

ANNEX 2 to

Submission of public redacted Rule 86(3)(b) Outlines

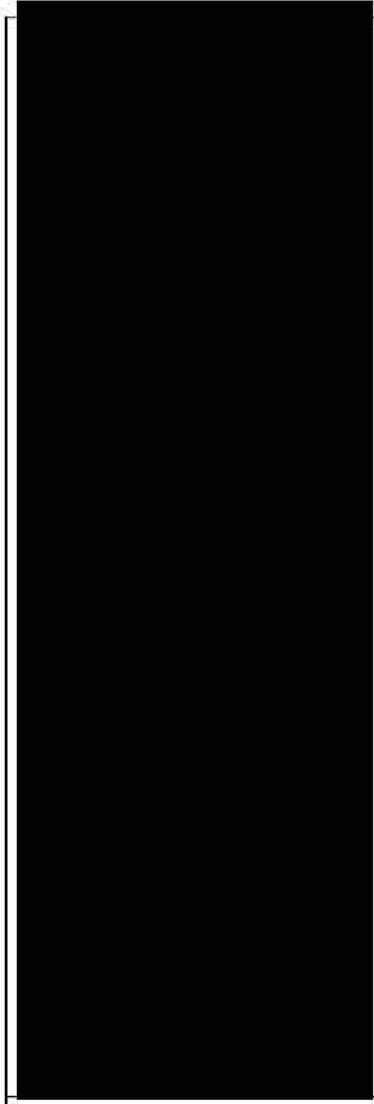


**Public Redacted Version of ANNEX 1 to
Submission of supplemental Rule 86(3)(b) Outline,
SC-BC-2020-06/F00014/A01**

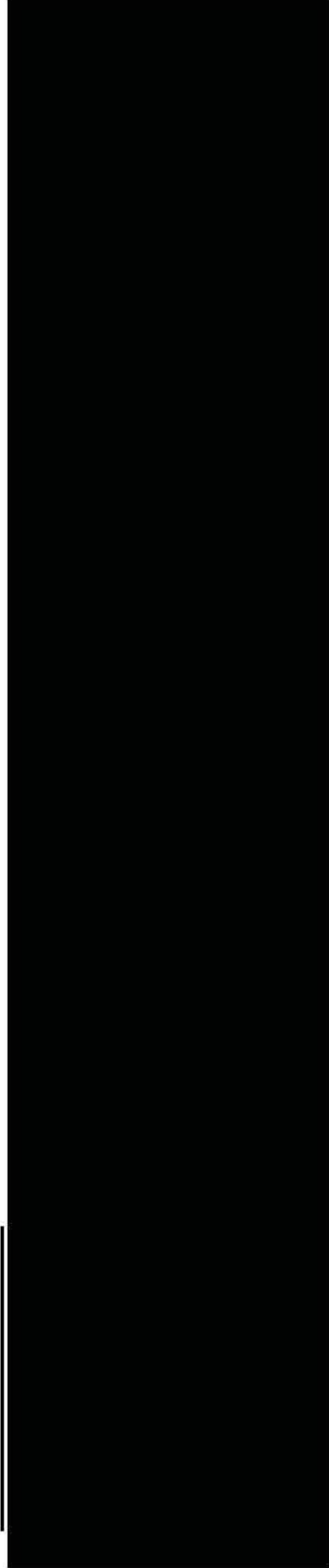
Strictly Confidential and *Ex Parte*
Supplemental Rule 86(3)(b) Outline

LEGAL ELEMENTS	REFERENCE(S) TO EVIDENCE
CRIMES AGAINST HUMANITY CONTEXTUAL ELEMENTS	
(1) Attack	See Rule 86(3)(b) Outline
(2) Directed against a civilian population	Upon withdrawal of FRY forces in June 1999, members of the KLA proceeded to terrorise Serb civilians. ¹
(3) Widespread or systematic	In the summer of 1999, the attacks on Serb civilians – resulting in 50 deaths a week initially – were not simply revenge, but a deliberate attempt to impact demographics and future negotiations on Kosovo's status. ² High profile killings and abductions of Kosovo Serbs, as well as forced expulsions, looting and arson, were occurring. ³ The perpetrators operated in an organised fashion, with a form of hierarchy and command and control, and there were clear indications that many of the perpetrators were members of the KLA. ⁴
(4) Knowledge of the attack	See Rule 86(3)(b) Outline

MODE(S) OF LIABILITY	
JCE (Article 16(1)(a)) ⁵	
(1) A plurality of persons.	
(2) The existence of a common plan, design, or purpose which amounts to or involves the commission of a crime.	The JCE Members targeted Opponents, including perceived political rivals, in order to gain power and secure control over Kosovo. ⁶ Upon withdrawal of FRY forces in June 1999, the JCE Members were poised to take <i>de facto</i> control, and the KLA/PGoK immediately moved to take over municipal buildings and began purporting to issue political regulations and legal edicts. ⁷ In direct contravention of UN authority, THAÇI appointed mayors in 25 municipalities and announced an all-Albanian cabinet in early July 1999. ⁸
(3) The Suspects made a significant contribution to the common plan/design.	

⁵ Joint Criminal Enterprise ('JCE') is a form of commission falling within Article 16(1)(a) (see *similarly* ICTY, Krajišnik, Appeal Judgment, para.662 (addressing identical language in the context of the Statute of the ICTY).

	<p>THAÇI personally led the detention and interrogation of Opponents, and threatened them directly.¹⁵ Indeed, before recently resorting to presenting an evolving and inconsistent narrative of events at , which is incapable of being credited,¹⁶ THAÇI had admitted not only to being there but to having been aware that  were beaten.¹⁷</p>
	<p>(4) Intent to effect the common purpose and commit the crimes.</p> <p>See Rule 86(3)(b) Outline</p>



<p>(5) In the alternative, it was foreseeable to the Suspects that the crimes might be perpetrated by a JCE member or a non-member used by a JCE member in carrying out the common purpose; and the Suspects willingly took the risk that the crime might occur by participating in the JCE.</p>	<p>See Rule 86(3)(b) Outline</p>
<p>Superior Responsibility (Article 16(1)(c))</p> <p>(1) Superior-subordinate relationship between the perpetrator and the Suspects.</p>	<p>Returning to Kosovo as Prime Minister of the Provisional Government, THAÇI travelled around widely and inspected KLA military formations and operations.¹⁸ As Prime Minister of the Provisional Government, THAÇI exercised extensive powers, including issuing appointments for the Chief of Staff of the KLA,¹⁹ and the Commander of a newly created National Guard.²⁰ Repeatedly, it was Hashim THAÇI who signed formal agreements and undertakings on behalf of the KLA, doing so under the title of Commander-in-Chief.²¹ In June and July 1999, in direct contravention of UN authority, THAÇI appointed mayors in 25 municipalities and announced an all-Albanian cabinet.²²</p>



<p>(2) The Suspects knew or had reason to know that the criminal act was about to be or had been committed.</p>	<p>Following the meeting held with Hashim THAÇI and Fatmir LIMAJ in November 1998, when allegations of KLA crimes and concerns regarding the detention of certain persons were raised,²³ Human Rights Watch wrote to the KLA reiterating concerns regarding the treatment of detainees and re-emphasising the need for compliance with humanitarian law.²⁴</p> <p>Crimes committed by KLA members - [REDACTED]²⁵ - were widely known and gained international attention.²⁶</p> <p>By early July 1999 the scale of the crimes were such that THAÇI was forced, under diplomatic pressure, to try and publicly distance himself from them.²⁷</p>
<p>(3) The Suspects failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.</p>	<p>See Rule 86(3)(b) Outline</p>

[REDACTED]