

Summary of Reparation Order in
Specialist Prosecutor v. Salih Mustafa (KSC-BC-2020-05)

Trial Panel I will deliver today the Reparation Order in the case of the *Specialist Prosecutor v. Salih Mustafa*. This Reparation Order is pronounced in public and in the presence of Mr Mustafa.

1. While I will read a summary of the key findings made by the Panel, this summary is not part of the Reparation Order, which is the only authoritative account of the Panel's ruling and findings. The non-authoritative summary will be available on the website of the KSC.

2. At the outset, I wish to emphasise that today's hearing marks another milestone for the Kosovo Specialist Chambers, as the first Reparation Order of this tribunal is issued. Reparations are an integral part of the proceedings before the KSC. They are essential for the delivery of justice to victims of serious violations of human rights and international humanitarian law.

3. This Reparation Order arises from the conviction of Mr Salih Mustafa on 16 December 2022. I recall in this regard that Mr Mustafa was found guilty by this Panel of three counts of war crimes, namely arbitrary detention, torture, and murder, which he committed, directly and as part of a joint criminal enterprise, between approximately 1 April 1999 and around the end of April 1999, in a compound in Zllash in Kosovo. Mr Mustafa was sentenced to twenty-six (26) years of imprisonment, with credit for the time served at the KSC detention facilities since 24 September 2020.

4. I recall that the victims participating in the proceedings benefitted from protective measures namely that their names and any identifying information be withheld from the public. Accordingly, in the course of this hearing, when referring

to the victims, I will use their assigned victim code. The Panel has also carefully reviewed what further information to disclose in public by balancing the need to protect the victims with the principle of publicity of the proceedings.

5. I will now begin with a summary of the Reparation Order.

Procedural Background

6. I will give a short overview of the proceedings.

7. On 4 February 2022, Trial Panel I ruled that in case of a conviction, it will not refer victims to civil litigation in Kosovo courts, but will issue a Reparation Order. The proceedings concerning reparations were as a result conducted in parallel with the trial.

8. On 30 June 2022, Victims' Counsel submitted a request for reparations on behalf of the eight victims admitted to participate in the trial proceedings.

Applicable Law and Principles

9. For a complete overview of the applicable law and principles I refer to the public version of the reparation order. For the purposes of this summary I would like to highlight the following.

10. The Panel emphasises that the objective of reparations at the Kosovo Specialist Chambers is not solely to punish the convicted person as foreseen in Article 44(6) of the Law; but also to acknowledge and to repair, to the extent possible, the harm caused to the victims.

11. Accordingly, Victims should receive reasonable, appropriate, and prompt reparations.

12. Moving to the principles applicable to the liability of a convicted person for reparations, the Panel determined that a reparation order cannot go beyond the crimes

of which the convicted person was held liable and it must be issued in all circumstances against the convicted person.

13. The responsibility of other persons, organisations, or State responsibility is irrelevant to determine the convicted person's liability for reparations.

14. Likewise, the convicted person's indigence is irrelevant to this determination.

Evidence assessment

15. Let me address briefly the Panel's approach concerning the assessment of the evidence presented by the Victims for the purposes of reparations.

16. First and foremost, the Panel relied on the factual and legal findings made in the Trial Judgment, which led to the conviction and sentencing of Mr Mustafa.

17. The Panel also considered *inter alia*: the Victims' Counsel Reparations Request; the Impact Statement; the iMMO Expert Reports; and the Lerz Report.

18. Finally, the Panel noted that the Defence maintained, throughout the proceedings, the same position, namely that due to the denial, by Mr Mustafa, of any responsibility for the crimes charged, no reparations to victims ought to be made by him. Accordingly, the Defence did not make any substantive submissions in the context of the reparation proceedings in this case.

Scope and Extent of Harm

19. Before moving to the reparation order against Mr Mustafa, let me summarise the Panel's findings in relation to the scope and extent of harm suffered by the participating victims in this case, in accordance with Article 22(7) of the Law

20. I will start with the Victims' Counsel's submissions.

21. Victims' Counsel submitted a request for reparations on behalf of eight (8) participating victims.

22. Victims' Counsel claimed that Victim 08, Victim 09, and Victim 10 (hereinafter Direct Victims), all suffered physical, mental, and material harm as result of the war crimes of arbitrary detention and torture committed by Mr Mustafa against them.

23. She further contended that Victim 05, Victim 06, Victim 11, Victim 12 and Victim 13 (hereinafter Indirect Victims) all suffered long-lasting mental harm as a result of the war crimes of arbitrary arrest, torture, and murder committed by Mr Mustafa against their family member, with whom they had a close relationship.

24. Let me turn to the Panel's findings. I will briefly outline the Panel's findings for each Victim.

25. I will begin with the Direct Victims.

26. At the outset, the Panel relied on the findings made in the Trial Judgment establishing that Victim 08, 09 and 10 were arbitrarily detained and tortured at the Zllash Detention Compound by Mr Mustafa and his BIA subordinates and suffered physical and mental harm as a result.

27. As to the physical harm suffered by Victim 09, the Panel considered that this victim was mistreated almost daily through his time in detention. He was held in inhuman and degrading conditions. As a result, he sustained multiple injuries. To this day, he suffers physically.

28. As to mental harm, the Panel considered that while detained in Zllash, Victim 09 could hear his co-detainees being mistreated and saw the injuries inflicted on them, when they were brought back to the barn: bruised, bloodied, or unconscious. He lived in constant fear that he could be next to be mistreated. This caused immense psychological strain.

29. Victim 09 has furthermore symptoms of post-traumatic stress disorder.

30. In addition, as part of mental harm, the Panel observed that in the aftermath of the crimes Victim 09 was not able to discuss his time in detention with any other

victims as they refused to do so out of what he believes is fear. He also felt unable to tell a doctor the true cause of his injuries.

31. The Panel found that this was the consequence of a social stigma which originated in Zllash when Mr Mustafa, as part of a joint criminal enterprise with other BIA members, labelled the detainees at the Zllash compound as “collaborators” and “traitors”, including Victim 09, setting him apart from his community. In doing so, Mr Mustafa contributed to Victim 09’s sense of isolation and social stigma. In turn, Victim 09 was not afforded the opportunity to process his trauma.

32. The Panel also found that as part of material harm, Victim 09 incurred a loss of earnings and a damage to his life plan, to the extent that he was deprived of the opportunity to pursue an average career path.

33. Consequently, the Panel found that Victim 09 experienced physical and mental harm with long-term consequences, as well as material harm, as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.

34. Moving on to Victim 08.

35. As to physical harm, the mistreatment inflicted upon Victim 08 left him in pain and bruised.

36. As to mental harm Victim 08 witnessed the brutal mistreatment inflicted on his co-detainees and has carried this fear to this day. Victim 08 displays symptoms of post-traumatic stress disorder. Victim 08 also experienced disruption in his personal relationships and family. He thus also suffered a damage to his life plan, as part of the mental harm. In addition, by labelling Victim 08 as a “collaborator”, Mr Mustafa, as part of a joint criminal enterprise with other BIA members, set him apart from his community and in doing so, Mr Mustafa contributed to Victim 08’s feelings of fear to speak out about what happened to him in Zllash or seek accountability for those events. Victim 08 was also never afforded the space to process the trauma ensuing from his time in Zllash.

37. In terms of material harm, the intense mental trauma experienced by V08 affected his ability to develop his career. Thus, the Panel finds that Victim 08 has incurred a loss of income as well as a damage to his life plan.

38. Consequently, the Panel found that Victim 08 experienced: physical harm with no long-lasting consequences, mental harm with long-term consequences, and material harm, as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.

39. Now let's turn to Victim 10.

40. As to physical harm Victim 10 was mistreated almost on a daily basis and was held in degrading and inhuman conditions. As a result, he sustained multiple injuries from which he has not recovered.

41. As to mental harm, Victim 10 was terrified by the sounds of others screaming and being beaten, and due to the constant fear that he could be next to be mistreated. Victim 10 continues to suffer to this day.

42. The Panel also considered as part of mental harm, that by branding Victim 10 as a "collaborator" during his detention in Zllash, Mr Mustafa, as part of a joint criminal enterprise with other BIA members, set Victim 10 apart from his community. In doing so, Mr Mustafa contributed to Victim 10's inability to openly seek help to heal his trauma ensuing from his time being detained in Zllash.

43. Concerning material harm, the Panel considered that as result of the torture suffered in Zllash, Victim 10 incurred a loss of income and damage to his life plan.

44. Consequently, the Panel found that V10 experienced physical and mental harm with long-term consequences, and material harm, as a result of the war crimes of arbitrary detention and torture of which Mr Mustafa was convicted.

45. I will now summarise the scope and extent of harm suffered by the Indirect Victims.

46. To begin with, the Panel relied on the findings made in the Trial Judgment concerning the arbitrary detention, torture, and murder of a detainee at the Zllash Detention Compound, of which Mr Mustafa was convicted. This detainee will be referred to as the Murder Victim.

47. The Panel observed that the Murder Victim's arbitrary arrest, detention, and subsequent murder, as well as the circumstances surrounding it, had a devastating impact on the Indirect Victims. They experienced sorrow, distress, and horror. Moreover, they have not been able to grieve the loss of their relative. This has hampered their ability to move forward with their lives.

48. The Panel further considered that the pain and suffering experienced by the family members of the Murder Victim also had an impact on this family's next generation.

49. Consequently, the Panel found that the Indirect Victims experienced mental harm as a result of the war crimes of arbitrary detention, torture, and murder of which Mr Mustafa was convicted with regard to the Murder Victim.

50. This concludes the Panel's findings as to the scope and extent of harm suffered by the Victims and brings me to the Reparation Order against Mr Mustafa.

Reparation Order Against Mr Mustafa

51. This order is made directly against Mr Mustafa.

Beneficiaries of Reparations

52. The beneficiaries of reparations are the three Direct Victims and the five Indirect Victims as mentioned before.

Types and Modalities of Reparations

53. Concerning the types and modalities of reparations, the Panel has determined as follows.

54. In its determination, the Panel noted that the conviction and sentencing in the Trial Judgment constituted already a form of remedy - in the form of an acknowledgement - for the Victims.

55. It also gave the opportunity to the Victims to demand and receive justice for crimes against them or a family member committed more than two decades ago. Lastly, it contributed to the right for the Victims, their families and their communities, to have access to the truth.

56. For reasons set out in the Reparation Order, the Panel determined that compensation for each of the victims on an individual basis constituted the most appropriate type and modality of reparations in this case.

57. Even though, as expressed by Victims' Counsel, no money will bring back the lost family member or can ever repair years of depression, of a life deprived of opportunities to work as before and live a life which allows joy and happiness, compensation will provide some measure of financial relief to the Victims.

Scope of Mr Mustafa's liability for reparations

58. I will now address the scope of Mr Mustafa's liability for reparations. I will start with Victims' Counsel requests.

59. Victims' Counsel requested with respect to Victim 08:- at a minimum – €30,000 euro for material, physical and mental harm.

60. In respect of Victim 09, she requested: at a minimum – €80,000 euro for material, physical and mental harm.

61. In respect of Victim 10, she requested: at a minimum – €60,000 euro for material, physical and mental harm.

62. Lastly, she requested €10,000 euro for Victim 05, Victim 06, and Victim 12; €5,000 for Victim 11, and €2,000 for Victim 13, as compensation for mental harm.

63. Let me move on to the Panel's determination of the scope of Mr Mustafa's liability for reparations.

64. First, Mr Mustafa is liable to repair the harm caused to all Direct and Indirect Victims of the crimes of which he was convicted. This is regardless of the different modes of liability relied on in the conviction, and regardless of whether others may have also contributed to the harm.

65. Second, the Panel ought to set out an amount for each type of harm and also the overall amount of Mr Mustafa's financial liability – that it considers reasonable, in accordance with Article 22(3) of the Law.

66. Moreover, in setting the amount of Mr Mustafa's financial liability, the Panel considered the scope and extent of harm suffered by the Victims and the Victims' Counsel Reparations Request.

67. It also took into consideration relevant Kosovo legislation. This legislation regulates the rights and benefits to which different categories of persons affected by the armed conflict in Kosovo between 1998 and 1999 are entitled. These include: veterans and civilians who were harmed during the armed conflict; those who participated in the war efforts; and family members of deceased or missing Kosovo Liberation Army members and civilians. The Panel decided to consider it as a reference point in order to set a reparation award that it deemed reasonable in the context of Kosovo.

68. It further considered the Lerz Report. The Panel noted that said Report provided rough estimations of the economic losses incurred by the Direct Victims.

69. In the same vein, the Panel considered that these amounts were not disproportionate when compared with the benefits available under Kosovo legislation as indicated before.

70. As for the Indirect Victims, the Panel considered that the sums requested by Victims' Counsel to repair the harm suffered by these victims were in line with the

ones pertaining to the Direct Victims – although they reflect a different type of mental harm.

71. Consequently, the Panel found that the sums requested by Victims' Counsel reflected the scope and extent of the harm suffered by the Victims and were reasonable as foreseen in Article 22(3) of the Law.

72. Taking all the aforementioned considerations into account, bearing in mind the scope and extent of the harm suffered by the Direct and Indirect Victims, resolving uncertainties in favour of the convicted person, the Panel set the total reparation award for which Mr Mustafa is liable at €207,000 (two hundred seven thousand euro).

73. Accordingly, Mr Mustafa is ordered to pay, as compensation for the harm inflicted:

- €30,000 euro to Victim 08;
- €80,000 euro to Victim 09;
- €60,000 euro to Victim 10;
- €10,000 euro to Victim 05, Victim 06, and Victim 12;
- €5,000 euro to Victim 11; and
- €2,000 euro to Victim 13.

74. This concludes the Panel's determination of the financial liability of Mr Mustafa for reparations.

75. The last part of the Reparation Order concerns its Implementation and Execution

Implementation and Execution

Monitoring and Oversight

76. The Panel noted that its jurisdiction in this case will cease with the issuance of this Reparation Order.

77. As a result, the Panel invited the President of the Kosovo Specialist Chambers to assign a judicial authority that will be in charge of monitoring and overseeing the implementation and execution of this Reparation Order.

Funding of the Reparation Order

By the convicted person

78. As to the execution of the Reparation Order, the Panel recalled that the responsibility to pay the compensation awarded by this Panel to the Victims, lies exclusively with Mr Mustafa.

79. The Panel noted however that at the time of issuance of the Reparation Order Mr Mustafa does not have the means to fully comply with said order. The Panel found Mr Mustafa therefore partially indigent for the purposes of reparations. Nevertheless, the Panel decided to issue as an annex to the present Reparation Order, a decision ordering the production of records and documents concerning Mr Mustafa, in order to see if his existing assets could be used to execute, albeit partially, this Reparation Order. In any event, the fact that Mr Mustafa is partially indigent does not absolve him from his obligations towards the victims and he remains liable for the full compensation award.

80. Given the status of Mr Mustafa's financial situation, the Panel emphasised that other actors ought to step in to execute the Reparation Order.

By Kosovo

81. The Panel observed that the first of such actors may be Kosovo.

Crime Victim Compensation Program

82. In its submissions, the Ministry of Justice of Kosovo informed the Panel last year that victims of crimes under the jurisdiction of the KSC may be awarded compensation or restitution from the victim compensation program, which was

established pursuant to the Law on Crime Victim Compensation. This compensation program may be triggered when it has been established that the convicted person is unable to pay the award, in whole or in part. Although this law was recently abrogated and replaced by a new law, the submissions of the Ministry of Justice remained relevant in the context of this new law.

83. In order to preserve the anonymity of the Victims participating in the procedures before the KSC and to ensure their protection, the Panel decided that the Registrar, in coordination with Victims' Counsel, are best suited to seek compensation from the Crime Victim Compensation Program, on behalf of the Victims.

84. The Panel observed nevertheless that other means of execution need to be envisaged to fully execute the Reparation Order, taking into consideration the maximum sums which can be awarded by this Crime Victim Compensation Program.

85. I will now turn to another means of execution, namely the establishment of a new reparation mechanism in Kosovo.

86. The Panel took notice of the fact that Kosovo took no proactive steps to specifically prepare for the need to ensure reparations for victims of crimes under the jurisdiction of the Kosovo Specialist Chambers. The Panel also noted that Kosovo foresaw the need to financially support the defence of suspects and accused before the KSC.

87. It also observed that legislation in Kosovo which addresses harm and injuries suffered in the context of the war in Kosovo in 1998-1999 refers exclusively to the victims of the enemy forces and not to all victims during the war in Kosovo. In the view of the Panel, these laws created a discrimination between the victims of this war.

88. The Panel observed that it has no power to order Kosovo to pay the compensation awarded to the Victims.

89. It found it however important to remind Kosovo of its obligations pertaining to the Victims' right to an effective remedy, as enshrined in Article 54 of the Constitution

and under international treaties. This right comprises a duty to ensure that such a remedy is enforceable.

90. Accordingly, it urged Kosovo to enact the necessary laws and to establish a reparation mechanism for the purpose of fully compensating victims of crimes under the jurisdiction of the Kosovo Specialist Chambers. In the view of the Panel, this would ensure, within the legal system of Kosovo, equal treatment between the victims and the suspects or accused before the KSC.

91. The Panel also underlined that when establishing such a reparation mechanism, consideration should be given to fund it through the budget of Kosovo inasmuch as the defence of suspects and accused before the KSC is also financed through said budget. In the view of the Panel, this equal use of the budget of Kosovo would promote the mandate of the KSC pursuant to Article 1(2) of the Law, as upheld by Kosovo and Members States of the European Union, together with other contributing countries when establishing the KSC and financially supporting its work.

Newly Established Trust Fund for Victims at the Initiative of the KSC

92. Having said that, the Panel stressed that if victims of crimes under the jurisdiction of the KSC cannot enforce their right to reparations, this right, would become meaningless.

93. The Panel, therefore, also recommended the establishment of a trust fund for victims of crimes under the jurisdiction of the KSC, at the initiative of the KSC, in case Kosovo fails to uphold its obligations towards victims in a reasonable time through the establishment of a reparation mechanism.

94. It should be financially supported above all by Kosovo as well as other States and donors wishing to support victims.

95. Accordingly, for the reasons summarised above, the Panel hereby:

- a) **ISSUES** a Reparation Order against Mr Mustafa;

- b) **FINDS** that V08, V09, V10, V05, V06, V12, V11 and V13 have shown to the standard of proof of balance of probabilities that they are victims of the crimes of which Mr Mustafa was convicted;
- c) **DECIDES** to award reparations to the aforementioned Direct and Indirect Victims;
- d) **AWARDS** individual reparations, in the form of compensation;
- e) **SETS** the reparations award for which Mr Mustafa is liable at €207,000 euro (two hundred seven thousand euro);
- f) **ORDERS** Mr Mustafa to pay, as compensation for the harm inflicted:
 - €30,000 euro to V08;
 - €80,000 euro to V09;
 - €60,000 euro to V10;
 - €10,000 euro to V05, V06, and V12;
 - €5,000 euro to V11; and
 - €2,000 euro to V13;

This should be done within a time-limit to be determined by the judicial authority in charge of monitoring and overseeing the implementation and execution of this Reparation Order;

- g) **DECLARES** Mr Mustafa partially indigent for the purpose of the enforcement of this Reparation Order;
- h) **ISSUES** the “Decision ordering the production of records and documents for the purposes of the enforcement of a Reparation Order” and related orders, annexed to this Reparation Order;
- i) **ORDERS** the Registrar to take the necessary steps to implement this Reparation Order;

- j) **INVITES** the President of the KSC to designate a judicial authority which will be in charge of monitoring and overseeing the implementation and execution of this Reparation Order;
- k) **INVITES** Kosovo to establish a new reparation mechanism for victims of crimes under the jurisdiction of the KSC;
- l) **ORDERS** the Registrar to transmit the present Reparation Order, in its public redacted form, to the Government of Kosovo; and
- m) **RECOMMENDS** the establishment of a trust fund, at the initiative of the KSC, for the benefit of victims of crimes under the jurisdiction of the KSC, in case Kosovo fails to uphold its obligations towards victims in a reasonable time through the establishment of a reparation mechanism.

This concludes the summary of the Reparation Order.

The Registry shall now serve the judgement in electronic form and Mr Mustafa will be served with a certified copy in the detention facilities in the English form.

The Albanian version will be served on Mr Mustafa as soon as it is ready.

And this concludes the first instance proceedings in this case.

The court stands adjourned.