

**ANNEX 2 to**  
**Submission of confirmed Indictment**

Strictly Confidential



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-07  
**Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 14 December 2020

**Language:** English

**Classification:** Strictly Confidential

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**Redacted Indictment**

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**Specialist Prosecutor's Office**

Jack Smith

The Specialist Prosecutor, pursuant to his authority under Articles 35(2)(i) and 38 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), charges:

### **HYSNI GUCATI**

### **NASIM HARADINAJ**

with **Criminal Offences Against the Administration of Justice and Public Administration** and **Criminal Offences Against Public Order** punishable under Chapters II, XXXI, and XXXII of the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC') and Articles 15(2) and 16(3) of the Law, as set forth below:

#### **THE ACCUSED**

1. **Hysni GUCATI**, son of [REDACTED], was born on 30 March 1967 in Morinë, Skënderaj/Srbica municipality, Kosovo. His last known residence is in [REDACTED], Kosovo. He has Kosovan nationality (personal number [REDACTED]).
2. **Nasim HARADINAJ**, son of [REDACTED], was born on 21 May 1963 in Glllogjan/Glođane, Deçan/Deçani municipality, Kosovo. His last known residence is in [REDACTED], Kosovo. He has Kosovan nationality (personal number [REDACTED]).
3. At all times relevant to this indictment, **Hysni GUCATI** and **Nasim HARADINAJ** were chairman and deputy chairman, respectively, of the Kosovo Liberation Army War Veterans Association ('KLA WVA').

#### **STATEMENT OF FACTS**

4. All crimes charged in this indictment relate to official proceedings of the Specialist Chambers ('SC'), including investigations of the Specialist Prosecutor's Office ('SPO') (collectively, 'SC Proceedings'). All references to witness(es) in this indictment should be understood to include any person(s) likely to have information about a crime, the perpetrator, or important circumstances relevant to SC Proceedings.

5. Between at least April and September 2020, **Hysni GUCATI** and **Nasim HARADINAJ** made statements accusing witnesses cooperating with the SPO and other persons of being, *inter alia*, liars, collaborators, and traitors. This conduct demonstrates their intent and motives to undermine and obstruct SC Proceedings.

6. As set out below, between at least 7 and 25 September 2020, **Hysni GUCATI**, **Nasim HARADINAJ**, and others, without authorisation, disseminated confidential and non-public information relating to the confidential investigations of the Special Investigative Task Force ('SITF') and SPO, encouraged others to further disseminate confidential and non-public information, and undertook other actions for the declared purpose of obstructing the SC/SPO. This confidential and non-public information included documents marked 'confidential' [REDACTED].

7. **Hysni GUCATI** and **Nasim HARADINAJ** organised and coordinated the unauthorised dissemination and related actions, including by, with certain others, reviewing the confidential and non-public information, partaking in decisions as to whether and how to disseminate it, and organising and participating in related events, including press conferences and public appearances, where confidential and non-public information was publicly disseminated and discussed.

#### *First Disclosure*

8. On 7 September 2020, **Hysni GUCATI** and **Nasim HARADINAJ**, acting in their capacities as head and deputy head of the KLA WVA, held a press conference at which **Hysni GUCATI** announced that the KLA WVA had received files relating to the SC/SPO ('First Press Conference'). These files ('First Disclosure') were laid out on a table during the press conference.

9. **Nasim HARADINAJ** stated that four copies of the documents were being made available at the First Press Conference. He announced the [REDACTED]. **Nasim HARADINAJ** also explained that [REDACTED], were in the First Disclosure. **Nasim HARADINAJ** acknowledged the confidential nature of the documents. He stated that the KLA WVA would send a copy of the documents to members of the Kosovo

Assembly and would give those attending the First Press Conference as many copies as they wanted. **Nasim HARADINAJ** urged those in attendance to take a copy of the documents and to review the witnesses' names and statements.

10. On 7 September 2020, the SC Single Judge authorised the seizure of documents forming part of the First Disclosure, recognised the confidential and non-public nature of information from SITF/SPO investigations, and ordered that any individual in possession of the documents or their contents refrain from copying, recording or disseminating them ('First Order'). On 8 September 2020, the SPO served the First Order and seized documents at the KLA WVA premises. The seized items included confidential and non-public information relating to confidential investigations, [REDACTED].

11. After the First Press Conference, between 7 and 15 September 2020, **Hysni GUCATI** and **Nasim HARADINAJ** made multiple public statements relating to the First Disclosure. As part of such statements, **Hysni GUCATI** and/or **Nasim HARADINAJ** publicly:

- i. confirmed that copies of the First Disclosure had been provided to members of the press;
- ii. disclosed further contents of the First Disclosure, including details of the confidential investigations;
- iii. stated that witnesses were named in the documents and referred to the dates and locations of specific interviews;
- iv. accused witnesses named in the documents of being, *inter alia*, liars, traitors, and spies;
- v. encouraged members of the press to publish documents contained in the First Disclosure;
- vi. declared that, if they received further confidential and non-public information, they would publicly disseminate it; and
- vii. stated that they did not recognise the SC/SPO and that their actions were intended to obstruct the SC/SPO.

12. After the First Press Conference and over the following days, certain contents of the First Disclosure, including [REDACTED] names and personal data, were further disseminated, including in the press and online.

*Second Disclosure*

13. On 16 September 2020, **Hysni GUCATI** and **Nasim HARADINAJ**, acting in their capacities as head and deputy head of the KLA WVA, held a press conference ('Second Press Conference') at which **Hysni GUCATI** stated that the KLA WVA had received another set of documents. He told those who were present that they could take the documents ('Second Disclosure'). While showing one of the documents, **Hysni GUCATI** named two persons who had cooperated with the SITF.

14. **Nasim HARADINAJ** repeated the name of one of the persons already identified by **Hysni GUCATI**, named another person who cooperated with the SITF, and revealed other confidential and non-public information relating to the confidential investigations. **Nasim HARADINAJ** told those present at the Second Press Conference that the documents were available for anyone and told those present to take them.

15. On 17 September 2020, the SC Single Judge authorised the seizure of documents forming part of the Second Disclosure, recognised the confidential and non-public nature of information from SITF/SPO investigations, and ordered that any individual in possession of the documents or their contents refrain from copying, recording or disseminating them ('Second Order'). Later that day, the SPO served the Second Order and seized documents at the KLA WVA premises. The seized items included (i) documents relating to prior criminal proceedings in Kosovo and before the International Criminal Tribunal for the former Yugoslavia; and (ii) documents relating to confidential investigations, which had also formed part of the First Disclosure and included the identity and/or personal data [REDACTED].

16. After the Second Press Conference, between 17 and 21 September 2020, **Hysni GUCATI**, **Nasim HARADINAJ**, and at least one other representative of the KLA

WVA made multiple public statements relating to the First Disclosure and Second Disclosure. As part of such statements, **Hysni GUCATI**, **Nasim HARADINAJ**, and/or other(s) publicly:

- i. acknowledged the sensitive, confidential, and non-public nature of the contents of the First Disclosure and Second Disclosure;
- ii. acknowledged that, by law, witness identities and personal data should not be published;
- iii. claimed that the documents seized by the SPO formed only part of the documents disseminated during and after the Second Press Conference, as the rest had already been taken by members of the press and others;
- iv. acknowledged that SC orders forbade further dissemination of the contents of the First Disclosure and Second Disclosure;
- v. confirmed that the Second Disclosure had been made available to and taken by members of the press;
- vi. disclosed further contents of the First Disclosure and Second Disclosure, including details of the confidential investigations;
- vii. confirmed that documents disseminated included names and personal data of witnesses;
- viii. accused witnesses referred to in the confidential information of being, *inter alia*, liars, spies, and traitors;
- ix. thanked and praised the persons who had provided the Second Disclosure to the KLA WVA;
- x. promised to publish any further confidential and non-public information relating to the SC/SPO provided to the KLA WVA;
- xi. challenged members of the press for not publishing confidential and non-public information;
- xii. told members of the press to publish confidential and non-public information; and

- xiii. stated that they did not recognise the SC/SPO and that their actions were intended to obstruct the SC/SPO.

*Third Disclosure*

17. On 22 September 2020, **Hysni GUCATI** and **Nasim HARADINAJ**, acting in their capacities as head and deputy head of the KLA WVA, held a press conference ('Third Press Conference') at which **Hysni GUCATI** stated that the KLA WVA had received documents, which they believed had been leaked from the SC/SPO ('Third Disclosure'). **Hysni GUCATI** showed one of the documents, inviting those in attendance to move closer to view it.

18. **Nasim HARADINAJ** stated that the documents bore the SPO's logo and, based on his understanding, concerned a draft indictment. Referring to the contents of the documents, he named five potential accused persons, [REDACTED], and identified other persons and locations mentioned in the document. **Nasim HARADINAJ** invited those in attendance to look at, record, and publish the contents of the documents. He also declared that the KLA WVA would accept and disseminate further confidential and non-public information relating to the SC/SPO.

19. On 22 September 2020, the SPO issued an order for the production of documents forming part of the Third Disclosure and that any individual in possession of the documents or their contents refrain from copying, recording or disseminating them ('Third Order'). That same day, the SPO served the Third Order and seized documents at the KLA WVA premises. The seized items included confidential and non-public information relating to confidential investigations, [REDACTED].

20. After the Third Press Conference, between 22 and 25 September 2020, **Hysni GUCATI** and **Nasim HARADINAJ** made multiple public statements relating to the Third Disclosure. As part of such statements, **Hysni GUCATI** and/or **Nasim HARADINAJ** publicly:

- i. confirmed that the Third Disclosure was disseminated to the press;
- ii. [REDACTED];



- iii. encouraged persons with confidential and non-public information relating to the SC/SPO to continue to provide it to the KLA WVA;
- iv. promised to publish any further confidential and non-public information relating to the SC/SPO provided to the KLA WVA; and
- v. stated that they did not recognise the SC/SPO and that their actions were intended to obstruct the SC/SPO.

21. Following the Third Press Conference and over the following days, contents of the Third Disclosure, [REDACTED], were further disseminated, including in the press and online.

22. As a result of the First Disclosure, Second Disclosure, Third Disclosure, and related events set out above, witnesses and/or their family members were intimidated. Their safety, privacy, reputations, and livelihoods were threatened. Further, the SPO was forced to take measures to address actual and potential consequences, including to witnesses and SC Proceedings.

23. The confidential and non-public documents disseminated as part of the First Disclosure, Second Disclosure, and Third Disclosure are hereafter referred to as the 'Confidential Information'.

### *Crimes*

24. Based on the facts set out in paragraphs 4-22, **Hysni GUCATI** and **Nasim HARADINAJ** are individually criminally responsible for each of the following crimes. As set out in paragraphs 45-46, they had the requisite knowledge and intent for each crime.

### Obstructing official persons in performing official duties

25. Between at least 7 and 25 September 2020, **Hysni GUCATI**, **Nasim HARADINAJ**, and certain others ('Associates'), by serious threat and/or common action, obstructed or attempted to obstruct SC Proceedings. **Hysni GUCATI** and **Nasim HARADINAJ** organised and coordinated the group committing such acts.

26. In particular, as set out in paragraphs 6-9, 11-14, 16-18, and 20-21, on multiple occasions between at least 7 and 25 September 2020, **Hysni GUCATI**, **Nasim HARADINAJ**, and/or Associates (i) disseminated the Confidential Information; (ii) accused witnesses identified in the Confidential Information of being, *inter alia*, liars, spies, and traitors; and (iii) declared that their purpose in disseminating the Confidential Information and related acts was to obstruct SC Proceedings. **Hysni GUCATI** and **Nasim HARADINAJ** also publicly encouraged, instructed, and/or advised others, including:

- i. certain members of the public in possession of or with access to confidential information relating to SC Proceedings to continue providing it to the KLA WVA; and
- ii. certain members of the press and public to take and/or record, and further disseminate and publish, Confidential Information.

27. Following, at least, the First Disclosure and Third Disclosure, certain of the Confidential Information was further disseminated, including in the press and online, as set out in paragraphs 12 and 21.

28. Finally, as set out in paragraph 22, the acts of **Hysni GUCATI**, **Nasim HARADINAJ**, and/or Associates obstructed or attempted to obstruct SC Proceedings: (i) witnesses were intimidated; (ii) the SPO's ability to effectively investigate and prosecute crimes, including by obtaining and securing relevant evidence, was thereby threatened; and (iii) SPO resources and time were diverted to address actual and potential consequences, including to witnesses and SC Proceedings.

#### Intimidation during criminal proceedings

29. Between at least 7 and 25 September 2020, **Hysni GUCATI**, **Nasim HARADINAJ**, and Associates used serious threats to induce or attempt to induce witnesses to refrain from making a statement or to make a false statement or otherwise fail to state true information to the SPO and/or SC.

30. In particular, as set out in paragraphs 6-9, 11-14, 16-18, and 20-21, on multiple occasions, **Hysni GUCATI, Nasim HARADINAJ**, and/or Associates:

- i. [REDACTED];
- ii. acknowledged that the Confidential Information included the identities and data of protected witnesses;
- iii. in public appearances, revealed [REDACTED] identities, their places of residence and other personal data, and/or details, including dates and locations, of witness interviews;
- iv. accused witnesses identified in the Confidential Information of being, *inter alia*, liars, spies, and traitors;
- v. encouraged, instructed, and advised certain members of the public in possession of or with access to confidential information relating to SC Proceedings to continue providing it to the KLA WVA;
- vi. encouraged, instructed, and advised certain members of the press and public to take and/or record, and further disseminate and publish, Confidential Information;
- vii. declared, and by their actions demonstrated, their indifference to the safety of witnesses identified in the Confidential Information; and
- viii. declared that their purpose in disseminating the Confidential Information and related acts was to obstruct SC Proceedings.

### Retaliation

31. Between at least 7 and 25 September 2020, **Hysni GUCATI, Nasim HARADINAJ**, and Associates took or attempted to take actions harmful to witnesses with the intent to retaliate for providing truthful information relating to the commission or possible commission of criminal offences to the SPO.

32. In particular, the acts and omissions described in paragraph 30 above infringed the witnesses' fundamental rights as guaranteed in the Constitution of the Republic of Kosovo and the European Convention on Human Rights. Witnesses and/or their

family members were intimidated. Their safety, privacy, reputations, and livelihoods were threatened.

#### Violating secrecy of proceedings

33. As set out in paragraphs 6-9, 11-14, 16-18, and 20-21, between at least 7 and 25 September 2020, **Hysni GUCATI, Nasim HARADINAJ**, and Associates, without authorisation, revealed Confidential Information. They also encouraged, instructed, and advised: (i) certain members of the public in possession of or with access to confidential information relating to SC Proceedings to continue providing it to the KLA WVA; and (ii) certain members of the press and public to take and/or record, and further disseminate and publish, Confidential Information. The Confidential Information must not be revealed according to the Law and/or was classified by competent authorities, including the SC, SITF/SPO, and cooperating organisations and states pursuant to an agreement with the SITF/SPO. The information was classified in accordance with Articles 4(2), 23, 35(2)(d)-(f), 39, 54(8), 61(3)-(4), and 62 of the Law.

34. Further, as set out in paragraphs 6-9, 11-14, 16-18, and 20-21, between at least 7 and 25 September 2020, **Hysni GUCATI, Nasim HARADINAJ**, and Associates, without authorisation, revealed or attempted to reveal the identities and personal data of witnesses under protection in SC Proceedings and prior criminal proceedings in Kosovo. They also encouraged, instructed, and advised members of the press and public to reveal such information without authorisation. **Hysni GUCATI, Nasim HARADINAJ**, and Associates publicly stated that the Confidential Information included identities, personal data, and evidence of witnesses and related to confidential SITF/SPO investigations. **Hysni GUCATI, Nasim HARADINAJ**, and Associates acknowledged that the identities and personal data of witnesses should not, by law, be publicly disseminated. Rather, in accordance with the Law, the Confidential Information should only have been disclosed in the context of criminal proceedings, subject to appropriate safeguards and protective measures.

35. As set out in paragraphs 22 and 32 above, the unauthorised revelation of protected witness identities and personal data resulted in serious consequences for the witnesses and severely hindered SPO investigations.

#### *Modes of Liability*

36. Based on the facts set out in paragraphs 4-22, **Hysni GUCATI** and **Nasim HARADINAJ** are individually criminally responsible for the crimes described above through the following modes of liability. As set out in paragraphs 45-46, they had the requisite knowledge and intent for each mode of liability and crime.

#### Commission and Attempt

37. **Hysni GUCATI** and **Nasim HARADINAJ** committed the crimes, through the acts and omissions described in paragraphs 6-9, 11, 13-14, 16-18, 20.

38. In addition and/or the alternative, through the acts and omissions described in paragraphs 6-9, 11, 13-14, 16-18, 20, **Hysni GUCATI** and **Nasim HARADINAJ** attempted, within the meaning of KCC Article 28, the commission of the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings through the revelation of the identities and personal data of protected witnesses.

#### Co-perpetration and Agreement to commit criminal offence

39. As demonstrated by their declared purpose to obstruct the SC/SPO and concerted acts in furtherance of this common purpose, as described in paragraphs 6-9, 11-14, 16-18, and 20-21, **Hysni GUCATI**, **Nasim HARADINAJ**, and/or Associates committed the crimes in co-perpetration and/or agreed to commit the crimes.

40. **Hysni GUCATI** and **Nasim HARADINAJ** substantially contributed to and undertook substantial acts toward the commission of the crimes in furtherance of their common purpose or agreement, including in one or more of the following ways, as described in more detail in paragraphs 6-9, 11, 13-14, 16-18, 20:

- i. reviewing the Confidential Information;

- ii. deciding and/or partaking in decisions about whether and how to disseminate it;
- iii. organising and partaking in events, including press conferences and public appearances, where Confidential Information was publicly disseminated and discussed;
- iv. disseminating the Confidential Information;
- v. revealing the identities and personal data [REDACTED];
- vi. making accusations against and derogatory comments about witnesses;
- vii. encouraging and advising persons with access to confidential information relating to SC Proceedings to continue providing it to the KLA WVA, and promising to continue disseminating such confidential information; and/or
- viii. encouraging, instructing, and advising members of the media and public to take and/or record, and further disseminate the Confidential Information.

### Incitement

41. Through one or more of the acts described in paragraph 40(ii)-(viii), **Hysni GUCATI** and **Nasim HARADINAJ** incited one another, Associates, and certain others to commit the crimes described above.

42. In addition and/or in the alternative, through one or more of the acts described in paragraph 40(ii)-(viii), **Hysni GUCATI** and **Nasim HARADINAJ**: (i) incited one another, Associates, and certain others to commit the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings; and (ii) such crimes were attempted.

43. In addition and/or in the alternative, through one or more of the acts described in paragraph 40(ii)-(viii), **Hysni GUCATI** and **Nasim HARADINAJ**: (i) incited one another, Associates, and certain others to commit the crimes of obstructing official

persons in performing official duties, intimidation during criminal proceedings, and violating the secrecy of proceedings through the revelation of the identities and personal data of protected witnesses; and (ii) such crimes were neither committed, nor attempted.

#### Assistance

44. Finally, through one or more of the acts described in paragraph 40, **Hysni GUCATI** and **Nasim HARADINAJ** provided assistance to one another, Associates, and certain others in the commission of the crimes described above.

#### *Intent*

45. As demonstrated by their deliberate conduct and statements described in paragraphs 5-9, 11-14, 16-18, and 20-21, including dissemination of the Confidential Information, accusations against witnesses, indifference to witness safety, statements acknowledging the confidential nature of the Confidential Information, and declared purpose to obstruct the SC/SPO, **Hysni GUCATI**, **Nasim HARADINAJ**, and, as applicable, Associates and others intended the commission of the crimes described above and/or to incite and assist the commission of the crimes.

46. In the alternative, as demonstrated by their deliberate conduct and statements, **Hysni GUCATI**, **Nasim HARADINAJ**, and, as applicable, Associates, and others: (i) were aware that the crimes described above could occur as a result of their acts or omissions, and/or that their acts or omissions could incite or assist in the commission of crimes; and (ii) acceded to their occurrence.

#### **STATEMENT OF CRIMES**

47. Through the acts and omissions described above, **Hysni GUCATI** and **Nasim HARADINAJ**:

- i. committed, alone and/or in co-perpetration, the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings;
- ii. attempted to commit the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings through the revelation of the identities and personal data of protected witnesses;
- iii. agreed to commit the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings, and took substantial acts towards the commission of these crimes;
- iv. incited and assisted in the commission of the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings;
- v. incited the commission of the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings, and such crimes were attempted; and/or
- vi. incited the commission of the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, and violating the secrecy of proceedings through the revelation of the identities and personal data of protected witnesses, and such crimes were neither committed, nor attempted.

48. **Hysni GUCATI** and **Nasim HARADINAJ** are individually criminally responsible for:

**Count 1: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by serious threat, between at least 7 and 25 September 2020, a CRIMINAL



OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 28, 31, 32(1)-(3), 33, 35, and 401(1) and (5), and Articles 15(2) and 16(3) of the Law;

**Count 2: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES**, by participating in the common action of a group, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 28, 32(1)-(3), 33, 35, and 401(2)-(3) and (5), and Articles 15(2) and 16(3) of the Law;

**Count 3: INTIMIDATION DURING CRIMINAL PROCEEDINGS**, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(3), 33, 35, and 387, and Articles 15(2) and 16(3) of the Law;

**Count 4: RETALIATION**, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(2), 33, 35, and 388(1), and Articles 15(2) and 16(3) of the Law;

**Count 5: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of secret information disclosed in official proceedings, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 31, 32(1)-(2), 33, 35, and 392(1), and Articles 15(2) and 16(3) of the Law; and

**Count 6: VIOLATING SECRECY OF PROCEEDINGS**, through unauthorised revelation of the identities and personal data of protected witnesses, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(3), 33, 35, and 392(2)-(3), and Articles 15(2) and 16(3) of the Law.

49. All sections of this indictment should be read in conjunction with one another.



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**Jack Smith**

**Specialist Prosecutor**

Monday, 14 December 2020

At The Hague, the Netherlands.