

STATEMENT OF WITNESS

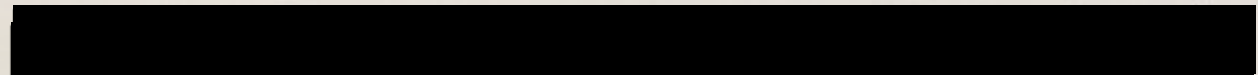
(Criminal Justice Act 1967, ss 2,9/M.C. Rules, 1968, r.58)

Statement of : Khaled el-Masri

Age of witness
(if over 18 enter 'over 18') : Over 18

Occupation of witness: Food retailer

Address:



This statement, consisting of 11 pages signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 16th July 2020

Signed

Khaled El Masri

Signature witnessed by

Imad

1. I am a German citizen. At the end of 2003 I was travelling through Europe on a bus. At the Macedonian border I was kidnapped; first detained without reason, held incommunicado and severely ill treated for 23 days, until the 23rd January 2004. I was handcuffed and blindfolded and at Skopje Airport, handed to a CIA rendition team who physically overwhelmed me, cutting off all my clothes except my blindfold. I make this statement in these proceedings because the WikiLeaks publications were relied on by the European Court in obtaining the redress I have received.

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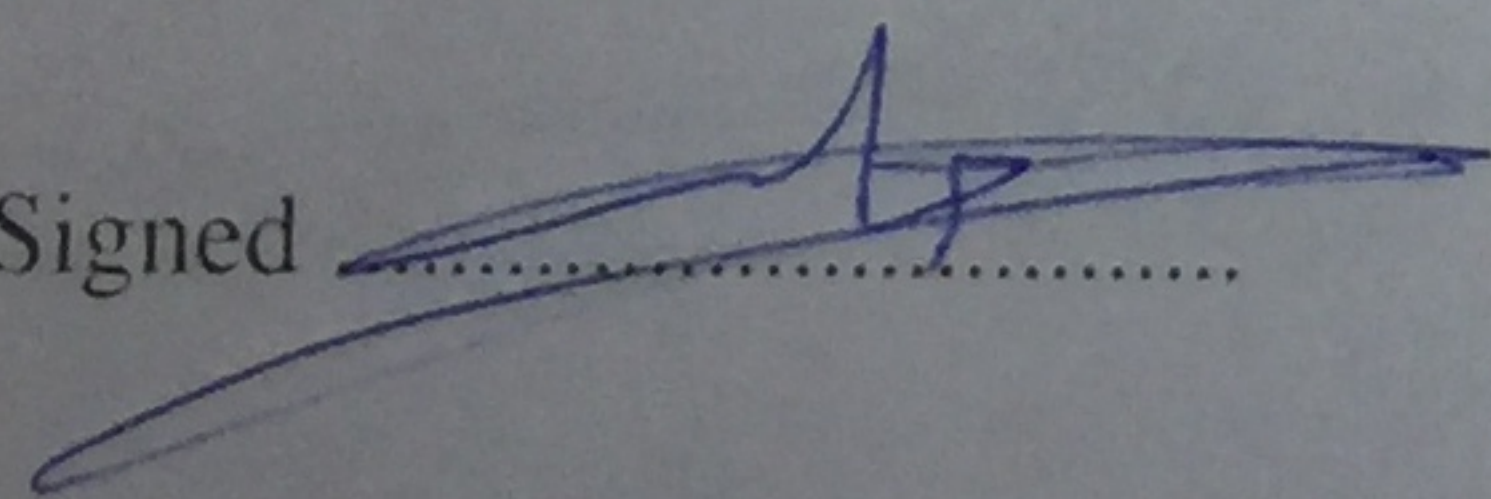
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2. The Grand Chamber of the European Court of Human Rights nine years later made a series of findings confirming that the following had in fact occurred and that I was "*Severely beaten, sodomised, shackled and hooded and subjected to total sensory deprivation – carried out in the presence of state officials of Macedonia and within its jurisdiction*". As a result of that treatment and my prior detention in Macedonia the Grand Chamber found that Macedonia's "*government was consequently responsible for those acts performed by foreign officials. ... Those measures had been used with pre-meditation, the aim being to cause Mr Masri severe pain and suffering in order to obtain information. In the Court's view such treatment had amounted to torture, in violation of Article 3 ECHR*". I attach a copy of the judgement as exhibit KeM1.
3. Those actions were only the beginning. When my blindfold was eventually removed I was temporarily blinded by the bright light of flash photography. When I recovered my sight, I saw seven or eight men dressed head to foot in black, wearing black masks. They dressed me in a diaper and a tracksuit, with a bag over my head and earmuffs. I was shackled and marched to a waiting aircraft.
4. On the plane, I was spread-eagled and my limbs tied to the sides of the aircraft. I was given injections and an anaesthetic. I was unconscious for most of the journey.

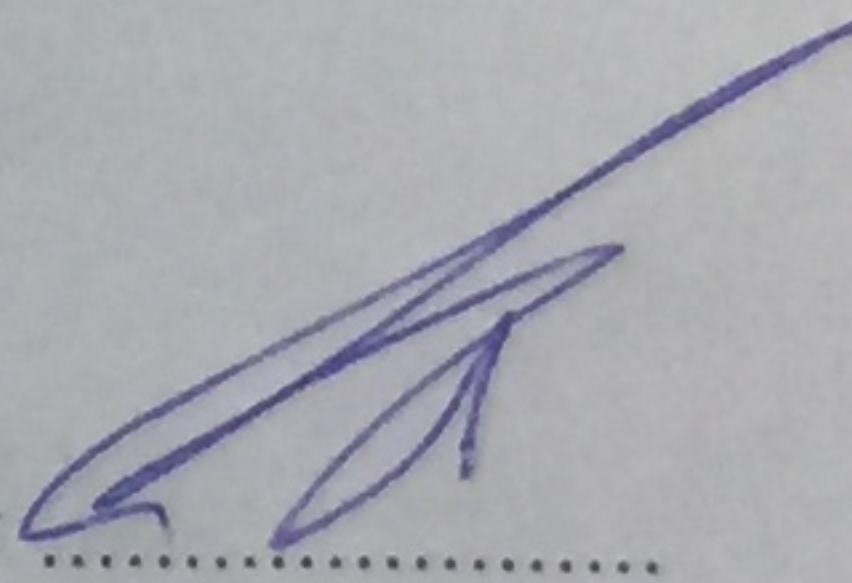
Afghanistan

5. The plane landed in a place I later learned was Afghanistan. I was taken to a prison where I was held incommunicado. I was continuously interrogated, held in a cold concrete cell (in winter in Afghanistan) with only a dirty thin blanket and a bucket to use as a toilet. I was humiliated, stripped naked, insulted and threatened. I was interrogated by someone with a South Lebanese accent (my country of birth) and later by a native German speaker. In March 2004 I went on hunger strike to protest my incommunicado detention without charge. On the 34th day of the hunger strike I was dragged from my cell to the interrogation room, tied to a chair and a tube painfully forced through my nose.

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6. I much later discovered that by this time the CIA knew that my detention was the result of "mistaken identity", and that I should be released.¹ I was nevertheless held for several more months.
7. By the end of May 2004 an American who identified himself as a psychologist promised me I would soon be released. He told me he had travelled from Washington D.C. to check. Soon thereafter, I was interrogated again by the native German speaker named "Sam," the American prison director, and an American translator.
8. I was warned as a condition of my release I was never to mention what happened to me and that there would be consequences if I spoke.
9. On approximately 28 May 2004, I was blindfolded and handcuffed, and led out of my cell. I was handed the suitcase I had arrived with in Skopje, and told to change back into the clothes I had arrived with in Macedonia. I was given two new t-shirts.
10. I was taken to an aircraft, blindfolded, ear-muffled, and chained to the seat. The German speaker who had visited me in prison - "Sam" - accompanied me. He told me that the plane would land in a European country - not Germany - and that I would then eventually continue home to Germany.

Albania

11. When the plane landed I was put into the back of a vehicle and driven up and down windy, mountainous roads. There were men in the car, speaking a language that sounded Slavic.
12. Eventually, the vehicle stopped. I was brought out of the car and my blindfold and handcuffs were removed. The men gave me my suitcase, and my passport, and told me to walk down the road without turning back.

¹ - CIA OIG report <https://www.cia.gov/library/readingroom/docs/0006541725.pdf>

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13. It was very dark, and the road was completely deserted. I really believed I was going to be shot in the back and that I would die on that road. I rounded a corner and came across three armed men who immediately asked me for my passport. When they saw I had a German passport, with no visa in it, they asked me why I was in Albania with no legal permission. I told them I had no idea where I was. They told me I was close to the Albanian / Macedonian border. I had never even been to Albania before.

Germany

14. I was eventually driven to the airport in Tirana, and put straight on a plane to Frankfurt.

15. On my return to Germany, in 2004 (although ultimately the European Court made those findings in my case), any recognition that I had indeed suffered the criminal actions was impossible to establish. It was only at the stage of the Grand Chamber handing down the judgment, finding unanimously that I had been "*subjected to forced disappearance, unlawful detention, extraordinary rendition outside any judicial process and inhuman and degrading treatment*" that revelations in US diplomatic cables published by WikiLeaks made it clear why over the intervening years, my suffering had been able to be denied and ignored, and steps taken that should have been taken against those responsible, sidelined. Those cables, made public in 2011, were relied upon by the Court in December 2012.

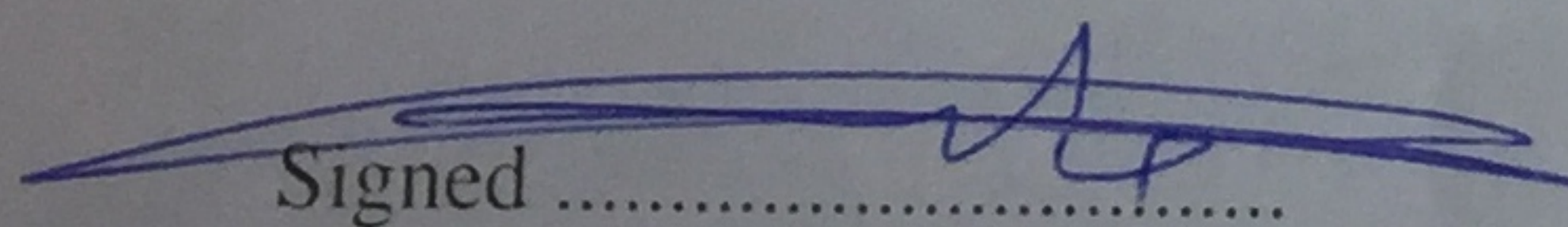
16. Despite this finding against Macedonia, there has been complete impunity for criminality in relation to the CIA officers and those acting as their agents who took part in my kidnapping, rendition, torture, and inhumane and degrading treatment. No individual party to my kidnapping, rendition and detention has undergone a criminal prosecution.

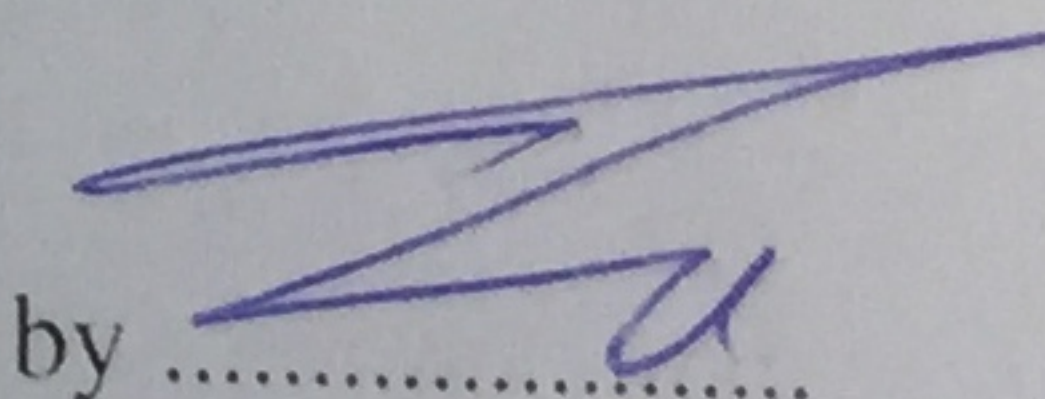
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17. I arrived back in Germany in the morning of (approximately) 29 May 2004. On arrival in Frankfurt, I gave my passport at immigration. When I returned I had long hair and beard, and had lost 40 pounds. The officer repeatedly looked at the picture and at me and then remarked you look very different and asked if I had a more recent photo. I said that the photo in the passport was recent but that I had rapidly aged.
18. When I got to my house it was empty and I could see that it had been abandoned. I contacted friends who told me that my wife and the children had gone to Lebanon. My wife had left a contact number. Of course, I immediately called her. When she heard my voice, she couldn't speak; instead I spoke to her mother.
19. I and my family have Lebanese roots; I had lived in Germany at the time of these events in 2003/2004 for effectively all my adult life, almost 20 years. I was a man of exemplary character. The traumatic experiences that followed my return to Germany intensified and left me unable to understand how and why I was treated in the ways that followed; disbelieved, humiliated, and subjected to forms of oppressive behaviour. When in 2010/2011 WikiLeaks published US diplomatic cables did it become clear what pressures had taken place beyond Macedonia's collusion with the US. The deputy chief of mission to Germany in February 2007 warned the German Deputy Security Adviser, Rolf Nickel in terms that: *"the issuance of international arrest warrants would have a negative impact on our bilateral relationship. He reminded Nickel of the repercussions to U.S.-Italian bilateral relations in the wake of a similar move by Italian authorities last year."* A copy of this cable is exhibited as KeM2.
20. Despite being a German citizen, as a result of several attempted court proceedings, I now know that in May 2004, the then German Interior Minister, Otto Schily, had been directly informed of my situation by the US Ambassador to Germany.²

² - CIA OIG report <https://www.cia.gov/library/readingroom/docs/0006541725.pdf>

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21. Despite knowledge at the highest levels of both the US and Germany, no-one from either government reached out to help me.
22. My quest for accountability has been characterised by passivity and avoidance on the part of the officials. It has also been manifested in attacks on me, intimidation and slurs on my character, in the course of which my very sense of reality has been chipped away, questioned and undermined by powerful states seeking only to protect themselves from being held to account.
23. I knew that I had to tell the truth, but was afraid of what might happen if I started to speak publicly. I decided to record my testimony on a tape. I made several copies, and sent it out to various people both inside and outside the country. This was to make sure my story was available, and recorded, in case I 'disappeared' again.
24. I met a local lawyer in Ulm, Manfred Gnjdic, and relayed my story to him. He was clearly not sure if I was telling the truth, or was completely mad. He explored my story again and again in different ways to see if my account remained consistent. He knew from the community that I was missing but it was still difficult for him to believe me. The allegations I was making seemed so unbelievable and there was a complete silence from those who could have corroborated my story.
25. Over the following years, as a direct result of the secrecy of the states involved and attempts to cover up what happened, I had a long struggle to expose even the most basic facts about my case. It was only with the assistance of independent journalists working with Wkileaks, and later human rights investigators and lawyers that I was able to slowly build up my credibility and gather evidence to support my story.
26. Amongst the key investigators was John Goetz who was able to reconstruct the path of my rendition flight. He and others researched in different countries establishing with great difficulty that what I said I had experienced must be true. Bit by bit pieces could be put together and eventually the names of 13 CIA

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agents involved in my rendition emerged in a separate Spanish investigation into the use of Palma Airport for CIA flights. **Some of this data became public** and John Goetz used it to find the rendition team in the United States. He even filmed his attempts to interview them at their homes. After the broadcast on his work **in the ARD Television magazine, Panorama**, the Munich state prosecutor issued international arrest warrants for the CIA rendition team.

27. As a result of cables published by WikiLeaks it is now known (but was not at the time in 2006) that the German Government bowed to pressure from the US government to not seek the extradition of the rendition team.

28. Similarly as a result of WikiLeaks cables it is known that the US had interfered to block a judicial investigation in Germany and similarly intervened in Spain, the rendition flight in question having travelled from Palma airport in Spain.

29. I do not set out here all of the misleading and untrue statements made by a number of authorities suggesting that it was appropriate to disbelieve my allegations and undermine my claims. Intimidation upon me and witnesses was manifest throughout.

30. Despite the institution in Germany of a parliamentary investigation as a result of media scrutiny, impediments were erected to my ability to ascertain the truth, including via witnesses whose details I had learned in prison in Afghanistan. Other incidents caused me fear, being suddenly blocked on the motorway by cars, unknown strangers approaching my children, my complaints to the police leading to their attempting to section me in a hospital for the mentally ill. I was violently restrained.

31. I and my family endured extended and repeated hostile experiences over many years. These have been fully documented and I therefore do not go into them in detail in this statement.

32. The CIA had told me in Afghanistan that they would monitor me after my release and it is in fact also mentioned in the Officer of the Inspector General's (OIG) report: ***"The following evening, these officers met again with al Masri and***

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related conditions for his release which included:... that he would not reveal his experiences to the media or local authority; that he would accept that his post release activities would be monitored and that any breach of his pledge would have consequences." I exhibit a copy of that report as KeM3. The reference is at paragraph 111.

33. The European Court of Human Rights considered my case and the Grand Chamber issued its judgement in December 2012.

34. At each stage of my raising my predicament, governments, both my own and those who played a direct part, have sought to discredit my account and in a number of different ways attempted to silence me. But, at each juncture it has been journalists and investigators informed by WikiLeaks documents that have been able, through their painstaking and diligent work, to corroborate my story and restore credibility to my account.

35. Those who assisted me have not been spared either. My lawyer in Germany was also subjected to threats and his office was bugged. He successfully brought an action against the responsible state authorities for this.

Accountability of the CIA in America

36. There has been none. On 6 December 2005, after filing a Freedom of Information Act lawsuit lawyers at the American Civil Liberties Union obtained some CIA documents. These showed amongst much else that was horrifying that an investigation carried out by the CIA's Inspector General into my rendition and torture showed that there had been no basis to *"render and detain el-Masri and the agencies' prolonged detention was unjustified"*. They found that a fundamental breakdown in management and oversight had taken place and that the Afghan Station and the *"ALEC exaggerated the nature of the data possessed linking el-Masri to terrorism"*. Disagreements delayed my release further by months. The option of transfer to US military custody was ruled out because *"The US military would register el-Masri and notify the Red Cross of his*

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detention, ... would have no grounds on which to detain him ... and he could be a free man within hours".

37. The ACLU's lawsuit on my behalf, before the United States District Court for the Eastern District of Virginia, against a number of defendants including former CIA director George Tenet and certain unknown CIA agents was based upon the deprivation of my liberty and the absence of legal process and a claim under the Alien Torts Statute for violations of international legal norms prohibiting prolonged arbitrary detention and cruel, inhuman, or degrading treatment. However the Bush administration pressed the US Supreme Court to refuse to hear my case; the Court acquiesced deciding not to review it, it having been dismissed by the lower courts on "state secrets" grounds – the very same month the Inspector General report was submitted to the administration. On the basis of the states secret ground, the CIA asserted that the case should to be dismissed because the documents detailing what had happened to me were classified and so the court was not permitted to hear it.

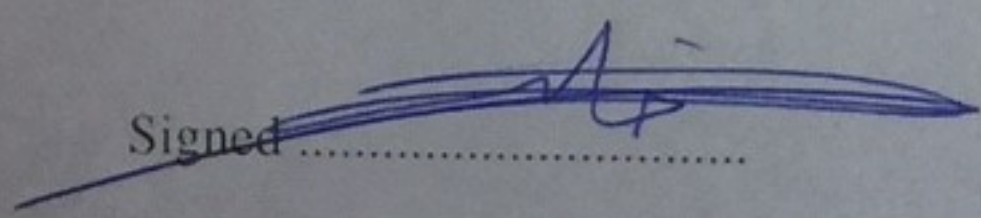
38. No one has ever been held accountable for what happened to me beyond "*Oral admonishing*" given to three CIA attorneys. The CIA's Inspector General, I learned, referred my case to the Department of Justice for prosecution but in May 2007 the **Office of the US Attorney for the Eastern District of Virginia** declined to pursue the case.

39. When in 2014 the US Senate Select Committee on Intelligence published its study of the Central Intelligence Agency 's Detention and Interrogation Program; it noted that the CIA argued against punitive detention because "*The Director strongly believes that mistakes should be expected in a business filled with uncertainty and that, when they result from performance that meets reasonable standards, CIA leadership must stand behind the officers who make them*".³

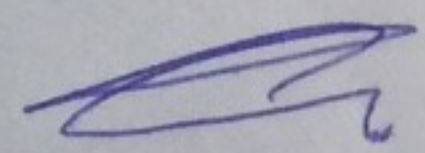
³ -

https://upload.wikimedia.org/wikipedia/commons/a/a2/US_Senate_Report_on_CIA_Detention_Interrogation_Program.pdf

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40. Findings of essential factual detail have never been made public, however, and there have still been no consequences for those who made the mistakes.

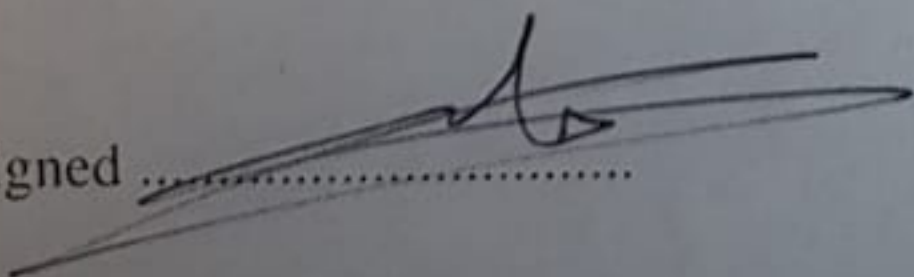
41. It was when my case against the CIA in the US was aborted as a result of the US asserting state secret privilege, that I realised the extent of the lawlessness that I was up against. I had brought my case, told my story, and the American government knew I was speaking the truth. Yet I never even received an acknowledgment and my life was and remains in tatters.

42. I see that the CIA Inspector General recommended that the matter be referred to the Department of Justice for consideration. I observe that prosecutors in the Eastern District of Virginia made a decision not to bring any prosecution.

43. The American Civil Liberties Union initiated a case on my behalf against the US before both the Inter American Commission on Human Rights and the International Criminal Court. My complaint included the Grand Chamber judgment and therefore, in the body of its evidence, the WikiLeaks publications. I have learned that in March 2020, when the International Criminal Court (which I am told is the court of last resort when governments cannot or will not investigate grave crimes) US Secretary of State Pompeo has stated, his statement followed by the authority of an Executive Order, that extreme measures will be taken against the International Criminal Court, its prosecutor and her family, and against any involved in bringing cases to the court which would cause the US to be the subject of investigation.

44. I record here my belief that without dedicated and brave exposure of the state secrets in question, what happened to me would never have been acknowledged and understood; I nevertheless observe, with fear of what is to come, that threats and intimidation are not diminishing, but expanding for all concerned.

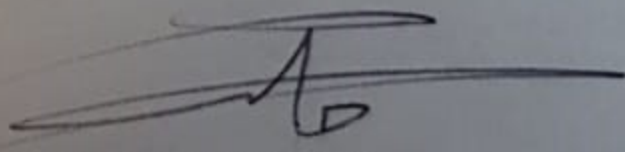
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45. I nevertheless believe that the exposure of what happened, was necessary not just for myself but for law and justice worldwide. My story is not yet concluded.

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