> and had psychological and/or physical conditions that continued after their release.<sup>763</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(iv) Drenoc/Drenovac*

245. The Pre-Trial Judge finds that the supporting material indicates that, between approximately May and July 1998, KLA members caused serious physical and psychological injury and suffering to several persons detained at the former school building and a registration office in Drenoc/Drenovac, Rahovec/Orahovac municipality.

246. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned former school building. These conditions were characterised by deprivation of liberty without due process of law,<sup>764</sup> coupled with inadequate provision of food,<sup>765</sup> sanitation and

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<sup>756</sup> [REDACTED].

<sup>757</sup> [REDACTED].

<sup>758</sup> [REDACTED].

<sup>759</sup> [REDACTED].

<sup>760</sup> [REDACTED].

<sup>761</sup> [REDACTED].

<sup>762</sup> [REDACTED].

<sup>763</sup> [REDACTED].

<sup>764</sup> See *supra* paras 149-152 (Counts 2-3).

<sup>765</sup> [REDACTED].

hygiene,<sup>766</sup> and bedding.<sup>767</sup> Detainees were kept in dark rooms with no access to daylight.<sup>768</sup>

247. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular, while being detained in the former school building in Drenoc/Drenovac,<sup>769</sup> [REDACTED] were severely beaten,<sup>770</sup> including with wooden batons and baseball bats,<sup>771</sup> by KLA members, [REDACTED].<sup>772</sup> [REDACTED].<sup>773</sup> Before being detained in the former school building, [REDACTED] was also detained and severely beaten [REDACTED].<sup>774</sup> [REDACTED], while [REDACTED] held [REDACTED] in [REDACTED] Drenoc/Drenovac, [REDACTED] was hit by a KLA member.<sup>775</sup>

248. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>776</sup> were bleeding,<sup>777</sup> had their teeth broken,<sup>778</sup> lost weight,<sup>779</sup> would not eat,<sup>780</sup> were unable to talk,<sup>781</sup> and lost consciousness.<sup>782</sup> This also demonstrates that the nature and

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<sup>766</sup> [REDACTED].

<sup>767</sup> [REDACTED].

<sup>768</sup> [REDACTED].

<sup>769</sup> [REDACTED].

<sup>770</sup> [REDACTED].

<sup>771</sup> [REDACTED].

<sup>772</sup> [REDACTED].

<sup>773</sup> [REDACTED].

<sup>774</sup> [REDACTED].

<sup>775</sup> [REDACTED].

<sup>776</sup> [REDACTED].

<sup>777</sup> [REDACTED].

<sup>778</sup> [REDACTED].

<sup>779</sup> [REDACTED].

<sup>780</sup> [REDACTED].

<sup>781</sup> [REDACTED].

<sup>782</sup> [REDACTED].

level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(v) *Malishevë/Mališevo*

249. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 17 and 26 or 27 July 1998, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained at various locations in or near Malishevë/Mališevo, in Malishevë/Mališevo municipality.

250. The supporting material indicates that KLA members established and maintained inhumane detention conditions at several of the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>783</sup> coupled with inadequate provision of food and water,<sup>784</sup> bedding<sup>785</sup> and medical care.<sup>786</sup> Thirteen detainees were kept in a 16-squaremetres room, with only small holes in the window.<sup>787</sup>

251. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- [REDACTED] July 1998,<sup>788</sup> armed KLA members apprehended [REDACTED],<sup>789</sup> beat them and drove them towards Malishevë/Mališevo at

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<sup>783</sup> See *supra* paras 153-155 (Counts 2-3).

<sup>784</sup> [REDACTED].

<sup>785</sup> [REDACTED].

<sup>786</sup> [REDACTED].

<sup>787</sup> [REDACTED].

<sup>788</sup> [REDACTED].

<sup>789</sup> [REDACTED].

gunpoint.<sup>790</sup> On the way, [REDACTED] were beaten again [REDACTED].<sup>791</sup> [REDACTED].<sup>792</sup> [REDACTED] Malishevë/Mališevo, [REDACTED] they were kept in the basement and repeatedly beaten,<sup>793</sup> including with rifles.<sup>794</sup> [REDACTED] were also detained and beaten [REDACTED].<sup>795</sup> KLA members also threatened the detainees with more severe harm [REDACTED].<sup>796</sup>

- [REDACTED] July 1998,<sup>797</sup> [REDACTED] apprehended by armed KLA members,<sup>798</sup> [REDACTED],<sup>799</sup> [REDACTED] brought to the former police station building in Malishevë/Mališevo,<sup>800</sup> [REDACTED].<sup>801</sup> [REDACTED], Mr Krasniqi once visited [REDACTED].<sup>802</sup>
- [REDACTED] July 1998,<sup>803</sup> while being detained by KLA members [REDACTED],<sup>804</sup> [REDACTED] could hear men screaming in pain, as though they were being beaten.<sup>805</sup> [REDACTED],<sup>806</sup> [REDACTED].<sup>807</sup>
- In July 1998, KLA members apprehended [REDACTED] and beat him, including with a rifle.<sup>808</sup> [REDACTED].<sup>809</sup> [REDACTED] drove

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<sup>790</sup> [REDACTED].

<sup>791</sup> [REDACTED].

<sup>792</sup> [REDACTED].

<sup>793</sup> [REDACTED].

<sup>794</sup> [REDACTED].

<sup>795</sup> [REDACTED].

<sup>796</sup> [REDACTED].

<sup>797</sup> [REDACTED].

<sup>798</sup> [REDACTED].

<sup>799</sup> [REDACTED].

<sup>800</sup> [REDACTED].

<sup>801</sup> [REDACTED].

<sup>802</sup> [REDACTED].

<sup>803</sup> [REDACTED].

<sup>804</sup> [REDACTED].

<sup>805</sup> [REDACTED].

<sup>806</sup> [REDACTED].

<sup>807</sup> [REDACTED].

<sup>808</sup> [REDACTED].

<sup>809</sup> [REDACTED].

[REDACTED] to the former police building in Malishevë/Mališevo.<sup>810</sup> [REDACTED] was beaten.<sup>811</sup> [REDACTED]. They were all beaten at least on one occasion by KLA members.<sup>812</sup> [REDACTED] was threatened several times [REDACTED].<sup>813</sup> He could hear others screaming at night, as though they were being beaten.<sup>814</sup>

252. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>815</sup> were bleeding,<sup>816</sup> lost consciousness,<sup>817</sup> sustained broken bones,<sup>818</sup> and had psychological and/or physical conditions that continued after their release.<sup>819</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(vi) [REDACTED]*

253. The Pre-Trial Judge finds that the supporting material indicates that, in or around [REDACTED] 1998,<sup>820</sup> KLA members caused serious physical and psychological injury and suffering to three persons detained at [REDACTED] in [REDACTED], Prizren municipality.

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<sup>810</sup> [REDACTED].

<sup>811</sup> [REDACTED].

<sup>812</sup> [REDACTED].

<sup>813</sup> [REDACTED].

<sup>814</sup> [REDACTED].

<sup>815</sup> [REDACTED].

<sup>816</sup> [REDACTED].

<sup>817</sup> [REDACTED].

<sup>818</sup> [REDACTED].

<sup>819</sup> [REDACTED].

<sup>820</sup> [REDACTED].

254. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,<sup>821</sup> coupled with inadequate sanitation.<sup>822</sup> Detainees were kept in [REDACTED].<sup>823</sup>

255. Furthermore, the supporting material indicates that KLA members physically assaulted the three detainees. In particular, while being detained in [REDACTED],<sup>824</sup> [REDACTED] were beaten,<sup>825</sup> including with rifles.<sup>826</sup>

256. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>827</sup> [REDACTED],<sup>828</sup> were unable to talk,<sup>829</sup> lost consciousness,<sup>830</sup> suffered from memory impairment,<sup>831</sup> and had psychological and/or physical conditions that continued after their release.<sup>832</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>821</sup> See *supra* paras 156-158 (Counts 2-3).

<sup>822</sup> [REDACTED].

<sup>823</sup> [REDACTED].

<sup>824</sup> [REDACTED].

<sup>825</sup> [REDACTED].

<sup>826</sup> [REDACTED].

<sup>827</sup> [REDACTED].

<sup>828</sup> [REDACTED].

<sup>829</sup> [REDACTED].

<sup>830</sup> [REDACTED].

<sup>831</sup> [REDACTED].

<sup>832</sup> [REDACTED].

(vii) *Bare and Bajgorë/Bajgora*

257. The Pre-Trial Judge finds that the supporting material indicates that, between August and mid-September 1998, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained at the KLA detention sites in Bare and Bajgorë/Bajgora, both in Podujevë/Podujevo municipality.

258. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA detention sites. These conditions were characterised by deprivation of liberty without due process of law,<sup>833</sup> coupled with inadequate provision of accommodation,<sup>834</sup> food,<sup>835</sup> water,<sup>836</sup> sanitation and hygiene,<sup>837</sup> and medical care.<sup>838</sup>

259. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- In August 1998,<sup>839</sup> while being detained in Bare,<sup>840</sup> [REDACTED] were repeatedly and severely beaten,<sup>841</sup> including with police batons, wooden sticks and rifles,<sup>842</sup> by KLA members, [REDACTED].<sup>843</sup> [REDACTED] detainees told [REDACTED] that they had also been beaten

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<sup>833</sup> See *supra* paras 159-161 (Counts 2-3).

<sup>834</sup> [REDACTED].

<sup>835</sup> [REDACTED].

<sup>836</sup> [REDACTED].

<sup>837</sup> [REDACTED].

<sup>838</sup> [REDACTED].

<sup>839</sup> [REDACTED].

<sup>840</sup> [REDACTED].

<sup>841</sup> [REDACTED].

<sup>842</sup> [REDACTED].

<sup>843</sup> [REDACTED].

[REDACTED].<sup>844</sup> [REDACTED].<sup>845</sup> KLA members, [REDACTED],<sup>846</sup> also threatened to kill [REDACTED].<sup>847</sup>

- [REDACTED] 1998,<sup>848</sup> while being detained in Bajgorë/Bajgora, [REDACTED].<sup>849</sup> He also witnessed [REDACTED].<sup>850</sup>

260. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals were bleeding,<sup>851</sup> were unable to stand or walk,<sup>852</sup> lost consciousness,<sup>853</sup> had their teeth broken,<sup>854</sup> sustained broken bones,<sup>855</sup> lost considerable weight,<sup>856</sup> [REDACTED].<sup>857</sup> [REDACTED].<sup>858</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(viii) Llapashticë/Lapaštica and [REDACTED]*

261. The Pre-Trial Judge finds that the supporting material indicates that, between at least November 1998 and March 1999, KLA members caused serious physical

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<sup>844</sup> [REDACTED].

<sup>845</sup> [REDACTED].

<sup>846</sup> [REDACTED].

<sup>847</sup> [REDACTED].

<sup>848</sup> [REDACTED].

<sup>849</sup> [REDACTED].

<sup>850</sup> [REDACTED].

<sup>851</sup> [REDACTED].

<sup>852</sup> [REDACTED].

<sup>853</sup> [REDACTED].

<sup>854</sup> [REDACTED].

<sup>855</sup> [REDACTED].

<sup>856</sup> [REDACTED].

<sup>857</sup> [REDACTED].

<sup>858</sup> [REDACTED].

and psychological injury and suffering to several persons apprehended and/or detained at a cowshed next to the KLA Llap Zone headquarters and other locations in Llapashticë/Lapaštica, Podujevë/Podujevo municipality, and at [REDACTED] in [REDACTED], Prishtinë/Priština municipality.

262. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA detention sites. These conditions were characterised by deprivation of liberty without due process of law,<sup>859</sup> coupled with inadequate provision of food,<sup>860</sup> water,<sup>861</sup> sanitation and hygiene,<sup>862</sup> bedding<sup>863</sup> and medical care.<sup>864</sup> The cowshed was a very cold room, with no heating, no light and frost on the walls.<sup>865</sup> Detainees were forbidden to speak to each other.<sup>866</sup>

263. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- While being held in the cowshed in Llapashticë/Lapaštica for various amounts of time, [REDACTED],<sup>867</sup> [REDACTED],<sup>868</sup> [REDACTED],<sup>869</sup> [REDACTED],<sup>870</sup> [REDACTED],<sup>871</sup> [REDACTED],<sup>872</sup> [REDACTED],<sup>873</sup>

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<sup>859</sup> See *supra* paras 162-164 (Counts 2-3).

<sup>860</sup> [REDACTED].

<sup>861</sup> [REDACTED].

<sup>862</sup> [REDACTED].

<sup>863</sup> [REDACTED].

<sup>864</sup> [REDACTED].

<sup>865</sup> [REDACTED]. See also *supra* para. 162 (Counts 2-3).

<sup>866</sup> [REDACTED].

<sup>867</sup> [REDACTED].

<sup>868</sup> [REDACTED].

<sup>869</sup> [REDACTED].

<sup>870</sup> [REDACTED].

<sup>871</sup> [REDACTED].

<sup>872</sup> [REDACTED].

<sup>873</sup> [REDACTED].

[REDACTED]<sup>874</sup> and others were repeatedly and severely beaten,<sup>875</sup> including with wooden sticks,<sup>876</sup> shovel handles,<sup>877</sup> chains<sup>878</sup> and rifles,<sup>879</sup> by KLA members, [REDACTED].<sup>880</sup> Some detainees were also electrocuted,<sup>881</sup> threatened to be killed,<sup>882</sup> forced to perform manual labour during their detention,<sup>883</sup> or forced to beat each other.<sup>884</sup>

- [REDACTED],<sup>885</sup> [REDACTED],<sup>886</sup> [REDACTED].<sup>887</sup> [REDACTED].<sup>888</sup>  
[REDACTED].<sup>889</sup> [REDACTED].<sup>890</sup>
- [REDACTED] detainees were mistreated [REDACTED], before being transferred to the cowshed in Llapashticë/Lapaštica. On or about [REDACTED] 1998,<sup>891</sup> armed KLA members apprehended [REDACTED] at his home, [REDACTED] and took him to a room in Llapashticë/Lapaštica,<sup>892</sup> where he was severely beaten,<sup>893</sup> threatened to be killed,<sup>894</sup> [REDACTED].<sup>895</sup>  
On or about [REDACTED] 1999,<sup>896</sup> KLA members apprehended

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<sup>874</sup> [REDACTED].

<sup>875</sup> [REDACTED].

<sup>876</sup> [REDACTED].

<sup>877</sup> [REDACTED].

<sup>878</sup> [REDACTED].

<sup>879</sup> [REDACTED].

<sup>880</sup> [REDACTED].

<sup>881</sup> [REDACTED].

<sup>882</sup> [REDACTED].

<sup>883</sup> [REDACTED].

<sup>884</sup> [REDACTED].

<sup>885</sup> [REDACTED].

<sup>886</sup> [REDACTED].

<sup>887</sup> [REDACTED].

<sup>888</sup> [REDACTED].

<sup>889</sup> [REDACTED].

<sup>890</sup> [REDACTED].

<sup>891</sup> [REDACTED].

<sup>892</sup> [REDACTED].

<sup>893</sup> [REDACTED].

<sup>894</sup> [REDACTED].

<sup>895</sup> [REDACTED].

<sup>896</sup> [REDACTED].

[REDACTED] and forcefully took him to [REDACTED] in [REDACTED],<sup>897</sup> where he was threatened to be killed and beaten.<sup>898</sup> [REDACTED].<sup>899</sup>

264. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>900</sup> were bleeding,<sup>901</sup> were unable to sleep because of their wounds,<sup>902</sup> were unable to walk,<sup>903</sup> lost consciousness,<sup>904</sup> sustained broken bones,<sup>905</sup> [REDACTED],<sup>906</sup> and had psychological and/or physical conditions that continued after their release.<sup>907</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(ix) Zllash/Zlaš*

265. The Pre-Trial Judge finds that the supporting material indicates that, in September 1998 and between approximately 1 and 19 April 1999, KLA members caused serious physical and psychological injury and suffering to at least eight persons apprehended and/or detained in a house in Zllash/Zlaš and in a barn belonging to the Zllash/Zlaš KLA detention compound, Prishtinë/Priština municipality.

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<sup>897</sup> [REDACTED].

<sup>898</sup> [REDACTED].

<sup>899</sup> [REDACTED].

<sup>900</sup> [REDACTED].

<sup>901</sup> [REDACTED].

<sup>902</sup> [REDACTED].

<sup>903</sup> [REDACTED].

<sup>904</sup> [REDACTED].

<sup>905</sup> [REDACTED].

<sup>906</sup> [REDACTED].

<sup>907</sup> [REDACTED].

266. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>908</sup> coupled with inadequate provision of accommodation,<sup>909</sup> food,<sup>910</sup> water,<sup>911</sup> sanitation and hygiene,<sup>912</sup> bedding<sup>913</sup> and medical care.<sup>914</sup> The barn where detainees were kept had no windows and no access to daylight.<sup>915</sup> It was cold and detainees slept in the water puddles on the floor.<sup>916</sup>

267. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained both physically and psychologically. In particular:

- In [REDACTED] 1998,<sup>917</sup> armed KLA members apprehended [REDACTED],<sup>918</sup> and took him [REDACTED] in Zllash/Zlaš,<sup>919</sup> where he was repeatedly beaten,<sup>920</sup> [REDACTED],<sup>921</sup> [REDACTED].<sup>922</sup>
- Between 1 and 19 April 1999,<sup>923</sup> while being detained in a barn at the Zllash/Zlaš KLA detention compound,<sup>924</sup> [REDACTED] were repeatedly and severely beaten,<sup>925</sup> including with wooden sticks and metal bars,<sup>926</sup> by

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<sup>908</sup> See *supra* paras 165-167 (Counts 2-3).

<sup>909</sup> [REDACTED].

<sup>910</sup> [REDACTED].

<sup>911</sup> [REDACTED].

<sup>912</sup> [REDACTED].

<sup>913</sup> [REDACTED].

<sup>914</sup> [REDACTED].

<sup>915</sup> [REDACTED].

<sup>916</sup> [REDACTED].

<sup>917</sup> [REDACTED].

<sup>918</sup> [REDACTED].

<sup>919</sup> [REDACTED].

<sup>920</sup> [REDACTED].

<sup>921</sup> [REDACTED].

<sup>922</sup> [REDACTED].

<sup>923</sup> [REDACTED].

<sup>924</sup> [REDACTED].

<sup>925</sup> [REDACTED].

<sup>926</sup> [REDACTED].

KLA members, including Salih Mustafa (also known as “Commander Cali”).<sup>927</sup> Some detainees were also electrocuted,<sup>928</sup> [REDACTED]<sup>929</sup> [REDACTED],<sup>930</sup> urinated on,<sup>931</sup> or threatened to be killed.<sup>932</sup> Detainees could hear the screams of others who were being beaten.<sup>933</sup> [REDACTED],<sup>934</sup> electrocuted,<sup>935</sup> [REDACTED],<sup>936</sup> and [REDACTED].<sup>937</sup> [REDACTED].<sup>938</sup>

268. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>939</sup> were bleeding,<sup>940</sup> were unable to stand or walk,<sup>941</sup> lost consciousness,<sup>942</sup> had their teeth broken,<sup>943</sup> sustained broken bones,<sup>944</sup> [REDACTED],<sup>945</sup> needed surgery,<sup>946</sup> and had psychological and/or physical conditions that continued after their release.<sup>947</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>927</sup> [REDACTED].

<sup>928</sup> [REDACTED].

<sup>929</sup> [REDACTED].

<sup>930</sup> [REDACTED].

<sup>931</sup> [REDACTED].

<sup>932</sup> [REDACTED].

<sup>933</sup> [REDACTED].

<sup>934</sup> [REDACTED].

<sup>935</sup> [REDACTED].

<sup>936</sup> [REDACTED].

<sup>937</sup> [REDACTED].

<sup>938</sup> [REDACTED].

<sup>939</sup> [REDACTED].

<sup>940</sup> [REDACTED].

<sup>941</sup> [REDACTED].

<sup>942</sup> [REDACTED].

<sup>943</sup> [REDACTED].

<sup>944</sup> [REDACTED].

<sup>945</sup> [REDACTED].

<sup>946</sup> [REDACTED].

<sup>947</sup> [REDACTED].

(x) [REDACTED]

269. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1998, KLA members caused serious physical and psychological injury and suffering to [REDACTED] detained at [REDACTED].

270. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,<sup>948</sup> coupled with inadequate provision of food and water.<sup>949</sup>

271. Furthermore, the supporting material indicates that, between approximately [REDACTED] 1998,<sup>950</sup> KLA members assaulted the detainees, both physically and psychologically. [REDACTED],<sup>951</sup> [REDACTED] were severely beaten,<sup>952</sup> [REDACTED],<sup>953</sup> by KLA members, [REDACTED].<sup>954</sup> [REDACTED].<sup>955</sup> [REDACTED].<sup>956</sup> [REDACTED].<sup>957</sup> [REDACTED],<sup>958</sup> [REDACTED].<sup>959</sup> [REDACTED].<sup>960</sup>

272. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises

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<sup>948</sup> See *supra* paras 168-171 (Counts 2-3).

<sup>949</sup> [REDACTED].

<sup>950</sup> [REDACTED].

<sup>951</sup> [REDACTED].

<sup>952</sup> [REDACTED].

<sup>953</sup> [REDACTED].

<sup>954</sup> [REDACTED].

<sup>955</sup> [REDACTED].

<sup>956</sup> [REDACTED].

<sup>957</sup> [REDACTED].

<sup>958</sup> [REDACTED].

<sup>959</sup> [REDACTED].

<sup>960</sup> [REDACTED].

and swelling,<sup>961</sup> were bleeding,<sup>962</sup> sustained broken bones,<sup>963</sup> [REDACTED],<sup>964</sup> and had psychological and/or physical conditions that continued after their release.<sup>965</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xi) [REDACTED]

273. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1998, KLA members caused serious physical and psychological injury and suffering to at least four persons detained [REDACTED] in [REDACTED], Lipjan/Lipljan municipality.

274. The supporting material indicates that KLA members deprived detainees of their liberty without due process of law,<sup>966</sup> [REDACTED].<sup>967</sup>

275. Furthermore, the supporting material indicates that KLA members mistreated at least three [REDACTED] detainees, both physically and psychologically. In particular:

- [REDACTED],<sup>968</sup> [REDACTED],<sup>969</sup> [REDACTED].<sup>970</sup> [REDACTED].<sup>971</sup>  
 [REDACTED].<sup>972</sup>

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<sup>961</sup> [REDACTED].

<sup>962</sup> [REDACTED].

<sup>963</sup> [REDACTED].

<sup>964</sup> [REDACTED].

<sup>965</sup> [REDACTED].

<sup>966</sup> See *supra* paras 172-174 (Counts 2-3).

<sup>967</sup> [REDACTED].

<sup>968</sup> [REDACTED].

<sup>969</sup> [REDACTED].

<sup>970</sup> [REDACTED].

<sup>971</sup> [REDACTED].

<sup>972</sup> [REDACTED].

- [REDACTED],<sup>973</sup> [REDACTED],<sup>974</sup> [REDACTED] were beaten by KLA members.<sup>975</sup>

276. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious physical pain and psychological injury to the detainees.<sup>976</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xii) *Kleçkë/Klečka*

277. The Pre-Trial Judge finds that the supporting material indicates that, between at least November 1998 and June 1999, KLA members caused serious physical and psychological injury and suffering to several persons detained in a two-storey building with a basement and other locations in or near Kleçkë/Klečka, Lipjan/Lipljan municipality, [REDACTED].

278. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>977</sup> coupled with inadequate provision of accommodation,<sup>978</sup> sanitation and hygiene.<sup>979</sup> One of the rooms in which detainees were kept had bullet holes in the door and bloodstains on the wall.<sup>980</sup>

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<sup>973</sup> [REDACTED].

<sup>974</sup> [REDACTED].

<sup>975</sup> [REDACTED].

<sup>976</sup> [REDACTED].

<sup>977</sup> See *supra* paras 175-177 (Counts 2-3).

<sup>978</sup> [REDACTED].

<sup>979</sup> [REDACTED].

<sup>980</sup> [REDACTED].

279. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular:

- [REDACTED],<sup>981</sup> [REDACTED],<sup>982</sup> [REDACTED].<sup>983</sup> [REDACTED].<sup>984</sup>  
[REDACTED],<sup>985</sup> [REDACTED],<sup>986</sup> [REDACTED].<sup>987</sup>
- [REDACTED],<sup>988</sup> [REDACTED],<sup>989</sup> [REDACTED] repeatedly and severely beaten,<sup>990</sup> including with sticks.<sup>991</sup> [REDACTED] transferred to Kleçkë/Klečka.<sup>992</sup>
- [REDACTED],<sup>993</sup> [REDACTED] detained in [REDACTED] Kleçkë/Klečka,<sup>994</sup> [REDACTED] were repeatedly and severely beaten,<sup>995</sup> [REDACTED].<sup>996</sup> [REDACTED].<sup>997</sup> [REDACTED].<sup>998</sup>
- [REDACTED] 1999,<sup>999</sup> while being detained at a house [REDACTED] in Kleçkë/Klečka,<sup>1000</sup> [REDACTED] were repeatedly and severely beaten, including with batons.<sup>1001</sup>

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<sup>981</sup> [REDACTED].

<sup>982</sup> [REDACTED].

<sup>983</sup> [REDACTED].

<sup>984</sup> [REDACTED].

<sup>985</sup> [REDACTED].

<sup>986</sup> [REDACTED].

<sup>987</sup> [REDACTED].

<sup>988</sup> [REDACTED].

<sup>989</sup> [REDACTED].

<sup>990</sup> [REDACTED].

<sup>991</sup> [REDACTED].

<sup>992</sup> [REDACTED].

<sup>993</sup> [REDACTED].

<sup>994</sup> [REDACTED].

<sup>995</sup> [REDACTED].

<sup>996</sup> [REDACTED].

<sup>997</sup> [REDACTED].

<sup>998</sup> [REDACTED].

<sup>999</sup> IT-05-87 3D00140, p. 4 (3D00-1547); [REDACTED].

<sup>1000</sup> [REDACTED].

<sup>1001</sup> [REDACTED].

- In [REDACTED] 1999,<sup>1002</sup> while being detained [REDACTED] in Klečkë/Klečka, [REDACTED] were beaten.<sup>1003</sup> [REDACTED].<sup>1004</sup>
- Between approximately [REDACTED],<sup>1005</sup> while being detained [REDACTED] in Klečkë/Klečka,<sup>1006</sup> [REDACTED] was beaten, [REDACTED],<sup>1007</sup> by other KLA members, [REDACTED].<sup>1008</sup> [REDACTED].<sup>1009</sup>

280. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1010</sup> were bleeding,<sup>1011</sup> [REDACTED],<sup>1012</sup> were unable to stand,<sup>1013</sup> lost consciousness,<sup>1014</sup> sustained broken bones,<sup>1015</sup> [REDACTED],<sup>1016</sup> [REDACTED],<sup>1017</sup> and had psychological and/or physical conditions that continued after their release.<sup>1018</sup> [REDACTED].<sup>1019</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>1002</sup> [REDACTED].

<sup>1003</sup> [REDACTED].

<sup>1004</sup> [REDACTED].

<sup>1005</sup> [REDACTED].

<sup>1006</sup> [REDACTED].

<sup>1007</sup> [REDACTED].

<sup>1008</sup> [REDACTED].

<sup>1009</sup> [REDACTED].

<sup>1010</sup> [REDACTED].

<sup>1011</sup> [REDACTED].

<sup>1012</sup> [REDACTED].

<sup>1013</sup> [REDACTED].

<sup>1014</sup> [REDACTED].

<sup>1015</sup> [REDACTED].

<sup>1016</sup> [REDACTED].

<sup>1017</sup> [REDACTED].

<sup>1018</sup> [REDACTED].

<sup>1019</sup> [REDACTED].

(xiii) [REDACTED]

281. The Pre-Trial Judge finds that the supporting material indicates that, between [REDACTED] and [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to at least nine persons detained at [REDACTED] Kaçanik/Kaçanik municipality, and [REDACTED], Ferizaj/Uroševac municipality.

282. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned detention locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>1020</sup> coupled with inadequate provision of food,<sup>1021</sup> water,<sup>1022</sup> sanitation and hygiene,<sup>1023</sup> and bedding.<sup>1024</sup> [REDACTED].<sup>1025</sup>

283. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. In particular, while being detained [REDACTED],<sup>1026</sup> [REDACTED] were repeatedly beaten,<sup>1027</sup> including with automatic weapons.<sup>1028</sup> [REDACTED], the hands of the detainees were often tied.<sup>1029</sup> [REDACTED].<sup>1030</sup> Detainees could hear each other's screams while being beaten.<sup>1031</sup>

284. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical

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<sup>1020</sup> See *supra* paras 178-180 (Counts 2-3).

<sup>1021</sup> [REDACTED].

<sup>1022</sup> [REDACTED].

<sup>1023</sup> [REDACTED].

<sup>1024</sup> [REDACTED].

<sup>1025</sup> [REDACTED].

<sup>1026</sup> [REDACTED].

<sup>1027</sup> [REDACTED].

<sup>1028</sup> [REDACTED].

<sup>1029</sup> [REDACTED].

<sup>1030</sup> [REDACTED].

<sup>1031</sup> [REDACTED].

suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1032</sup> [REDACTED],<sup>1033</sup> and had psychological and/or physical conditions that continued after their release.<sup>1034</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xiv) Cahan, Albania*

285. The Pre-Trial Judge finds that the supporting material indicates that, between April and June 1999,<sup>1035</sup> KLA members caused serious physical and psychological injury and suffering to at least four persons detained at the KLA Military Barracks in Cahan, Albania.

286. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned military barracks. These conditions were characterised by deprivation of liberty without due process of law,<sup>1036</sup> coupled with inadequate provision of water,<sup>1037</sup> sanitation and hygiene,<sup>1038</sup> bedding<sup>1039</sup> and medical care.<sup>1040</sup> Detainees were kept in a small room with bloodstains on the wall,<sup>1041</sup> rainwater leaked in and the stench of the nearby toilet reached the room.<sup>1042</sup>

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<sup>1032</sup> [REDACTED].

<sup>1033</sup> [REDACTED].

<sup>1034</sup> [REDACTED].

<sup>1035</sup> [REDACTED].

<sup>1036</sup> See *supra* paras 181-183 (Counts 2-3).

<sup>1037</sup> [REDACTED].

<sup>1038</sup> [REDACTED].

<sup>1039</sup> [REDACTED].

<sup>1040</sup> [REDACTED].

<sup>1041</sup> [REDACTED].

<sup>1042</sup> [REDACTED].

287. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. [REDACTED] were repeatedly and severely beaten, including with wooden sticks,<sup>1043</sup> police batons,<sup>1044</sup> a whip or switch<sup>1045</sup> and an iron bar,<sup>1046</sup> by KLA members, [REDACTED].<sup>1047</sup> [REDACTED].<sup>1048</sup> The detainees were also threatened to be killed.<sup>1049</sup>

288. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1050</sup> had scars,<sup>1051</sup> were bleeding,<sup>1052</sup> were unable to move,<sup>1053</sup> and lost consciousness.<sup>1054</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xv) Kukës, Albania*

289. The Pre-Trial Judge finds that the supporting material indicates that, between May and June 1999, KLA members caused serious physical and psychological injury and suffering to several individuals detained at the Kukës Metal Factory, in Albania.

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<sup>1043</sup> [REDACTED].

<sup>1044</sup> [REDACTED].

<sup>1045</sup> [REDACTED].

<sup>1046</sup> [REDACTED].

<sup>1047</sup> [REDACTED].

<sup>1048</sup> [REDACTED].

<sup>1049</sup> [REDACTED].

<sup>1050</sup> [REDACTED].

<sup>1051</sup> [REDACTED].

<sup>1052</sup> [REDACTED].

<sup>1053</sup> [REDACTED].

<sup>1054</sup> [REDACTED].

290. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned metal factory. These conditions were characterised by deprivation of liberty without due process of law,<sup>1055</sup> coupled with inadequate provision of food,<sup>1056</sup> water,<sup>1057</sup> sanitation and hygiene,<sup>1058</sup> bedding<sup>1059</sup> and medical care.<sup>1060</sup> Detainees slept on the cement floor,<sup>1061</sup> one of the rooms had no access to daylight and bottles filled with urine were littered on the floor.<sup>1062</sup>

291. Furthermore, the supporting material indicates that KLA members, including [REDACTED], Sabit Geci, [REDACTED] and [REDACTED],<sup>1063</sup> routinely assaulted those detained, both physically and psychologically. In particular, [REDACTED] were repeatedly and severely beaten,<sup>1064</sup> including with rubber batons,<sup>1065</sup> baseball bats,<sup>1066</sup> iron or metal bars,<sup>1067</sup> as well as guns, [REDACTED] and knives.<sup>1068</sup> [REDACTED].<sup>1069</sup> [REDACTED],<sup>1070</sup> [REDACTED],<sup>1071</sup> [REDACTED].<sup>1072</sup> KLA members shot at close range and wounded [REDACTED] detainees.<sup>1073</sup> On the way to the toilet, detainees would be harassed by a KLA member who tried to stab them.<sup>1074</sup> The detainees were also threatened with death and serious bodily

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<sup>1055</sup> See *supra* paras 184-186 (Counts 2-3).

<sup>1056</sup> [REDACTED].

<sup>1057</sup> [REDACTED].

<sup>1058</sup> [REDACTED].

<sup>1059</sup> [REDACTED].

<sup>1060</sup> [REDACTED].

<sup>1061</sup> [REDACTED].

<sup>1062</sup> [REDACTED].

<sup>1063</sup> [REDACTED].

<sup>1064</sup> [REDACTED].

<sup>1065</sup> [REDACTED].

<sup>1066</sup> [REDACTED].

<sup>1067</sup> [REDACTED].

<sup>1068</sup> [REDACTED].

<sup>1069</sup> [REDACTED].

<sup>1070</sup> [REDACTED].

<sup>1071</sup> [REDACTED].

<sup>1072</sup> [REDACTED].

<sup>1073</sup> [REDACTED].

<sup>1074</sup> [REDACTED].

injury.<sup>1075</sup> Some detainees were forced to perform manual labour during their detention.<sup>1076</sup> [REDACTED].<sup>1077</sup>

292. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on human dignity. In particular, these individuals sustained bruises and swelling,<sup>1078</sup> lost consciousness<sup>1079</sup> and control of bodily functions,<sup>1080</sup> had their vision temporarily impaired,<sup>1081</sup> had their skin come off,<sup>1082</sup> sustained broken bones,<sup>1083</sup> lost a considerable amount of weight,<sup>1084</sup> were seriously wounded,<sup>1085</sup> were covered in blood,<sup>1086</sup> were humiliated<sup>1087</sup> and had psychological and/or physical conditions that continued after their release.<sup>1088</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xvi) [REDACTED]*

293. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to several persons detained at [REDACTED] in

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<sup>1075</sup> [REDACTED].

<sup>1076</sup> [REDACTED].

<sup>1077</sup> [REDACTED].

<sup>1078</sup> [REDACTED].

<sup>1079</sup> [REDACTED].

<sup>1080</sup> [REDACTED].

<sup>1081</sup> [REDACTED].

<sup>1082</sup> [REDACTED].

<sup>1083</sup> [REDACTED].

<sup>1084</sup> [REDACTED].

<sup>1085</sup> [REDACTED].

<sup>1086</sup> [REDACTED].

<sup>1087</sup> [REDACTED].

<sup>1088</sup> [REDACTED].

[REDACTED], Malishevë/Mališevo municipality, and [REDACTED] in [REDACTED], Suharekë/Suva Reka municipality, [REDACTED].

294. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned detention locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>1089</sup> coupled with inadequate provision of food,<sup>1090</sup> water,<sup>1091</sup> sanitation and hygiene,<sup>1092</sup> and medical care.<sup>1093</sup> In [REDACTED], [REDACTED] detainees were held [REDACTED].<sup>1094</sup>

295. Furthermore, the supporting material indicates that KLA members routinely assaulted those detained, both physically and psychologically. [REDACTED],<sup>1095</sup> [REDACTED],<sup>1096</sup> [REDACTED],<sup>1097</sup> [REDACTED],<sup>1098</sup> [REDACTED],<sup>1099</sup> [REDACTED],<sup>1100</sup> [REDACTED].<sup>1101</sup> [REDACTED],<sup>1102</sup> [REDACTED].<sup>1103</sup>

296. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling, and were bleeding from their injuries.<sup>1104</sup> This also demonstrates that the nature and level of

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<sup>1089</sup> See *supra* paras 187-189 (Counts 2-3).

<sup>1090</sup> [REDACTED].

<sup>1091</sup> [REDACTED].

<sup>1092</sup> [REDACTED].

<sup>1093</sup> [REDACTED].

<sup>1094</sup> [REDACTED].

<sup>1095</sup> [REDACTED].

<sup>1096</sup> [REDACTED].

<sup>1097</sup> [REDACTED].

<sup>1098</sup> [REDACTED].

<sup>1099</sup> [REDACTED].

<sup>1100</sup> [REDACTED].

<sup>1101</sup> [REDACTED].

<sup>1102</sup> [REDACTED].

<sup>1103</sup> [REDACTED].

<sup>1104</sup> [REDACTED].

gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xvii) [REDACTED]

297. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999,<sup>1105</sup> KLA members caused serious physical and psychological injury and suffering to [REDACTED] at [REDACTED] in Drenas (Glogoc)/Glogovac municipality.

298. The supporting material indicates that, at [REDACTED], KLA members established and maintained inhumane conditions. These conditions were characterised by deprivation of liberty without due process of law,<sup>1106</sup> coupled with inadequate provision of accommodation,<sup>1107</sup> food<sup>1108</sup> and medical care.<sup>1109</sup> [REDACTED].<sup>1110</sup>

299. Furthermore, the supporting material indicates that, [REDACTED],<sup>1111</sup> [REDACTED] repeatedly and severely beaten, including with rifles and wooden sticks,<sup>1112</sup> by KLA members, [REDACTED].<sup>1113</sup> [REDACTED] repeatedly threatened to be killed,<sup>1114</sup> [REDACTED],<sup>1115</sup> [REDACTED].<sup>1116</sup> [REDACTED].<sup>1117</sup> [REDACTED].<sup>1118</sup>

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<sup>1105</sup> [REDACTED].

<sup>1106</sup> See *supra* paras 190-192 (Counts 2-3).

<sup>1107</sup> [REDACTED].

<sup>1108</sup> [REDACTED].

<sup>1109</sup> [REDACTED].

<sup>1110</sup> [REDACTED].

<sup>1111</sup> [REDACTED].

<sup>1112</sup> [REDACTED].

<sup>1113</sup> [REDACTED].

<sup>1114</sup> [REDACTED].

<sup>1115</sup> [REDACTED].

<sup>1116</sup> [REDACTED].

<sup>1117</sup> [REDACTED].

<sup>1118</sup> [REDACTED].

300. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to [REDACTED], or constituted a serious attack on his human dignity. [REDACTED] scars,<sup>1119</sup> [REDACTED] bleeding,<sup>1120</sup> [REDACTED],<sup>1121</sup> [REDACTED],<sup>1122</sup> and [REDACTED].<sup>1123</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xviii) [REDACTED]

301. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] persons apprehended and detained at detention locations near [REDACTED], Prishtinë/Priština municipality.

302. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned detention locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>1124</sup> coupled with inadequate provision of food and water.<sup>1125</sup> [REDACTED].<sup>1126</sup>

303. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and detained, both physically and psychologically.

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<sup>1119</sup> [REDACTED].

<sup>1120</sup> [REDACTED].

<sup>1121</sup> [REDACTED].

<sup>1122</sup> [REDACTED].

<sup>1123</sup> [REDACTED].

<sup>1124</sup> See *supra* paras 193-195 (Counts 2-3).

<sup>1125</sup> [REDACTED].

<sup>1126</sup> [REDACTED].

[REDACTED], on [REDACTED] 1999,<sup>1127</sup> [REDACTED] KLA members apprehended [REDACTED] and forcefully took him towards [REDACTED].<sup>1128</sup> [REDACTED],<sup>1129</sup> [REDACTED] KLA members apprehended [REDACTED] and took them to [REDACTED], beating them on the way.<sup>1130</sup> Between approximately [REDACTED] 1999,<sup>1131</sup> while being detained [REDACTED] near [REDACTED],<sup>1132</sup> [REDACTED] were repeatedly and severely beaten,<sup>1133</sup> [REDACTED],<sup>1134</sup> [REDACTED],<sup>1135</sup> and threatened to be killed,<sup>1136</sup> by KLA members. Detainees could hear each other's screams while being beaten.<sup>1137</sup>

304. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1138</sup> were bleeding,<sup>1139</sup> had their teeth broken,<sup>1140</sup> and had psychological and/or physical conditions that continued after their release.<sup>1141</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>1127</sup> [REDACTED].

<sup>1128</sup> [REDACTED].

<sup>1129</sup> [REDACTED].

<sup>1130</sup> [REDACTED].

<sup>1131</sup> [REDACTED].

<sup>1132</sup> [REDACTED].

<sup>1133</sup> [REDACTED].

<sup>1134</sup> [REDACTED].

<sup>1135</sup> [REDACTED].

<sup>1136</sup> [REDACTED].

<sup>1137</sup> [REDACTED].

<sup>1138</sup> [REDACTED].

<sup>1139</sup> [REDACTED].

<sup>1140</sup> [REDACTED].

<sup>1141</sup> [REDACTED].

(xix) [REDACTED]

305. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to at least six persons apprehended near and/or detained at [REDACTED], Viti/Vitina municipality.

306. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned KLA detention locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>1142</sup> coupled with inadequate provision of water,<sup>1143</sup> bedding<sup>1144</sup> and medical care.<sup>1145</sup> [REDACTED].<sup>1146</sup>

307. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. [REDACTED],<sup>1147</sup> [REDACTED] were repeatedly and severely beaten,<sup>1148</sup> including with [REDACTED],<sup>1149</sup> [REDACTED],<sup>1150</sup> wooden sticks<sup>1151</sup> and boots,<sup>1152</sup> by KLA members. [REDACTED].<sup>1153</sup> [REDACTED].<sup>1154</sup> [REDACTED].<sup>1155</sup>

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<sup>1142</sup> See *supra* paras 196-198 (Counts 2-3).

<sup>1143</sup> [REDACTED].

<sup>1144</sup> [REDACTED].

<sup>1145</sup> [REDACTED].

<sup>1146</sup> [REDACTED].

<sup>1147</sup> [REDACTED].

<sup>1148</sup> [REDACTED].

<sup>1149</sup> [REDACTED].

<sup>1150</sup> [REDACTED].

<sup>1151</sup> [REDACTED].

<sup>1152</sup> [REDACTED].

<sup>1153</sup> [REDACTED].

<sup>1154</sup> [REDACTED].

<sup>1155</sup> [REDACTED].

Detainees [REDACTED],<sup>1156</sup> [REDACTED] could hear or see others being beaten,<sup>1157</sup> [REDACTED].<sup>1158</sup> [REDACTED].<sup>1159</sup>

308. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1160</sup> were bleeding,<sup>1161</sup> were unable to sleep,<sup>1162</sup> lost consciousness,<sup>1163</sup> suffered mental trauma,<sup>1164</sup> sustained broken bones,<sup>1165</sup> needed hospital treatment,<sup>1166</sup> and had psychological and/or physical conditions that continued after their release.<sup>1167</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xx) [REDACTED], Prizren

309. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 15 and 23 June 1999, KLA members caused serious physical and psychological injury and suffering to at least seven persons apprehended and/or detained in [REDACTED] Prizren, in Prizren municipality.

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<sup>1156</sup> [REDACTED].

<sup>1157</sup> [REDACTED].

<sup>1158</sup> [REDACTED].

<sup>1159</sup> [REDACTED].

<sup>1160</sup> [REDACTED].

<sup>1161</sup> [REDACTED].

<sup>1162</sup> [REDACTED].

<sup>1163</sup> [REDACTED].

<sup>1164</sup> [REDACTED].

<sup>1165</sup> [REDACTED].

<sup>1166</sup> [REDACTED].

<sup>1167</sup> [REDACTED].

310. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law,<sup>1168</sup> coupled with inadequate provision of food<sup>1169</sup> and bedding.<sup>1170</sup> [REDACTED] and had no access to daylight.<sup>1171</sup> Some of the detainees were kept [REDACTED],<sup>1172</sup> or were handcuffed throughout their detention.<sup>1173</sup>

311. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- On [REDACTED] June 1999,<sup>1174</sup> armed KLA members apprehended [REDACTED] at gunpoint and took him to [REDACTED], beating him on the way, including with rifles.<sup>1175</sup> He was taken to a room [REDACTED],<sup>1176</sup> where he was repeatedly and severely beaten, including with baseball bats, pipes, sticks and knives.<sup>1177</sup> [REDACTED] was also threatened to be killed, [REDACTED].<sup>1178</sup> [REDACTED].<sup>1179</sup> He could hear the screams of [REDACTED] being beaten.<sup>1180</sup> He was released [REDACTED].<sup>1181</sup>

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<sup>1168</sup> See *supra* paras 199-201 (Counts 2-3).

<sup>1169</sup> [REDACTED].

<sup>1170</sup> [REDACTED].

<sup>1171</sup> [REDACTED].

<sup>1172</sup> [REDACTED].

<sup>1173</sup> [REDACTED].

<sup>1174</sup> [REDACTED].

<sup>1175</sup> [REDACTED].

<sup>1176</sup> [REDACTED].

<sup>1177</sup> [REDACTED].

<sup>1178</sup> [REDACTED].

<sup>1179</sup> [REDACTED].

<sup>1180</sup> [REDACTED].

<sup>1181</sup> [REDACTED].

- Between [REDACTED] June 1999,<sup>1182</sup> while being held [REDACTED] in Prizren,<sup>1183</sup> [REDACTED] were repeatedly beaten,<sup>1184</sup> including with baseball bats [REDACTED].<sup>1185</sup> Some detainees were [REDACTED],<sup>1186</sup> questioned in a room with blood on the walls,<sup>1187</sup> or threatened to be killed.<sup>1188</sup> Detainees could hear the screams of others being beaten.<sup>1189</sup>

312. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained individuals, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1190</sup> had cuts on their skin,<sup>1191</sup> were unable to walk,<sup>1192</sup> lost consciousness,<sup>1193</sup> sustained broken bones,<sup>1194</sup> and had psychological and/or physical conditions that continued after their release.<sup>1195</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xxi) Former MUP Building, Prizren*

313. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 18 June 1999, KLA members caused serious physical and

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<sup>1182</sup> [REDACTED].

<sup>1183</sup> [REDACTED].

<sup>1184</sup> [REDACTED].

<sup>1185</sup> [REDACTED].

<sup>1186</sup> [REDACTED].

<sup>1187</sup> [REDACTED].

<sup>1188</sup> [REDACTED].

<sup>1189</sup> [REDACTED].

<sup>1190</sup> [REDACTED].

<sup>1191</sup> [REDACTED].

<sup>1192</sup> [REDACTED].

<sup>1193</sup> [REDACTED].

<sup>1194</sup> [REDACTED].

<sup>1195</sup> [REDACTED].

psychological injury and suffering to at least 14 persons [REDACTED] detained at the former MUP building in Prizren, in Prizren municipality.

314. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned building. These conditions were characterised by deprivation of liberty without due process of law,<sup>1196</sup> coupled with inadequate provision of food and water,<sup>1197</sup> sanitation and hygiene,<sup>1198</sup> and medical care.<sup>1199</sup> Detainees were held tied up,<sup>1200</sup> including to a radiator.<sup>1201</sup>

315. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular, while being held at the former MUP building in Prizren,<sup>1202</sup> [REDACTED] were repeatedly and severely beaten,<sup>1203</sup> including with a rubber stick or baton,<sup>1204</sup> guns,<sup>1205</sup> belts,<sup>1206</sup> and water bottles.<sup>1207</sup> [REDACTED].<sup>1208</sup> [REDACTED] were [REDACTED] forced to perform manual labour while they were held in the building.<sup>1209</sup> Detainees could hear others being beaten.<sup>1210</sup> [REDACTED] were beaten, including with wooden sticks<sup>1211</sup> and automatic

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<sup>1196</sup> See *supra* paras 202-204 (Counts 2-3).

<sup>1197</sup> [REDACTED].

<sup>1198</sup> [REDACTED].

<sup>1199</sup> [REDACTED].

<sup>1200</sup> [REDACTED].

<sup>1201</sup> [REDACTED].

<sup>1202</sup> [REDACTED].

<sup>1203</sup> [REDACTED].

<sup>1204</sup> [REDACTED].

<sup>1205</sup> [REDACTED].

<sup>1206</sup> [REDACTED].

<sup>1207</sup> [REDACTED].

<sup>1208</sup> [REDACTED].

<sup>1209</sup> [REDACTED].

<sup>1210</sup> [REDACTED].

<sup>1211</sup> [REDACTED].

guns,<sup>1212</sup> upon being apprehended and before being taken to the former MUP building.<sup>1213</sup>

316. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1214</sup> [REDACTED],<sup>1215</sup> were bleeding,<sup>1216</sup> became suicidal,<sup>1217</sup> lost control of their bodily functions,<sup>1218</sup> lost consciousness,<sup>1219</sup> and sustained broken bones.<sup>1220</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xxii) [REDACTED], Prizren*

317. The Pre-Trial Judge finds that the supporting material indicates that, between approximately 16 and 19 June 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] detained at [REDACTED] in Prizren, in Prizren municipality.

318. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,<sup>1221</sup>

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<sup>1212</sup> [REDACTED].

<sup>1213</sup> [REDACTED].

<sup>1214</sup> [REDACTED].

<sup>1215</sup> [REDACTED].

<sup>1216</sup> [REDACTED].

<sup>1217</sup> [REDACTED].

<sup>1218</sup> [REDACTED].

<sup>1219</sup> [REDACTED].

<sup>1220</sup> [REDACTED].

<sup>1221</sup> See *supra* paras 205-207 (Counts 2-3).

coupled with inadequate provision of food and water,<sup>1222</sup> being handcuffed during detention,<sup>1223</sup> and sleeping on the concrete floor in the basement.<sup>1224</sup>

319. Furthermore, the supporting material indicates that KLA members assaulted those apprehended and detained, both physically and psychologically. In particular:

- On [REDACTED] June 1999,<sup>1225</sup> armed KLA members, [REDACTED],<sup>1226</sup> apprehended [REDACTED],<sup>1227</sup> and took him to [REDACTED].<sup>1228</sup> Upon arrival, KLA members beat [REDACTED] with sticks and chains.<sup>1229</sup> [REDACTED] was repeatedly beaten, including with wooden sticks.<sup>1230</sup> [REDACTED].<sup>1231</sup>
- On [REDACTED] June 1999,<sup>1232</sup> armed KLA members apprehended [REDACTED],<sup>1233</sup> and took him to [REDACTED],<sup>1234</sup> [REDACTED].<sup>1235</sup>

320. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and

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<sup>1222</sup> [REDACTED].

<sup>1223</sup> [REDACTED].

<sup>1224</sup> [REDACTED].

<sup>1225</sup> [REDACTED].

<sup>1226</sup> [REDACTED].

<sup>1227</sup> [REDACTED].

<sup>1228</sup> [REDACTED].

<sup>1229</sup> [REDACTED].

<sup>1230</sup> [REDACTED].

<sup>1231</sup> [REDACTED].

<sup>1232</sup> [REDACTED].

<sup>1233</sup> [REDACTED].

<sup>1234</sup> [REDACTED].

<sup>1235</sup> [REDACTED].

swelling,<sup>1236</sup> were bleeding,<sup>1237</sup> were unable to sleep from the pain,<sup>1238</sup> needed hospital treatment for their injuries,<sup>1239</sup> and had psychological and/or physical conditions that continued after their release.<sup>1240</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

(xxiii) [REDACTED], Prizren

321. The Pre-Trial Judge finds that the supporting material indicates that, on or about 26 June 1999,<sup>1241</sup> KLA members caused serious physical and psychological injury and suffering to at least three persons apprehended near and/or detained at [REDACTED] in Prizren, in Prizren municipality.

322. The supporting material indicates that KLA members established and maintained inhumane detention conditions at [REDACTED]. These conditions were characterised by deprivation of liberty without due process of law,<sup>1242</sup> coupled with inadequate provision of water,<sup>1243</sup> sanitation and hygiene,<sup>1244</sup> and medical care.<sup>1245</sup> The room where detainees were kept had bloodstains on the wall.<sup>1246</sup>

323. Furthermore, the supporting material indicates that KLA members assaulted those apprehended and/or detained, both physically and psychologically. In particular, while being detained at [REDACTED] in Prizren, [REDACTED] were

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<sup>1236</sup> [REDACTED].

<sup>1237</sup> [REDACTED].

<sup>1238</sup> [REDACTED].

<sup>1239</sup> [REDACTED].

<sup>1240</sup> [REDACTED].

<sup>1241</sup> [REDACTED].

<sup>1242</sup> See *supra* paras 208-210 (Counts 2-3).

<sup>1243</sup> [REDACTED].

<sup>1244</sup> [REDACTED].

<sup>1245</sup> [REDACTED].

<sup>1246</sup> [REDACTED].

severely beaten,<sup>1247</sup> including with baseball bats,<sup>1248</sup> chains,<sup>1249</sup> hammers,<sup>1250</sup> sticks,<sup>1251</sup> and hoses,<sup>1252</sup> by KLA members, who also repeatedly threatened to kill them.<sup>1253</sup> [REDACTED].<sup>1254</sup> [REDACTED] were ordered to undress and to have sex.<sup>1255</sup> [REDACTED] forced to drink paint thinner.<sup>1256</sup> [REDACTED].<sup>1257</sup> [REDACTED].<sup>1258</sup>

324. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises and swelling,<sup>1259</sup> were bleeding,<sup>1260</sup> were unable to stand<sup>1261</sup> or walk,<sup>1262</sup> lost consciousness,<sup>1263</sup> and had psychological and/or physical conditions that continued after their release.<sup>1264</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>1247</sup> [REDACTED].

<sup>1248</sup> [REDACTED].

<sup>1249</sup> [REDACTED].

<sup>1250</sup> [REDACTED].

<sup>1251</sup> [REDACTED].

<sup>1252</sup> [REDACTED].

<sup>1253</sup> [REDACTED].

<sup>1254</sup> [REDACTED].

<sup>1255</sup> [REDACTED].

<sup>1256</sup> [REDACTED].

<sup>1257</sup> [REDACTED].

<sup>1258</sup> [REDACTED].

<sup>1259</sup> [REDACTED].

<sup>1260</sup> [REDACTED].

<sup>1261</sup> [REDACTED].

<sup>1262</sup> [REDACTED].

<sup>1263</sup> [REDACTED].

<sup>1264</sup> [REDACTED].

*(xxiv) Rahovec/Orahovac*

325. The Pre-Trial Judge finds that the supporting material indicates that, on or about [REDACTED] 1999 and [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] persons at their respective homes in Rahovec/Orahovac, in Rahovec/Orahovac municipality.

326. The supporting material indicates that KLA members assaulted these persons, both physically and psychologically. In particular:

- On or about [REDACTED] 1999,<sup>1265</sup> armed KLA members, [REDACTED],<sup>1266</sup> forcefully entered the house of [REDACTED] in Rahovec/Orahovac and started beating him in front of his wife, while ransacking and stealing from the property.<sup>1267</sup> [REDACTED] was then forced into a vehicle and driven away.<sup>1268</sup> The remaining KLA members set the house on fire.<sup>1269</sup>
- On or about [REDACTED] 1999,<sup>1270</sup> armed KLA members, [REDACTED],<sup>1271</sup> forcefully entered the house of [REDACTED] and started beating him,<sup>1272</sup> asking for weapons.<sup>1273</sup> [REDACTED] could hear the beating.<sup>1274</sup> [REDACTED] was then forced into a vehicle and driven away.<sup>1275</sup>
- [REDACTED] 1999,<sup>1276</sup> armed KLA members forcefully entered the house of [REDACTED] in Rahovec/Orahovac, assaulted [REDACTED],<sup>1277</sup> and took

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<sup>1265</sup> [REDACTED].

<sup>1266</sup> [REDACTED].

<sup>1267</sup> [REDACTED].

<sup>1268</sup> [REDACTED].

<sup>1269</sup> [REDACTED].

<sup>1270</sup> [REDACTED].

<sup>1271</sup> [REDACTED].

<sup>1272</sup> [REDACTED].

<sup>1273</sup> [REDACTED].

<sup>1274</sup> [REDACTED].

<sup>1275</sup> [REDACTED].

<sup>1276</sup> [REDACTED].

<sup>1277</sup> [REDACTED].

him away.<sup>1278</sup> For the following [REDACTED] days, the same KLA members returned to the house, threatening and harassing [REDACTED],<sup>1279</sup> [REDACTED],<sup>1280</sup> [REDACTED].<sup>1281</sup> [REDACTED].<sup>1282</sup> On one of these occasions, KLA members also severely beat [REDACTED].<sup>1283</sup>

327. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the mistreated persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises,<sup>1284</sup> were unable walk,<sup>1285</sup> suffered psychologically,<sup>1286</sup> and [REDACTED], until they abandoned their homes.<sup>1287</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xxv) Ferizaj/Uroševac*

328. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] apprehended and detained in a house in or near Ferizaj/Uroševac, in Ferizaj/Uroševac municipality.

329. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned house. These

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<sup>1278</sup> [REDACTED].

<sup>1279</sup> [REDACTED].

<sup>1280</sup> [REDACTED].

<sup>1281</sup> [REDACTED].

<sup>1282</sup> [REDACTED].

<sup>1283</sup> [REDACTED].

<sup>1284</sup> [REDACTED].

<sup>1285</sup> [REDACTED].

<sup>1286</sup> [REDACTED].

<sup>1287</sup> [REDACTED].

conditions were characterised by deprivation of liberty without due process of law,<sup>1288</sup> coupled with inadequate provision of food and water.<sup>1289</sup> [REDACTED].<sup>1290</sup>

330. Furthermore, the supporting material indicates that KLA members assaulted [REDACTED], both physically and psychologically. In particular, on or about [REDACTED] 1999,<sup>1291</sup> when [REDACTED] was trying to leave Ferizaj/Uroševac,<sup>1292</sup> armed KLA members apprehended them [REDACTED].<sup>1293</sup> [REDACTED] was [REDACTED], forced into the trunk of a vehicle,<sup>1294</sup> and taken to a house outside of Ferizaj/Uroševac,<sup>1295</sup> where he was repeatedly beaten by KLA members, including with rifles.<sup>1296</sup> [REDACTED],<sup>1297</sup> [REDACTED].<sup>1298</sup> [REDACTED].<sup>1299</sup>

331. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detainee, or constituted a serious attack on his human dignity. [REDACTED],<sup>1300</sup> [REDACTED],<sup>1301</sup> [REDACTED].<sup>1302</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

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<sup>1288</sup> See *supra* paras 211-213 (Counts 2-3).

<sup>1289</sup> [REDACTED].

<sup>1290</sup> [REDACTED].

<sup>1291</sup> [REDACTED].

<sup>1292</sup> [REDACTED].

<sup>1293</sup> [REDACTED].

<sup>1294</sup> [REDACTED].

<sup>1295</sup> [REDACTED].

<sup>1296</sup> [REDACTED].

<sup>1297</sup> [REDACTED].

<sup>1298</sup> [REDACTED].

<sup>1299</sup> [REDACTED].

<sup>1300</sup> [REDACTED].

<sup>1301</sup> [REDACTED].

<sup>1302</sup> [REDACTED].

(xxvi) [REDACTED]

332. The Pre-Trial Judge finds that the supporting material indicates that, between approximately [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] detained in [REDACTED], Ferizaj/Uroševac municipality.

333. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned house. These conditions were characterised by deprivation of liberty without due process of law,<sup>1303</sup> coupled with inadequate provision of water.<sup>1304</sup> The detainees were [REDACTED],<sup>1305</sup> [REDACTED],<sup>1306</sup> [REDACTED].<sup>1307</sup>

334. Furthermore, the supporting material indicates that KLA members physically assaulted [REDACTED], both physically and psychologically. [REDACTED],<sup>1308</sup> [REDACTED],<sup>1309</sup> [REDACTED].<sup>1310</sup> [REDACTED].<sup>1311</sup> [REDACTED].<sup>1312</sup> [REDACTED].<sup>1313</sup>

335. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the detained persons, or constituted a serious attack on their human dignity. In particular, the detainee sustained bruises and swelling because of the beatings.<sup>1314</sup> This also demonstrates that the nature and level of gravity of the

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<sup>1303</sup> See *supra* paras 214-216 (Counts 2-3).

<sup>1304</sup> [REDACTED].

<sup>1305</sup> [REDACTED].

<sup>1306</sup> [REDACTED].

<sup>1307</sup> [REDACTED].

<sup>1308</sup> [REDACTED].

<sup>1309</sup> [REDACTED].

<sup>1310</sup> [REDACTED].

<sup>1311</sup> [REDACTED].

<sup>1312</sup> [REDACTED].

<sup>1313</sup> [REDACTED].

<sup>1314</sup> [REDACTED].

aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xxvii) Former Boarding School/Dormitory, Gjilan/Gnjilane*

336. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] persons apprehended near and detained at a KLA headquarters located in the former Boarding School/Dormitory in Gjilan/Gnjilane, in Gjilan/Gnjilane municipality.

337. The supporting material indicates that, at the aforementioned boarding school, KLA members established and maintained inhumane conditions by depriving these persons of their liberty without due process of law.<sup>1315</sup>

338. Furthermore, the supporting material indicates that KLA members assaulted those apprehended and detained, both physically and psychologically. In particular:

- On [REDACTED] June 1999,<sup>1316</sup> armed KLA members apprehended [REDACTED] at his home, forced him into a vehicle and took him to the former Boarding School/Dormitory at Gjilan/Gnjilane.<sup>1317</sup> While held there, [REDACTED] was severely beaten,<sup>1318</sup> including with sticks,<sup>1319</sup> boots<sup>1320</sup> and

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<sup>1315</sup> See *supra* paras 217-219 (Counts 2-3).

<sup>1316</sup> [REDACTED].

<sup>1317</sup> [REDACTED].

<sup>1318</sup> [REDACTED].

<sup>1319</sup> [REDACTED].

<sup>1320</sup> [REDACTED].

batons,<sup>1321</sup> and was threatened to be killed.<sup>1322</sup> [REDACTED],<sup>1323</sup>  
 [REDACTED].<sup>1324</sup> [REDACTED].<sup>1325</sup> [REDACTED].<sup>1326</sup>

- On or about [REDACTED] June 1999,<sup>1327</sup> armed KLA members apprehended [REDACTED] at his home, forced him into a vehicle and took him to the former Boarding School/Dormitoryi at Gjilan/Gnjilane.<sup>1328</sup> While held there, [REDACTED] was severely beaten, including with batons,<sup>1329</sup> and was threatened to be killed.<sup>1330</sup> He could hear other detainees screaming.<sup>1331</sup> [REDACTED].<sup>1332</sup>

339. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and detained persons, or constituted a serious attack on their human dignity. In particular, these persons sustained bruises and swelling,<sup>1333</sup> were bleeding,<sup>1334</sup> [REDACTED],<sup>1335</sup> [REDACTED],<sup>1336</sup> [REDACTED],<sup>1337</sup> and had psychological and/or physical conditions that continued after their release.<sup>1338</sup> This also demonstrates that the nature and level of gravity of

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<sup>1321</sup> [REDACTED].

<sup>1322</sup> [REDACTED].

<sup>1323</sup> [REDACTED].

<sup>1324</sup> [REDACTED].

<sup>1325</sup> [REDACTED].

<sup>1326</sup> [REDACTED].

<sup>1327</sup> [REDACTED].

<sup>1328</sup> [REDACTED].

<sup>1329</sup> [REDACTED].

<sup>1330</sup> [REDACTED].

<sup>1331</sup> [REDACTED].

<sup>1332</sup> [REDACTED].

<sup>1333</sup> [REDACTED].

<sup>1334</sup> [REDACTED].

<sup>1335</sup> [REDACTED].

<sup>1336</sup> [REDACTED].

<sup>1337</sup> [REDACTED].

<sup>1338</sup> [REDACTED].

the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xxviii) Former Police Station, Suharekë/Suva Reka*

340. The Pre-Trial Judge finds that the supporting material indicates that, in late June 1999, KLA members caused serious physical and psychological injury and suffering to one person detained at the former police station in Suharekë/Suva Reka, in Suharekë/Suva Reka municipality.

341. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned building. These conditions were characterised by deprivation of liberty without due process of law,<sup>1339</sup> coupled with inadequate provision of food and water.<sup>1340</sup>

342. Furthermore, the supporting material indicates that KLA members routinely assaulted the detainee, both physically and psychologically. In particular, on [REDACTED] June 1999,<sup>1341</sup> armed KLA members forced [REDACTED] to the Suharekë/Suva Reka police station,<sup>1342</sup> where [REDACTED] detained.<sup>1343</sup> During this period, KLA members repeatedly beat [REDACTED] with rifles, batons and boots.<sup>1344</sup> [REDACTED],<sup>1345</sup> [REDACTED].<sup>1346</sup> [REDACTED] released after [REDACTED] days of detention [REDACTED].<sup>1347</sup>

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<sup>1339</sup> See *supra* paras 220-222 (Counts 2-3).

<sup>1340</sup> [REDACTED].

<sup>1341</sup> [REDACTED].

<sup>1342</sup> [REDACTED].

<sup>1343</sup> [REDACTED].

<sup>1344</sup> [REDACTED].

<sup>1345</sup> [REDACTED].

<sup>1346</sup> [REDACTED].

<sup>1347</sup> [REDACTED].

343. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering [REDACTED], or constituted a serious attack on [REDACTED] human dignity. [REDACTED] sustained bruises [REDACTED],<sup>1348</sup> and needed bandages to attend [REDACTED] injuries.<sup>1349</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

*(xxix) Novobërdë/Novo Brdo*

344. The Pre-Trial Judge finds that the supporting material indicates that, on or about [REDACTED] 1999, KLA members caused serious physical and psychological injury and suffering to [REDACTED] apprehended in [REDACTED] and detained at the KLA headquarters in Novobërdë/Novo Brdo, in Novobërdë/Novo Brdo municipality.

345. The supporting material indicates that, at the aforementioned KLA headquarters, KLA members established and maintained inhumane conditions of detention by depriving [REDACTED] liberty without due process of law.<sup>1350</sup>

346. Furthermore, the supporting material indicates that, in [REDACTED] 1999, KLA members assaulted [REDACTED], both physically and psychologically. [REDACTED] in [REDACTED].<sup>1351</sup> [REDACTED].<sup>1352</sup> KLA members then forced [REDACTED] into a vehicle, hitting [REDACTED] in the process,<sup>1353</sup> and took [REDACTED] to the KLA headquarters, [REDACTED], in Novobërdë/Novo Brdo,

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<sup>1348</sup> [REDACTED].

<sup>1349</sup> [REDACTED].

<sup>1350</sup> See *supra* paras 223-225 (Counts 2-3).

<sup>1351</sup> [REDACTED].

<sup>1352</sup> [REDACTED].

<sup>1353</sup> [REDACTED].

where [REDACTED] severely beaten and threatened to be killed.<sup>1354</sup>  
[REDACTED].<sup>1355</sup>

347. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering [REDACTED], or constituted a serious attack on [REDACTED] human dignity. [REDACTED],<sup>1356</sup> [REDACTED].<sup>1357</sup> This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

#### (b) Mental Element

348. The supporting material indicates the failure to ensure humane detention conditions,<sup>1358</sup> the deliberate manner in which those apprehended and/or detained were assaulted both physically and psychologically,<sup>1359</sup> the types of instruments used in and the brutality of the physical assaults,<sup>1360</sup> as well as the grave injuries caused.<sup>1361</sup> This demonstrates that at least some of the KLA members partaking in the aforementioned acts and omissions meant to cause serious mental or physical suffering or injury or to commit a serious attack upon the human dignity of the apprehended and/or detained individuals.

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<sup>1354</sup> [REDACTED].

<sup>1355</sup> [REDACTED].

<sup>1356</sup> [REDACTED].

<sup>1357</sup> [REDACTED].

<sup>1358</sup> See *supra* paras 234, 238, 242, 246, 250, 254, 258, 262, 266, 270, 274, 278, 282, 286, 290, 294, 298, 302, 306, 310, 314, 318, 322, 329, 333, 337, 341, 345.

<sup>1359</sup> See *supra* paras 235, 239, 243, 247, 251, 255, 259, 263, 267, 271, 275, 279, 283, 287, 291, 295, 299, 303, 307, 311, 315, 319, 323, 326, 330, 334, 338, 342, 346.

<sup>1360</sup> See *supra* paras 235, 239, 243, 247, 251, 255, 259, 263, 267, 271, 275, 279, 283, 287, 291, 295, 299, 303, 307, 311, 315, 319, 323, 326, 330, 334, 338, 342, 346.

<sup>1361</sup> See *supra* paras 236, 240, 244, 248, 252, 256, 260, 264, 268, 272, 276, 280, 284, 288, 292, 296, 300, 304, 308, 312, 316, 320, 324, 327, 331, 335, 339, 343, 347.

(c) Conclusion

349. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against individuals apprehended and/or detained at the aforementioned detention sites between approximately April 1998 and August 1999.

### 3. Counts 6 and 7: Torture

350. In the Revised Indictment, the SPO alleges that, during the Indictment Period, torture, a crime against humanity under Article 13(1)(f) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against individuals apprehended and/or detained at the detention sites indicated under Counts 4-5.<sup>1362</sup>

#### (a) Material Elements

351. The Pre-Trial Judge finds that the supporting material indicates that, through the acts and omissions described in relation to Counts 4-5, certain KLA members inflicted severe pain or suffering on individuals apprehended and/or detained at detention locations indicated under the aforementioned counts.

352. The supporting material indicates that detainees were deprived of food and/or water,<sup>1363</sup> sanitation facilities,<sup>1364</sup> and medical care,<sup>1365</sup> were kept tied up for

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<sup>1362</sup> Revised Indictment, paras 136, 174 [68].

<sup>1363</sup> Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Drenoc/Drenovac: *supra* para. 246. Malishevë/Mališevo: *supra* para. 250. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. [REDACTED]: *supra* para. 270. [REDACTED]: *supra* para. 282. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. [REDACTED]: *supra* para. 298. [REDACTED]: *supra* para. 302. [REDACTED]: *supra* para. 306. [REDACTED], Prizren: *supra* para. 310. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 318. [REDACTED], Prizren: *supra* para. 322. Ferizaj/Uroševac: *supra* para. 329. [REDACTED]: *supra* para. 333. Former Police Station, Suharekë/Suva Reka: *supra* para. 341.

<sup>1364</sup> Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Llapushnik/Lapušnik: *supra* para. 242. Drenoc/Drenovac: *supra* para. 246. [REDACTED]: *supra* para. 254. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. Kleçkë/Klečka: *supra* para. 278. [REDACTED]: *supra* para. 282. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 322.

<sup>1365</sup> Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Llapushnik/Lapušnik: *supra* para. 242. Malishevë/Mališevo: *supra* para. 250. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. [REDACTED]: *supra* para. 298. [REDACTED]: *supra* para. 306. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 322.

an extended period,<sup>1366</sup> or were otherwise held in inhumane detention conditions.<sup>1367</sup> Some detainees were forced to perform manual labour.<sup>1368</sup> The supporting material further indicates that KLA members repeatedly and/or severely beat apprehended and/or detained individuals,<sup>1369</sup> including with

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<sup>1366</sup> Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 242. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. [REDACTED]: *supra* para. 282. [REDACTED]: *supra* para. 302. [REDACTED], Prizren: *supra* para. 310. Former MUP Building, Prizren: *supra* para. 314. [REDACTED], Prizren: *supra* para. 318. Ferizaj/Uroševac: *supra* para. 329. [REDACTED]: *supra* para. 333. Former Police Station, Suharekë/Suva Reka: *supra* para. 342.

<sup>1367</sup> Likoc/Likovac: *supra* para. 234. Jabllanicë/Jablanica: *supra* para. 238. Llapushnik/Lapušnik: *supra* para. 242. Drenoc/Drenovac: *supra* para. 246. Malishevë/Mališevo: *supra* para. 250. [REDACTED]: *supra* para. 254. Bare and Bajgorë/Bajgora: *supra* para. 258. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 262. Zllash/Zlaš: *supra* para. 266. Kleçkë/Klečka: *supra* para. 278. [REDACTED]: *supra* para. 282. Cahan: *supra* para. 286. Kukës: *supra* para. 290. [REDACTED]: *supra* para. 294. [REDACTED]: *supra* para. 298. [REDACTED]: *supra* para. 306. [REDACTED], Prizren: *supra* para. 310. [REDACTED], Prizren: *supra* para. 318. [REDACTED], Prizren: *supra* para. 322. [REDACTED]: *supra* para. 333.

<sup>1368</sup> Likoc/Likovac: *supra* para. 235. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Kukës: *supra* para. 291. Former MUP Building, Prizren: *supra* para. 315. Rahovec/Orahovac: *supra* para. 326.

<sup>1369</sup> Likoc/Likovac: *supra* para. 235. Jabllanicë/Jablanica: *supra* para. 239. Llapushnik/Lapušnik: *supra* para. 243. Drenoc/Drenovac: *supra* para. 247. Malishevë/Mališevo: *supra* para. 251. [REDACTED]: *supra* para. 255. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 271. Kleçkë/Klečka: *supra* para. 279. [REDACTED]: *supra* para. 283. Cahan: *supra* para. 287. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. Rahovec/Orahovac: *supra* para. 326. Ferizaj/Uroševac: *supra* para. 330. [REDACTED]: *supra* para. 334. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Former Police Station, Suharekë/Suva Reka: *supra* para. 342. Novobërdë/Novo Brdo: *supra* para. 346.

wooden sticks,<sup>1370</sup> rifles,<sup>1371</sup> baseball bats<sup>1372</sup> and other objects.<sup>1373</sup> Detainees were electrocuted,<sup>1374</sup> stabbed or cut,<sup>1375</sup> burned,<sup>1376</sup> or urinated on.<sup>1377</sup> Some detainees had salt rubbed into their wounds,<sup>1378</sup> others had their fingers, nails or teeth pulled with pliers.<sup>1379</sup> Apprehended and/or detained individuals could hear and/or see others being mistreated,<sup>1380</sup> including their relatives.<sup>1381</sup> Some detainees were

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<sup>1370</sup> Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 243. Drenoc/Drenovac: *supra* para. 247. Malishevë/Mališevo: *supra* para. 251. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 271. Kleçkë/Kleçka: *supra* para. 279. Cahan: *supra* para. 287. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338.

<sup>1371</sup> Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 243. Malishevë/Mališevo: *supra* para. 251. [REDACTED]: *supra* para. 255. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. [REDACTED]: *supra* para. 283. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Ferizaj/Uroševac: *supra* para. 330. [REDACTED]: *supra* para. 334. Former Police Station, Suharekë/Suva Reka: *supra* para. 342.

<sup>1372</sup> Likoc/Likovac: *supra* para. 235. Jabllanicë/Jablanica: *supra* para. 239. Drenoc/Drenovac: *supra* para. 247. Kukës: *supra* para. 291. [REDACTED], Prizren: *supra* para. 311. [REDACTED], Prizren: *supra* para. 323.

<sup>1373</sup> Likoc/Likovac: *supra* para. 235. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. Kleçkë/Kleçka: *supra* para. 279. Cahan: *supra* para. 287. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Former Police Station, Suharekë/Suva Reka: *supra* para. 342.

<sup>1374</sup> Likoc/Likovac: *supra* para. 235. Drenoc/Drenovac: *supra* para. 247. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267.

<sup>1375</sup> Jabllanicë/Jablanica: *supra* para. 239. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 283.

<sup>1376</sup> Zllash/Zlaš: *supra* para. 267. Kukës: *supra* para. 291.

<sup>1377</sup> Zllash/Zlaš: *supra* para. 267. [REDACTED], Prizren: *supra* para. 311.

<sup>1378</sup> Zllash/Zlaš: *supra* para. 267. Kukës: *supra* para. 291.

<sup>1379</sup> Llapushnik/Lapušnik: *supra* para. 243. [REDACTED]: *supra* para. 307. Former MUP Building, Prizren: *supra* para. 315.

<sup>1380</sup> Likoc/Likovac: *supra* para. 235. Malishevë/Mališevo: *supra* para. 251. Bare and Bajgorë/Bajgora: *supra* para. 259. Zllash/Zlaš: *supra* para. 267. Kleçkë/Kleçka: *supra* para. 279. [REDACTED]: *supra* para. 283. [REDACTED]: *supra* para. 295. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED]: *supra* para. 334. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338.

<sup>1381</sup> Likoc/Likovac: *supra* para. 235. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Kleçkë/Kleçka: *supra* para. 279. [REDACTED]: *supra* para. 307.

forced to beat each other.<sup>1382</sup> Others were subjected to mock executions,<sup>1383</sup> or were forced to watch the purported execution of others.<sup>1384</sup> Apprehended and/or detained individuals were routinely threatened to be killed.<sup>1385</sup>

353. These acts and omissions resulted in severe pain and suffering for the apprehended and/or detained individuals, including severe bruising,<sup>1386</sup> bleeding,<sup>1387</sup> loss of consciousness,<sup>1388</sup> broken bones or teeth,<sup>1389</sup> inability to eat or

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<sup>1382</sup> Likoc/Likovac: *supra* para. 235. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Kukës *supra* para. 291. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338.

<sup>1383</sup> [REDACTED]. [REDACTED]: *supra* para. 307.

<sup>1384</sup> [REDACTED].

<sup>1385</sup> Likoc/Likovac: *supra* para. 235. Malishevë/Mališevo: *supra* para. 251. Bare and Bajgorë/Bajgora: *supra* para. 259. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 271. [REDACTED]: *supra* para. 275. Kleçkë/Klečka: *supra* para. 279. Cahan: *supra* para. 287. Kukës: *supra* para. 291. [REDACTED]: *supra* para. 299. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. [REDACTED]: *supra* para. 334. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Novobërdë/Novo Brdo: *supra* para. 346.

<sup>1386</sup> Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. [REDACTED]: *supra* para. 256. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš: *supra* para. 268. [REDACTED]: *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. [REDACTED]: *supra* para. 284. Cahan: *supra* para. 288. Kukës: *supra* para. 292. [REDACTED]: *supra* para. 296. [REDACTED]: *supra* para. 304. [REDACTED]: *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. Former MUP Building, Prizren: *supra* para. 316. [REDACTED], Prizren: *supra* para. 320. [REDACTED], Prizren: *supra* para. 324. Ferizaj/Uroševac: *supra* para. 331. [REDACTED]: *supra* para. 335. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339. Former Police Station, Suharekë/Suva Reka: *supra* para. 343.

<sup>1387</sup> Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš: *supra* para. 268. [REDACTED]: *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. Cahan: *supra* para. 288. Kukës: *supra* para. 292. [REDACTED]: *supra* para. 296. [REDACTED]: *supra* para. 300. [REDACTED]: *supra* para. 304. [REDACTED]: *supra* para. 308. Former MUP Building, Prizren: *supra* para. 316. [REDACTED], Prizren: *supra* para. 320. [REDACTED], Prizren: *supra* para. 324. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

<sup>1388</sup> Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. [REDACTED]: *supra* para. 256. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš: *supra* para. 268. Kleçkë/Klečka: *supra* para. 280. Cahan: *supra* para. 288. Kukës: *supra* para. 292. [REDACTED]: *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. Former MUP Building, Prizren: *supra* para. 316. [REDACTED], Prizren: *supra* para. 324. Ferizaj/Uroševac: *supra* para. 331. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

<sup>1389</sup> Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Drenoc/Drenovac: *supra* para. 248. Malishevë/Mališevo: *supra* para. 252. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]: *supra* para. 264. Zllash/Zlaš:

drink,<sup>1390</sup> inability to stand or walk,<sup>1391</sup> as well as psychological and/or physical conditions that continued after the mistreatment.<sup>1392</sup>

(b) Mental Element

354. The supporting material indicates the deliberate manner in which the apprehended and/or detained individuals were physically assaulted, the particularly brutal nature of the various forms of physical mistreatment, the types of objects used therefor, the death threats, the severe injuries caused as well as the escalation of the mistreatment despite the detainees' worsening condition. This demonstrates that at least some of the KLA members, partaking in the aforementioned acts and omissions, intended to inflict upon the individuals concerned severe pain and suffering.

355. Moreover, the supporting material indicates that this infliction was done for one or more of the following purposes: to obtain information or a confession; to punish, intimidate or coerce the mistreated individual or a third person; and/or to

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*supra* para. 268. [REDACTED]; *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. Kukës: *supra* para. 292. [REDACTED]; *supra* para. 300. [REDACTED]; *supra* para. 304. [REDACTED]; *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. Former MUP Building, Prizren: *supra* para. 316. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

<sup>1390</sup> Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. [REDACTED]; *supra* para. 300.

<sup>1391</sup> Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]; *supra* para. 264. Zllash/Zlaš: *supra* para. 268. Kleçkë/Klečka: *supra* para. 280. Cahan: *supra* para. 288. [REDACTED]; *supra* para. 300. [REDACTED], Prizren: *supra* para. 324. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339.

<sup>1392</sup> Likoc/Likovac: *supra* para. 236. Jabllanicë/Jablanica: *supra* para. 240. Llapushnik/Lapušnik: *supra* para. 244. Malishevë/Mališevo: *supra* para. 252. [REDACTED]; *supra* para. 256. Bare and Bajgorë/Bajgora: *supra* para. 260. Llapashticë/Lapaštica and [REDACTED]; *supra* para. 264. Zllash/Zlaš: *supra* para. 268. [REDACTED]; *supra* para. 272. Kleçkë/Klečka: *supra* para. 280. [REDACTED]; *supra* para. 284. Kukës: *supra* para. 292. [REDACTED]; *supra* para. 304. [REDACTED]; *supra* para. 308. [REDACTED], Prizren: *supra* para. 312. [REDACTED], Prizren: *supra* para. 320. [REDACTED], Prizren: *supra* para. 324. Ferizaj/Uroševac: *supra* para. 331. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 339. Novobërdë/Novo Brdo: *supra* para. 347.

discriminate against the mistreated individual or a third person, including on ethnic, religious and political grounds.

356. Accordingly, mistreated individuals were questioned about: (i) alleged spies or collaborators in their area of residence or in their work relations;<sup>1393</sup> (ii) their or their relatives' relations or interaction with such alleged spies or collaborators;<sup>1394</sup> (iii) their or their relatives' alleged collaboration with Serb authorities or their alleged friendship or interaction with Serbs;<sup>1395</sup> (iv) the activities or employees of the Serbian military or police;<sup>1396</sup> and/or (v) alleged crimes or other anti-KLA activities they or other individuals had carried out.<sup>1397</sup> Some of those mistreated were forced to confess about alleged crimes or anti-KLA activities;<sup>1398</sup> and/or to provide statements or information about themselves or other individuals.<sup>1399</sup>

357. Mistreated individuals were punished because of: (i) their or their relatives' alleged collaboration with Serb authorities or their alleged friendship or interaction with Serbs;<sup>1400</sup> (ii) their or their relatives' alleged political affiliation to

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<sup>1393</sup> Likoc/Likovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Former MUP Building, Prizren: [REDACTED].

<sup>1394</sup> Drenoc/Drenovac: [REDACTED]. Kleçkë/Klečka: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1395</sup> Likoc/Likovac: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1396</sup> Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1397</sup> Bare and Bajgorë/Bajgora: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former Police Station in Suharekë/Suva Reka: [REDACTED].

<sup>1398</sup> Jabllanicë/Jablanica: IT-04-84bis P00119, p. 4256. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED].

<sup>1399</sup> Llapushnik/Lapušnik: 050951-050965, paras 5, 7-8 (050953-050954). Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1400</sup> Likoc/Likovac: [REDACTED]. Jabllanicë/Jablanica: IT-04-84bis P00119, pp. 4249-4250, 4255-4256, 4265; [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

or sympathy towards the LDK;<sup>1401</sup> (iii) not having joined or allegedly not supporting the KLA;<sup>1402</sup> (iv) their current or former employment perceived as anti-KLA;<sup>1403</sup> and/or (v) crimes or other anti-KLA activities they or their relatives had carried out.<sup>1404</sup> Some of those mistreated individuals were intimidated or coerced with a view to: (i) providing weapons;<sup>1405</sup> (ii) beating other detainees;<sup>1406</sup> or (iii) performing other acts.<sup>1407</sup>

358. Mistreated individuals were discriminated against on account of their or their relatives' ethnicity,<sup>1408</sup> religion<sup>1409</sup> and/or alleged political affiliation.<sup>1410</sup>

359. Furthermore, the supporting material indicates that Mr Thaçi, Mr Veseli and Mr Selimi personally participated in some of the aforementioned acts. In particular:

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<sup>1401</sup> Likoc/Likovac: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Cahan: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1402</sup> Likoc/Likovac: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1403</sup> Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1404</sup> Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1405</sup> [REDACTED], Prizren: [REDACTED]. Ferizaj/Uroševac: [REDACTED]. [REDACTED]: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

<sup>1406</sup> Likoc/Likovac: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. Kukës: [REDACTED]. Former Boarding School/Dormitory, Gjilan/Gnjilane: [REDACTED].

<sup>1407</sup> Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED].

<sup>1408</sup> Jabllanicë/Jablanica: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Kukës: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED]. Ferizaj/Uroševac: [REDACTED]. Former Boarding School/Dormitory, Gjilan/Gnjilane: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

<sup>1409</sup> Kukës: [REDACTED]. Former MUP Building, Prizren: [REDACTED].

<sup>1410</sup> See *supra* fns 1401-1402.

- [REDACTED], Mr Selimi [REDACTED],<sup>1411</sup> [REDACTED].<sup>1412</sup>
- [REDACTED], Mr Thaçi [REDACTED].<sup>1413</sup> [REDACTED].<sup>1414</sup>  
[REDACTED].<sup>1415</sup> [REDACTED].<sup>1416</sup>
- [REDACTED], Mr Selimi [REDACTED].<sup>1417</sup> [REDACTED].<sup>1418</sup>
- [REDACTED], Mr Veseli [REDACTED].<sup>1419</sup>

(c) Conclusion

360. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that torture, a crime against humanity under Article 13(1)(f) of the Law and torture, a war crime under Article 14(1)(c)(i) of the Law, were committed against individuals apprehended and/or detained at detention locations indicated under Counts 4-5 between approximately April 1998 and August 1999.

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<sup>1411</sup> Likoc/Likovac: [REDACTED].

<sup>1412</sup> Likoc/Likovac: *supra* para. 235.

<sup>1413</sup> [REDACTED]: [REDACTED].

<sup>1414</sup> [REDACTED]: [REDACTED].

<sup>1415</sup> [REDACTED]: [REDACTED].

<sup>1416</sup> [REDACTED]: [REDACTED].

<sup>1417</sup> Kleçkë/Klečka: *supra* para. 279. [REDACTED].

<sup>1418</sup> Kleçkë/Klečka: [REDACTED].

<sup>1419</sup> Kukës: [REDACTED].

#### 4. Counts 8 and 9: Murder

361. In the Revised Indictment, the SPO alleges that, during the Indictment Period, murder, a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against individuals in Kosovo and northern Albania following arrests or abductions, and at or in connection with detention sites indicated under Counts 4-5, as well as in the midst of KLA withdrawals after offensives by FRY forces in the locations set out below.<sup>1420</sup>

##### (a) Material Elements

###### (i) *Likoc/Likovac*

362. The Pre-Trial Judge finds that the supporting material indicates that, in Likoc/Likovac, Skënderaj/Srbica municipality, KLA members killed: (i) [REDACTED] between [REDACTED] 1998; (ii) [REDACTED] in [REDACTED] 1998; and (iii) [REDACTED] around [REDACTED] 1999.

363. [REDACTED] 1998, six armed men abducted [REDACTED].<sup>1421</sup> Several KLA members also abducted [REDACTED],<sup>1422</sup> [REDACTED].<sup>1423</sup> [REDACTED] and taken to Likoc/Likovac.<sup>1424</sup> [REDACTED].<sup>1425</sup> [REDACTED].<sup>1426</sup> [REDACTED] at the KLA headquarters in Likoc/Likovac, KLA members severely beat the detainees, [REDACTED].<sup>1427</sup> After [REDACTED], some detainees [REDACTED] home.<sup>1428</sup>

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<sup>1420</sup> Revised Indictment, paras 137-171, 174 [68], Schedule B.

<sup>1421</sup> [REDACTED].

<sup>1422</sup> [REDACTED].

<sup>1423</sup> See *supra* para. 235 (Counts 4-5). [REDACTED].

<sup>1424</sup> [REDACTED].

<sup>1425</sup> [REDACTED].

<sup>1426</sup> [REDACTED].

<sup>1427</sup> [REDACTED].

<sup>1428</sup> [REDACTED].

[REDACTED].<sup>1429</sup> [REDACTED] were not released.<sup>1430</sup> [REDACTED], the bodies of [REDACTED] were found [REDACTED], in [REDACTED].<sup>1431</sup> The corpses belonging to [REDACTED] had bullet holes [REDACTED] and exhibited signs of a brutal beating.<sup>1432</sup> [REDACTED]'s corpses had [REDACTED] gunshot wounds [REDACTED].<sup>1433</sup> [REDACTED].<sup>1434</sup>

364. [REDACTED] 1998, [REDACTED] was taken by uniformed KLA members to the KLA headquarters in Likoc/Likovac.<sup>1435</sup> He [REDACTED] was accused of being a spy and collaborating with Serbs.<sup>1436</sup> His body was found in [REDACTED].<sup>1437</sup> His corpse showed signs of multiple injuries: [REDACTED] bullets in [REDACTED], [REDACTED] bullets in [REDACTED], [REDACTED].<sup>1438</sup> [REDACTED] 1998, [REDACTED] was abducted and detained in Likoc/Likovac.<sup>1439</sup> [REDACTED].<sup>1440</sup>

365. On [REDACTED] January 1999, four KLA members, [REDACTED], arrested [REDACTED],<sup>1441</sup> and brought him to the KLA headquarters in Likoc/Likovac.<sup>1442</sup> He was accused of collaborating with Serbs.<sup>1443</sup> [REDACTED].<sup>1444</sup> His remains have not been found.<sup>1445</sup>

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<sup>1429</sup> [REDACTED].

<sup>1430</sup> [REDACTED].

<sup>1431</sup> [REDACTED].

<sup>1432</sup> [REDACTED].

<sup>1433</sup> [REDACTED].

<sup>1434</sup> [REDACTED].

<sup>1435</sup> [REDACTED].

<sup>1436</sup> [REDACTED].

<sup>1437</sup> [REDACTED].

<sup>1438</sup> [REDACTED].

<sup>1439</sup> [REDACTED].

<sup>1440</sup> [REDACTED].

<sup>1441</sup> [REDACTED].

<sup>1442</sup> [REDACTED].

<sup>1443</sup> [REDACTED].

<sup>1444</sup> [REDACTED].

<sup>1445</sup> [REDACTED].

(ii) *Jabllanicë/Jablanica*

366. The Pre-Trial Judge finds that the supporting material indicates that, in Jabllanicë/Jablanica, Gjakovë/Đakovica municipality, KLA members killed: (i) [REDACTED] around or after [REDACTED] 1998; and (ii) [REDACTED] in [REDACTED] 1998 and [REDACTED] 1998, [REDACTED].

367. Around [REDACTED] 1998,<sup>1446</sup> [REDACTED] was brought to the KLA barracks compound in Jabllanicë/Jablanica by KLA members.<sup>1447</sup> [REDACTED].<sup>1448</sup> [REDACTED], KLA members, among them [REDACTED],<sup>1449</sup> started beating them.<sup>1450</sup> The beatings were [REDACTED] and [REDACTED], involving kicking, punching, and hitting them with a baseball bat,<sup>1451</sup> [REDACTED].<sup>1452</sup> [REDACTED] was very badly beaten [REDACTED].<sup>1453</sup> [REDACTED] never saw him again.<sup>1454</sup> [REDACTED].<sup>1455</sup> A missing persons report indicates that [REDACTED] was last seen in Jabllanicë/Jablanica on [REDACTED] 1998.<sup>1456</sup>

368. In [REDACTED] 1998,<sup>1457</sup> [REDACTED] were detained [REDACTED] in the barracks compound in Jabllanicë/Jablanica, which was under the command of [REDACTED].<sup>1458</sup> [REDACTED] were in poor physical condition after having been badly beaten by KLA members.<sup>1459</sup> [REDACTED],<sup>1460</sup> [REDACTED].<sup>1461</sup>

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<sup>1446</sup> [REDACTED].

<sup>1447</sup> [REDACTED].

<sup>1448</sup> *See supra* para. 143 (Counts 2-3). [REDACTED].

<sup>1449</sup> [REDACTED].

<sup>1450</sup> *See supra* para. 239 (Counts 4-5). [REDACTED].

<sup>1451</sup> [REDACTED].

<sup>1452</sup> [REDACTED].

<sup>1453</sup> [REDACTED].

<sup>1454</sup> [REDACTED].

<sup>1455</sup> [REDACTED].

<sup>1456</sup> IT-04-84 P01276, p. 1 (U015-4141).

<sup>1457</sup> [REDACTED]; IT-04-84bis P00119, p. 81 (4255).

<sup>1458</sup> IT-04-84bis P00119, pp. 4264-4265; [REDACTED].

<sup>1459</sup> *See supra* para. 239 (Counts 4-5). [REDACTED]; IT-04-84bis P00119, pp. 81-82 (4255-4256); [REDACTED].

<sup>1460</sup> [REDACTED].

<sup>1461</sup> [REDACTED].

[REDACTED] were brutally beaten [REDACTED] by KLA members, [REDACTED].<sup>1462</sup> After the beatings, [REDACTED] was in a bad condition.<sup>1463</sup> [REDACTED].<sup>1464</sup> A medical report indicates that [REDACTED] was disoriented, bruised, and swollen [REDACTED].<sup>1465</sup> [REDACTED].<sup>1466</sup> [REDACTED] 1998, [REDACTED].<sup>1467</sup> An autopsy report dated [REDACTED] 1998, indicates that a body, [REDACTED] identified through DNA testing as belonging to [REDACTED],<sup>1468</sup> was discovered [REDACTED] with a gunshot wound [REDACTED].<sup>1469</sup> [REDACTED].<sup>1470</sup>

*(iii) Llapushnik/Lapušnik*

369. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed: (i) [REDACTED] in Llapushnik/Lapušnik, Drenas (Glogoc)/Glogovac municipality, [REDACTED] June 1998; and (ii) [REDACTED] near Llapushnik/Lapušnik, Drenas (Glogoc)/Glogovac municipality, on 25 or 26 July 1998.

370. On [REDACTED] June 1998,<sup>1471</sup> [REDACTED], a detainee,<sup>1472</sup> was brought into the yard of the Lapushnik/Lapušnik prison compound and was shot in the vicinity of the following KLA members: [REDACTED].<sup>1473</sup> [REDACTED].<sup>1474</sup> When it got dark, [REDACTED] removed [REDACTED]'s body from Llapushnik/Lapušnik

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<sup>1462</sup> [REDACTED].

<sup>1463</sup> [REDACTED].

<sup>1464</sup> [REDACTED]; IT-04-84bis P00082.

<sup>1465</sup> IT-04-84bis P00082.

<sup>1466</sup> [REDACTED].

<sup>1467</sup> [REDACTED].

<sup>1468</sup> IT-04-84bis P00428; [REDACTED].

<sup>1469</sup> IT-04-84bis P00484.E, pp. 2, 5-6.

<sup>1470</sup> IT-04-84 D166.E, pp. 1 and 20.

<sup>1471</sup> IT-03-66 P183, p. 8 (U003-4908-U003-4908).

<sup>1472</sup> *See supra* para. 243 (Counts 4-5). [REDACTED].

<sup>1473</sup> [REDACTED]. *See also* [REDACTED].

<sup>1474</sup> [REDACTED].

prison.<sup>1475</sup> [REDACTED]'s body was later seen on the roadside, [REDACTED], with [REDACTED] bullets in the chest.<sup>1476</sup>

371. On 25 or 26 July 1998, the day of a Serb offensive against Llapushnik/Lapušnik,<sup>1477</sup> KLA members took approximately 30 detainees from the Llapushnik/Lapušnik prison compound through the Berishë/Beriša mountains.<sup>1478</sup> Upon reaching a nearby forest, [REDACTED],<sup>1479</sup> [REDACTED] KLA members released 20 detainees from this group of 30 and shot at the remaining 10 detainees with AK-47s, [REDACTED].<sup>1480</sup> The bodies of the executed detainees were left at the execution site.<sup>1481</sup> [REDACTED].<sup>1482</sup> The bodies of [REDACTED] were exhumed from [REDACTED] and the cause of death for [REDACTED] was determined to be gunshot wounds [REDACTED], while the cause of death for [REDACTED] could not be ascertained.<sup>1483</sup> [REDACTED],<sup>1484</sup> [REDACTED],<sup>1485</sup> [REDACTED],<sup>1486</sup> [REDACTED],<sup>1487</sup> [REDACTED],<sup>1488</sup> [REDACTED]<sup>1489</sup> [REDACTED].

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<sup>1475</sup> [REDACTED].

<sup>1476</sup> [REDACTED]; IT-03-66 P183, pp. 9-11 (U003-4909-U003-4909, U003-4910-U003-4910, U003-4911-U003-4911).

<sup>1477</sup> IT-03-66 P245.1a, p. 1 (U008-7028-U008-7043).

<sup>1478</sup> [REDACTED].

<sup>1479</sup> [REDACTED].

<sup>1480</sup> [REDACTED].

<sup>1481</sup> [REDACTED].

<sup>1482</sup> [REDACTED].

<sup>1483</sup> IT-03-66 P111, U00079551-U0079600, pp. 2, 8 (U0079552, U0079558); [REDACTED]. IT-03-66 P111, 0323-2041-0323-2390, pp. 109 (0323-2041), 121 (0323-2215), 150 (0323-2244), 199 (0323-2293), 223 (0323-2317), 241 (0323-2335), 261 (0323-2355), 277 (0323-2371), 283 (0323-2377). DNA testing was used to identify the remains. *See* IT-03-66 P111, U0086010-U0086033, p. 74 (U0086033); IT-03-66 P112, U0086123-U0086138, pp. 18-19 (U0086127-0086128).

<sup>1484</sup> [REDACTED].

<sup>1485</sup> [REDACTED].

<sup>1486</sup> [REDACTED]; IT-03-66 P245.1a, pp. 1, 5-6.

<sup>1487</sup> [REDACTED].

<sup>1488</sup> [REDACTED].

<sup>1489</sup> [REDACTED], IT-03-66 P245.1a, pp. 1, 26. *See also* IT-03-66 P245.15a, pp. 1-2.

(iv) *Drenoc/Drenovac*

372. The Pre-Trial Judge finds that the supporting material indicates that, in Drenoc/Drenovac, Rahovec/Orahovac municipality, KLA members killed detainees: (i) [REDACTED] around or after [REDACTED] 1998; (ii) [REDACTED] around or after [REDACTED] 1998; (iii) [REDACTED] around or after [REDACTED] 1998; (iv) [REDACTED] in [REDACTED] 1998; (v) [REDACTED] around or after [REDACTED] 1998; and (vi) [REDACTED] around or after [REDACTED] 1998.

373. The KLA considered [REDACTED] to be collaborators.<sup>1490</sup> [REDACTED] was arrested and detained in the Drenoc/Drenovac school building on [REDACTED] 1998.<sup>1491</sup> [REDACTED] beat the detainees.<sup>1492</sup> [REDACTED] was beaten day and night.<sup>1493</sup> [REDACTED].<sup>1494</sup>

374. [REDACTED] was considered a spy and collaborator.<sup>1495</sup> He was seen detained in the Drenoc/Drenovac school building<sup>1496</sup> and covered in blood.<sup>1497</sup> After 45 days in detention, he was killed by KLA members.<sup>1498</sup> [REDACTED].<sup>1499</sup>

375. [REDACTED] were accused of being spies and collaborators.<sup>1500</sup> [REDACTED],<sup>1501</sup> [REDACTED] on [REDACTED] 1998 [REDACTED] detained.<sup>1502</sup> [REDACTED] severely beaten while detained.<sup>1503</sup> [REDACTED].<sup>1504</sup> On

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<sup>1490</sup> [REDACTED].

<sup>1491</sup> [REDACTED].

<sup>1492</sup> [REDACTED].

<sup>1493</sup> See *supra* para. 247 (Counts 4-5). [REDACTED].

<sup>1494</sup> [REDACTED].

<sup>1495</sup> [REDACTED].

<sup>1496</sup> [REDACTED].

<sup>1497</sup> See *supra* para. 247 (Counts 4-5). [REDACTED].

<sup>1498</sup> [REDACTED].

<sup>1499</sup> [REDACTED].

<sup>1500</sup> [REDACTED].

<sup>1501</sup> [REDACTED].

<sup>1502</sup> [REDACTED].

<sup>1503</sup> See *supra* para. 247 (Counts 4-5). [REDACTED].

<sup>1504</sup> [REDACTED].

[REDACTED] 1998, [REDACTED] Drenoc/Drenovac [REDACTED].<sup>1505</sup>  
[REDACTED].<sup>1506</sup> [REDACTED];<sup>1507</sup> [REDACTED] his family never saw or heard  
from him again.<sup>1508</sup> On or about [REDACTED] 1998, [REDACTED] forcibly  
removed from Drenoc/Drenovac [REDACTED].<sup>1509</sup> [REDACTED].<sup>1510</sup>  
[REDACTED].<sup>1511</sup> [REDACTED].<sup>1512</sup> [REDACTED];<sup>1513</sup> [REDACTED].<sup>1514</sup>

376. KLA members arrested [REDACTED] and ultimately took him to  
Drenoc/Drenovac.<sup>1515</sup> He was accused of being a spy.<sup>1516</sup> KLA members could be  
heard shouting and swearing at [REDACTED].<sup>1517</sup> [REDACTED].<sup>1518</sup> Some of  
[REDACTED]'s remains were found in [REDACTED];<sup>1519</sup> [REDACTED],<sup>1520</sup>  
[REDACTED].<sup>1521</sup> [REDACTED].<sup>1522</sup>

377. [REDACTED] was arrested in [REDACTED] 1998 by KLA members  
[REDACTED].<sup>1523</sup> His family was told that he would be taken for interrogation and  
brought back.<sup>1524</sup> He was subsequently detained in Drenoc/Drenovac for

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<sup>1505</sup> [REDACTED].

<sup>1506</sup> [REDACTED].

<sup>1507</sup> [REDACTED].

<sup>1508</sup> [REDACTED].

<sup>1509</sup> See *infra* para. 425 (Count 10). [REDACTED].

<sup>1510</sup> [REDACTED].

<sup>1511</sup> See *infra* para. 425 (Count 10). [REDACTED].

<sup>1512</sup> See *infra* para. 426 (Count 10). [REDACTED].

<sup>1513</sup> [REDACTED].

<sup>1514</sup> [REDACTED].

<sup>1515</sup> [REDACTED].

<sup>1516</sup> [REDACTED].

<sup>1517</sup> [REDACTED].

<sup>1518</sup> [REDACTED].

<sup>1519</sup> [REDACTED].

<sup>1520</sup> [REDACTED].

<sup>1521</sup> [REDACTED].

<sup>1522</sup> [REDACTED].

<sup>1523</sup> [REDACTED].

<sup>1524</sup> [REDACTED].

[REDACTED] days and severely beaten [REDACTED].<sup>1525</sup> [REDACTED].<sup>1526</sup> His remains were never found.<sup>1527</sup>

378. Members of [REDACTED] KLA unit arrested [REDACTED] on [REDACTED] 1998 and handed him over to the KLA in Drenoc/Drenovac.<sup>1528</sup> He was suspected of being a collaborator.<sup>1529</sup> While in detention, [REDACTED] was badly beaten.<sup>1530</sup> [REDACTED]; he was badly beaten and covered in blood.<sup>1531</sup> [REDACTED]'s remains were found in [REDACTED];<sup>1532</sup> [REDACTED].<sup>1533</sup> [REDACTED].<sup>1534</sup>

*(v) Malishevë/Mališevo and Volljakë/Volujak Cave*

379. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed: (i) [REDACTED] in Malishevë/Mališevo, in Malishevë/Mališevo municipality, on 18 or 19 July 1998; (ii) [REDACTED] in Malishevë/Mališevo and surroundings, Malishevë/Mališevo municipality, around or after 26 or 27 July 1998; and (iii) nine Serb males from Opterushë/Opteruša, 15 Serb males from Reti/Retimlje [REDACTED], in the Volljakë/Volujak Cave, Klinë/Klina municipality, on 26 or 27 July 1998.

380. [REDACTED],<sup>1535</sup> [REDACTED].<sup>1536</sup> In the evening of 18 or 19 July 1998,<sup>1537</sup> KLA members took out, in [REDACTED] separate groups, Serb detainees

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<sup>1525</sup> See *supra* para. 247 (Counts 4-5). [REDACTED].

<sup>1526</sup> [REDACTED].

<sup>1527</sup> See *infra* para. 427 (Count 10). [REDACTED].

<sup>1528</sup> [REDACTED].

<sup>1529</sup> [REDACTED].

<sup>1530</sup> See *supra* para. 247 (Counts 4-5). [REDACTED].

<sup>1531</sup> [REDACTED].

<sup>1532</sup> See *infra* para. 428 (Count 10). [REDACTED].

<sup>1533</sup> [REDACTED].

<sup>1534</sup> [REDACTED].

<sup>1535</sup> [REDACTED].

<sup>1536</sup> [REDACTED].

<sup>1537</sup> [REDACTED].

[REDACTED].<sup>1538</sup> These Serb detainees included [REDACTED],<sup>1539</sup> [REDACTED].<sup>1540</sup> Each of the [REDACTED] groups were taken away in a [REDACTED] van by KLA members.<sup>1541</sup> The detainees were taken into the woods, [REDACTED], and executed by masked KLA members [REDACTED].<sup>1542</sup> Their bodies were buried [REDACTED].<sup>1543</sup> The remains of [REDACTED] individuals were found [REDACTED].<sup>1544</sup> [REDACTED] were identified as belonging to [REDACTED],<sup>1545</sup> [REDACTED],<sup>1546</sup> [REDACTED],<sup>1547</sup> [REDACTED],<sup>1548</sup> [REDACTED],<sup>1549</sup> [REDACTED],<sup>1550</sup> [REDACTED],<sup>1551</sup> [REDACTED],<sup>1552</sup> [REDACTED],<sup>1553</sup> [REDACTED],<sup>1554</sup> [REDACTED],<sup>1555</sup> [REDACTED].<sup>1556</sup> The cause of death for [REDACTED] was determined to be blunt force trauma [REDACTED].<sup>1557</sup> The cause of death for the remaining individuals included gunshot wounds [REDACTED].<sup>1558</sup>

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<sup>1538</sup> [REDACTED].

<sup>1539</sup> *See supra* para. 251 (Counts 4-5). [REDACTED].

<sup>1540</sup> *See supra* para. 251 (Counts 4-5). [REDACTED].

<sup>1541</sup> [REDACTED].

<sup>1542</sup> [REDACTED].

<sup>1543</sup> [REDACTED].

<sup>1544</sup> [REDACTED].

<sup>1545</sup> [REDACTED].

<sup>1546</sup> [REDACTED].

<sup>1547</sup> [REDACTED].

<sup>1548</sup> [REDACTED].

<sup>1549</sup> [REDACTED].

<sup>1550</sup> [REDACTED].

<sup>1551</sup> [REDACTED].

<sup>1552</sup> [REDACTED].

<sup>1553</sup> [REDACTED].

<sup>1554</sup> [REDACTED].

<sup>1555</sup> [REDACTED].

<sup>1556</sup> [REDACTED].

<sup>1557</sup> [REDACTED].

<sup>1558</sup> [REDACTED].

381. [REDACTED].<sup>1559</sup> [REDACTED].<sup>1560</sup> [REDACTED].<sup>1561</sup> [REDACTED].<sup>1562</sup> [REDACTED].<sup>1563</sup> [REDACTED].<sup>1564</sup> [REDACTED].<sup>1565</sup> The remains of [REDACTED] were found in [REDACTED].<sup>1566</sup> The cause of death for [REDACTED] could not be determined, [REDACTED].<sup>1567</sup> The cause of death for [REDACTED] was a gunshot wound [REDACTED].<sup>1568</sup> [REDACTED].<sup>1569</sup>

382. On 18 July 1998, KLA units attacked the villages of Optrushë/Opteraša, Reti/Retimlje, and Zoçisht/Zoçište.<sup>1570</sup> The Serb villagers surrendered to the KLA.<sup>1571</sup> KLA members then took [REDACTED] to [REDACTED] where [REDACTED] were beaten.<sup>1572</sup> [REDACTED], *inter alia*, [REDACTED].<sup>1573</sup> After [REDACTED] were detained by the KLA in Drenoc/Drenovac before being transferred to Malishevë/Mališevo.<sup>1574</sup>

383. The village of Reti/Retimlje [REDACTED].<sup>1575</sup> On 18 July 1998, [REDACTED].<sup>1576</sup> KLA soldiers ordered [REDACTED] get on [REDACTED]<sup>1577</sup> including [REDACTED].<sup>1578</sup> [REDACTED] drove towards Drenoc/Drenovac.<sup>1579</sup>

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<sup>1559</sup> [REDACTED].

<sup>1560</sup> [REDACTED].

<sup>1561</sup> *See supra* paras 247, 251 (Counts 4-5). [REDACTED].

<sup>1562</sup> [REDACTED].

<sup>1563</sup> [REDACTED].

<sup>1564</sup> [REDACTED].

<sup>1565</sup> [REDACTED].

<sup>1566</sup> [REDACTED].

<sup>1567</sup> [REDACTED].

<sup>1568</sup> [REDACTED].

<sup>1569</sup> [REDACTED].

<sup>1570</sup> [REDACTED].

<sup>1571</sup> [REDACTED].

<sup>1572</sup> [REDACTED].

<sup>1573</sup> [REDACTED].

<sup>1574</sup> [REDACTED].

<sup>1575</sup> [REDACTED].

<sup>1576</sup> [REDACTED].

<sup>1577</sup> [REDACTED].

<sup>1578</sup> [REDACTED].

<sup>1579</sup> [REDACTED].

The [REDACTED] KLA unit, [REDACTED], brought [REDACTED] detainees from Drenoc/Drenovac to Malishevë/Mališevo.<sup>1580</sup>

384. Around the time of the Serb offensive in Lapushnik/Lapušnik, and as part of the emptying of the Malishevë/Mališevo prison, which was completed on 28 July 1998, the detainees who had arrived from Drenoc/Drenovac were [REDACTED],<sup>1581</sup> [REDACTED].<sup>1582</sup> [REDACTED].<sup>1583</sup> [REDACTED].<sup>1584</sup> [REDACTED] transferred [REDACTED], whereupon they were brought to a location between [REDACTED] and Volljakë/Volujak and all executed; [REDACTED].<sup>1585</sup>

385. [REDACTED]<sup>1586</sup> [REDACTED].<sup>1587</sup> [REDACTED],<sup>1588</sup> [REDACTED],<sup>1589</sup>  
 [REDACTED].<sup>1590</sup> [REDACTED].<sup>1591</sup> [REDACTED].<sup>1592</sup> [REDACTED].<sup>1593</sup>  
 [REDACTED],<sup>1594</sup> [REDACTED],<sup>1595</sup> [REDACTED],<sup>1596</sup> [REDACTED],<sup>1597</sup>

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1580 [REDACTED].

1581 [REDACTED].

1582 [REDACTED].

1583 [REDACTED].

1584 [REDACTED].

1585 [REDACTED].

1586 [REDACTED].

1587 [REDACTED].

1588 [REDACTED].

1589 [REDACTED].

1590 [REDACTED].

1591 [REDACTED].

1592 [REDACTED].

1593 [REDACTED].

1594 [REDACTED].

1595 [REDACTED].

1596 [REDACTED].

1597 [REDACTED].

[REDACTED],<sup>1598</sup> [REDACTED],<sup>1599</sup> [REDACTED].<sup>1600</sup> [REDACTED],<sup>1601</sup>  
[REDACTED].<sup>1602</sup> [REDACTED].<sup>1603</sup> [REDACTED].<sup>1604</sup>

*(vi) Bajgorë/Bajgora*

386. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in Bajgorë/Bajgora, Podujevë/Podujevo municipality, around or after 30 August 1998.

387. [REDACTED]'s name was on a list of persons suspected as co-operating or associating with Serbs.<sup>1605</sup> He was subsequently detained in [REDACTED] Bajgorë/Bajgora,<sup>1606</sup> [REDACTED].<sup>1607</sup> While detained, [REDACTED] was described as being in a bad state, [REDACTED].<sup>1608</sup> [REDACTED],<sup>1609</sup> [REDACTED].<sup>1610</sup> [REDACTED].<sup>1611</sup> A KLA member [REDACTED] telling [REDACTED] that he had [REDACTED] to admit that he had been collaborating with Serbs or he would be killed.<sup>1612</sup> [REDACTED].<sup>1613</sup> [REDACTED].<sup>1614</sup> He was never seen at the Bajgorë/Bajgora detention centre again.<sup>1615</sup> Thereafter, [REDACTED] his remains

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<sup>1598</sup> [REDACTED].

<sup>1599</sup> [REDACTED].

<sup>1600</sup> [REDACTED].

<sup>1601</sup> [REDACTED].

<sup>1602</sup> [REDACTED].

<sup>1603</sup> [REDACTED].

<sup>1604</sup> [REDACTED].

<sup>1605</sup> [REDACTED].

<sup>1606</sup> [REDACTED].

<sup>1607</sup> [REDACTED].

<sup>1608</sup> [REDACTED].

<sup>1609</sup> [REDACTED].

<sup>1610</sup> [REDACTED].

<sup>1611</sup> [REDACTED].

<sup>1612</sup> [REDACTED].

<sup>1613</sup> [REDACTED].

<sup>1614</sup> [REDACTED].

<sup>1615</sup> [REDACTED].

were recovered.<sup>1616</sup> An autopsy of [REDACTED]'s remains determined the cause of death to be blunt force trauma [REDACTED].<sup>1617</sup> [REDACTED].<sup>1618</sup> [REDACTED].<sup>1619</sup>

*(vii) Majac/Majance*

388. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in Majac/Majance, Podujevë/Podujevo municipality, in early April 1999.

389. [REDACTED],<sup>1620</sup> [REDACTED],<sup>1621</sup> [REDACTED]<sup>1622</sup> were detained in Llapashticë/Lapaštica<sup>1623</sup> and Majac/Majance.<sup>1624</sup> [REDACTED],<sup>1625</sup> [REDACTED],<sup>1626</sup> [REDACTED]<sup>1627</sup> were beaten and mistreated during their detention.<sup>1628</sup> [REDACTED] ([REDACTED]<sup>1629</sup> [REDACTED]<sup>1630</sup>), [REDACTED].<sup>1631</sup> [REDACTED].<sup>1632</sup> [REDACTED].<sup>1633</sup> [REDACTED].<sup>1634</sup> [REDACTED] the bodies

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<sup>1616</sup> [REDACTED].

<sup>1617</sup> [REDACTED].

<sup>1618</sup> [REDACTED].

<sup>1619</sup> [REDACTED].

<sup>1620</sup> [REDACTED].

<sup>1621</sup> [REDACTED].

<sup>1622</sup> [REDACTED].

<sup>1623</sup> *See supra* para. 162 (Counts 2-3). [REDACTED].

<sup>1624</sup> [REDACTED].

<sup>1625</sup> [REDACTED].

<sup>1626</sup> [REDACTED].

<sup>1627</sup> [REDACTED].

<sup>1628</sup> *See supra* para. 263 (Counts 4-5).

<sup>1629</sup> [REDACTED].

<sup>1630</sup> [REDACTED].

<sup>1631</sup> [REDACTED].

<sup>1632</sup> [REDACTED].

<sup>1633</sup> [REDACTED].

<sup>1634</sup> [REDACTED].

[REDACTED] found [REDACTED].<sup>1635</sup> [REDACTED].<sup>1636</sup> [REDACTED].<sup>1637</sup>  
 [REDACTED].<sup>1638</sup>

*(viii) Potok*

390. The Pre-Trial Judge finds that the supporting material indicates that [REDACTED] were killed in Potok, Podujevë/Podujevo municipality, in early April 1999.

391. [REDACTED] had been detained in Llapashticë/Lapaštica by the KLA;<sup>1639</sup> [REDACTED].<sup>1640</sup> Their names were on a list [REDACTED].<sup>1641</sup> [REDACTED] were continuously interrogated during their detention.<sup>1642</sup> [REDACTED] was beaten while detained.<sup>1643</sup> [REDACTED].<sup>1644</sup> [REDACTED];<sup>1645</sup> [REDACTED].<sup>1646</sup> [REDACTED]'s remains were found [REDACTED].<sup>1647</sup> [REDACTED].<sup>1648</sup> [REDACTED].<sup>1649</sup>

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<sup>1635</sup> [REDACTED].

<sup>1636</sup> [REDACTED].

<sup>1637</sup> [REDACTED].

<sup>1638</sup> [REDACTED].

<sup>1639</sup> *See supra* para. 162 (Counts 2-3). [REDACTED].

<sup>1640</sup> [REDACTED].

<sup>1641</sup> [REDACTED].

<sup>1642</sup> [REDACTED].

<sup>1643</sup> *See supra* para. 263 (Counts 4-5). [REDACTED].

<sup>1644</sup> [REDACTED].

<sup>1645</sup> [REDACTED].

<sup>1646</sup> [REDACTED].

<sup>1647</sup> [REDACTED].

<sup>1648</sup> [REDACTED].

<sup>1649</sup> [REDACTED].

(ix) [REDACTED]

392. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed an unidentified Roma man in [REDACTED], Podujevë/Podujevo municipality, around late March or the beginning of April 1999.

393. Around the end of March 1999 or the beginning of April 1999, a Roma man arrived in the village of [REDACTED].<sup>1650</sup> The KLA military police and the KLA [REDACTED], were stationed in [REDACTED].<sup>1651</sup> The Roma man was kept tied up in the middle of the village<sup>1652</sup> and [REDACTED] was abused by KLA members and civilians; [REDACTED].<sup>1653</sup> [REDACTED].<sup>1654</sup> [REDACTED], shooting and killing him on Latif Gashi's orders; his body was left where he had been struck down by gunfire.<sup>1655</sup> [REDACTED].<sup>1656</sup>

(x) *Zllash/Zlaš*

394. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in Zllash/Žlaš, Prishtinë/Priština municipality, between approximately 19 and around the end of April 1999.

395. [REDACTED], detained at the Zllash/Zlaš detention compound by KLA members,<sup>1657</sup> was mistreated [REDACTED].<sup>1658</sup> [REDACTED].<sup>1659</sup> [REDACTED].<sup>1660</sup>

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<sup>1650</sup> [REDACTED].

<sup>1651</sup> [REDACTED].

<sup>1652</sup> [REDACTED].

<sup>1653</sup> [REDACTED].

<sup>1654</sup> [REDACTED].

<sup>1655</sup> [REDACTED].

<sup>1656</sup> [REDACTED].

<sup>1657</sup> See *supra* para. 165 (Counts 2-3), para. 267 (Counts 4-5). [REDACTED].

<sup>1658</sup> See *supra* para. 267 (Counts 4-5). [REDACTED].

<sup>1659</sup> [REDACTED].

<sup>1660</sup> [REDACTED].

[REDACTED].<sup>1661</sup> His body was discovered [REDACTED].<sup>1662</sup> [REDACTED].<sup>1663</sup>  
[REDACTED].<sup>1664</sup> His body showed a bullet hole [REDACTED] and signs of  
mistreatment, [REDACTED].<sup>1665</sup>

*(xi) Klečkë/Klečka*

396. The Pre-Trial Judge finds that the supporting material indicates that, in Klečkë/Klečka, Lipjan/Lipljan municipality, KLA members killed: (i) [REDACTED] on 3 April 1999; (ii) [REDACTED] on [REDACTED] 1999; (iii) [REDACTED] on 5 April 1999; (iv) [REDACTED] on 5 April 1999; and (v) [REDACTED] around April 1999.

397. [REDACTED] was detained in Klečkë/Klečka prison from 21 March 1999 to 2 April 1999.<sup>1666</sup> One day after he was released, [REDACTED] was arrested again and killed near Klečkë/Klečka village.<sup>1667</sup> KLA members [REDACTED]<sup>1668</sup> shot at him with their AK 47s.<sup>1669</sup> [REDACTED]<sup>1670</sup> [REDACTED] were also present during the killing of [REDACTED].<sup>1671</sup>

398. KLA members arrested [REDACTED] on [REDACTED] 1999 [REDACTED].<sup>1672</sup> [REDACTED] detained in a house and beaten, [REDACTED]

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<sup>1661</sup> [REDACTED].

<sup>1662</sup> [REDACTED].

<sup>1663</sup> [REDACTED].

<sup>1664</sup> [REDACTED].

<sup>1665</sup> [REDACTED].

<sup>1666</sup> [REDACTED].

<sup>1667</sup> [REDACTED].

<sup>1668</sup> [REDACTED].

<sup>1669</sup> [REDACTED].

<sup>1670</sup> [REDACTED].

<sup>1671</sup> [REDACTED].

<sup>1672</sup> [REDACTED].

screams could be heard by other detainees.<sup>1673</sup> [REDACTED].<sup>1674</sup> [REDACTED].<sup>1675</sup>  
 [REDACTED].<sup>1676</sup> [REDACTED].<sup>1677</sup> [REDACTED].<sup>1678</sup> [REDACTED].<sup>1679</sup>

399. [REDACTED] were detained by the KLA in Kleçkë/Klečka until 3 or 5 April 1999.<sup>1680</sup> On the orders of Fatmir Limaj, KLA members<sup>1681</sup> took [REDACTED] towards the mountains and killed them with their AK 47.<sup>1682</sup> [REDACTED].<sup>1683</sup>

400. KLA members [REDACTED]<sup>1684</sup> took [REDACTED] to Kleçkë/Klečka around 9 February 1999.<sup>1685</sup> [REDACTED] were kept in burned houses in Kleçkë/Klečka where they were questioned and slapped around every [REDACTED] by [REDACTED] KLA members.<sup>1686</sup> On 5 April 1999, [REDACTED] were taken to [REDACTED] and executed by the Kleçkë/Klečka prison warden on the orders of Fatmir Limaj,<sup>1687</sup> in the presence of Fatmir Limaj and other KLA members.<sup>1688</sup> [REDACTED] were buried [REDACTED].<sup>1689</sup> [REDACTED].<sup>1690</sup> [REDACTED].<sup>1691</sup> [REDACTED].<sup>1692</sup>

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<sup>1673</sup> *See supra* para. 279 (Counts 4-5). [REDACTED].

<sup>1674</sup> [REDACTED].

<sup>1675</sup> [REDACTED].

<sup>1676</sup> [REDACTED].

<sup>1677</sup> [REDACTED].

<sup>1678</sup> [REDACTED].

<sup>1679</sup> [REDACTED].

<sup>1680</sup> [REDACTED].

<sup>1681</sup> [REDACTED].

<sup>1682</sup> [REDACTED].

<sup>1683</sup> [REDACTED].

<sup>1684</sup> [REDACTED].

<sup>1685</sup> [REDACTED].

<sup>1686</sup> [REDACTED].

<sup>1687</sup> [REDACTED].

<sup>1688</sup> [REDACTED].

<sup>1689</sup> [REDACTED].

<sup>1690</sup> [REDACTED].

<sup>1691</sup> [REDACTED].

<sup>1692</sup> [REDACTED].

401. On 11 April 1999, KLA members intercepted [REDACTED],<sup>1693</sup> transported and held them in a burned house in Klečkë/Klečka.<sup>1694</sup> KLA members [REDACTED] took [REDACTED], to a nearby field [REDACTED].<sup>1695</sup> [REDACTED].<sup>1696</sup> Shortly after being taken to the field, shots were heard from Kalashnikovs.<sup>1697</sup> [REDACTED].<sup>1698</sup> [REDACTED].<sup>1699</sup> [REDACTED].<sup>1700</sup> KLA members [REDACTED].<sup>1701</sup> [REDACTED].<sup>1702</sup> [REDACTED].<sup>1703</sup> [REDACTED] the remains [REDACTED],<sup>1704</sup> [REDACTED],<sup>1705</sup> [REDACTED],<sup>1706</sup> [REDACTED],<sup>1707</sup> [REDACTED]<sup>1708</sup> were found.<sup>1709</sup> [REDACTED].<sup>1710</sup> [REDACTED].<sup>1711</sup>

(xii) [REDACTED]

402. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in [REDACTED], Ferizaj/Uroševac municipality, around [REDACTED] 1999.

403. [REDACTED] had been in KLA custody since beginning of [REDACTED] 1999 [REDACTED].<sup>1712</sup> [REDACTED], they were taken to

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<sup>1693</sup> [REDACTED].

<sup>1694</sup> *See supra* para. 279 (Counts 4-5). [REDACTED].

<sup>1695</sup> [REDACTED].

<sup>1696</sup> [REDACTED].

<sup>1697</sup> [REDACTED].

<sup>1698</sup> [REDACTED].

<sup>1699</sup> [REDACTED].

<sup>1700</sup> [REDACTED].

<sup>1701</sup> [REDACTED].

<sup>1702</sup> [REDACTED].

<sup>1703</sup> [REDACTED].

<sup>1704</sup> [REDACTED].

<sup>1705</sup> [REDACTED].

<sup>1706</sup> [REDACTED].

<sup>1707</sup> [REDACTED].

<sup>1708</sup> [REDACTED].

<sup>1709</sup> [REDACTED].

<sup>1710</sup> [REDACTED].

<sup>1711</sup> [REDACTED].

<sup>1712</sup> *See supra* para. 178 (Counts 2-3), para. 283 (Counts 4-5).

[REDACTED] Ferizaj/Uroševac.<sup>1713</sup> The detainees were beaten by [REDACTED] and then left locked in [REDACTED].<sup>1714</sup> [REDACTED].<sup>1715</sup> [REDACTED] KLA members<sup>1716</sup> [REDACTED]<sup>1717</sup> [REDACTED] took the detainees, [REDACTED], out of the room in which they were being held and beat them.<sup>1718</sup> [REDACTED].<sup>1719</sup> [REDACTED].<sup>1720</sup> [REDACTED].<sup>1721</sup> [REDACTED] were never seen again.<sup>1722</sup>

*(xiii) Kukës, Albania*

404. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] at the Kukës Metal Factory in Kukës, Albania, on [REDACTED].

405. On or about 3 June 1999, KLA members, [REDACTED], beat [REDACTED] and shot at him with automatic weapons.<sup>1723</sup> On or about 4 June 1999, certain KLA members, [REDACTED],<sup>1724</sup> shot and wounded him,<sup>1725</sup> [REDACTED].<sup>1726</sup> [REDACTED].<sup>1727</sup> [REDACTED]<sup>1728</sup> [REDACTED],<sup>1729</sup> [REDACTED].<sup>1730</sup> [REDACTED] died [REDACTED] of being shot.<sup>1731</sup>

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<sup>1713</sup> [REDACTED].

<sup>1714</sup> [REDACTED].

<sup>1715</sup> [REDACTED].

<sup>1716</sup> [REDACTED].

<sup>1717</sup> [REDACTED].

<sup>1718</sup> [REDACTED].

<sup>1719</sup> [REDACTED].

<sup>1720</sup> [REDACTED].

<sup>1721</sup> [REDACTED].

<sup>1722</sup> See *infra* para. 434 (Count 10). [REDACTED].

<sup>1723</sup> See *supra* para. 291 (Counts 4-5). [REDACTED].

<sup>1724</sup> [REDACTED].

<sup>1725</sup> [REDACTED].

<sup>1726</sup> [REDACTED].

<sup>1727</sup> [REDACTED].

<sup>1728</sup> [REDACTED].

<sup>1729</sup> [REDACTED].

<sup>1730</sup> [REDACTED].

<sup>1731</sup> [REDACTED].

*(xiv) Former MUP Building, Prizren*

406. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in the former MUP building in Prizren, in Prizren municipality, on 17 or 18 June 1999.

407. [REDACTED],<sup>1732</sup> [REDACTED].<sup>1733</sup> On 17 June 1999, he was taken by two KLA members to the former MUP building for questioning.<sup>1734</sup> A day later, he was found deceased [REDACTED] in [REDACTED] the former MUP building, [REDACTED].<sup>1735</sup> The approximate date of his death was determined to be 18 June 1999 or earlier.<sup>1736</sup> [REDACTED]<sup>1737</sup> [REDACTED] his body had welts and bruises [REDACTED].<sup>1738</sup> [REDACTED].<sup>1739</sup> [REDACTED].<sup>1740</sup>

*(xv) Rahovec/Orahovac*

408. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed: (i) [REDACTED], in Rahovec/Orahovac municipality, around or after [REDACTED]; (ii) [REDACTED], Rahovec/Orahovac municipality, around or after [REDACTED] June 1999; and (iii) [REDACTED], in Rahovec/Orahovac municipality, around or after [REDACTED].

409. On [REDACTED],<sup>1741</sup> [REDACTED] armed KLA members, [REDACTED], went to [REDACTED]'s apartment,<sup>1742</sup> demanded that he hand over weapons<sup>1743</sup>

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<sup>1732</sup> [REDACTED].

<sup>1733</sup> [REDACTED].

<sup>1734</sup> [REDACTED].

<sup>1735</sup> See *supra* para. 315 (Counts 4-5). [REDACTED].

<sup>1736</sup> [REDACTED].

<sup>1737</sup> [REDACTED].

<sup>1738</sup> [REDACTED].

<sup>1739</sup> [REDACTED].

<sup>1740</sup> [REDACTED].

<sup>1741</sup> [REDACTED].

<sup>1742</sup> [REDACTED].

<sup>1743</sup> [REDACTED].

and beat him.<sup>1744</sup> After seising weapons,<sup>1745</sup> they pushed around [REDACTED], pointed their rifles at him and took him away,<sup>1746</sup> alleging they were taking him to [REDACTED] for questioning and would bring him back.<sup>1747</sup> [REDACTED], however, was never seen again<sup>1748</sup> and is presumed dead.<sup>1749</sup> [REDACTED] was beaten<sup>1750</sup> and forcefully taken<sup>1751</sup> by [REDACTED] armed<sup>1752</sup> KLA members, [REDACTED],<sup>1753</sup> from his house in Rahovec/Orahovac<sup>1754</sup> on [REDACTED].<sup>1755</sup> The remaining KLA members set his house on fire.<sup>1756</sup> [REDACTED]'s remains were found [REDACTED].<sup>1757</sup>

410. Around or after [REDACTED] June 1999, [REDACTED] armed men in masks and black camouflage KLA uniforms assaulted [REDACTED] at his house in Rahovec/Orahovac.<sup>1758</sup> He was then taken away by two armed and uniformed KLA members who said [REDACTED] that they needed to take [REDACTED] to [REDACTED] and they would bring him back in 15 minutes.<sup>1759</sup> [REDACTED] was never seen again.<sup>1760</sup>

411. On [REDACTED] 1999,<sup>1761</sup> [REDACTED] was abducted from his home in Rahovec/Orahovac by [REDACTED] armed KLA members in black uniforms with

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<sup>1744</sup> See *supra* para. 326 (Counts 4-5). [REDACTED].

<sup>1745</sup> [REDACTED].

<sup>1746</sup> [REDACTED].

<sup>1747</sup> [REDACTED].

<sup>1748</sup> [REDACTED].

<sup>1749</sup> [REDACTED].

<sup>1750</sup> [REDACTED].

<sup>1751</sup> [REDACTED].

<sup>1752</sup> [REDACTED].

<sup>1753</sup> [REDACTED].

<sup>1754</sup> [REDACTED].

<sup>1755</sup> See *supra* para. 326 (Counts 4-5). [REDACTED].

<sup>1756</sup> [REDACTED].

<sup>1757</sup> [REDACTED].

<sup>1758</sup> [REDACTED].

<sup>1759</sup> [REDACTED].

<sup>1760</sup> [REDACTED].

<sup>1761</sup> [REDACTED].

[REDACTED] symbol with a red eagle on their sleeves.<sup>1762</sup> [REDACTED].<sup>1763</sup> One of the KLA members [REDACTED] introduced himself as leader of the group in Albanian;<sup>1764</sup> [REDACTED].<sup>1765</sup> [REDACTED] was told that he would be taken to [REDACTED] for an informative conversation and then brought back.<sup>1766</sup> When [REDACTED] objected to the abduction, they were pushed around and some of their property was damaged by the KLA members.<sup>1767</sup> In the [REDACTED] days following [REDACTED]'s abduction, the KLA members [REDACTED].<sup>1768</sup> [REDACTED].<sup>1769</sup> [REDACTED].<sup>1770</sup> [REDACTED] remains were never found.<sup>1771</sup>

(xvi) [REDACTED]

412. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] in [REDACTED], Ferizaj/Uroševac municipality, around or after [REDACTED] 1999.

413. On [REDACTED] 1999, [REDACTED] was taken [REDACTED] to [REDACTED] by a dozen KLA members; he was told that he had to be sent to [REDACTED] for a conversation.<sup>1772</sup> [REDACTED] KLA [REDACTED]

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<sup>1762</sup> See *supra* para. 326 (Counts 4-5). [REDACTED].

<sup>1763</sup> [REDACTED].

<sup>1764</sup> [REDACTED].

<sup>1765</sup> [REDACTED].

<sup>1766</sup> [REDACTED].

<sup>1767</sup> [REDACTED].

<sup>1768</sup> [REDACTED].

<sup>1769</sup> [REDACTED].

<sup>1770</sup> [REDACTED].

<sup>1771</sup> [REDACTED].

<sup>1772</sup> [REDACTED].

interrogated [REDACTED].<sup>1773</sup> [REDACTED].<sup>1774</sup> [REDACTED].<sup>1775</sup>  
 [REDACTED].<sup>1776</sup> [REDACTED] was never seen again.<sup>1777</sup>

(xvii) [REDACTED]

414. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed an unidentified elderly Serb man in [REDACTED], Prishtinë/Priština municipality, in July or August 1999.

415. In July or August 1999, KLA member [REDACTED], drove a [REDACTED] old Serb man to [REDACTED], located in [REDACTED].<sup>1778</sup> Upon arrival at [REDACTED], it could be seen that the elderly Serb man had been badly beaten.<sup>1779</sup> The man was brought in because he was a Serb and kept at [REDACTED] for [REDACTED] days.<sup>1780</sup> He was beaten during this time by KLA members, [REDACTED] and another KLA member from [REDACTED].<sup>1781</sup> [REDACTED].<sup>1782</sup> [REDACTED], the decision was taken that the elderly Serb man should be killed in order to prevent discovery of the abuse that had been inflicted on him.<sup>1783</sup> [REDACTED].<sup>1784</sup> KLA members [REDACTED] carried out the killing [REDACTED].<sup>1785</sup> The elderly Serb man was buried by [REDACTED] KLA members [REDACTED].<sup>1786</sup>

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<sup>1773</sup> [REDACTED].

<sup>1774</sup> [REDACTED].

<sup>1775</sup> [REDACTED].

<sup>1776</sup> [REDACTED].

<sup>1777</sup> [REDACTED].

<sup>1778</sup> See *supra* para. 227 (Counts 2-3). [REDACTED].

<sup>1779</sup> [REDACTED].

<sup>1780</sup> [REDACTED].

<sup>1781</sup> [REDACTED].

<sup>1782</sup> [REDACTED].

<sup>1783</sup> [REDACTED].

<sup>1784</sup> [REDACTED].

<sup>1785</sup> [REDACTED].

<sup>1786</sup> [REDACTED].

(b) Mental Element

416. Regarding the mental element of the crime, the supporting material indicates the deliberate manner in which the individuals in KLA custody were mistreated and executed, also considering the degree of violence and type of instruments used in the physical assault;<sup>1787</sup> the refusal to provide medical treatment despite requests from the victims, fellow detainees, family members or advice from doctors;<sup>1788</sup> the acknowledgment of killings by KLA members<sup>1789</sup> and other statements regarding liquidation;<sup>1790</sup> the circumstances of the victims' abductions and their non-release from KLA custody;<sup>1791</sup> the circumstances of the victims' death or when they were last seen;<sup>1792</sup> and the refusal by KLA members to disclose the whereabouts of the victims to their families.<sup>1793</sup> This demonstrates that KLA members involved in the aforementioned acts and omissions meant to kill or at least wilfully cause serious injury or grievous bodily harm, which they should reasonably have known might lead to the victims' deaths.

(c) Conclusion

417. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that murder, as a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against individuals apprehended and/or detained at the

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<sup>1787</sup> [REDACTED]; IT-04-84bis P484.E, pp. 2, 5-6 ([REDACTED]); [REDACTED].

<sup>1788</sup> [REDACTED].

<sup>1789</sup> [REDACTED].

<sup>1790</sup> [REDACTED]; IT-04-84bis P119, p. 81 (4255); [REDACTED].

<sup>1791</sup> [REDACTED].

<sup>1792</sup> [REDACTED].

<sup>1793</sup> [REDACTED].

aforementioned locations throughout Kosovo and northern Albania between approximately April 1998 and August 1999.

## 5. Count 10: Enforced Disappearance of Persons

418. In the Revised Indictment, the SPO alleges that, during the Indictment Period, enforced disappearance as a crime against humanity under Article 13(1)(i) of the Law, was committed against individuals following arrests or abductions, and at or in connection with detention sites in the locations set out below.<sup>1794</sup>

### (a) Material Elements

#### (i) *Likoc/Likovac*

419. The Pre-Trial Judge finds that the supporting material indicates that, in Likoc/Likovac, Skënderaj/Srbica municipality, KLA members caused the enforced disappearance of: (i) [REDACTED] on [REDACTED] 1998; and (ii) [REDACTED] in January 1999.

420. While some detainees were released from KLA custody on [REDACTED] 1998, [REDACTED], and [REDACTED] were held back.<sup>1795</sup> [REDACTED] later, [REDACTED] went to Likoc/Likovac to speak to KLA member [REDACTED] about the whereabouts of [REDACTED],<sup>1796</sup> [REDACTED].<sup>1797</sup> KLA member [REDACTED] told them that [REDACTED] were in [REDACTED].<sup>1798</sup> [REDACTED].<sup>1799</sup> [REDACTED], the bodies of the [REDACTED] missing men were

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<sup>1794</sup> Revised Indictment, paras 172, 174 [68], Schedule C.

<sup>1795</sup> See *supra* para. 235 (Counts 4-5), para. 363 (Counts 8-9).

<sup>1796</sup> [REDACTED].

<sup>1797</sup> [REDACTED].

<sup>1798</sup> [REDACTED].

<sup>1799</sup> [REDACTED].

found [REDACTED].<sup>1800</sup> While the [REDACTED] persons were in KLA custody, KLA members concealed their fate and made no effort to ascertain their whereabouts.

421. On [REDACTED] January 1999, [REDACTED] was arrested and taken into KLA custody.<sup>1801</sup> [REDACTED]'s family went to look for him [REDACTED].<sup>1802</sup> [REDACTED].<sup>1803</sup> After [REDACTED] visits to Likoc/Likovac, KLA member [REDACTED]<sup>1804</sup> warned [REDACTED]'s family not to return to Likoc/Likovac [REDACTED].<sup>1805</sup> [REDACTED].<sup>1806</sup> [REDACTED].<sup>1807</sup> [REDACTED].<sup>1808</sup> [REDACTED].<sup>1809</sup> [REDACTED]'s remains have never been found.<sup>1810</sup>

(ii) *Jabllanicë/Jablanica*

422. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in Jabllanicë/Jablanica, Gjakovë/Đakovica municipality, in [REDACTED] 1998.

423. In [REDACTED] 1998, [REDACTED] was detained in a KLA guarded barracks compound in Jabllanicë/Jablanica.<sup>1811</sup> Around that time, [REDACTED]'s family began to enquire into [REDACTED]'s whereabouts.<sup>1812</sup> Members of [REDACTED]'s family were told that he had gone to [REDACTED], which they understood to mean that he had disappeared.<sup>1813</sup> Later [REDACTED], they spoke

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<sup>1800</sup> See *supra* para. 363 (Counts 8-9).

<sup>1801</sup> See *supra* para. 365 (Counts 8-9).

<sup>1802</sup> [REDACTED].

<sup>1803</sup> [REDACTED].

<sup>1804</sup> [REDACTED].

<sup>1805</sup> [REDACTED].

<sup>1806</sup> [REDACTED].

<sup>1807</sup> [REDACTED].

<sup>1808</sup> [REDACTED].

<sup>1809</sup> [REDACTED].

<sup>1810</sup> [REDACTED].

<sup>1811</sup> See *supra* para. 368 (Counts 8-9).

<sup>1812</sup> IT-04-84bis P00050, pp. 48-49 (4817-4818), 53 (4822).

<sup>1813</sup> IT-04-84bis P00050, pp. 48-49 (4817-4818), 53-56 (4822-4825).

to [REDACTED], two KLA members,<sup>1814</sup> and were told that [REDACTED] had not been in Jabllanicë/Jablanica.<sup>1815</sup> [REDACTED]'s family also spoke to [REDACTED],<sup>1816</sup> who told them that [REDACTED] had been with the KLA until [REDACTED] 1998.<sup>1817</sup> [REDACTED] also promised to get back to them with further information, but he never did. When [REDACTED]'s family attempted to meet with him again, they were denied access and told by guards to go back home and never come back again.<sup>1818</sup>

*(iii) Drenoc/Drenovac*

424. The Pre-Trial Judge finds that the supporting material indicates that, in Drenoc/Drenovac, Rahovec/Orahovac municipality, KLA members caused the enforced disappearance of: (i) [REDACTED] in [REDACTED] 1998; and (ii) [REDACTED] in [REDACTED] 1998.

425. [REDACTED] to Drenoc/Drenovac on [REDACTED] 1998 and was subsequently detained until on or around [REDACTED] 1998, when [REDACTED] were forcibly taken away [REDACTED].<sup>1819</sup> [REDACTED], and [REDACTED] received [REDACTED] upon his arrival in Drenoc/Drenovac.<sup>1820</sup> A few days after his arrest, his family went to Drenoc/Drenovac to find him; KLA members at Drenoc/Drenovac acknowledged that he was there, but did not let the family see him.<sup>1821</sup> A week later, [REDACTED]'s family returned to Drenoc/Drenovac; they

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<sup>1814</sup> IT-04-84bis P00050, pp. 10-11 (4776-4777).

<sup>1815</sup> IT-04-84bis P00050, pp. 10-12 (4776-4778), 32-35 (4801-4804).

<sup>1816</sup> IT-04-84bis P00050, p. 13 (4779).

<sup>1817</sup> IT-04-84bis P00050, pp. 17-18 (4783-4784).

<sup>1818</sup> IT-04-84bis P00050, pp. 13-16 (4779-4782).

<sup>1819</sup> *See supra* para. 150 (Counts 2-3). [REDACTED].

<sup>1820</sup> [REDACTED].

<sup>1821</sup> [REDACTED].

were told that [REDACTED].<sup>1822</sup> [REDACTED].<sup>1823</sup> Thereafter, [REDACTED]'s family could not get through to Drenoc/Drenovac, as KLA members had been instructed not to let them pass through a checkpoint.<sup>1824</sup> From 1999 [REDACTED]'s family enquired with [REDACTED],<sup>1825</sup> [REDACTED]<sup>1826</sup> and [REDACTED]<sup>1827</sup> regarding [REDACTED] fate and whereabouts, but received no answers.<sup>1828</sup> [REDACTED].<sup>1829</sup> [REDACTED].<sup>1830</sup> [REDACTED]'s family met with [REDACTED] KLA members [REDACTED], who said they did not know anything about [REDACTED]'s fate, [REDACTED].<sup>1831</sup> [REDACTED].<sup>1832</sup> [REDACTED].<sup>1833</sup>

426. [REDACTED] 1998;<sup>1834</sup> thereafter, his family never saw or heard from him again.<sup>1835</sup> [REDACTED] after [REDACTED]'s disappearance, KLA members, [REDACTED], intimated that [REDACTED] was arrested but failed to provide his family with any concrete information [REDACTED].<sup>1836</sup> [REDACTED].<sup>1837</sup> In [REDACTED] 1998, [REDACTED]'s family [REDACTED], but received no information in response.<sup>1838</sup> In [REDACTED] 1999, and in response to [REDACTED]'s enquiries, [REDACTED] replied that he had no concrete information regarding [REDACTED]'s whereabouts [REDACTED].<sup>1839</sup> [REDACTED] family also requested

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<sup>1822</sup> [REDACTED].

<sup>1823</sup> [REDACTED].

<sup>1824</sup> [REDACTED].

<sup>1825</sup> [REDACTED].

<sup>1826</sup> [REDACTED].

<sup>1827</sup> [REDACTED].

<sup>1828</sup> [REDACTED].

<sup>1829</sup> [REDACTED].

<sup>1830</sup> [REDACTED].

<sup>1831</sup> [REDACTED].

<sup>1832</sup> [REDACTED].

<sup>1833</sup> [REDACTED].

<sup>1834</sup> *See supra* para. 150 (Counts 2-3). [REDACTED].

<sup>1835</sup> [REDACTED].

<sup>1836</sup> [REDACTED].

<sup>1837</sup> [REDACTED].

<sup>1838</sup> [REDACTED].

<sup>1839</sup> [REDACTED].

information [REDACTED] from [REDACTED].<sup>1840</sup> [REDACTED], but received no further information.<sup>1841</sup> [REDACTED]<sup>1842</sup> [REDACTED],<sup>1843</sup> [REDACTED].<sup>1844</sup> [REDACTED].<sup>1845</sup> [REDACTED];<sup>1846</sup> [REDACTED], the circumstances of [REDACTED]'s disappearance [REDACTED] were never clarified.<sup>1847</sup>

427. [REDACTED] was arrested in [REDACTED] 1998 by KLA members, [REDACTED] and subsequently detained in Drenoc/Drenovac.<sup>1848</sup> [REDACTED] after [REDACTED]'s arrest, his family went to Drenoc/Drenovac to enquire into his whereabouts; [REDACTED].<sup>1849</sup> [REDACTED].<sup>1850</sup> KLA member [REDACTED] said that [REDACTED] was in [REDACTED], but [REDACTED]'s family understood this as a way of stopping their enquiries.<sup>1851</sup> [REDACTED].<sup>1852</sup> [REDACTED].<sup>1853</sup> [REDACTED].<sup>1854</sup> [REDACTED].<sup>1855</sup> The family ultimately did not receive any information regarding [REDACTED]'s fate.<sup>1856</sup>

428. KLA members arrested [REDACTED] on [REDACTED] 1998 and took him to Drenoc/Drenovac.<sup>1857</sup> Thereafter, [REDACTED]'s family visited Drenoc/Drenovac [REDACTED].<sup>1858</sup> [REDACTED], when they made enquiries at Drenoc/Drenovac,

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<sup>1840</sup> [REDACTED].

<sup>1841</sup> [REDACTED].

<sup>1842</sup> [REDACTED].

<sup>1843</sup> [REDACTED].

<sup>1844</sup> [REDACTED].

<sup>1845</sup> [REDACTED].

<sup>1846</sup> [REDACTED].

<sup>1847</sup> [REDACTED].

<sup>1848</sup> *See supra* para. 247 (Counts 4-5), para. 377 (Counts 8-9).

<sup>1849</sup> [REDACTED].

<sup>1850</sup> [REDACTED].

<sup>1851</sup> [REDACTED].

<sup>1852</sup> [REDACTED].

<sup>1853</sup> [REDACTED].

<sup>1854</sup> [REDACTED].

<sup>1855</sup> [REDACTED].

<sup>1856</sup> [REDACTED].

<sup>1857</sup> *See supra* para. 247 (Counts 4-5), para. 378 (Counts 8-9).

<sup>1858</sup> [REDACTED].

[REDACTED]'s family were told to return home.<sup>1859</sup> [REDACTED].<sup>1860</sup> [REDACTED].<sup>1861</sup> [REDACTED],<sup>1862</sup> [REDACTED].<sup>1863</sup> [REDACTED].<sup>1864</sup> Around [REDACTED] 1998, the [REDACTED] family went to visit KLA member [REDACTED] in Drenoc/Drenovac to enquire after their family member; [REDACTED] simply stated that he would look into the matter.<sup>1865</sup> In [REDACTED], [REDACTED]'s family went to [REDACTED] to enquire into [REDACTED]'s fate, but they received no further information.<sup>1866</sup> The [REDACTED] also went to [REDACTED], but they were unable to meet up with him [REDACTED].<sup>1867</sup> [REDACTED] remains were found [REDACTED].<sup>1868</sup>

*(iv) Malishevë/Mališevo*

429. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in Malishevë/Mališevo, in Malishevë/Mališevo municipality, around or after 26 or 27 July 1998.

430. [REDACTED] was detained in Drenoc/Drenovac from 7 June 1998 until he was transferred with other detainees to Malishevë/Mališevo prison on or about 19 or 20 July 1998.<sup>1869</sup> From the time of his arrest, [REDACTED]'s family visited Drenoc/Drenovac several times.<sup>1870</sup> [REDACTED] told [REDACTED]'s family that

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<sup>1859</sup> [REDACTED].

<sup>1860</sup> [REDACTED].

<sup>1861</sup> [REDACTED].

<sup>1862</sup> [REDACTED].

<sup>1863</sup> [REDACTED].

<sup>1864</sup> [REDACTED].

<sup>1865</sup> [REDACTED].

<sup>1866</sup> [REDACTED].

<sup>1867</sup> [REDACTED].

<sup>1868</sup> See *supra* para. 378 (Counts 8-9). [REDACTED].

<sup>1869</sup> See *supra* paras 247, 251 (Counts 4-5), para. 381 (Counts 8-9).

<sup>1870</sup> [REDACTED].

[REDACTED] had not done anything wrong [REDACTED].<sup>1871</sup> [REDACTED].<sup>1872</sup> [REDACTED].<sup>1873</sup> On [REDACTED], KLA member [REDACTED] told [REDACTED]'s family that he was not at Drenoc/Drenovac.<sup>1874</sup> [REDACTED].<sup>1875</sup> [REDACTED] refused to provide any further information to [REDACTED]'s family.<sup>1876</sup> [REDACTED]'s family met with [REDACTED], requesting [REDACTED]'s release; he told them that [REDACTED]'s disappearance [REDACTED] should not have happened.<sup>1877</sup> In [REDACTED], [REDACTED]'s family also enquired with KLA member [REDACTED], who promised to look into the matter, but no information was subsequently obtained.<sup>1878</sup> Upon meeting KLA members [REDACTED] in [REDACTED], [REDACTED]'s family was told that they were lucky to have survived and should not speak badly of the KLA.<sup>1879</sup> [REDACTED] told [REDACTED]'s family to get out of his office and refused to provide any explanations regarding [REDACTED]'s fate or whereabouts, when the family insisted that they would continue looking for [REDACTED].<sup>1880</sup> In [REDACTED], [REDACTED]'s family also made enquiries [REDACTED], but no information was provided to [REDACTED]'s family.<sup>1881</sup> The family also tried to meet [REDACTED], but they were not able to meet them.<sup>1882</sup> [REDACTED]'s remains were found [REDACTED].<sup>1883</sup>

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<sup>1871</sup> [REDACTED].

<sup>1872</sup> [REDACTED].

<sup>1873</sup> [REDACTED].

<sup>1874</sup> [REDACTED].

<sup>1875</sup> [REDACTED].

<sup>1876</sup> [REDACTED].

<sup>1877</sup> [REDACTED].

<sup>1878</sup> [REDACTED].

<sup>1879</sup> [REDACTED].

<sup>1880</sup> [REDACTED].

<sup>1881</sup> [REDACTED].

<sup>1882</sup> [REDACTED].

<sup>1883</sup> *See supra* para. 381 (Counts 8-9). [REDACTED].

(v) *Zllash/Zlaš*

431. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in Zllash/Zlaš, Prishtinë/Priština municipality, on or about 19 April 1999.

432. [REDACTED] was arrested by KLA member [REDACTED] and detained in a barn at the Zllash/Zlaš KLA detention compound from approximately [REDACTED] April 1999.<sup>1884</sup> Around [REDACTED]'s family members spoke to [REDACTED].<sup>1885</sup> [REDACTED].<sup>1886</sup> On one occasion, [REDACTED] ran into [REDACTED].<sup>1887</sup> [REDACTED]'s family also met [REDACTED] at [REDACTED] with [REDACTED] told them [REDACTED].<sup>1888</sup> In [REDACTED], [REDACTED]'s family was told by KLA member [REDACTED].<sup>1889</sup> [REDACTED]'s remains were found [REDACTED].<sup>1890</sup>

(vi) [REDACTED]

433. The Pre-Trial Judge finds that the supporting material indicates that KLA members caused the enforced disappearance of [REDACTED] in [REDACTED], Ferizaj/Uroševac municipality, on or about [REDACTED] 1999.

434. KLA members held [REDACTED] in custody [REDACTED] from approximately [REDACTED] 1999.<sup>1891</sup> [REDACTED] around [REDACTED] 1999, [REDACTED] were never seen again.<sup>1892</sup> KLA members concealed the fate of

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<sup>1884</sup> See *supra* para. 165 (Counts 2-3), para. 267 (Counts 4-5).

<sup>1885</sup> [REDACTED].

<sup>1886</sup> [REDACTED].

<sup>1887</sup> [REDACTED].

<sup>1888</sup> [REDACTED].

<sup>1889</sup> [REDACTED].

<sup>1890</sup> See *supra* para. 395 (Counts 8-9). [REDACTED].

<sup>1891</sup> See *supra* para. 178 (Counts 2-3), para. 283 (Counts 4-5).

<sup>1892</sup> See *supra* para. 403 (Counts 8-9).

[REDACTED] and made no effort to ascertain their whereabouts. [REDACTED]'s family enquired, [REDACTED], with KLA member [REDACTED],<sup>1893</sup> who told them that [REDACTED].<sup>1894</sup> KLA member [REDACTED],<sup>1895</sup> told [REDACTED]'s family that [REDACTED] had been taken in for questioning because he was a suspected collaborator, [REDACTED].<sup>1896</sup> When [REDACTED] pressed him about [REDACTED]'s whereabouts, [REDACTED] told him [REDACTED].<sup>1897</sup> Family members made many other enquires [REDACTED] to ascertain [REDACTED] whereabouts, but to no avail.<sup>1898</sup>

(b) Mental Element

435. The supporting material indicates that KLA members: (i) intentionally deprived the persons of their liberty and were aware that the deprivation of liberty would be followed by a refusal to acknowledge such deprivation of liberty or to give information on the fate or whereabouts of the victims; or (ii) intentionally refused to disclose information regarding the fate or whereabouts of the persons concerned and were aware that such refusal was preceded or accompanied by that deprivation of liberty.<sup>1899</sup>

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<sup>1893</sup> [REDACTED].

<sup>1894</sup> [REDACTED].

<sup>1895</sup> *See supra* para. 403 (Counts 8-9).

<sup>1896</sup> [REDACTED].

<sup>1897</sup> [REDACTED].

<sup>1898</sup> [REDACTED].

<sup>1899</sup> As regards the awareness of or intentional deprivation of liberty, *see supra*: para. 140 (Counts 2-3), paras 363, 365 (Counts 8-9) [REDACTED]; para. 144 (Counts 2-3), para. 368 (Counts 8-9) [REDACTED]; para. 151 (Counts 2-3), paras 375, 377-378 (Counts 8-9) [REDACTED]; paras 151, 154 (Counts 2-3), para. 381 (Counts 8-9) [REDACTED]; para. 166 (Counts 2-3), para. 395 (Counts 8-9) [REDACTED]; para. 179 (Counts 2-3), para. 403 (Counts 8-9) [REDACTED]. As regards the awareness of or intentional refusal to acknowledge the deprivation of liberty or give information on the fate or whereabouts of the victim, *see*: [REDACTED]; IT-04-84bis P00050, pp. 10-12 (4776-4778), 32-35 (4801-4804) ([REDACTED]); [REDACTED].

(c) Conclusion

436. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that KLA members caused the enforced disappearance, a crime against humanity under Article 13(1)(i) of the Law, of individuals following arrests or abductions, and at or in connection with detention sites between approximately April 1998 and March 1999.

**6. Count 1: Persecution**

437. In the Revised Indictment, the SPO alleges that during the Indictment Period persecution on political and/or ethnic grounds, a crime against humanity under Article 13(1)(h) of the Law, was committed against opponents in multiple municipalities in Kosovo and the districts of Kukës and Has in northern Albania.<sup>1900</sup>

(a) Material Elements

438. The Pre-Trial Judge finds that the supporting material indicates that, through the crimes charged under Counts 2-10 and through other acts of equal gravity, KLA members denied, in a gross and blatant manner, fundamental rights of individuals throughout Kosovo and northern Albania, including at locations indicated under the aforementioned counts, resulting in discriminatory consequences.

439. As specified under Counts 2-10, the supporting material indicates that KLA members committed the crimes of imprisonment/arbitrary detention,<sup>1901</sup> other

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<sup>1900</sup> Revised Indictment, paras 57-58, 174 [68].

<sup>1901</sup> See *supra* paras 139-231 (Counts 2-3).

inhumane acts/cruel treatment,<sup>1902</sup> torture,<sup>1903</sup> murder<sup>1904</sup> and enforced disappearance,<sup>1905</sup> constituting a gross and blatant denial of the right to life, the right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, as well as the rights to liberty and not to be subjected to arbitrary arrest or detention.<sup>1906</sup>

440. Furthermore, the supporting material indicates that KLA members also engaged in: (i) unlawful appropriation and/or destruction of private property;<sup>1907</sup> (ii) unlawful proceedings, [REDACTED];<sup>1908</sup> and (iii) other restrictive measures, such as forced labour,<sup>1909</sup> arbitrary searches,<sup>1910</sup> intimidation and/or harassment,<sup>1911</sup> and coercing statements and confessions.<sup>1912</sup> These acts typically occurred in the overall context of arbitrary arrests and detentions, severe mistreatments and

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<sup>1902</sup> See *supra* paras 233-349 (Counts 4-5).

<sup>1903</sup> See *supra* paras 351-360 (Counts 6-7).

<sup>1904</sup> See *supra* paras 362-417 (Counts 8-9).

<sup>1905</sup> See *supra* paras 419-436 (Count 10).

<sup>1906</sup> The right of life is protected by Article 3 of the UDHR, Article 6(1) of the ICCPR and by Article 2(1) of the ECHR. The right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment is protected by Article 5 of the UDHR, Article 7 of the ICCPR and Article 3 of the ECHR. The right to liberty and not to be subjected to arbitrary arrest or detention is protected by Articles 3 and 9 of the UDHR, Article 9 of the ICCPR and Article 5 of the ECHR.

<sup>1907</sup> Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED].

<sup>1908</sup> [REDACTED], see Cahan, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], see Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1909</sup> Likoc/Likovac: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED].

<sup>1910</sup> Jabllanicë/Jablanica: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

<sup>1911</sup> Malishevë/Mališevo: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Rahovec/Orahovac: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED].

<sup>1912</sup> Jabllanicë/Jablanica: IT-04-84bis P00119, p. 4256. Llapushnik/Lapušnik: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Kukës, Albania: [REDACTED].

killings, and were undertaken against individuals who were the victims of one or more of the crimes charged under Counts 2-10 and/or against these individuals' family members. Considering their nature, context and timing, these acts reach the same level of gravity as crimes under Article 13 of the Law and constitute a blatant and gross denial of the right to private property, right to a fair trial as well as the prohibition of forced labour, the prohibition of arbitrary searches and the rights to liberty, respect for dignity and security.<sup>1913</sup>

441. The supporting material further indicates that the aforementioned acts mainly targeted and primarily affected Serbs, Romas, Catholic Albanians and Albanians holding political views perceived as anti-KLA, as well as such individuals' family members, and resulted therefore in actual discriminatory consequences against them.

#### (b) Mental Element

442. The supporting material indicates the deliberate manner in which KLA members carried out or were involved in each of the aforementioned crimes and other persecutory acts.

443. Moreover, the supporting material indicates that the aforementioned crimes and other persecutory acts were carried out with the specific intent to discriminate on ethnic, religious and/or political grounds. In particular, individuals were

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<sup>1913</sup> The right to property is protected by Article 17 of the UDHR and by Article 1 of the 1952 Protocol to the ECHR. The right to a fair trial is protected by Article 10 of the UDHR, Article 9(3) of the ICCPR and Article 6(1) of the ECHR. The prohibition against forced labour is enshrined in Article 8(3)(a) of the ICCPR and Article 4(2) of the ECHR. The prohibition against arbitrary searches is included in the right to privacy, protected by Article 12 of the UDHR, Article 17 of the ICCPR and Article 8 of the ECHR. The rights to liberty and security are protected by Article 9 of the ICCPR and Article 5(1) of the ECHR. The right to dignity is protected by Article 1 of the UDHR and Article 10(1) of the ICCPR.

targeted because of their: (i) Serb ethnicity;<sup>1914</sup> (ii) Roma or Ashkali ethnicity;<sup>1915</sup> (iii) Catholic religion;<sup>1916</sup> (iv) affiliation to or sympathy towards the LDK or other parties perceived as anti-KLA;<sup>1917</sup> (v) not having joined or not supporting the KLA;<sup>1918</sup> (vi) current or former employment perceived as anti-KLA;<sup>1919</sup> and/or (vii) alleged collaboration with Serb authorities or alleged friendship or interaction with Serbs.<sup>1920</sup>

### (c) Conclusion

444. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that persecution, a crime against humanity under

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<sup>1914</sup> Jabllanicë/Jablanica: [REDACTED]. Malishevë/Mališevo: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. Ferizaj/Uroševac: [REDACTED]. Dormitory, Gjilan/Gnjilane: [REDACTED]. Novobërdë/Novo Brdo: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1915</sup> Jabllanicë/Jablanica: [REDACTED]. Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Rahovec/Orahovac: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1916</sup> Kukës, Albania: [REDACTED]. Former MUP Building, Prizren: [REDACTED].

<sup>1917</sup> Likoc/Likovac: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. Zllash/Zlaš: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED]: [REDACTED]. Cahan, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1918</sup> Likoc/Likovac: [REDACTED]. [REDACTED]: [REDACTED]. Cahan, Albania: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1919</sup> Likoc/Likovac: [REDACTED]. Jabllanicë/Jablanica: [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED].

<sup>1920</sup> Likoc/Likovac: [REDACTED]. Jabllanicë/Jablanica: IT-04-84bis P00119, pp. 4249-4250, 4255-4256, 4265; [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]; [REDACTED]: [REDACTED]. Zllash/Zlaš: [REDACTED]. [REDACTED]: [REDACTED]. Cahan, Albania: [REDACTED]. Kukës, Albania: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former MUP Building, Prizren: [REDACTED]. [REDACTED], Prizren: [REDACTED]. Former Police Station in Suharekë/Suva Reka: [REDACTED].

Article 13(1)(h) of the Law, was committed against individuals on ethnic, religious and/or political grounds throughout Kosovo and northern Albania, including at locations indicated under Counts 2-10, between approximately April 1998 and August 1999.

## 7. Additional Requirements for Crimes Against Humanity and War Crimes

445. The Pre-Trial Judge will hereunder make his findings with regard to the additional requirements for crimes against humanity and war crimes.

### (a) Crimes Against Humanity

446. Regarding the nexus between the incidents under Counts 1, 2, 4, 6, 8 and 10 and the attack against the civilian population, the findings made in sections VI.B.1 to VI.B.6 show that KLA members targeted particular categories of individuals, namely those falling within the definition of Opponents of the KLA,<sup>1921</sup> as opposed to random individuals. Notably, the incidents occurred during the campaign of violence and mistreatment of civilians who were perceived, by KLA members, to be Opponents. Therefore, the incidents found under Counts 1, 2, 4, 6, 8 and 10 were part of the attack against the civilian population.<sup>1922</sup>

447. Regarding the perpetrators' knowledge of the attack against the civilian population, the Pre-Trial Judge recalls that police and intelligence structures had been put in place by the KLA leadership for the purpose of identifying and investigating Opponents.<sup>1923</sup> Some Opponents were named in KLA General Staff statements,<sup>1924</sup> while others were included in lists of alleged collaborators and suspected persons, and targeted accordingly.<sup>1925</sup> Moreover, KLA commanders with authority to release detainees decided on whether to release them on the basis of

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<sup>1921</sup> See *supra* para. 126 (Contextual Requirements for Crimes Against Humanity).

<sup>1922</sup> See *supra* para. 126 (Contextual Requirements for Crimes Against Humanity).

<sup>1923</sup> Around June 1998, the KLA General Staff established the G2 Intelligence Directorate, which was tasked to, *inter alia*, [REDACTED] and discover [REDACTED] inside and outside the army. See *infra* paras 455-456 (Joint Criminal Enterprise). [REDACTED].

<sup>1924</sup> [REDACTED].

<sup>1925</sup> [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED].

information provided by subordinates, who were directly involved in the arrest and/or detention of persons.<sup>1926</sup> The findings made in section VI.C regarding the modes of liability charged indicate that the Suspects had knowledge of the ongoing pattern of violence.<sup>1927</sup> Moreover, on some occasions, the Suspects themselves participated in the arrest and detention of Opponents,<sup>1928</sup> or were present at locations where Opponents were mistreated.<sup>1929</sup> This course of action must be placed within a wider framework of public statements, regulations, directions and orders issued at the relevant time by the KLA leadership, including the Suspects, which encouraged the attack against Opponents.<sup>1930</sup> Therefore, the perpetrators acted in the knowledge of the attack against the civilian population.

#### (b) War Crimes

448. Regarding the protected status of the victims under Counts 3, 5, 7 and 9, the findings made in sections VI.B.1 to VI.B.4 show that KLA members exercised custody (arbitrary detention)<sup>1931</sup> or control (cruel treatment, torture, murder)<sup>1932</sup> over the victims, as soon as they fell into the hands of the KLA members. Therefore, at the time when the crimes were committed, the targeted individuals

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<sup>1926</sup> [REDACTED].

<sup>1927</sup> See *infra* para. 473 (Joint Criminal Enterprise I), para. 477 (Joint Criminal Enterprise III), para. 481 (Aiding and Abetting), paras 489, 496, 503, 510 (Superior Responsibility).

<sup>1928</sup> [REDACTED].

<sup>1929</sup> See *infra* paras 457, 462, 466, 470 (Joint Criminal Enterprise I).

<sup>1930</sup> See *supra* paras 125-128 (Contextual Requirements for Crimes Against Humanity).

<sup>1931</sup> See *supra* paras 139-231(Counts 2-3).

<sup>1932</sup> In relation to Count 5, see Likoc/Likovac: *supra* para. 235. Malishevë/Mališevo: *supra* para. 251. Llapashiticë/Lapaštica and [REDACTED]: *supra* para. 263. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* para. 303. [REDACTED]: *supra* para. 307. [REDACTED], Prizren: *supra* para. 311. Former MUP Building, Prizren: *supra* para. 315. [REDACTED], Prizren: *supra* para. 319. [REDACTED], Prizren: *supra* para. 323. Rahovec/Orahovac: *supra* para. 326. Ferizaj/Uroševac: *supra* para. 330. Former Boarding School/Dormitory, Gjilan/Gnjilane: *supra* para. 338. Novobërdë/Novo Brdo: *supra* para. 346. In relation to Count 9, see [REDACTED] (in relation to an unidentified Roma man in [REDACTED]); [REDACTED].

were taking no active part in the hostilities and were entitled to the protection of IHL for such time as they were under the custody or control of the KLA members.

449. Regarding the nexus between the incidents under Counts 3, 5, 7 and 9 and the non-international armed conflict, the findings made in sections VI.A and VI.B.1 to VI.B.4 show that, during the Indictment Period, one of the goals of the KLA was to prevent Opponents from harming the KLA itself.<sup>1933</sup> Accordingly, arrests, detention, acts of cruel treatment and torture, and murder were often executed on the basis of lists of suspected collaborators or otherwise suspicious people, who regularly included persons of Serb, Roma or Ashkali ethnicity or persons with suspected ties, either personal or professional, with Serbian authorities or institutions,<sup>1934</sup> which constituted the opposing party to the armed conflict.<sup>1935</sup> Therefore, the crimes charged took place in the context of the ongoing armed conflict between the Serbian forces and the KLA.

450. Lastly, regarding the awareness of the factual circumstances establishing the armed conflict and the status of the victims, the Pre-Trial Judge recalls the findings made in sections VI.A and VI.B.1 to VI.B.4, which show, *inter alia*: (i) the dissemination of the KLA's strategy and messages to counter the [REDACTED] waged by Serbia against the KLA<sup>1936</sup> by targeting Opponents; (ii) the issuance of communiqués, political declarations and statements which included information on the status of the hostilities;<sup>1937</sup> (iii) the presence at the detention sites of one or more KLA commanders in charge of the detention site;<sup>1938</sup> (iv) the fact that measures taken against Opponents were reported back to the KLA General Staff;<sup>1939</sup> and (v) that detainees were often released or transferred in connection to

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<sup>1933</sup> [REDACTED].

<sup>1934</sup> [REDACTED].

<sup>1935</sup> See *supra* para. 132 (Contextual Requirements for War Crimes).

<sup>1936</sup> See also [REDACTED].

<sup>1937</sup> See *supra* para. 132 (Contextual Requirements for War Crimes).

<sup>1938</sup> [REDACTED].

<sup>1939</sup> [REDACTED].

military operations by Serbian forces.<sup>1940</sup> Therefore, KLA members were aware of the existence of the ongoing non-international armed conflict and knew that the Opponents whom they arrested, detained, killed or otherwise mistreated were taking no active part in the hostilities, as they were under the KLA custody or control.

## C. THE MODES OF LIABILITY CHARGED

### 1. Joint Criminal Enterprise I

451. In the Revised Indictment, the SPO alleges that the Suspects committed, as members of a JCE, the crimes under Counts 1-10.<sup>1941</sup>

#### (a) Material Elements

##### (i) *Plurality of persons*

452. The Pre-Trial Judge finds that the supporting material indicates that a plurality of persons, including Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi, was involved in the crimes committed at the locations indicated under Counts 1-10. Other persons involved included Azem Syla,<sup>1942</sup> Lahi Brahimaj,<sup>1943</sup> Fatmir Limaj,<sup>1944</sup> Sylejman Selimi,<sup>1945</sup> Rrustem Mustafa,<sup>1946</sup> Shukri Buja,<sup>1947</sup>

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<sup>1940</sup> [REDACTED].

<sup>1941</sup> Revised Indictment, paras 32-33, 35-51, 173.

<sup>1942</sup> [REDACTED].

<sup>1943</sup> IT-04-84bis P00064, pp. 5074-5075; [REDACTED]. Jabllanicë/Jablanica: IT-04-84bis P00119, pp. 4262, 4264-4265; [REDACTED].

<sup>1944</sup> [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. [REDACTED]: [REDACTED]. Kleçkë/Klečka: [REDACTED]. Kukës: [REDACTED].

<sup>1945</sup> IT-05-87 6D00067, p. 14 (U003-9097). Likoc/Likovac: [REDACTED].

<sup>1946</sup> [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]

<sup>1947</sup> [REDACTED].

Latif Gashi,<sup>1948</sup> Sabit Geci,<sup>1949</sup> as well as other KLA members, including zone commanders and deputy commanders.<sup>1950</sup>

*(ii) Common purpose*

453. The supporting material further indicates that the aforementioned individuals shared a common purpose between at least March 1998 and September 1999 to gain and exercise control over all of Kosovo<sup>1951</sup> by means including unlawfully intimidating, mistreating, committing violence against and removing persons who were perceived to have been Opponents.<sup>1952</sup>

454. This common purpose involved the commission of the crimes of persecution, imprisonment, arbitrary detention, other inhumane acts, cruel treatment, torture, murder and enforced disappearance. Its existence and contours are indicated by: (i) early public statements of the KLA, preceding the period of the charges;<sup>1953</sup> (ii) communiqués and political declarations of the KLA General Staff,<sup>1954</sup> public statements of KLA General Staff members,<sup>1955</sup> as well as other KLA publications,<sup>1956</sup> during the period of the charges; (iii) regulations, structures, directions and orders drafted, issued or approved by the Suspects;<sup>1957</sup> (iv) the pattern of crimes

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<sup>1948</sup> Bare and Bajgorë/Bajgora: [REDACTED]; Llapashticë/Lapaštica and Related Locations: [REDACTED].

<sup>1949</sup> [REDACTED]. [REDACTED]: [REDACTED]. Cahan: [REDACTED]. Kukës: [REDACTED].

<sup>1950</sup> Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 148. Malishevë/Mališevo: *supra* para. 384. Bare and Bajgorë/Bajgora: *supra* para. 161. Zllash/Zlaš: *supra* para. 267. [REDACTED]: *supra* paras 169, 271, 359. [REDACTED]: *supra* para. 275. Kleçkë/Klečka: *supra* paras 397, 401. [REDACTED]: *supra* paras 403, 434. Cahan: *supra* paras 183, 287. Kukës: *supra* paras 291, 359. [REDACTED]: *supra* para. 299. [REDACTED], Prizren: *supra* paras 207, 319. [REDACTED]: *supra* para. 216. Novobërdë/Novo Brdo: *supra* para. 346. [REDACTED]: *supra* para. 413. [REDACTED]: *supra* para. 415.

<sup>1951</sup> [REDACTED].

<sup>1952</sup> See *supra* para. 125 (Contextual Requirements for Crimes Against Humanity).

<sup>1953</sup> [REDACTED].

<sup>1954</sup> [REDACTED].

<sup>1955</sup> [REDACTED]

<sup>1956</sup> [REDACTED].

<sup>1957</sup> [REDACTED].

committed at the locations indicated under Counts 1-10;<sup>1958</sup> and (v) the personal participation of the Suspects and other senior KLA/PGoK members in the commission of the crimes.<sup>1959</sup>

*(iii) Significant contribution*

a. Mr Thaçi

455. The supporting material indicates that Mr Thaçi significantly contributed to the common purpose of the JCE. Mr Thaçi was a founding member of the KLA General Staff.<sup>1960</sup> As of approximately June 1998, Mr Thaçi was also Chief of the KLA Information Department<sup>1961</sup> and Chief of the KLA Political Department (departments were also known as [REDACTED]).<sup>1962</sup> After the creation of the PGoK, by late March 1999, Mr Thaçi became Prime Minister of Kosovo,<sup>1963</sup> and also served as Commander-in-Chief of the KLA.<sup>1964</sup> In this capacity, Mr Thaçi: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise contributed to the crimes under Counts 1-10; (iii) coordinated or otherwise contributed to efforts to deny or provide incorrect information to international monitors and the public regarding the commission of crimes under Counts 1-10; and (iv) otherwise provided

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<sup>1958</sup> See *supra* Counts 1-10.

<sup>1959</sup> See *supra* para. 452. See also e.g. Likoc/Likovac: *supra* para. 235. Llapushnik/Lapušnik: *supra* para. 148. Drenoc/Drenovac: *supra* paras 150, 375, 425. Malishevë/Mališevo: *supra* paras 153, 251, 384, 430. Bare and Bajgorë/Bajgora: *supra* para. 161. Zilash/Zlaš: *supra* para. 267. [REDACTED]: *supra* paras 169, 271, 359. [REDACTED]: *supra* para. 275. Kleçkë/Klečka: *supra* paras 175, 279, 359, 397, 401. [REDACTED]: *supra* paras 403, 434. Cahan: *supra* paras 183, 287. Kukës: *supra* paras 291, 359. [REDACTED]: *supra* para. 299. [REDACTED], Prizren: *supra* paras 207, 319. [REDACTED]: *supra* para. 216. Novobërdë/Novo Brdo: *supra* para. 346. [REDACTED]: *supra* para. 413. [REDACTED]: *supra* para. 415.

<sup>1960</sup> [REDACTED].

<sup>1961</sup> [REDACTED].

<sup>1962</sup> [REDACTED].

<sup>1963</sup> [REDACTED].

<sup>1964</sup> [REDACTED].

information and political, logistical, military or financial support to, as well as coordinated with and liaised between, JCE members in furtherance of the common purpose.

456. As regards Mr Thaçi's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that his authority within the KLA was apparent and that other General Staff members deferred to Mr Thaçi in their decision-making.<sup>1965</sup> He also had the power to appoint key governmental figures as well as to promote, dismiss, commend and reproach combat members of the KLA as well as to issue or terminate disciplinary measures against them.<sup>1966</sup> Furthermore, the supporting material indicates that KLA General Staff decisions were made unanimously and its members, including Mr Thaçi, formulated or approved KLA communiqués and public statements.<sup>1967</sup> Many of such statements, including those referenced above, repeatedly and publicly called for or endorsed violence against Opponents,<sup>1968</sup> some of whom were specifically named and presented as [REDACTED].<sup>1969</sup> Furthermore, around June 1998, the KLA General Staff established the Intelligence Service Department (also known as [REDACTED]), which was tasked to, *inter alia*, [REDACTED] and discover [REDACTED] inside and outside the army.<sup>1970</sup> In July 1998, Mr Thaçi, as member of the KLA General Staff, approved the Provisional Regulations of the Internal Life of the Army ("Provisional Regulations"), which stated, *inter alia*, that the KLA Military Police [REDACTED].<sup>1971</sup> The KLA General Staff, including Mr Thaçi, did not delineate the scope of [REDACTED], thereby opening the door to abuse. In

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<sup>1965</sup> [REDACTED]; IT-05-87 6D00067, p. 23 (U003-9108) ("We were waging the war. Hashim's presence was important for morale").

<sup>1966</sup> See *infra* paras 485-486 (Superior Responsibility).

<sup>1967</sup> [REDACTED].

<sup>1968</sup> See *supra* fns 1953, 1954, 1955, 1956.

<sup>1969</sup> [REDACTED].

<sup>1970</sup> [REDACTED]; see also *supra* para. 259 (Counts 4-5) [REDACTED].

<sup>1971</sup> [REDACTED]. See also [REDACTED].

fact, the KLA General Staff considered [REDACTED], who deserved punitive measures, including killings.<sup>1972</sup> Mr Thaçi, as member of the KLA General Staff, would then be informed of [REDACTED].<sup>1973</sup> The supporting material further indicates that, in 1998-1999, it was common knowledge in Kosovo, and therefore known to Mr Thaçi, that persons accused of collaborating with the Serbs were being killed.<sup>1974</sup>

457. As regards Mr Thaçi's participation in or contribution to the crimes committed under Counts 1-10, the supporting material indicates that he personally participated in such crimes [REDACTED]. [REDACTED].<sup>1975</sup> [REDACTED].<sup>1976</sup> [REDACTED].<sup>1977</sup> [REDACTED], the supporting material indicates that, during the Indictment Period, Mr Thaçi visited several other locations indicated under Counts 1-10.<sup>1978</sup>

458. As regards Mr Thaçi's contributions to efforts to deny or provide incorrect information regarding the commission of crimes, the supporting material indicates at least two occasions when Mr Thaçi personally provided false information. [REDACTED].<sup>1979</sup> [REDACTED].<sup>1980</sup> The supporting material also indicates further instances when Mr Thaçi contributed to the dissemination of misleading or incomplete information about KLA activities.<sup>1981</sup>

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<sup>1972</sup> [REDACTED].

<sup>1973</sup> [REDACTED].

<sup>1974</sup> [REDACTED].

<sup>1975</sup> Drenoc/Drenovac: *supra* paras 150, 375, 425.

<sup>1976</sup> [REDACTED]: *supra* paras 169, 271, 359.

<sup>1977</sup> [REDACTED].

<sup>1978</sup> IT-05-87 6D00067, pp. 14, 23 (U003-9097, U003-9104) (in 1998, Mr Thaçi and Mr Veseli frequently visited the Drenoc/Drenovac area); [REDACTED]; *see also* para. 142 (Counts 2-3), para. 239 (Counts 4-5) and para. 368 (Counts 8-9) [REDACTED]; *see also* para. 153 (Counts 2-3), para. 251 (Counts 4-5) and paras 380-384 (Counts 8-9) [REDACTED]; *see also* para. 184 (Counts 2-3), para. 291 (Counts 4-5) and para. 405 (Counts 8-9) [REDACTED].

<sup>1979</sup> [REDACTED].

<sup>1980</sup> [REDACTED]; *see also* para. 172 (Counts 2-3) and para. 275 (Counts 4-5) [REDACTED].

<sup>1981</sup> [REDACTED].

459. As regards Mr Thaçi's support for and coordination between JCE members, the supporting material indicates that he: (i) sought to secure financial support for the KLA;<sup>1982</sup> (ii) was a primary contact for some of the zone commanders;<sup>1983</sup> (iii) was in regular contact with operational zones;<sup>1984</sup> and (iv) frequently visited multiple locations indicated under Counts 1-10 to oversee the organisation of the units, maintain contact and provide supplies,<sup>1985</sup> as well as to provide other information, including about [REDACTED].<sup>1986</sup>

b. Mr Veseli

460. The supporting material indicates that Mr Veseli significantly contributed to the common purpose of the JCE. Mr Veseli was a founding member of the KLA General Staff.<sup>1987</sup> At least from June 1998, Mr Veseli was also a member of the KLA Political Directorate and Head of the Intelligence Service Department.<sup>1988</sup> After the creation of the PGoK, in late March 1999, Mr Veseli was assigned as Chief of the Kosovo Intelligence Service ("SHIK") and he was reporting to Mr Thaçi.<sup>1989</sup> In this capacity, Mr Veseli: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise contributed to the crimes committed under Counts 1-10; and (iii) otherwise provided information and political, logistical, military or financial support to, as well as

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<sup>1982</sup> [REDACTED].

<sup>1983</sup> [REDACTED].

<sup>1984</sup> [REDACTED].

<sup>1985</sup> [REDACTED]; *see supra* fn. 1978.

<sup>1986</sup> [REDACTED].

<sup>1987</sup> [REDACTED].

<sup>1988</sup> [REDACTED].

<sup>1989</sup> [REDACTED].

coordinated and liaised between, JCE members in furtherance of the common purpose.

461. As regards Mr Veseli's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that his authority within the KLA was apparent.<sup>1990</sup> Mr Veseli was a close associate of Mr Thaçi,<sup>1991</sup> [REDACTED].<sup>1992</sup> As a member of the KLA General Staff, Mr Veseli approved the aforementioned KLA public statements and regulations.<sup>1993</sup> Furthermore, Mr Veseli oversaw the KLA's intelligence services, which were tasked with the identification and investigation of Opponents, including collaborators within the KLA.<sup>1994</sup> [REDACTED],<sup>1995</sup> [REDACTED] many others were included in lists of alleged collaborators.<sup>1996</sup> Zone intelligence sectors reported directly to Mr Veseli about their activity, in parallel to the zone commanders.<sup>1997</sup> In this context, Mr Veseli confirmed that the G2 focused on [REDACTED] and [REDACTED].<sup>1998</sup>

462. As regards Mr Veseli's participation in or contribution to the crimes committed under Counts 1-10, the supporting material indicates that he personally participated in such crimes in relation to at least three locations. [REDACTED].<sup>1999</sup> [REDACTED].<sup>2000</sup> [REDACTED].<sup>2001</sup> Furthermore, the supporting

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<sup>1990</sup> [REDACTED].

<sup>1991</sup> [REDACTED].

<sup>1992</sup> [REDACTED].

<sup>1993</sup> [REDACTED].

<sup>1994</sup> [REDACTED]; [REDACTED].

<sup>1995</sup> [REDACTED].

<sup>1996</sup> [REDACTED]. Llapushnik/Lapušnik: [REDACTED]. Drenoc/Drenovac: [REDACTED]. Malishevë/Mališevo: [REDACTED]. [REDACTED]: [REDACTED]. Bare and Bajgorë/Bajgora: [REDACTED]. Llapashticë/Lapaštica and Related Locations: [REDACTED]. [REDACTED]: [REDACTED]. [REDACTED], Prizren: [REDACTED]. [REDACTED]: [REDACTED].

<sup>1997</sup> [REDACTED].

<sup>1998</sup> [REDACTED].

<sup>1999</sup> See *supra* para. 457. Drenoc/Drenovac: *supra* para. 150 (Counts 2-3), *supra* para. 375 (Counts 8-9).

<sup>2000</sup> Kleçkë/Klečka: [REDACTED].

<sup>2001</sup> Kukës: [REDACTED].

material indicates that, during the Indictment Period, Mr Veseli visited several other locations indicated under Counts 1-10.<sup>2002</sup>

463. As regards Mr Veseli's support for and coordination between JCE members, the supporting material indicates that he: (i) was a primary contact for some of the zone commanders;<sup>2003</sup> (ii) accompanied Mr Thaçi to meetings with third parties,<sup>2004</sup> including talks with international representatives where allegations about the KLA taking prisoners were raised;<sup>2005</sup> and (iii) frequently visited locations indicated under Counts 1-10 to maintain contact and provide supplies to JCE members.<sup>2006</sup>

c. Mr Selimi

464. The supporting material indicates that Mr Selimi significantly contributed to the common purpose of the JCE. Mr Selimi was a founding member of the KLA and was part of the KLA General Staff throughout 1997, 1998, and into 1999.<sup>2007</sup> As early as March 1998, he was Chief of the Operational Directorate [REDACTED], transferring to the post of Inspector General of the KLA General Staff in July 1998.<sup>2008</sup> In early April 1999, Mr Selimi became Minister of Public Order of the PGoK.<sup>2009</sup> In this capacity, Mr Selimi: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise

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<sup>2002</sup> IT-05-87 6D00067, pp. 14, 23 (U003-9097, U003-9104) (in 1998, Mr Thaçi and Mr Veseli frequently visited the Drenoc/Drenovac area); [REDACTED]; *see also* para. 142 (Counts 2-3), para. 239 (Counts 4-5) and para. 368 (Counts 8-9) [REDACTED].

<sup>2003</sup> [REDACTED].

<sup>2004</sup> [REDACTED].

<sup>2005</sup> [REDACTED].

<sup>2006</sup> [REDACTED]. *See also supra* para. 462.

<sup>2007</sup> [REDACTED].

<sup>2008</sup> [REDACTED].

<sup>2009</sup> [REDACTED].

contributed to the crimes committed under Counts 1-10; and (iii) otherwise provided information and political, logistical, military, or financial support to, as well as coordinated and liaised between, JCE members in furtherance of the common purpose.

465. As regards Mr Selimi's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that Mr Selimi, as a member of the KLA General Staff, approved the aforementioned KLA public statements and regulations.<sup>2010</sup> He also sought to solidify the recognition of the General Staff's political authority.<sup>2011</sup> Furthermore, Mr Selimi participated in the formation of the zone structures, coordinated between operational zones, was involved in the recruitment and the instruction of soldiers, was present when commanders were appointed,<sup>2012</sup> and signed or participated in other appointment decisions.<sup>2013</sup> Mr Selimi was [REDACTED] present on the ground including in Dukagjin, Drenica, Pashtrik, Neredime, Shala and Llap zones.<sup>2014</sup> He reported to the General Staff concerning events in the zones.<sup>2015</sup>

466. As regards Mr Selimi's participation in or contribution to the crimes committed under Counts 1-10, the supporting material indicates that he personally participated in such crimes [REDACTED]. [REDACTED].<sup>2016</sup> [REDACTED].<sup>2017</sup> [REDACTED].<sup>2018</sup> [REDACTED].<sup>2019</sup> [REDACTED].<sup>2020</sup> [REDACTED].<sup>2021</sup> Furthermore, the supporting material indicates that, during the

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<sup>2010</sup> See *supra* para. 454 and fns 1953, 1954, 1955, 1956 and 1957.

<sup>2011</sup> [REDACTED].

<sup>2012</sup> [REDACTED].

<sup>2013</sup> [REDACTED].

<sup>2014</sup> [REDACTED].

<sup>2015</sup> [REDACTED].

<sup>2016</sup> [REDACTED]. See also *supra* para. 150 (Counts 2-3).

<sup>2017</sup> See *supra* para. 375 (Counts 8-9). [REDACTED].

<sup>2018</sup> [REDACTED].

<sup>2019</sup> [REDACTED]. See also para. 169 (Counts 2-3), para. 271 (Counts 4-5).

<sup>2020</sup> [REDACTED].

<sup>2021</sup> [REDACTED]. See also para. 279 (Counts 4-5) and para. 359 (Counts 6-7).

Indictment Period, Mr Selimi [REDACTED]<sup>2022</sup> [REDACTED] visited other locations indicated under Counts 1-10.<sup>2023</sup> In addition, Mr Selimi participated in a series of meetings between zone commanders and General Staff members in which orders were issued for collaborators to be detained and for detention facilities to be set up for that purpose.<sup>2024</sup> These instructions were implemented by zone commanders.<sup>2025</sup>

467. As concerns Mr Selimi's support for and coordination between JCE members, the supporting material indicates that Mr Selimi: (i) sought to secure financial support for the KLA;<sup>2026</sup> (ii) was a primary contact for some of the zone commanders and was in regular contact with operational zones;<sup>2027</sup> and (iii) frequently visited multiple locations indicated under Counts 1-10 to oversee the organisation of the units, maintain contact and provide supplies,<sup>2028</sup> as well as to provide other information, including about [REDACTED].<sup>2029</sup>

d. Mr Krasniqi

468. The supporting material indicates that Mr Krasniqi significantly contributed to the common purpose of the JCE. Mr Krasniqi was a member of the KLA General Staff since the end of 1996 or the beginning of 1997.<sup>2030</sup> From at least June 1998, he became the KLA spokesperson and Chief of the Local Government Department.<sup>2031</sup>

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<sup>2022</sup> [REDACTED].

<sup>2023</sup> [REDACTED]; *see also* para. 153 (Counts 2-3), para. 251 (Counts 4-5) and paras 380-384 (Counts 8-9) [REDACTED]; IT-05-87 6D00067, p. 14 (U003-9097) (Mr Selimi was "always present" in the Drenica area).

<sup>2024</sup> [REDACTED].

<sup>2025</sup> [REDACTED].

<sup>2026</sup> [REDACTED].

<sup>2027</sup> [REDACTED].

<sup>2028</sup> [REDACTED]; *see also* para. 142 (Counts 2-3), para. 239 (Counts 4-5) and para. 368 (Counts 8-9) [REDACTED]. *See also* fn. 2023.

<sup>2029</sup> [REDACTED].

<sup>2030</sup> IT-04-84 P340, p. 21 (3305); [REDACTED].

<sup>2031</sup> [REDACTED].

Mr Krasniqi was also part of the Political Directorate of the KLA,<sup>2032</sup> which was headed by Mr Thaçi.<sup>2033</sup> From at least November 1998, Mr Krasniqi was appointed KLA Deputy Commander for Support and continued to be one of the KLA political representatives and its spokesperson; in the absence of the commander, he was replacing him and took all of his authority and functions.<sup>2034</sup> In this capacity, Mr Krasniqi: (i) was directly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; (ii) personally participated in or otherwise contributed to the crimes committed under Counts 1-10; (iii) coordinated or otherwise contributed to efforts to deny or provide incorrect information to international monitors and the public regarding the commission of crimes under Counts 1-10; and (iv) otherwise provided information and political, logistical, military or financial support to, as well as coordinated with and liaised between, JCE members in furtherance of the common purpose.

469. As regards Mr Krasniqi's involvement in the plans, policies and practices in furtherance of the common purpose, the supporting material indicates that such involvement was part and parcel of Mr Krasniqi's position as KLA spokesperson and as member of the KLA Political Department. In particular, Mr Krasniqi drafted the aforementioned Provisional Regulations,<sup>2035</sup> and was also responsible for communicating with domestic and international delegations<sup>2036</sup> and publicising the policy of the General Staff.<sup>2037</sup> Per a decision of the General Staff, only the KLA spokesperson was authorised to make known its political positions;<sup>2038</sup> this order was

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<sup>2032</sup> [REDACTED].

<sup>2033</sup> [REDACTED].

<sup>2034</sup> [REDACTED].

<sup>2035</sup> See *supra* para. 456. See also [REDACTED].

<sup>2036</sup> [REDACTED].

<sup>2037</sup> [REDACTED].

<sup>2038</sup> [REDACTED].

conveyed to the zone commands.<sup>2039</sup> As member of the KLA General Staff and as the KLA spokesperson, Mr Krasniqi was involved in the development and dissemination of KLA policies through the drafting and/or issuance of General Staff communiqués and political statements.<sup>2040</sup> [REDACTED],<sup>2041</sup> [REDACTED] were used by zone commanders as policy statements to guide their organisation.<sup>2042</sup>

470. As regards Mr Krasniqi's participation in or contribution to the crimes under Counts 1-10, the supporting material indicates that Mr Krasniqi personally visited a number of sites in KLA controlled areas including Likoc/Likovac,<sup>2043</sup> Jabllanicë/Jablanica,<sup>2044</sup> Malishevë/Malishevo,<sup>2045</sup> Kleçkë/Klečka,<sup>2046</sup> Shala and Llap operational zones,<sup>2047</sup> and Kukës, Albania.<sup>2048</sup> In addition to the contributions enumerated above, Mr Krasniqi participated in a series of meetings between zone commanders and General Staff members in which orders were issued for collaborators to be detained and for detention facilities to be set up for that purpose.<sup>2049</sup> These instructions were implemented by zone commanders.<sup>2050</sup>

471. As regards Mr Krasniqi's contribution to efforts to deny or provide incorrect information regarding the commission of crimes, the supporting material indicates that Mr Krasniqi sought to justify KLA actions taken against persons designated as [REDACTED].<sup>2051</sup> [REDACTED].<sup>2052</sup> Mr Krasniqi also declared that

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<sup>2039</sup> [REDACTED].

<sup>2040</sup> [REDACTED].

<sup>2041</sup> [REDACTED].

<sup>2042</sup> [REDACTED].

<sup>2043</sup> [REDACTED].

<sup>2044</sup> [REDACTED].

<sup>2045</sup> [REDACTED].

<sup>2046</sup> [REDACTED].

<sup>2047</sup> [REDACTED].

<sup>2048</sup> [REDACTED].

<sup>2049</sup> [REDACTED].

<sup>2050</sup> [REDACTED].

<sup>2051</sup> [REDACTED].

<sup>2052</sup> [REDACTED].

[REDACTED].<sup>2053</sup> Despite such statements, when face-to-face with [REDACTED], members of the General Staff, including Mr Krasniqi, who were regularly notified of abductions, murders and kidnappings of Serbs and the killing and disappearance of Albanians, in particular senior members of the LDK, would flatly deny allegations related to the killing of collaborators.<sup>2054</sup>

472. As regards Mr Krasniqi's support for and coordination between JCE members, the supporting material indicates that Mr Krasniqi: (i) was a primary contact for some of the zone commanders, who received orders, instructions and information through him;<sup>2055</sup> (ii) was in regular contact with operational zones,<sup>2056</sup> including for nominating commanders for appointments,<sup>2057</sup> receiving reports on the outcome of operations,<sup>2058</sup> resolving disputes between commanders,<sup>2059</sup> and issuing orders, including those of a disciplinary nature<sup>2060</sup> and on the release of detainees;<sup>2061</sup> and (iii) frequently visited multiple locations indicated under Counts 1-10 to oversee the organisation of the units, maintain contact and provide supplies,<sup>2062</sup> as well as to provide other information, including about [REDACTED].<sup>2063</sup>

#### (b) Subjective Element

473. The supporting material further indicates that the Suspects shared the intent to commit the crimes under Counts 1-10 forming part of the common purpose of the JCE. Accordingly, their intent is apparent from: (i) the personal statements of

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<sup>2053</sup> [REDACTED].

<sup>2054</sup> [REDACTED].

<sup>2055</sup> [REDACTED].

<sup>2056</sup> [REDACTED].

<sup>2057</sup> [REDACTED].

<sup>2058</sup> [REDACTED].

<sup>2059</sup> [REDACTED].

<sup>2060</sup> [REDACTED].

<sup>2061</sup> [REDACTED].

<sup>2062</sup> IT-04-84bis T675-T771, pp. 681-685; [REDACTED].

<sup>2063</sup> [REDACTED].

the Suspects;<sup>2064</sup> (ii) public statements of the KLA General Staff and/or the PGoK leadership, as well as regulations, structures, directions and orders drafted, issued or approved by the Suspects;<sup>2065</sup> and (iii) their individual conduct, as specified above.<sup>2066</sup>

(c) Conclusion

474. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is well-grounded suspicion that the Suspects committed, as members of a JCE, the crimes under Counts 1-10, within the meaning of Article 16(1)(a) of the Law.

## 2. Joint Criminal Enterprise III

475. In the Revised Indictment, the SPO alternatively alleges that, to the extent that some of the crimes under Counts 1-10 did not fall within the aforementioned JCE, the Suspects are nevertheless responsible according to Article 16(1)(a) of the Law for the commission of such crimes, as it was foreseeable to them that the crimes were a possible consequence of the implementation of the JCE's common purpose and they willingly took that risk.<sup>2067</sup>

476. The Pre-Trial Judge assesses this mode of liability in the alternative, in the event that some of the crimes under Counts 1-10 went beyond the common purpose of the aforementioned JCE. Accordingly, regarding the objective elements of this mode of liability, the Pre-Trial Judge refers to the above findings: that a JCE to gain and exercise control over all of Kosovo by means including unlawfully

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<sup>2064</sup> [REDACTED].

<sup>2065</sup> See *supra* para. 454 and fns 1953, 1954, 1955, 1956 and 1957.

<sup>2066</sup> See *supra* paras 455-472.

<sup>2067</sup> Revised Indictment, paras 34-35.

intimidating, mistreating, committing violence against and removing Opponents existed, and that the Suspects were members thereof.<sup>2068</sup> Furthermore, the organised manner in which the JCE was implemented, notably, the pattern of intimidations, detentions, mistreatment and killings of Opponents,<sup>2069</sup> made any of the crimes under Counts 1-10 an objectively foreseeable consequence of the implementation of the JCE's common purpose.

477. Regarding the subjective element of this mode of liability, the Pre-Trial Judge found above that the Suspects intended to participate in and contribute to the furtherance of the common purpose.<sup>2070</sup> In addition, the supporting material indicates that it was foreseeable to the Suspects that any of the crimes under Counts 1-10 might be perpetrated in carrying out the common purpose of the JCE. In particular, the Suspects: (i) repeatedly and publicly called for or endorsed violence against Opponents through their personal statements and the public statements of KLA/PGoK leadership;<sup>2071</sup> and (ii) established, maintained or had knowledge of the intelligence and police structures tasked with the identification investigation and neutralisation of Opponents.<sup>2072</sup> Furthermore, the Suspects' willingness to take the risk that crimes beyond the common purpose might be committed can be inferred from: (i) their knowledge that KLA recruits were being deployed with minimal training and negligible or no information on IHL obligations;<sup>2073</sup> (ii) their awareness that no clear definition for [REDACTED] and no procedure for determining such a role was provided by the KLA leadership, thereby opening the door to abuse;<sup>2074</sup> and (iii) despite such awareness and the

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<sup>2068</sup> See *supra* paras 452-474 (Joint Criminal Enterprise I).

<sup>2069</sup> See *supra* paras 139-444 (Counts 1-10) and paras 455-472 (Joint Criminal Enterprise I).

<sup>2070</sup> See *supra* para. 473 (Joint Criminal Enterprise I).

<sup>2071</sup> See *supra* fns 1953, 1954, 1955, 1956 (Joint Criminal Enterprise I).

<sup>2072</sup> See *supra* paras 455-472 (Joint Criminal Enterprise I); [REDACTED].

<sup>2073</sup> [REDACTED].

<sup>2074</sup> See *supra* para. 456 (Joint Criminal Enterprise I).

common knowledge of crimes against Opponents occurring in Kosovo,<sup>2075</sup> their continued endorsement of violence against Opponents and their personal participation in or contribution to the commission of crimes under Counts 1-10.<sup>2076</sup>

478. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the Suspects' alleged responsibility under JCE I, there is well-grounded suspicion that Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi committed crimes under Counts 1-10, as it was foreseeable to them that such crimes were a possible consequence of the implementation of the JCE's common purpose and they willingly took that risk, within the meaning of Article 16(1)(a) of the Law.

### 3. Aiding and Abetting

479. Further, and alternatively to the alleged responsibility for commission, the SPO alleges in the Revised Indictment that the Suspects are criminally responsible for aiding and abetting the crimes under Counts 1-10, according to Article 16(1)(a) of the Law.<sup>2077</sup>

480. Regarding the objective elements of this mode of liability, the supporting material indicates that the Suspects' acts and omissions amounted to practical assistance, encouragement or moral support in committing the aforementioned crimes. In particular, the Suspects: (i) participated in the formulation and approval of public statements of the KLA General Staff as well as regulations, structures, directions and orders directed against Opponents;<sup>2078</sup> (ii) personally participated in some of the crimes under Counts 1-10;<sup>2079</sup> and (iii) visited many of the locations

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<sup>2075</sup> [REDACTED].

<sup>2076</sup> See *supra* paras 455-472 (Joint Criminal Enterprise I).

<sup>2077</sup> Revised Indictment, paras 52, 173.

<sup>2078</sup> See *supra* paras 456, 461, 465, 469 and fns 1953, 1954, 1955, 1956, 1957 (Joint Criminal Enterprise I).

<sup>2079</sup> See *supra* paras 457, 462, 466, 470 (Joint Criminal Enterprise I).

indicated under Counts 1-10 and offered various forms of practical and moral support.<sup>2080</sup> Given that all four Suspects were senior KLA leaders and members of the KLA General Staff, with widely acknowledged authority,<sup>2081</sup> their aforementioned contribution had a substantial effect on the perpetration of the crimes.

481. Regarding the subjective element of this mode of liability, the supporting material indicates that the Suspects were aware of the essential elements of the crimes ultimately committed and they knew that their conduct assisted in their commission. In particular, the Suspects acquired such knowledge from: (i) their personal participation in the commission of some of the crimes and their visits to locations indicated under Counts 1-10;<sup>2082</sup> (ii) the political, logistical, financial and military support they provided to JCE members;<sup>2083</sup> (iii) reports sent to the KLA General Staff and regular communications with zone commanders;<sup>2084</sup> (iv) meetings with international representatives;<sup>2085</sup> and (v) publicly available information.<sup>2086</sup>

482. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, further to and in the alternative to the Suspects' alleged responsibility for commission, there is well-grounded suspicion that Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi aided and abetted the crimes under Counts 1-10, within the meaning of Article 16(1)(a) of the Law.

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<sup>2080</sup> See *supra* paras 459, 463, 467, 472 (Joint Criminal Enterprise I).

<sup>2081</sup> See *supra* paras 455, 460, 464, 468 (Joint Criminal Enterprise I).

<sup>2082</sup> See *supra* paras 457, 462, 466, 470 (Joint Criminal Enterprise I).

<sup>2083</sup> SITF00243018-00243022-ET Revised, p. 3; [REDACTED].

<sup>2084</sup> [REDACTED].

<sup>2085</sup> [REDACTED].

<sup>2086</sup> [REDACTED].

#### 4. Superior Responsibility

483. Further, and alternatively to the modes of liability under Article 16(1)(a) of the Law, the SPO alleges in the Revised Indictment that the Suspects are criminally responsible as superiors, according to Article 16(1)(c) of the Law, for all crimes charged under Counts 1-10.<sup>2087</sup>

(a) Mr Thaçi

484. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Thaçi was one of the founding members of the KLA General Staff<sup>2088</sup> and remained so through the Indictment Period.<sup>2089</sup> The General Staff was a body comprising a very limited number of persons that functioned on the basis of a division of tasks and responsibilities among its members.<sup>2090</sup> As of approximately June 1998, Mr Thaçi was also Chief of the KLA Information Department<sup>2091</sup> and Chief of the KLA Political Department.<sup>2092</sup> Under the Regulations on Discipline of the Kosovo Liberation Army (“KLA Disciplinary Regulations”), Chiefs of Departments were entrusted with essentially the same powers as the highest ranking commanders.<sup>2093</sup> Subsequent to the creation of the PGoK, by the end of March 1999, Mr Thaçi became Prime Minister, after approval by the zone commanders.<sup>2094</sup> As Prime Minister, Mr Thaçi also

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<sup>2087</sup> Revised Indictment, paras 53-55, 173, 174 [68].

<sup>2088</sup> [REDACTED].

<sup>2089</sup> [REDACTED].

<sup>2090</sup> [REDACTED].

<sup>2091</sup> [REDACTED].

<sup>2092</sup> [REDACTED].

<sup>2093</sup> [REDACTED].

<sup>2094</sup> [REDACTED]. *See also* [REDACTED].

served as Commander-in-Chief of the KLA<sup>2095</sup> and, as such, signed the KLA Undertaking on 21 June 1999.<sup>2096</sup>

485. The supporting material indicates that, in his capacity as chief of two Directorates, under the KLA Disciplinary Regulations, Mr Thaçi had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat members of the KLA.<sup>2097</sup> Other examples of powers that Mr Thaçi exercised under his different roles during the Indictment Period include: (i) leading deployments of KLA recruits into Kosovo in spring 1998;<sup>2098</sup> (ii) welcoming and deploying recruits to designated positions;<sup>2099</sup> (iii) issuing instructions to commanders on behalf of the KLA General Staff on operational matters (such as coordinating the supply line for weapons and ammunitions),<sup>2100</sup> or other civilian and administrative matters;<sup>2101</sup> (iv) intervening personally, along with other KLA General Staff members, to resolve disputes between commanders regarding division of areas of responsibility;<sup>2102</sup> and (v) participating in the appointment of commanders.<sup>2103</sup> The supporting material also indicates that Mr Thaçi's leading authority within the KLA was apparent and that other KLA General Staff members deferred to Mr Thaçi in their decision-making.<sup>2104</sup>

486. According to the supporting material, in his capacity as Prime Minister, Mr Thaçi had the power to, *inter alia*, appoint key governmental figures<sup>2105</sup> such as

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<sup>2095</sup> [REDACTED].

<sup>2096</sup> [REDACTED]. *See also supra* para. 134 (Contextual Requirements for War Crimes).

<sup>2097</sup> [REDACTED].

<sup>2098</sup> [REDACTED].

<sup>2099</sup> [REDACTED].

<sup>2100</sup> [REDACTED].

<sup>2101</sup> [REDACTED].

<sup>2102</sup> [REDACTED].

<sup>2103</sup> [REDACTED].

<sup>2104</sup> [REDACTED]; IT-05-87 6D00067, p. 23 (U003-9108) ("We were waging the war. Hashim's presence was important for morale").

<sup>2105</sup> [REDACTED].

the Minister of Defence (reporting directly to the Prime Minister),<sup>2106</sup> the KLA Chief of Staff,<sup>2107</sup> the Commander of the National Guard,<sup>2108</sup> and the Chief of the Intelligence Service (reporting directly to the Prime Minister).<sup>2109</sup>

487. This shows that Mr Thaçi had the material ability to prevent the commission of crimes and punish his subordinates at the time of the commission of such crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Thaçi and the KLA members at the locations included in the Revised Indictment.

488. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Thaçi's subordinates.<sup>2110</sup>

489. Regarding Mr Thaçi's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed, including at the times alleged in the Revised Indictment.<sup>2111</sup> He also witnessed victims being mistreated by KLA members on site.<sup>2112</sup> Mr Thaçi's knowledge came also from other sources. For example, as member of the KLA General Staff and Commander in Chief, Mr Thaçi met operational zone commanders in the field.<sup>2113</sup> Reports were also sent to the KLA General Staff, including Mr Thaçi, and regular

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<sup>2106</sup> [REDACTED].

<sup>2107</sup> [REDACTED].

<sup>2108</sup> [REDACTED].

<sup>2109</sup> [REDACTED].

<sup>2110</sup> *See supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

<sup>2111</sup> Likoc/Likovac: [REDACTED]; the wider Drenica operation zone: IT-05-87 6D00067, pp. 14, 21, 23 (U003-9097, U003-9104, U003-9106); Jabllanicë/Jablanica: [REDACTED]; Drenoc/Drenovac: [REDACTED]; Malishevë/Mališevo: [REDACTED]; Kleçkë/Klečka: [REDACTED]; Bare and Bajgorë/Bajgora: [REDACTED]; Shala and LLap operational zones: [REDACTED]; Kukës: [REDACTED]; Rahovec/Orahovac: [REDACTED].

<sup>2112</sup> *See supra* para. 271 (Counts 4-5), para. 457 (Joint Criminal Enterprise).

<sup>2113</sup> [REDACTED].

communications with zone commanders took place.<sup>2114</sup> Based on the supporting material, throughout the Indictment Period, Mr Thaçi also had a number of meetings with representatives of the international community, in which he was explicitly put on notice of crimes committed or being committed by KLA members.<sup>2115</sup> Moreover, Mr Thaçi and other high-ranking KLA members, in particular General Staff members, had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled daily communication between Mr Thaçi and KLA members in the operational zones.<sup>2116</sup> All of the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.<sup>2117</sup> It follows that Mr Thaçi knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

490. Regarding Mr Thaçi's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the KLA General Staff, Chief of the Information Department, Chief of the Political Department, Prime Minister and KLA Commander in Chief, Mr Thaçi had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Thaçi took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Thaçi condoned the actions of his subordinates through his presence on site

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<sup>2114</sup> [REDACTED].

<sup>2115</sup> [REDACTED].

<sup>2116</sup> [REDACTED].

<sup>2117</sup> [REDACTED].

and his failure to act when witnessing victims being mistreated by KLA members.<sup>2118</sup>

491. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the Law, there is well-grounded suspicion that Mr Thaçi is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

(b) Mr Veseli

492. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Veseli was one of the founding members of the KLA General Staff<sup>2119</sup> and a member of the KLA Political Directorate [REDACTED].<sup>2120</sup> Between at least June 1998 and March 1999 he was the Director of the G2 [REDACTED] before becoming, in late March 1999, Chief of the SHIK, after the creation of the PGoK.<sup>2121</sup> Mr Veseli was appointed to that position by Mr Thaçi<sup>2122</sup> and he reported to him.<sup>2123</sup> Under the KLA Disciplinary Regulations, chiefs of Departments/Directorates were entrusted with essentially the same powers as the highest ranking commanders.<sup>2124</sup>

493. According to the supporting material, in his capacity as chief of a Directorate, under the KLA Disciplinary Regulations, Mr Veseli had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat

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<sup>2118</sup> See *supra* para. 271 (Counts 4-5), para. 457 (Joint Criminal Enterprise); [REDACTED].

<sup>2119</sup> [REDACTED].

<sup>2120</sup> [REDACTED].

<sup>2121</sup> [REDACTED].

<sup>2122</sup> [REDACTED].

<sup>2123</sup> [REDACTED].

<sup>2124</sup> [REDACTED].

members of the KLA.<sup>2125</sup> Other examples of powers that Mr Veseli exercised under his different roles during the Indictment Period include: (i) leading deployments of KLA recruits into Kosovo in spring 1998;<sup>2126</sup> (ii) welcoming and deploying recruits to designated positions;<sup>2127</sup> (iii) conducting investigations;<sup>2128</sup> (iv) intervening personally, along with other KLA General Staff members, to resolve disputes between commanders regarding division of areas of responsibility;<sup>2129</sup> (v) transferring<sup>2130</sup> and releasing<sup>2131</sup> a detainee; and (vi) dealing with a request to discipline Ramush Haradinaj for the way he treated his troops.<sup>2132</sup> The supporting material also indicates that Mr Veseli, as a senior leadership figure, had authority and standing within the KLA.<sup>2133</sup>

494. This shows that Mr Veseli had the material ability to prevent the commission of crimes and punish his subordinates at the time of the commission of such crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Veseli and the KLA members at the locations included in the Revised Indictment.

495. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Veseli's subordinates.<sup>2134</sup>

496. Regarding Mr Veseli's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed,

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<sup>2125</sup> [REDACTED].

<sup>2126</sup> [REDACTED].

<sup>2127</sup> [REDACTED].

<sup>2128</sup> [REDACTED].

<sup>2129</sup> [REDACTED].

<sup>2130</sup> [REDACTED].

<sup>2131</sup> [REDACTED].

<sup>2132</sup> [REDACTED].

<sup>2133</sup> [REDACTED].

<sup>2134</sup> *See supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

including at the times alleged in the Revised Indictment.<sup>2135</sup> He also witnessed victims being mistreated by KLA members on site.<sup>2136</sup> Mr Veseli's knowledge came also from other sources. For example, as member of the KLA General Staff, Mr Veseli met operational zone commanders in the field.<sup>2137</sup> Reports were also sent to the KLA General Staff, including Mr Veseli, and regular communications with zone commanders took place.<sup>2138</sup> Significantly, in his capacity as Chief of the Intelligence Service Department, Mr Veseli, along with the other members of the General Staff, had direct access to information coming directly from the operational zone personnel regarding the identification of Opponents.<sup>2139</sup> Moreover, in July 1998, Mr Veseli, along with Mr Thaçi, participated in a meeting with representatives of the international community, in which he was explicitly put on notice of crimes committed or being committed by KLA members.<sup>2140</sup> Generally, as a high-ranking KLA member, Mr Veseli had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled daily communication between him and KLA members in the operational zones.<sup>2141</sup> All of the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.<sup>2142</sup> It follows that Mr Veseli knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

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<sup>2135</sup> Likoc/Likovac: [[REDACTED]]; the wider Drenica operation zone: IT-05-87 6D00067, p. 14 (U003-9097); Jabllanicë/Jablanica: [REDACTED]; Drenoc/Drenovac: [REDACTED]; Malishevë/Mališevo: [REDACTED]; Kleçkë/Klečka: [REDACTED]; Kukës: [REDACTED]; Rahovec/Orahovac: [REDACTED].

<sup>2136</sup> See *supra* para. 175 (Counts 2-3), para. 291 (Counts 4-5) and para. 462 (Joint Criminal Enterprise I).

<sup>2137</sup> [REDACTED].

<sup>2138</sup> [REDACTED].

<sup>2139</sup> [REDACTED].

<sup>2140</sup> [REDACTED].

<sup>2141</sup> [REDACTED].

<sup>2142</sup> [REDACTED].

497. Regarding Mr Veseli's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the KLA General Staff, member of the KLA Political Directorate, and Chief of the Intelligence Service Department, Mr Veseli had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Veseli took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Veseli condoned the actions of his subordinates through his presence on site and his failure to act when witnessing victims being mistreated by KLA members.<sup>2143</sup>

498. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the Law, there is well-grounded suspicion that Mr Veseli is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

(c) Mr Selimi

499. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Selimi was one of the founding members of the KLA General Staff and remained so throughout 1998 and into 1999.<sup>2144</sup> Around March 1998, Mr Selimi became Chief of G3,<sup>2145</sup> before taking up the position of Inspector General of the KLA General Staff, from July 1998.<sup>2146</sup> In

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<sup>2143</sup> See *supra* para. 175 (Counts 2-3), para. 291 (Counts 4-5) and para. 462 (Joint Criminal Enterprise I). [REDACTED].

<sup>2144</sup> [REDACTED].

<sup>2145</sup> [REDACTED].

<sup>2146</sup> [REDACTED].

early April 1999, Mr Selimi was appointed Minister of Public Order of the PGoK by Mr Thaçi.<sup>2147</sup> Under the KLA Disciplinary Regulations, Chiefs of Departments/Directorates were entrusted essentially with the same powers as the highest ranking commanders.<sup>2148</sup> Furthermore, in his capacity as Inspector General, Mr Selimi's tasks included assessing the readiness of the KLA units from an operational point of view as well as determining whether there was a lack of discipline, in which case he informed the responsible commander.<sup>2149</sup> Generally, Mr Selimi was at all times regarded as an authoritative figure within the KLA,<sup>2150</sup> one that visited most often the commanders on the ground<sup>2151</sup> and one of the few KLA General Staff members to remain in Kosovo until the end of the armed conflict, while most of the other members were in Albania.<sup>2152</sup>

500. According to the supporting material, in his capacity as Chief of a Directorate, under the KLA Disciplinary Regulations, Mr Selimi had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat members of the KLA.<sup>2153</sup> Other examples of powers that Mr Selimi exercised under his different roles during the Indictment Period include: (i) deploying KLA recruits;<sup>2154</sup> (ii) taking part in the appointment of zone commanders;<sup>2155</sup> (iii) being involved in investigations into disciplinary matters;<sup>2156</sup>

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<sup>2147</sup> [REDACTED].

<sup>2148</sup> [REDACTED].

<sup>2149</sup> [REDACTED].

<sup>2150</sup> [REDACTED].

<sup>2151</sup> [REDACTED].

<sup>2152</sup> [REDACTED].

<sup>2153</sup> [REDACTED].

<sup>2154</sup> [REDACTED].

<sup>2155</sup> [REDACTED].

<sup>2156</sup> [REDACTED].

(iv) inquiring about the reasons to arrest and disarm individuals;<sup>2157</sup> and (v) taking decisions to release detainees.<sup>2158</sup>

501. This shows that Mr Selimi had the material ability to prevent the commission of crimes and punish his subordinates at the time of the commission of such crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Selimi and the KLA members at the locations included in the Revised Indictment.

502. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Selimi's subordinates.<sup>2159</sup>

503. Regarding Mr Selimi's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed, including at the times alleged in the Revised Indictment.<sup>2160</sup> In fact, Mr Selimi was [REDACTED] present on the ground including in Dukagjin, Drenica, Pashtrik, Neredime, Shala and Llap zones.<sup>2161</sup> Mr Selimi himself admitted that he was aware that persons other than combatants were detained by KLA members, at least prior to 28 November 1998, without knowing the exact detention location.<sup>2162</sup> He also witnessed victims being mistreated by KLA members on site or condoned such mistreatment when participating in interrogations.<sup>2163</sup> Mr Selimi's knowledge came also from other sources. For example, as member of the KLA General Staff,

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<sup>2157</sup> [REDACTED].

<sup>2158</sup> [REDACTED].

<sup>2159</sup> See *supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

<sup>2160</sup> Likoc/Likovac: [REDACTED]; the wider Drenica operation zone: IT-05-87 6D00067, p. 14 (U003-9097); Jabllanicë/Jablanica: [REDACTED]; Drenoc/Drenovac: [REDACTED]; Kleçkë/Klečka: [REDACTED]; Bare and Bajgorë/Bajgora: [REDACTED]; Shala and Llap operational zones: [REDACTED]; Rahovec/Orahovac: [REDACTED].

<sup>2161</sup> [REDACTED].

<sup>2162</sup> [REDACTED].

<sup>2163</sup> See *supra* paras 271, 279 (Counts 4-5), para. 359 (Counts 6-7), para. 466 (Joint Criminal Enterprise I).

Mr Selimi met operational zone commanders in the field.<sup>2164</sup> Reports were also sent to the KLA General Staff, including Mr Selimi, and regular communications with zone commanders took place.<sup>2165</sup> Generally, as a high-ranking KLA member and General Staff member, he had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled his communication with KLA members in the operational zones.<sup>2166</sup> All the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.<sup>2167</sup> It follows that Mr Selimi knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

504. Regarding Mr Selimi's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the KLA General Staff, Chief of Operational Directorate, Inspector General, and Minister of Public Order, Mr Selimi had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Selimi took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Selimi condoned the actions of his subordinates through his presence on site, his participation in interrogations, and his failure to act when witnessing victims being mistreated by KLA members.<sup>2168</sup>

505. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the

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<sup>2164</sup> [REDACTED].

<sup>2165</sup> [REDACTED].

<sup>2166</sup> [REDACTED].

<sup>2167</sup> [REDACTED].

<sup>2168</sup> See *supra* paras 271, 279 (Counts 4-5), para. 359 (Counts 6-7), para. 466 (Joint Criminal Enterprise I). [REDACTED].

Law, there is well-grounded suspicion that Mr Selimi is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

(d) Mr Krasniqi

506. Regarding the superior-subordinate relationship, the Pre-Trial Judge recalls that the supporting material indicates that Mr Krasniqi was a member of the KLA General Staff since the end of 1996 or the beginning of 1997.<sup>2169</sup> In 1998, he was a member of the KLA Political Directorate,<sup>2170</sup> Chief of the Local Government Department<sup>2171</sup> and was appointed official spokesperson of the KLA as of June of that year.<sup>2172</sup> In November 1998, Mr Krasniqi was also formally appointed Deputy Commander for support and continued to be one of the KLA political representatives and its Spokesperson.<sup>2173</sup> Under the KLA Disciplinary Regulations, chiefs of Departments/Directorates were entrusted with essentially the same powers as the highest ranking commanders.<sup>2174</sup>

507. Based on the supporting material, as chief of a Directorate and, subsequently, Deputy Commander, under the KLA Disciplinary Regulations, Mr Krasniqi had the formal power to, *inter alia*, commend, promote, reproach, reprimand, issue disciplinary measures (including confinement up to 25 days) and terminate them, or dismiss combat members of the KLA.<sup>2175</sup> The supporting material also suggests that, during the Indictment Period, Mr Krasniqi was the one tasked with disseminating all orders, instructions and information on behalf of the General

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<sup>2169</sup> IT-04-84 P00340, p. 21 (3305).

<sup>2170</sup> [REDACTED].

<sup>2171</sup> [REDACTED].

<sup>2172</sup> [REDACTED].

<sup>2173</sup> [REDACTED].

<sup>2174</sup> [REDACTED].

<sup>2175</sup> [REDACTED].

Staff;<sup>2176</sup> consequently, zone commanders communicated via Mr Krasniqi with the General Staff and coordinated their work through him, because he was the only General Staff member that people knew publicly.<sup>2177</sup> The public character of Mr Krasniqi, as the only widely known member of the KLA General Staff, conferred upon him respect and regard among KLA members<sup>2178</sup> and with the international community.<sup>2179</sup> Examples of Mr Krasniqi's exercise of his authority under his different roles during the Indictment Period include: (i) intervening personally, along with other KLA General Staff members, to resolve disputes between commanders regarding division of areas of responsibility;<sup>2180</sup> (ii) issuing an order for the arrest of a KLA member [REDACTED];<sup>2181</sup> (iii) issuing an order to release prisoners;<sup>2182</sup> and (iv) taking part in the appointment of commanders and other senior officials.<sup>2183</sup>

508. This shows that Mr Krasniqi had the material ability to prevent the commission of crimes by and punish his subordinates at the time of the commission of the crimes. From the foregoing, it follows that there was a superior-subordinate relationship, during the time relevant to the charges, between Mr Krasniqi and the KLA members at the locations included in the Revised Indictment.

509. Regarding the crimes committed, the Pre-Trial Judge refers to his findings with regard to the crimes charged under Counts 1-10, as committed by Mr Krasniqi's subordinates.<sup>2184</sup>

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<sup>2176</sup> [REDACTED].

<sup>2177</sup> [REDACTED].

<sup>2178</sup> [REDACTED].

<sup>2179</sup> [REDACTED].

<sup>2180</sup> [REDACTED].

<sup>2181</sup> [REDACTED].

<sup>2182</sup> [REDACTED].

<sup>2183</sup> [REDACTED].

<sup>2184</sup> *See supra* paras 139-231 (Counts 2-3), paras 233-349 (Counts 4-5), paras 351-360 (Counts 6-7), paras 362-417 (Counts 8-9), paras 419-436 (Count 10) and paras 438-444 (Count 1).

510. Regarding Mr Krasniqi's knowledge, the supporting material indicates that he was present at a number of locations where crimes charged were committed, including at the times alleged in the Revised Indictment.<sup>2185</sup> Mr Krasniqi's knowledge came also from other sources. For example, Mr Krasniqi received reports from zone commanders on the outcome of military operations, including the taking of prisoners,<sup>2186</sup> or how to deal with them.<sup>2187</sup> He was also personally put on notice about crimes being committed, including kidnapping, killings and disappearances.<sup>2188</sup> Further, as member of the KLA General Staff and due to his specific role as KLA spokesperson, Mr Krasniqi met and maintained close contact with the operational zone commanders in the field.<sup>2189</sup> Reports were also sent to the KLA General Staff, including Mr Krasniqi, and regular communications with zone commanders took place.<sup>2190</sup> Generally, as a high-ranking KLA member and General Staff member, he had access to means of communication such as couriers, walkie-talkies and satellite phones, which enabled him to communicate daily with KLA members in the operational zones.<sup>2191</sup> All the above occurred against the backdrop of common knowledge of abuses committed by KLA members against civilians during the Indictment Period, including abductions, detention, beatings, and killings.<sup>2192</sup> It follows that Mr Krasniqi knew or had reason to know that his subordinates were about to commit the crimes charged or had done so.

511. Regarding Mr Krasniqi's failure to take necessary and reasonable measures, the supporting material indicates that, in each of his capacities as member of the

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<sup>2185</sup> Likoc/Likovac: [REDACTED]; Jabllanicë/Jablanica: IT-04-84bis P00064, pp. 135-136 (5075-5076); [REDACTED]; Kleçkë/Klečka: [REDACTED]; Shala and Llap operational zones: [REDACTED]; Malishevë/Mališevo: [REDACTED]; Kukës: [REDACTED].

<sup>2186</sup> [REDACTED].

<sup>2187</sup> [REDACTED].

<sup>2188</sup> [REDACTED].

<sup>2189</sup> [REDACTED].

<sup>2190</sup> [REDACTED].

<sup>2191</sup> [REDACTED].

<sup>2192</sup> [REDACTED].

KLA General Staff, member of the KLA Political Directorate, Chief of the Local Government Department, official spokesperson of the KLA, and Deputy Commander, Mr Krasniqi had the duty to prevent the commission of crimes in the locations included in the Revised Indictment and the duty to punish his subordinates for the crimes they committed during the time relevant to the charges. Yet, there is no indication in the supporting material that Mr Krasniqi took any necessary and reasonable measures with a view to complying with his duties as a superior. Rather, on occasion, Mr Krasniqi condoned the actions of his subordinates through his presence on site and his failure to act when witnessing victims being mistreated by KLA members.<sup>2193</sup> Mr Krasniqi also participated in a series of meetings between zone commanders and General Staff members in which orders were issued for collaborators to be detained and for detention facilities to be set up for that purpose.<sup>2194</sup>

512. Having examined the supporting material as a whole, the Pre-Trial Judge finds that, in the alternative to the modes of liability under Article 16(1)(a) of the Law, there is well-grounded suspicion that Mr Krasniqi is criminally responsible as a superior, within the meaning of Article 16(1)(c) of the Law, for the crimes against humanity and war crimes under Counts 1-10 as confirmed in the present decision.

## VII. RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY

513. As a general rule, Rule 88(1) of the Rules provides that an indictment shall be made public upon confirmation. Further, pursuant to Rules 95(1) and (2)(b) and 102(1)(a) of the Rules, any disclosure of material, including the names of witnesses and victims, will take place after the initial appearance of the Accused, for whom

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<sup>2193</sup> See *supra* para. 251 (Counts 4-5), para. 470 (Joint Criminal Enterprise). [REDACTED].

<sup>2194</sup> [REDACTED].

an indictment has been confirmed. In exceptional circumstances, and upon a showing of good cause, however, pursuant to Rules 88(2) and 105(1) of the Rules, the SPO may apply for the temporary non-disclosure of the indictment, related documents, and the identities of victims and witnesses to continue after confirmation of the indictment or initial appearance of the Accused, as the case may be. It is highlighted that Rule 105(1) measures are provisional in nature, allowing for the protection of vulnerable witnesses and victims until such time a request for protective measures is submitted.

514. With respect to the Suspects' risk of flight, the Pre-Trial Judge considers their: (i) awareness of the notification of the confirmed charges, as contained in the indictment to be served, and potential penalties; (ii) awareness of publicly reported convictions of former senior KLA members and named JCE members;<sup>2195</sup> (iii) former or current senior positions in the KLA and/or the Kosovo government,<sup>2196</sup> which would allow them to mobilise a vast network of supporters and officials;<sup>2197</sup> (iv) ability to travel to jurisdictions which would have no obligation to transfer them to the Specialist Chambers; and (v) significant funds and resources that demonstrate their incentive and means to flee.<sup>2198</sup>

515. With respect to the interference with victims, witnesses, and alleged accomplices, the Pre-Trial Judge considers the Suspects' positions of authority and influence in Kosovo and consequent ability to mobilise supporters in their efforts to obstruct the investigations and proceedings against them.<sup>2199</sup> The Pre-Trial

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<sup>2195</sup> Submission on Related Orders, paras 19-24, 31.

<sup>2196</sup> See *supra* paras 455, 460, 464, 468 (Joint Criminal Enterprise I).

<sup>2197</sup> Submission on Related Orders, paras 4-5, 32.

<sup>2198</sup> Submission on Related Orders, para. 32.

<sup>2199</sup> Submission on Related Orders, paras 4-5, 34.

Judge further considers the alleged attempts already made by the Suspects to delegitimise the KSC<sup>2200</sup> and obstruct past<sup>2201</sup> and present<sup>2202</sup> proceedings.

516. With respect to the further commission of crimes, the Pre-Trial Judge notes that the Suspects are alleged to be part of a joint criminal enterprise targeting KLA Opponents.<sup>2203</sup> Considering the alleged attempts to obstruct proceedings<sup>2204</sup> and the pervasive climate of intimidation that has marred cases against former KLA members,<sup>2205</sup> the Pre-Trial Judge finds that there is a significant risk that crimes of violence may be committed against those individuals the Suspects perceive to be against them.

517. In light of the factors enumerated in paragraphs 514-516 above, the Pre-Trial Judge finds that the SPO has demonstrated good cause justifying exceptional circumstances that allow, pursuant to Rule 88(2) of the Rules, the temporary non-disclosure of the following documents, including annexes, as the case may be: (i) the indictment as confirmed (“Confirmed Indictment”); and (ii) F00002, F00003, F00005, F00006, F00008, F00011, F00012, F00014, F00018, F00022, F00024 (“Related Documents”).

518. In light of the factors enumerated in paragraphs 515-516 above, the Pre-Trial Judge also finds that the SPO has demonstrated exceptional circumstances, pursuant to Rule 105(1) of the Rules, justifying interim non-disclosure of the identities of witnesses and victims, until appropriate protective measures have been ordered.

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<sup>2200</sup> Submission on Related Orders, para. 7; Annex 2 of Submission on Related Orders, Part 1A, Part II.

<sup>2201</sup> Submission on Related Orders, paras 8-9.

<sup>2202</sup> Submission on Related Orders, paras 10-17; Annex 3 of Submission on Related Orders, p. 8.

<sup>2203</sup> Revised Indictment, para. 32.

<sup>2204</sup> *See supra* para. 515.

<sup>2205</sup> Submission on Related Orders, paras 18-26.

519. As a result, the non-disclosure of the Confirmed Indictment towards the public<sup>2206</sup> shall be maintained until further order of the Pre-Trial Judge, but no later than the initial appearance of the Accused, as per Rule 88(2) of the Rules. The Accused shall be served with the strictly confidential Confirmed Indictment with redactions, as appropriate, pursuant to Rules 87(1) and 105(1) of the Rules. Notwithstanding the confidentiality of the Confirmed Indictment, pursuant to Rule 88(3) of the Rules, the SPO and the Registrar, as the case may be, may disclose the redacted version or part thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

520. Non-disclosure of the Related Documents and supporting material to the Confirmed Indictment shall also be maintained until further order of the Pre-Trial Judge, as provided in Rule 88(2) of the Rules. However, the supporting material shall be made available to the Accused with redactions, as appropriate, no later than 30 days of their initial appearance, as per Rules 102(1)(a) and 105(1) of the Rules.

## VIII. DISPOSITION

521. In light of the foregoing, the Pre-Trial Judge hereby:

- a. **CONFIRMS** the following charges against Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi:
  - i. persecution (Count 1), imprisonment (Count 2), other inhumane acts (Count 4), torture (Count 6), murder (Count 8) and enforced

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<sup>2206</sup> For the purposes of this decision, public shall mean all persons, organisations, entities, Third States, clients, associations and groups, including the media, other than the judges of the Specialist Chambers (and their staff), the Registry, the SPO, and the Accused.

- disappearance of persons (Count 10), as crimes against humanity punishable under Articles 13 and 16(1)(a) of the Law; and
- ii. arbitrary detention (Count 3), cruel treatment (Count 5), torture (Count 7) and murder (Count 9), as war crimes punishable under Articles 14(1)(c) and 16(1)(a) of the Law;
- b. **ORDERS** the Specialist Prosecutor to submit, within one week of the notification of the present decision, a further revised indictment, taking into account the findings in paragraph 226, which shall be considered the “Confirmed Indictment”;
  - c. **AUTHORISES** the SPO to redact the name and identifying information of any victim or witness from the Confirmed Indictment, Related Documents, and supporting material, and assign and use provisional pseudonyms to these victims and witnesses;
  - d. **ORDERS** the SPO to submit a strictly confidential, redacted version of the Confirmed Indictment within one week of notification of the present decision;
  - e. **ORDERS** the Registry to serve on the Accused, in consultation with the SPO, the strictly confidential, redacted version of the Confirmed Indictment;
  - f. **AUTHORISES** the SPO and the Registrar, as the case may be, to disclose the strictly confidential, redacted Confirmed Indictment or parts thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of the investigation or prosecution;
  - g. **ORDERS** the non-disclosure of the Related Documents and supporting material until further order;
  - h. **ORDERS** the non-disclosure of the Confirmed Indictment to the public until further order; and
  - i. **ORDERS** the SPO to submit a request for protective measures, if any, in relation to victims and witnesses identified in the Confirmed Indictment,

Related Documents and supporting material within one week of the initial appearance of the Accused.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Monday, 26 October 2020  
At The Hague, the Netherlands.