

BOSNIA AND HERZEGOVINA
PROSECUTOR'S OFFICE OF BiH
Case Number KT-RZ 141/06
Sarajevo, 26 January 2007

**TO THE PRELIMINARY HEARING JUDGE
OF THE COURT OF BOSNIA AND HERZEGOVINA**

Pursuant to Article 35 (2) (h), 226 (1) and 227 of the *Criminal Procedure Code of Bosnia and Herzegovina* (CPC BiH) I hereby file this:

INDICTMENT

Against:

ALIĆ Šefik, son of Mumin, born on 03 March 1968 in Dobro Selo, the municipality of Bužim, of Bosniak ethnicity, resides at Blatište b.b, the municipality of Bosanska Krupa, forest technician by occupation, JMBG 0303968111054, ID card number 04CSA2399, citizen of Bosnia and Herzegovina, held in custody based initially on the Decision of the Court of BiH number X-KRN-06/294 dated 03 November 2006, and presently on the Decision to Extend Custody issued by the Court of BiH, number X-KRN-06/294 dated 01 December 2006.

Because:

During an armed conflict on the territory of Bosnia and Herzegovina and Republic of Croatia between the forces of the Army of Bosnia and Herzegovina and the Army of Srpska Krajina, in the capacity of the Assistant to the Commander of the „Hamza“ Battalion for Security, the IV Battalion of the 505th Brigade of the 5th Corps of the Army of BiH, whose duties and responsibilities included questioning prisoners, protecting them and ensuring their safe passage to the Brigade Command, he acted contrary to the

provision of Common Article 3, Paragraph 1, Item a) of the Geneva Conventions, dated 12 August 1949, by participating in the physical and mental abuse of war prisoners and instigating, perpetrating or otherwise aiding and abetting their killings, and failing to undertake all necessary and reasonable measures to prevent or punish the perpetrators, because:

1. On 05 August 1995 together with other members of the Hamza Battalion and Al Harbi Tewfik, an irregular soldier over whom he had effective control, he participated in the military operation named „Oluja“, which operation was conducted by the 505th Brigade (also known as the Bužim Brigade), during which operation four members of the Army of Srpska Krajina were captured by the members of the Hamza Battalion in the wider vicinity of elevation Hleb on the territory of the Republic of Croatia near to the border of Bosnia and Herzegovina, and by the function he was performing in the Hamza Battalion he took custody of and was responsible for the protection of the lives and well-being the prisoners, who were captured, mistreated and killed in the following manner.
2. [REDACTED] was captured in the vicinity of elevation Hleb in the direction of Devetaci by [REDACTED] of the Hamza Battalion; immediately afterwards, Al Harbi Tewfik tried to kill this prisoner by asking other soldiers to give him a knife but was prevented from doing so by [REDACTED] and other members of the 1st Company; shortly afterwards the prisoner was placed in the custody and control of the Accused, who questioned and intimidated him together with Al Harbi Tewfik, during which Al Harbi Tewfik introduced himself to the prisoner as a *mujahedin* and said that “I come and kill one, two”, while the Accused at the same time told the prisoner he (referring to Al Harbi Tewfik) only slits throats; this prisoner was then handed back his rifle, without ammunition, and exposed to danger by being forced to march at the head of the column of the soldiers of the Hamza Battalion in the direction of the Serb lines and the Serb Battalion Command,

towards Pavlovo Brdo (Majdan), as a scout and as a "lure" to capture other soldiers of the Army of Srpska Krajina.

3. Shortly afterwards, [REDACTED] in the Hamza Battalion, with the help of his escort, independently captured two other Serb soldiers – [REDACTED] – in the vicinity of elevation Hleb in the direction of Pavlovo Brdo (Majdan), and within minutes after the capture he delivered them into the custody and control of the Accused, who arrived at the scene and who, with some members of the 1st Company, had separated from the first prisoner who was moving with the other soldiers including Al Harbi Tewfik; meanwhile, a fourth Serb soldier – [REDACTED] – was separately captured by members of the Hamza Battalion in the same vicinity and at approximately the same time, and he too was placed into the custody and control of the Accused; following which these newly captured soldiers joined the first prisoner, all under the control of the Accused.
4. During the course of these events, at least three of the prisoners in the custody of the Accused – [REDACTED] – were subjected to threatening and intimidating behavior and physical abuse while walking through a forest during which the Accused, while physically restraining and pointing his gun at the prisoner [REDACTED] threateningly said to the camera operated by [REDACTED] that he will make him (i.e. the prisoner) his "kum"¹ and then indicated that Al Harbi Tewfik will make the prisoner whom he was physically restraining, [REDACTED] his (i.e. Al Harbi Tewfik's) "kum"; Al Harbi Tewfik aggressively held the prisoner [REDACTED] by the prisoner's hair while questioning him without any intervention by the Accused; the Accused slapped the prisoner [REDACTED] on his back in an intimidating manner while questioning him, and while the Accused continued to physically restrain [REDACTED] Al Harbi Tewfik struck that prisoner twice with force to the chin with his hand again without any

¹ This term can mean best man, godfather and very often it is used in dialect for a close family friend.

intervention by the Accused; while on a wide forest road the Accused and Al Harbi Tewfik together aggressively slapped the fourth prisoner, [REDACTED] to the back of his head; at some point when all four prisoners were together at the head of the column of soldiers of the Hamza Battalion they were physically mistreated by Al Harbi Tewfik, who hit and kicked one or more of them.

5. After orders were given to withdraw to elevation Hleb because of the shooting of the Brigade Commander Nanić Izet, all four prisoners were taken together to or near to elevation Hleb in the company of members of the Hamza Battalion including the Accused and Al Harbi Tewfik; thereafter the Accused failed to take all necessary and reasonable steps to ensure the further safety of the prisoners which included failing to prevent Al Harbi Tewfik from having further contact with the prisoners and from further harming them, despite being aware of the real danger and risk which Al Harbi Tewfik posed to the prisoners; at some later point in time, all four prisoners were shot dead execution style while next to each other by Al Harbi Tewfik, without justification, with the assistance of regular soldiers of the Hamza Battalion, in the wider vicinity of Hleb on the edge of a wide forest road, where the bodies remained side by side for withdrawing soldiers to see; after the killings Al Harbi Tewfik boasted to the camera being operated by [REDACTED] that he killed them and encouraged [REDACTED] to film the bodies, which he did.
6. After the event, and despite knowing or having reason to know of the execution of the prisoners, the Accused failed to report the killings to his superiors including to his immediate [REDACTED] superior [REDACTED] the Assistant to the 505th Brigade Commander [REDACTED] and he otherwise took no action, or adequate action, to have the killings and the perpetrators investigated and punished.

Thus, as described above, and in the context of an armed conflict, the Accused by his acts and omissions, instigated, perpetrated, or otherwise aided and abetted the crimes described above and is also responsible by virtue of his position as a superior for

offences perpetrated by his subordinates, including Al Harbi Tewfik, over whom he had effective control, when he knew or had reason to know that his subordinates were about to commit such acts, or had done so, and he failed to take the necessary and reasonable measures to prevent or punish the perpetrators thereof.

Whereby he committed the criminal offence of War Crimes against Prisoners of War contrary to Article 175 (a) of the Criminal Code of Bosnia and Herzegovina (CC BiH) and in violation of common Article 3 (1) (a) of the Geneva Conventions (1949), namely


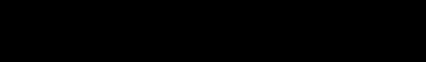
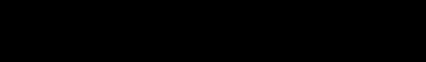
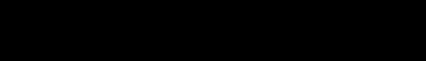
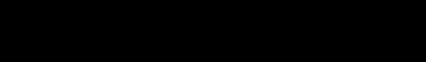
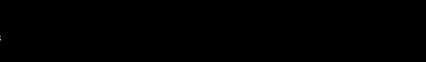
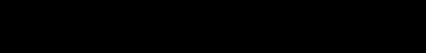

- 1. Inhuman treatment (physical and mental mistreatment of the four prisoners)**
- 2. Depriving another person of his life (murder of the four prisoners),**

both in connection with Articles 21, 35, 180 (1) and (2) of the CC BiH.

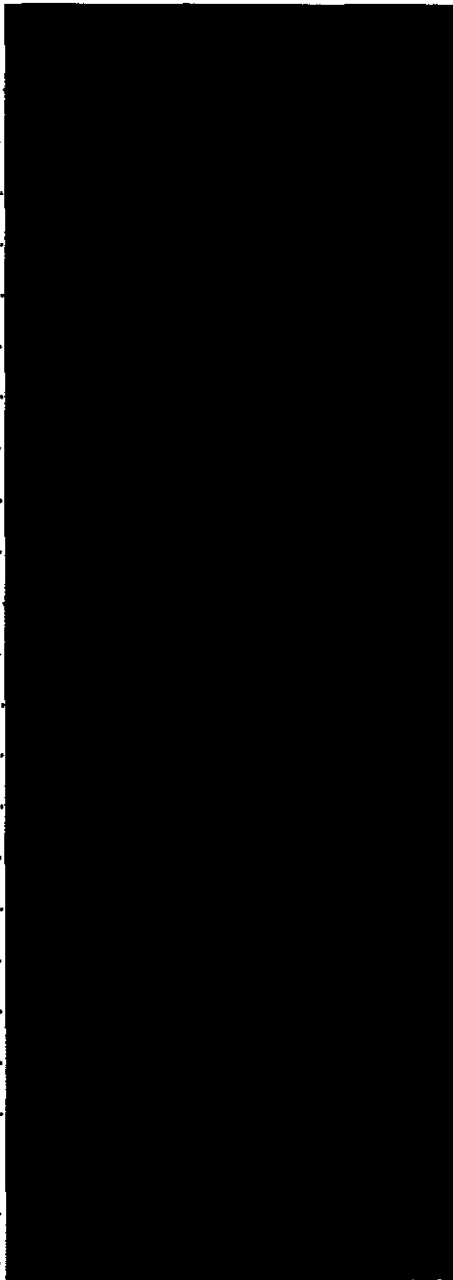
Therefore, I hereby file the following:

**PROPOSAL
of evidence to be presented**

I. To hear the following persons as witnesses:

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II. To inspect the following supporting evidence:

1. Video material: CD1 No. BiH 00001056 and Transcript CD1: The killing of four prisoners;

2. Video material: CD2 5.Korpus-ARBIH-505.Brigada and Transcript CD2: Questioning and killing of [REDACTED]
3. Record on questioning of the suspect ALIĆ Šefik, BiH Prosecutor's Office, dated 02 November 2006;
4. Record on examination of witness ALIĆ ŠEFIK, SIPA, dated 01 December 2005, No. 14-11/3-103-74-2/05;
5. Cards of the missing or captured person for [REDACTED] all dated 22 February 2006;
6. Death certificate for [REDACTED] dated 21 October 2005;
7. Death Certificate for [REDACTED] Decision confirming the death of [REDACTED] No. R.I.12/98-8;
8. Letter of the Center for Collecting documentation and information VERITAS with documentation for four Serb soldiers attached (death certificates, etc.), dated 28 November 2006, No. 01-28/06;
9. Lists of the missing and captured persons, issued by Government of the Republic of Srpska, Office for the search for missing and captured persons, dated 21 October 2005 and 07 February 2006;
10. Movement permit No. 001712 issued to ALIĆ ŠEFIK;
11. Military Book of ALIĆ ŠEFIK, 49 84 No. 6000931; Military ID card No. 1159;
12. Order for the transfer of ALIĆ ŠEFIK from the military police company to the company for special purposes "Hamza", dated 31 December 1994, No. 05/3-665/94;
13. Order on temporary war formation, dated 31 December 1994, No. 05/1-950/94;
14. Order on temporary war formation, dated 26 November 1995, No. 05/53-1813, issued by Army of BiH, Command of the 5th Corps;
15. Military beret of the Accused, green color, with the Army of BiH insignia (shield and sword), temporary seized on 2 November 2006 following the arrest;
16. Military Record for ALIĆ ŠEFIK, dated 29 August 2002;
17. Proposal for ranging members of the Army of BiH, dated 29 October 1995, No. 05-1189/95;
18. Report of the Unit Hamza, signed by ALIĆ ŠEFIK, dated 09 March 1995, No. 01-18/95;

19. Report of the Unit Hamza, signed under the name of ALIĆ ŠEFIK, dated 25 February 1995;
20. Excerpt on prior convictions for ALIĆ ŠEFIK, dated 28 November 2006, No. 05-5/03-04-3-185/06, issued by Cantonal ministry of the internal affairs;
21. Record on the opening and examination of the temporarily seized items and documents, BiH Prosecutor's Office, dated 23 January 2007;
22. Report of SIPA No. 17-12/3-04-2-103-52/05 on the search and temporary seizure of items of the arrested ALIĆ ŠEFIK; record No. 17-12/3-04-2-1/06 and record No. 17-12/3-04-2-2/06, all dated 2 November 2006;
23. Rules for work of the security service in the Defense Forces of the Republic of BiH, dated 1992, No. 521;
24. Security during operation SANA, annex to the Attack Order;
25. Order for logistics, dated 04 August 1995;
26. Query on the recruitment of the foreigners in the Army of BiH, dated 25 August 1995, No. 03/632-2;
27. Report on the foreigners in the 505th Brigade, dated 26 August 1995, No. 03/27-1-53;
28. Instruction on the recruitment of the foreigners in the Army of BiH, dated 22 August 1995, No. 7-2/73-40;
29. Information on recruitment of the foreigners in the Army of BiH, dated 04 September 1995, No. 03/632-12;
30. Presence of the foreigners in the war areas, instruction, dated 20 October 1994, No. 06.1/2-719;
31. Instruction on the application of the rules of the international law on war in the Defense Forces of the Republic of BiH (extracts), Official gazette of the Army of BiH, dated 05 December 1992, No. 2;
32. Rules on publication of the regulations and other acts in the Army of the Republic of BiH (extracts), Official gazette of the Army of the Republic of BiH, dated 15 November 1992, No. 1;
33. Official note issued by SIPA investigator on interview with BAPIĆ NEDŽAD, dated 29 November 2006, No. 17-12/3-04-2-201/06;

34. Official note of SIPA investigator, dated 10 October 2006, No. 17-12/3-04-2-177/06 on threats to [REDACTED]
35. Cantonal Ministry of the Internal Affairs, Una-Sana Canton, BiH, Sketch of the Scene, dated 23 August 2006, No. SL/06;
36. The list of the Commanders of the Bužim Brigade.

III. Results of the investigation

The results of the investigation prove that on the 4th of August 1995, the Hamza Battalion was officially formed within the 505th Bužim Brigade, on which occasion the Hamza Battalion was lined up and the war flag was handed over. It subsumed the Hamza Unit (a company) and the II Assault Battalion. See the evidence of [REDACTED]

[REDACTED]

The results of the investigation confirm that on the 5th of August 1995, in the early morning hours, the 505th Bužim Brigade of the 5th Corps of the Army of BiH started participation in the military operation, sometimes referred to as the Operation "Oluja", linking up with the Croatian Army in the area of Žirovac – Dvor na Uni near the border of Bosnia and Croatia. All units of the 505th Bužim Brigade moved slowly in columns from Ćorkovača through the narrow track on Vijenac ridge with the first stop at the elevation called Hleb from which point they went in different directions as was assigned. The above facts follow from witness statements, in particular, from the evidence of [REDACTED]

[REDACTED]

Three persons in particular participated with the 505th Bužim Brigade in this operation, namely the Suspect, Al Harbi Tewfik and [REDACTED]

The Suspect was an Assistant to the Commander of the Hamza Battalion for Security, otherwise known as the Security Officer for the Hamza Battalion. The written records obtained by the Prosecutor do not record the Suspect as an Assistant to the Commander of the Hamza Battalion for Security (Military Record for ŠEFIK ALIĆ, dated 29 August

2002). However, the investigation has established that he in fact held this position: as much is established by many witnesses as well as by the Suspect himself in the statement he made to SIPA when interviewed as a witness: this is confirmed by statements of witnesses, in particular, by [REDACTED]. Prior to the establishment of the Hamza Battalion, the Suspect was Company Commander of the Special Purposes Unit "Hamza": see Report of the Unit, signed by the Suspect, dated 25 February 1995 and Report of the Unit, signed by the Suspect dated 09 March 1995, No. 01-18/95; when the Hamza Battalion was established the Suspect was promoted to the battalion command. Other witnesses viewed the Suspect as one of the commanding officers in the Battalion Command (see the evidence of [REDACTED] and [REDACTED]), as a commander of the 1st Company (see [REDACTED] statement to SIPA), some kind of intelligence officer (see the evidence of [REDACTED]), or "one of company commanders or even something in the Battalion" (see the evidence of [REDACTED]).

One of the main functional responsibilities of the Suspect, as an Assistant to the Commander of the Hamza Battalion for Security, was to take custody of prisoners, to question them, and to ensure their safe passage and handing over to the Command of the Brigade: see the military document dated 04.08.1995, signed by [REDACTED] military document sent to all Security Officers No. 03/169-4 dated 03.08.1995, signed by Avdagić Husnija; military document No. 03/321-12, dated 03.08.1995, signed by Avdagić Husnija as well as the evidence of [REDACTED] who instantaneously handed over custody of two prisoners whom he captured to the Suspect. See also the evidence of [REDACTED] [REDACTED] 505th Brigade Commander [REDACTED] – the suspect's direct superior at the Brigade Command, and the evidence of [REDACTED] the Bužim Brigade appointed after the death of the Commander Nanić Izet.

Al Harbi Tewfik, a citizen of Saudi Arabia, who arrived in BiH during the war as a humanitarian worker, was not officially a member of any units of the 5th Corps of the Army of BiH. Al Harbi Tewfik clothed and armed himself and arrived by his own private transport at Ćorkovača on the morning of Operation Oluja: see the evidence of [REDACTED] [REDACTED]. However, the investigation has established that he actively and regularly

participated in the combat operations of the Hamza Battalion (previously the Hamza Unit) prior to the 4th of August 1995 and at least until mid September 1995 when he participated in Operation SANA: see the evidence of [REDACTED] as well as video evidence CD2 5.Korpus-ARBIH-505.Brigada – footage from 00:00 min. till 05:30 min.

[REDACTED] the Bužim Brigade, and joined the Hamza Battalion in this operation to film the combat activities as confirmed by witnesses: [REDACTED]
[REDACTED]

The investigation has established that during the course of this military operation in the wider vicinity of the elevation called Hleb (in the territory of the Republic of Croatia) four soldiers of the Army of Srpska Krajina were captured as follows.

[REDACTED] of the Hamza Battalion, captured a Serbian soldier, [REDACTED] (subsequently identified by the witness [REDACTED]) in the direction of the village of Devetaci. The prisoner did not resist capture. Al Harbi Tewfik then tried to kill the prisoner by asking other soldiers to give him a knife, while [REDACTED] and the other soldiers present successfully protected the prisoner. This was filmed by [REDACTED] the above facts are confirmed by CD1 No. BiH 00001056 – footage from 47:47 min. till 49:40 min. and statements of witnesses [REDACTED]

Soon after, the prisoner was handed over into the custody of the Suspect. The Suspect with Al Harbi Tewfik participated in the questioning of [REDACTED] filmed by [REDACTED] during which Al Harbi introduced himself as a *mujahedin*, saying that “I come and kill one, two” while the Suspect told the prisoner that he (meaning – Al Harbi) only slits throats; this is seen on CD1 No. BiH 00001056 – footage from 49:40 min. till 50:02 min. where the Suspect is identified by witnesses [REDACTED]

The prisoner was then handed back his rifle, without ammunition and he was forced to march at the head of the column of the soldiers with the intention to capture other

soldiers of the army of Srpska Krajina. He was marched in the direction of Pavlovo Brdo (Majdan). The use of him as lure and scout proved to be unsuccessful. (See the evidence of [REDACTED]).

The investigation has further established that soon afterwards, the witness [REDACTED] noticed two Serbian soldiers [REDACTED] (subsequently identified by the witness [REDACTED]) in the vicinity of elevation Hleb in the direction of Pavlovo Brdo (Majdan) whom he captured with the help of his escort [REDACTED]. No shots were fired and the prisoners did not resist. Within a matter of minutes the Suspect arrived with some members of the 1st Company, and [REDACTED] handed over his two prisoners to the Suspect whose responsibility was to deal with prisoners. The Suspect took custody of the prisoners without objection.

A fourth prisoner – [REDACTED] – as identified by witness [REDACTED] – was captured separately from the others and he too ultimately found himself with the other three prisoners in the custody of the Suspect and in the presence of Al Harbi Tewfik. The investigation did not establish who captured this prisoner but he seems to have been captured very near to where [REDACTED] were captured and at about the same time.

The investigation confirmed that all four soldiers were captured within a short period of time: see the evidence of [REDACTED]. They were captured in the process when they were walking back to their homes: see the evidence of [REDACTED].

At one point, at least three of the prisoners in the custody of the Suspect – [REDACTED] – were subjected to threatening and intimidating behavior and physical abuse while walking through a forest during which the Suspect, while physically restraining and pointing his gun at the prisoner [REDACTED] said to the camera, operated by [REDACTED] that he will make him (i.e. the prisoner) his “*kum*” and then indicated that Al Harbi Tewfik will make the prisoner whom he was physically restraining, [REDACTED] his (i.e. Al

Harbi Tewfik's) "*kum*"; Al Harbi Tewfik aggressively held the prisoner [REDACTED] by the prisoner's hair while questioning him without any intervention by the Suspect; the Suspect aggressively slapped the prisoner [REDACTED] on his back while questioning him, and while the Suspect continued to physically restrain [REDACTED] Al Harbi Tewfik struck that prisoner twice with force to the chin with his hand again without any intervention by the Suspect; while on a wide forest road the Suspect and Al Harbi Tewfik together aggressively slapped the fourth prisoner, [REDACTED] to the back of his head (see CD1 No. BiH 00001056 – footage from 50:40 min. till 51:05 min.); in the presence of Al Harbi Tewfik, the Suspect also struck with his hand the fourth prisoner, [REDACTED] to the back of the head on a wide forest road (see CD1 No. BiH 00001056 – footage from 52:02 min. till 52:12 min.).

At some point when all four prisoners were together at the head of the column of soldiers of the Hamza Battalion they were physically mistreated by Al Harbi Tewfik, who hit and kicked one or more of them: see the evidence of [REDACTED]

The investigation has established that after all four soldiers were captured the Brigade Commander Nanić Izet was shot dead between Ćorkovača area and elevation Hleb along the Vijenac ridge. Consequently, all activities were suspended and soldiers of the Hamza Battalion began to withdraw, at least to elevation Hleb. All four prisoners were taken together to or near to elevation Hleb in the company of soldiers from the Hamza Battalion, the Suspect and Al Harbi Tewfik (see the evidence of [REDACTED] [REDACTED])

As a result of the killing of Brigade Commander Nanić Izet, Battalion and Brigade officers withdrew from the vicinity of Hleb in the direction of Ćorkovača to attend an informal briefing with [REDACTED] and others senior officers: see the evidence of [REDACTED] [REDACTED] The Suspect remained in the wider vicinity of Hleb.

The investigation has established that treatment of the prisoners by the Suspect, in collaboration with Al Harbi Tewfik, amounted to inhuman treatment, particularly if considered cumulatively. The prisoners suffered physical abuse as well as mental

anguish, having been intimidated, threatened and unnecessarily exposed to danger. This included using the first prisoner as a scout and lure contrary to international humanitarian law. The prisoners were placed in fear for their lives. The investigation has established that the Suspect allowed Al Harbi Tewfik to have direct and constant access to the prisoners. The Suspect used Al Harbi's aggressive and threatening disposition in his dealings with the prisoners. The Suspect failed to restrain Al Harbi Tewfik's mistreatment of the prisoners and indeed actively tolerated and encouraged it. The Suspect himself physically abused and intimidated the prisoners and fueled the atmosphere of fear.

The treatment of the prisoners was such that one witness – [REDACTED] – an objective bystander who intervened to prevent the first prisoner from being attacked by Al Harbi Tewfik – raised the issue of their treatment with Bajraktarević Asim (deceased) at elevation Hleb; [REDACTED] said at interview that he believed that the conduct towards the prisoners amounted to inhuman treatment. [REDACTED] was equally concerned about the fate of the prisoners when he last saw them with [REDACTED] and Al Harbi Tewfik.

The prisoners in the care and custody of the Suspect never made it back to the Battalion Headquarters on Ćorkovača alive: at some point after they were taken to elevation Hleb or near to elevation Hleb, all four prisoners were shot dead by Al Harbi Tewfik, without justification, in the wider vicinity of Hleb on the edge of a wide forest road, where the bodies remained for withdrawing soldiers to see (for example, witness [REDACTED] saw those bodies in the late afternoon lying near the road when he was withdrawing). At some point after the killings Al Harbi Tewfik called [REDACTED] to film the dead bodies, while he – Al Harbi – boasted that he did it. It appears on the video footage that the prisoners have been shot in the back. The investigation did not establish the time of the killings, although the killings certainly took place in daylight hours on the day of capturing (see the evidence of [REDACTED] CD1 No. BiH 00001056 – footage from 52:50 min. till 53:05 min.).

The investigation did not establish that the Suspect was immediately present when the prisoners were killed or that he expressly ordered the killings. There is evidence that the Suspect separated from the prisoners and Al Harbi Tewfik while the prisoners were still alive. (See the evidence of [REDACTED])

The investigation has established that other officers were aware of the capture of the prisoners such as the Battalion Commander Bajraktarević Asim (see the evidence of [REDACTED])

[REDACTED] Indeed the capture of the prisoners was communicated via radio back to the Brigade Commander Nanić Izet (see the evidence of [REDACTED]) The investigation has also established that Battalion Commander Bajraktarević Asim did give orders concerning the prisoners including that they be escorted to the rear (see the evidence of [REDACTED]) [REDACTED]

The Suspect was, however, the officer who had the most dealings with and control of the prisoners on this day prior to their killings. Moreover, being a security officer he was the most responsible officer in the vicinity of elevation Hleb concerning the treatment and safe passage of the prisoners to the Brigade Command. The investigation has established that the Suspect was the last officer at either Battalion or Brigade level to have direct physical control of the prisoners and that he was the only one to have ever physically and directly controlled all four prisoners. If other Battalion or Brigade officers did have contact with the prisoners, such contact was fleeting or brief. All officers at Battalion or Brigade level who were near to elevation Hleb have made statements in the course of the investigation with the exception of the Battalion Commander, Bajraktarević Asim, who is deceased: [REDACTED]

[REDACTED] of the Hamza Battalion, will say that he became aware of the capture of the prisoners but never came into contact with the prisoners, having retreated from elevation Hleb early (he is supported by the witness [REDACTED])

[REDACTED] of the Bužim Brigade, had also withdrawn to where Brigade Commander Nanić Izet had been killed and never even saw the prisoners; after handing over the two prisoners to the Suspect, [REDACTED] never came into contact with the prisoners again; Bašić Meho, the Assistant Commander for Intelligence had been shot dead prior to the

execution of the prisoners; [REDACTED] of the 3rd Battalion, never even saw the prisoners; [REDACTED] Assistant to Commander of the Brigade for [REDACTED] of the Brigade after Commander Nanić Izet got killed), who went to Hleb plateau in the afternoon, did not see the prisoners or even hear that they had been captured. As to Bajraktarević Asim – the investigation has established that he never directly controlled the prisoners: see the evidence of the witness [REDACTED] who will say that he was with Bajraktarević Asim shortly after the Brigade Commander was killed and after the prisoners were returned to the vicinity of elevation Hleb alive, and that he remained with him at all times including during the withdrawal from Hleb and the prisoners were not with Bajraktarević Asim; according to [REDACTED] Bajraktarević Asim later said he regretted that Alić Šefik did not hand the prisoners over to the Brigade as he was deputy for security. There is also independent evidence that Bajraktarević Asim together with other members of the Battalion Command attended a meeting with [REDACTED] at the Observation Post in the rear, some distance from Hleb (see the evidence of [REDACTED]).

The Suspect was under a duty to take all reasonable steps to ensure the safety and welfare of the prisoners and to protect them. This duty arises first from his custody of the prisoners and from the fact that he had exposed the prisoners to danger, which duty was reinforced by the special responsibilities which attached to the position he held as a security officer.

The Suspect was under an additional, though separate, legal duty under the doctrine of Superior Responsibility to prevent his subordinates from committing any crimes against these four prisoners. The investigation has established that the Suspect at least was in a *de facto* superior-subordinate relationship with Al Harbi Tewfik. The Suspect was a member of the Battalion Command and Al Harbi Tewfik operated within this Battalion, albeit informally.

The investigation has established that despite being well aware of Al Harbi Tewfik's animus and potential danger to the Serb prisoners – encouraged and tolerated by the Suspect himself – the Suspect failed to take any steps at all, or he took grossly

insufficient measures to restrain Al Harbi Tewfik from having further access to the prisoners or from further harming them. He failed to ensure that the Battalion Commander Bajraktarević Asim or other senior commanding officers present were made aware of the dangers and risks posed by Al Harbi Tewfik and the imperative need to restrain him from any further possible contact with the prisoners. The Suspect has never claimed that he took such steps – he did not do so in any report (oral or written) to his superior [REDACTED] in his statement made to SIPA when interviewed as witness, or in his responses to [REDACTED] to allegations of his possible guilt. The investigation has established that Al Harbi Tewfik was not restrained in any way: he killed the prisoners openly, without fear of detection or punishment.

Through his acts and his particular omissions, the Suspect facilitated and encouraged the killing of the prisoners and is also liable under the doctrine of Superior Responsibility.

Possible failure by other officers and soldiers in their duties to protect the prisoners and to prevent crimes being committed against them does not excuse the Suspect from having to take all reasonable and necessary steps.

The investigation has also established that these killings were never reported, investigated or punished by anyone including by the Suspect; Al Harbi Tewfik remained in the Bužim Brigade and freely participated with it in Operation Sana, more than a month after these events. Therefore, he was available for the investigation: see the evidence of [REDACTED] as well as video evidence CD2 5.Korpus-ARBIH-505.Brigada – footage from 00:00 min. till 05:30 min.

The investigation has established that it is almost certain that Al Harbi Tewfik was assisted in some way by regular members of the Hamza Battalion in the execution of prisoners – by controlling the prisoners at the time of execution or in the moments beforehand, or by otherwise allowing the execution to occur – any soldier given responsibility for escorting the prisoners was obliged to take reasonable steps to protect the prisoners. The investigation has established there were also many soldiers in the

general vicinity at the time. The investigation has not established either the number or identity of the soldiers who may have so assisted although one witness has identified one regular soldier, Bužić Osman, on the video filmed by [REDACTED] nearby the dead bodies of the prisoners. Bužić Osman's behavior, as filmed, suggests approval of the killings. The investigation has established that Bužić Osman died as a result of war injuries. An unknown soldier, who is off camera, says about one of the killed prisoners "he was so scared", strongly suggesting he was present at the time of the execution. The real likelihood that regular soldiers – who were subordinated to the Suspect – played an immediate or direct role in the execution also needed to be reported, investigated and punished. The Suspect took no such steps.

Many witnesses involved in combat activities in the Hleb vicinity on this day became aware of the killings either through seeing the dead soldiers or through talk amongst soldiers. Nearly all such witnesses say they learned of the killings: see the evidence of [REDACTED]

[REDACTED] Even on the account given by the Suspect in his SIPA statement, he learned of the killings from his soldiers only four days later but he failed to act upon this information.

The Suspect failed to make a report in writing or orally on the capture or killing of the prisoners to his direct superior in the security service – see the evidence of Deputy Commander of the Bužim Brigade for [REDACTED]. The Suspect never reported the crimes to other senior members of the Brigade Command or the Battalion Command (see the evidence of [REDACTED] of the Brigade after Nanić Iset was killed; the evidence of [REDACTED] of the Bužim Brigade, and the statement of [REDACTED] of the Hamza Battalion). The Suspect, in his statement to SIPA, does not assert that he made any such report with a view to having the crimes investigated and punished.

The investigation has established that the Suspect was not a good report writer: see the evidence of [REDACTED] This did not excuse him from reporting the commission of serious crimes.

Possible knowledge of other officers of the killings and their inaction did not excuse the Suspect from acting upon his own knowledge.

Thus, irrespective of the suspect's liability for his acts and omissions prior to the killings, the Suspect is criminally liable for failing to take all necessary and reasonable measures to punish the perpetrator or perpetrators of these killings.

The investigation has also established that the Suspect has made a number of statements which can be construed as admissions of guilt.

The Suspect lied in his statement to SIPA, which he made as a witness, that he only saw Al Harbi Tewfik after he (i.e. the Suspect) had relinquished control of the prisoners.

When asked about the video footage of these events by [REDACTED] the Suspect claimed that the video was rigged: see the evidence of [REDACTED]

Also, in response to [REDACTED] suggestion that if he didn't do it he should go to the authorities the Suspect said: *"If I am held responsible then I will take down at least two persons with me"*.

The results of the investigation show that the above crimes were committed on the Croatian territory in the vicinity of the border between Bosnia and Croatia; the Suspect is a citizen of BiH and therefore this Court has jurisdiction under Article 12 (2) of the CC BiH.

Based on the above mentioned, it could be concluded that the Suspect is fully responsible for the acts with which he is charged in Counts 1 and 2 of the Indictment.

For these reasons and conclusions, I consider this Indictment to be fully justified and based on law and I therefore move the Preliminary Hearing Judge of the Court of BiH to confirm it in its entirety.

IV. Material supporting the allegations made in the Indictment:

- Record on examination of witness [REDACTED] SIPA, dated 28 September 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 01 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 24 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 24 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 16 December 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 01 September 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 15 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 15 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 24 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 05 December 2005, [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 03 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 01 December 2005, No. [REDACTED]

- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 18 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 29 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 22 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 22 January 2007;
- Record on examination of witness [REDACTED] SIPA, dated 08 December 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 08 January 2007;
- Record on examination of witness [REDACTED] SIPA, dated 22 September 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 13 December 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 03 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 13 October 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 30 August 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 04 October 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 02 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 28 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 09 January 2007;
- Record on examination of witness [REDACTED] SIPA, dated 02 December 2005, No. [REDACTED]

- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 23 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 22 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 09 January 2007;
- Record on examination of witness [REDACTED] SIPA, dated 13 December 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 21 September 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 19 October 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 07 December 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 18 August 2006;
- Record on examination of witness [REDACTED] SIPA, dated 05 December 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 31 August 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 29 August 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 16 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated 10 October 2006;
- Record on examination of witness [REDACTED] SIPA, dated 15 November 2005, No. [REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated 01 September 2006, No. [REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated [REDACTED]

- Record on examination of witness [REDACTED] SIPA, dated [REDACTED] No. [REDACTED]
[REDACTED]
- Record on examination of witness [REDACTED] BiH Prosecutor's Office, dated [REDACTED]
[REDACTED]
- Record on examination of witness [REDACTED] SIPA, dated [REDACTED] No. [REDACTED]
[REDACTED]
- Video material: CD1 No. BiH 00001056 and Transcript CD1: The killing of four prisoners;
- Video material: CD2 5.Korpus-ARBIH-505.Brigada and Transcript CD2: Questioning and killing of [REDACTED]
- Record on questioning of the Suspect ALIĆ Šefik, BiH Prosecutor's Office, dated 02 November 2006;
- Record on examination of witness ALIĆ ŠEFIĆ, SIPA, dated 01 December 2005, No. 14-11/3-103-74-2/05;
- Cards of the missing or captured person for [REDACTED]
[REDACTED] all dated 22 February 2006;
- Death certificate for [REDACTED] dated 21 October 2005;
- Death Certificate for [REDACTED] Decision confirming the death of [REDACTED] No. R.I.12/98-8;
- Letter of the Center for Collecting documentation and information VERITAS with documentation for four Serb soldiers attached (death certificates, etc.), dated 28 November 2006, No. 01-28/06;
- Lists of the missing and captured persons, issued by Government of the Republic of Srpska, Office for the search for missing and captured persons, dated 21 October 2005 and 07 February 2006;
- Movement permit No. 001712 issued to ALIĆ ŠEFIĆ;
- Military Book of ALIĆ ŠEFIĆ, 49 84 No. 6000931; Military ID card No. 1159;
- Order for the transfer of ALIĆ ŠEFIĆ from the military police company to the company for special purposes "Hamza", dated 31 December 1994, No. 05/3-665/94;
- Order on temporary war formation, dated 31 December 1994, No. 05/1-950/94;
- Order on temporary war formation, dated 26 November 1995, No. 05/53-1813, issued by Army of BiH, Command of the 5th Corps;

- Military beret of the Accused, green color, with the Army of BiH insignia (shield and sword), temporary seized on 2 November 2006 following the arrest;
- Military Record for ALIĆ ŠEFIK, dated 29 August 2002;
- Proposal for ranging members of the Army of BiH, dated 29 October 1995, No. 05-1189/95;
- Report of the Unit Hamza, signed by ALIĆ ŠEFIK, dated 09 March 1995, No. 01-18/95;
- Report of the Unit Hamza, signed under the name of ALIĆ ŠEFIK, dated 25 February 1995;
- Excerpt on prior convictions for ALIĆ ŠEFIK, dated 28 November 2006, No. 05-5/03-04-3-185/06, issued by Cantonal ministry of the internal affairs;
- Record on the opening and examination of the temporarily seized items and documents, BiH Prosecutor's Office, dated 23 January 2007;
- Report of SIPA No. 17-12/3-04-2-103-52/05 on the search and temporary seizure of items of the arrested ALIĆ ŠEFIK; record No. 17-12/3-04-2-1/06 and record No. 17-12/3-04-2-2/06, all dated 2 November 2006;
- Rules for work of the security service in the Defense Forces of the Republic of BiH, dated 1992, No. 521;
- Security during operation SANA, annex to the Attack Order;
- Order for logistics, dated 04 August 1995;
- Query on the recruitment of the foreigners in the Army of BiH, dated 25 August 1995, No. 03/632-2;
- Report on the foreigners in the 505th Brigade, dated 26 August 1995, No. 03/27-1-53;
- Instruction on the recruitment of the foreigners in the Army of BiH, dated 22 August 1995, No. 7-2/73-40;
- Information on recruitment of the foreigners in the Army of BiH, dated 04 September 1995, No. 03/632-12;
- Presence of the foreigners in the war areas, instruction, dated 20 October 1994, No. 06.1/2-719;

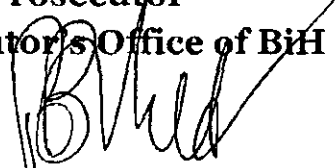
- Instruction on the application of the rules of the international law on war in the Defense Forces of the Republic of BiH (extracts), Official gazette of the Army of BiH, dated 05 December 1992, No. 2;
- Rules on publication of the regulations and other acts in the Army of the Republic of BiH (extracts), Official gazette of the Army of the Republic of BiH, dated 15 November 1992, No. 1;
- Official note issued by SIPA investigator on interview with BAPIĆ NEDŽAD, dated 29 November 2006, No. 17-12/3-04-2-201/06;
- Official note of SIPA investigator, dated 10 October 2006, No. 17-12/3-04-2-177/06 on threats to [REDACTED];
- Cantonal Ministry of the Internal Affairs, Una-Sana Canton, BiH, Sketch of the Scene, dated 23 August 2006, No. SL/06;
- The list of the Commanders of the Bužim Brigade.

V. Proposal for the Extension of Pre-trial Detention following the Confirmed Indictment

On 12 July 2006, the BiH Prosecutor's Office issued an Order to Conduct the Investigation against AL HARBI TEWFIK, ALIĆ ŠEFIĆ, and others (No. KT-RZ 141/06) based on grounds for suspicion that they had committed the criminal offenses of War Crimes against Prisoners of War per Article 175 of the CC BiH. On 02 November 2006, the Suspect was arrested and brought to the BiH Prosecutor's Office. On 03 November 2006 the prosecution submitted the motion for custody and the Preliminary Proceeding Judge denied it due to the fact that the prosecution did not submit the evidentiary materials to the defense but only to the Court. The Preliminary Proceeding Judge forwarded the motion for the consideration of the Panel according to Article 134 (5) of the CPC BiH. On 03 November 2006 the Panel confirmed the custody of the Suspect on the basis of Article 132 (1) (b) of the CPC BiH for a period of one (1) month. The defense appealed the decision and on 10 November 2006 the Appeal Panel denied the appeal and confirmed custody of the Suspect. On 01 December 2006 the custody of the Suspect

was extended for a period of two (2) month, until 02 February 2007. The defense appealed the decision and on 14 December 2006 the Appeal Panel denied the appeal and confirmed extension of custody.

Pursuant to Articles 227 (3) and 137 (1) of the CPC BiH, the Prosecutor's Office of BiH proposes that, following the confirmation of the Indictment, the detention of the accused Alić Šefik be extended till the end of the trial on the grounds set forth in Article 132 (1) (b) of the CPC BiH. These are grounds which the prosecution advanced in the original motion for custody at the time of arrest and which were accepted by the Panel both at the initial decision on custody and at the decision extending custody. For the sake of efficiency, these arguments will not be repeated here; they are incorporated by reference. It is submitted that the grounds for custody previously advanced by the Prosecutor, and accepted by this Court, continue to exist: there have been no further threats to the witnesses during the period in which the Suspect has been in custody.

Prosecutor
Prosecutor's Office of BiH

Peter Kidd