

**ANNEX 3 to**  
**Submission of corrected Rule 86(3)(b) Outline**

Public

Public  
Rule 86(3)(b) Outline

LEGAL ELEMENTS	REFERENCE(S) TO EVIDENCE
<b>CRIMES</b>	
<b>War Crimes</b>	
<b>Contextual Elements</b>	
(1) Non-international armed conflict	<p>The conflict between the KLA and the Serb forces was ongoing throughout the period covered by the Indictment. In the first half of 1999, the KLA command ordered a general mobilisation.<sup>1</sup></p> <p>Yugoslav troops had conducted an offensive against the KLA in the Podujevo region of Kosovo since December 1998.<sup>2</sup></p> <p>The town of Kamena Glava, near Ferizaj, (population approximately 5,000) was 90% destroyed by shelling on 6 April 1999.<sup>3</sup></p> <p>Men trying to flee from Kosovska Mitrovica to Albania in mid-April 1999 were stopped by Serbian forces and detained before being forced to return to Mitrovica. They were stopped at Srbica and men of fighting-age were separated from the group. The men were held in a school and eventually moved to a prison at Smerkovica. At one point, 50 men were taken to the front line to be used as human shields. The men reported meagre food rations, beatings, torture and interrogations.<sup>4</sup></p>

<sup>1</sup> [REDACTED]; KLA Political Declaration No.33, 25 March 1999, SPOE00054441-SPOE00054442-ET; KLA Decision No.151, 31 May 1999 “for the general mobilization aimed at confronting the Serbian offensive and the final liberation of Kosovo,” SPOE00054519- SPOE00054522-ET at 00054521-ET.

<sup>2</sup> UNHCR Kosovo Crisis Update: 25 May 1999, 075007-075129, p.52 (at ERN: 075058).

<sup>3</sup> UNHCR Kosovo Crisis Update: 21 May 1999, 075007-075129, p.36 (at ERN: 075042).

<sup>4</sup> UNHCR Kosovo Crisis Update: 24 May 1999, 075007-075129, pp.42-43 (at ERN: 075048-075049).

Public  
Rule 86(3)(b) Outline

	<p>On 12 May 1999, an estimated 4,000 refugees crossed the border from Kosovo into Albania reporting heavy fighting between Serbian forces and the KLA.<sup>5</sup></p> <p>On 15 May “six people [including two women and two children] were gunned down by Serbian militiamen as the village [near Vitina, Kosovo] was being ‘cleansed.’”<sup>6</sup></p> <p>A 17 May 1999 UNHCR Kosovo Crisis Update states that, “The Yugoslav army set up checkpoints near the border between Montenegro and Albania on Saturday; more than 100 Kosovar men were reportedly arrested while attempting to go into Albania... [I]n the last few days the numbers [of Kosovars fleeing into Albania] had dropped off precipitously though the few people who did cross said that in the hills were still many thousands of people who were running dangerously low on food and who were being constantly harassed by Serbian military operations...”<sup>7</sup></p> <p>A 19 May 1999 UNHCR Kosovo Crisis Update reported accounts of refugees from Kosovo into Albania: “Serb forces were emptying villages and were occupying civilian houses and using barns to store artillery and anti-aircraft guns. They also said food was becoming scarce.”<sup>8</sup></p> <p>A 21 May 1999 UNHCR Kosovo Crisis Update reports that the “Serbian army and paramilitary [are] mounting a campaign of terror and ethnic cleansing that included beating of civilians, stripping civilians of their money and valuables and burning houses.”<sup>9</sup> The same report notes increased military activity in Rozaje.<sup>10</sup></p>
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<sup>5</sup> UNHCR Kosovo Crisis Update: 13 May 1999, 075007-075129, p.1 (at ERN: 075007).

<sup>6</sup> UNHCR Kosovo Crisis Update: 24 May 1999, 075007-075129, p.44 (at ERN: 070050).

<sup>7</sup> UNHCR Kosovo Crisis Update: 17 May 1999, 074222-074225, p.1 (at ERN: 074222).

<sup>8</sup> UNHCR Kosovo Crisis Update: 18 May 1999, 075007-075129, p.20 (at ERN: 075026).

<sup>9</sup> UNHCR Kosovo Crisis Update: 21 May 1999, 075007-075129, p.36 (at ERN: 075042).

<sup>10</sup> UNHCR Kosovo Crisis Update: 21 May 1999, 075007-075129, p.37 (at ERN: 075043).

Public  
Rule 86(3)(b) Outline

	<p>A 24 May 1999 UNHCR Kosovo Crisis Update states that more than 18,000 refugees crossed from Kosovo into Albania and the FYR of Macedonia over a three day period starting 22 May. The refugees reported that the town of Kamena Glava was in the hands of Serbian forces.<sup>11</sup></p> <p>A 26 May 1999 communique issued by the General Staff of the KLA states that, “As the public opinion has already been informed, besides carrying out the forcible displacement of large parts of the Kosovar population, the Serb army is also persistently provoking them by launching artillery and air attacks against those groups of the population that have taken temporary shelter in the districts of Kukës, Has and Tropoja, in Albania. As result of these attacks, the population there has suffered fatalities, casualties and other harm. In these conditions, in order to prevent the Serb army from killing members of the population who are now in Albania, the KLA planned, organised and launched an assault operation codenamed Shigjeta the Arrow in the area close to the political border between the two countries. The goal was to neutralise the Serb forces deployed near the border belt with Albania and clearing this border belt of the Serbian forces.</p> <p>The operation was carried out in coordination with forces from Pashtrik Operational Zone and autonomous units of the General Staff, organised and designated as special operations forces SOF. The Shigjeta operation was launched at 4:00 hours, today, the 26th of May 1999 and is being carried out successfully. Until the early hours of this afternoon, the forces of the Kosovo Liberation Army had captured Mount Pashtrik and its northern slopes on the side of Milaj village, and had neutralised number of border checkpoints. Fighting is ongoing, with the aim of clearing the entire area on the border with Albania, by launching in depth attacks on the territory of Kosovo. As result of the fighting so far, twenty enemy soldiers were killed and two were taken prisoner, while considerable amounts of materiel and ammunition were</p>
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<sup>11</sup> UNHCR Kosovo Crisis Update: 24 May 1999, 075007-075129, pp.43-44 (at ERN: 075049-070050).

Public  
Rule 86(3)(b) Outline

	<p>rendered out of action. From the forces of the Kosovo Liberation Army, one soldier was killed and two were wounded. The operation is ongoing. ”<sup>12</sup></p> <p>A 28 May 1999 UNHCR Kosovo Crisis Update states that, “The estimated number of refugees and displaced people in the region is 778,700 including... 441,000 in Albania... Around 400 refugees enter Albania at the Morini crossing on Thursday amid sniper fire and artillery blasts on the Kosovo side of the border... On Wednesday, several villagers were killed and others wounded by artillery rounds that fell in Krume from the Kosovo frontier. A journalist was also hit by sniper fire at Morini.”<sup>13</sup></p> <p>A 31 May 1999 UNHCR Kosovo Crisis Update reports intense continued fighting between Serbian forces and the KLA, including intense clashes at the Albanian border over the previous week, and notes an increased KLA presence in the Kukës and Has regions of Albania..<sup>14</sup></p> <p>A 1 June 1999 UNHCR Kosovo Crisis Update reports continuing clashes between the KLA and Serbian forces. Refugees from Gnjilane [sic] reported a “significant increase in the harassment and expulsion of Kosovars, including the detention of young men and targeting of intellectuals.” They reported Serbians were refusing admission of injured Albanians into hospitals, which were filled with wounded Serbian police and soldiers.<sup>15</sup></p> <p>A 2 June 1999 UNHCR Kosovo Crisis Update reports intense fighting between Serbian forces and the KLA, including Serbian forces firing at KLA positions in Krume, Albania.<sup>16</sup></p>
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<sup>12</sup> Communique No.79 of the General Staff of the KLA, 26 May 1999, SPOE00055399-SPOE00055399-ET.

<sup>13</sup> UNHCR Kosovo Crisis Update: 28 May 1999, 074226-074231, p.1 (at ERN: 074226).

<sup>14</sup> UNHCR Kosovo Crisis Update: 31 May 1999, 075007-075129, pp.72-73 (at ERN: 075078-075079).

<sup>15</sup> UNHCR Kosovo Crisis Update: 1 June 1999, 075007-075129, pp.81-83 (at ERN: 075087-075089).

<sup>16</sup> UNHCR Kosovo Crisis Update: 2 June 1999, 075007-075129, pp.90-91 (at ERN: 075096-075097).

Public  
Rule 86(3)(b) Outline

	<p>A 3 June 1999 UNHCR Kosovo Crisis Update reports continued military activity along the border, and Serbian police firing at civilians and separating men from refugee convoys.<sup>17</sup></p> <p>An 8 June 1999 UNHCR Kosovo Crisis Update reports that scores of mortar rounds and rifle-fired grenades from Kosovo struck the Macedonian village of Vratnica. Refugees from Kosovo reported the continuing campaign by Serbian forces of ethnic cleansing, despite the agreement for a peace plan in Kosovo days earlier.<sup>18</sup></p> <p><b>NEXUS</b></p> <p>A large number of Kosovo Albanian refugees stayed in Kukës throughout the period covered by the Indictment, with the 17 May 1999 UNHCR Kosovo Crisis Update referring to “still an estimated 30,000” refugees living in tented camps in Kukës at that time.<sup>19</sup></p> <p>In addition to the presence of large numbers of refugees fleeing the conflict in Kosovo, the KLA was operating in Kukës throughout the period covered by the Indictment:</p> <p>Operation Arrow was directed by KLA General Staff member, Bislim ZYRAPI, who was primarily based out of a KLA headquarters at Kukës, which also supplied weaponry and ammunition to the battalions implementing Operation Arrow.<sup>20</sup></p> <p>A disused factory (“Kukës Metal Factory”)<sup>21</sup> was used as a KLA headquarters from the beginning of April<sup>22</sup> until the end of the war to support military operations in Kosovo. The</p>
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<sup>17</sup> UNHCR Kosovo Crisis Update: 3 June 1999, 075007-075129, pp.98-100 (at ERN: 075104-075106).

<sup>18</sup> UNHCR Kosovo Crisis Update: 8 June 1999, 075007-075129, pp.115-117 (at ERN: 075121-075123).

<sup>19</sup> See e.g. UNHCR Kosovo Crisis Update: 17 May 1999, 074222-074225, p.1 (at ERN: 074222); UNHCR Kosovo Crisis Updates 13 May 1999, 21 May 1999, 27 May 1999, 074222-074225, pp.2, 35, 66 (at ERN's: 075008, 075041, and 075074)

<sup>20</sup> [REDACTED]

<sup>21</sup> [REDACTED]

<sup>22</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>facility was used as a location for the recruitment<sup>23</sup> and registration of soldiers; the storage of clothing, weapons and equipment for the army;<sup>24</sup> and the logistical preparation for military operations into Kosovo.<sup>25</sup> The facility included offices for KLA officers,<sup>26</sup> storage locations, sleeping quarters,<sup>27</sup> and rooms used for detention.<sup>28</sup> KLA soldiers routinely arrived at the Kukës Metal Factory and stayed until they were mobilised and transported<sup>29</sup> either to KLA locations closer to the frontline or to KLA training facilities.<sup>30</sup> KLA staff at the Kukës Metal Factory were responsible for mobilising soldiers, ensuring weapons were usable, and providing vehicles for transport of soldiers.<sup>31</sup> Members of the KLA General Staff regularly came to the Kukës Metal Factory.<sup>32</sup> KLA soldiers injured in the fighting would report back to the Kukës Metal Factory, and sometimes KLA soldiers killed in combat were buried with military honors at the Kukës cemetery.<sup>33</sup></p>
<p>(2) Awareness of factual circumstances of armed conflict</p>	<p><b>Pjetër SHALA</b>, aka “<i>Ujku</i>” (Wolf)<sup>34</sup> was a member of the KLA.<sup>35</sup> While he was in Belgium in early 1999, he learned that “the KLA command had ordered a general mobilisation” and subsequently he re-entered Kosovo with others who were also going to join the KLA.<sup>36</sup> He</p>

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<sup>23</sup> [REDACTED]  
<sup>24</sup> [REDACTED]  
<sup>25</sup> [REDACTED]  
<sup>26</sup> [REDACTED]  
<sup>27</sup> [REDACTED]  
<sup>28</sup> [REDACTED]  
<sup>29</sup> [REDACTED]  
<sup>30</sup> [REDACTED]  
<sup>31</sup> [REDACTED]  
<sup>32</sup> [REDACTED]  
<sup>33</sup> [REDACTED]  
<sup>34</sup> [REDACTED]  
<sup>35</sup> [REDACTED]  
<sup>36</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>was in Kukës<sup>37</sup> under what he believed to be orders from the KLA General Staff to lead the KLA's 128<sup>th</sup> Brigade in combat against forces of the FRY.<sup>38</sup></p> <p>[REDACTED] described an incident when Sabit GECI aka "Qopa,"<sup>39</sup> Xhemshit KRASNIQI, <b>Pjetër SHALA</b><sup>40</sup> and three Military Police were in his room and soldiers who had come from the front line to bring a wounded comrade to Kukës were severely beaten while being accused of leaving the front line.<sup>41</sup></p>
<p><b>Elements of Underlying Counts</b></p>	
<p><b>Count 1: Arbitrary Detention (Article 14(1)(c)/ Article 14(1)(c)(i))</b></p>	
<p>(1) Deprivation of an individual's liberty without due process of law</p>	<p>Civilians were detained at the Kukës Metal Factory, including between approximately 17 May and 5 June 1999.<sup>42</sup> None of the detainees were told for what alleged criminal conduct they were arrested,<sup>43</sup> formally charged or referred to a judicial adjudication of criminal activity.</p> <p>[REDACTED] described how after his arrest [REDACTED] he was escorted to the Kukës Metal Factory by KLA soldiers including <b>Pjetër SHALA</b>.<sup>44</sup> He was put under guard when he reached the Kukës Metal Factory (arriving from another KLA detention site) and after questioning, how he was put into an improvised detention [REDACTED] where he found [REDACTED] already detained. [REDACTED] had been detained after KLA soldiers took away his money and passport when he arrived at Durres.<sup>45</sup></p>

<sup>37</sup> [REDACTED]

<sup>38</sup> [REDACTED]

<sup>39</sup> [REDACTED]

<sup>40</sup> [REDACTED]

<sup>41</sup> [REDACTED]

<sup>42</sup> [REDACTED]

<sup>43</sup> [REDACTED]

<sup>44</sup> [REDACTED]

<sup>45</sup> [REDACTED]



Public  
Rule 86(3)(b) Outline

	<p>The detainees were deprived of their liberty at the Kukës Metal Factory including by being kept under guard in makeshift cells;<sup>46</sup> having an escort to go out of the room to go to the toilet;<sup>47</sup> being handcuffed.<sup>48</sup></p> <p>Apart from being allowed out of the room in which he was detained to go to the toilet, [REDACTED] was not allowed out of the room.<sup>49</sup> For the duration of his detention, [REDACTED] hands were always tied.<sup>50</sup></p> <p>[REDACTED] stated that the KLA would bring people “taken from the city or from the town” to detention sites including the Kukës Metal Factory where he could see them through the window and deduced that they were prisoners (as opposed, for example, to someone injured because of the war) based on the way they were being treated: “You could say that as soon as you see someone that is being covered in blood and he’s being held by his arm and he’s finding it difficult to walk...”<sup>51</sup></p>
<p>(2) Intent to deprive individual of liberty without due process of law or in the reasonable knowledge that the act or omission is likely to cause arbitrary deprivation of liberty.</p>	<p><b>Pjetër SHALA</b>’s intent can be inferred from the deliberate manner in which the detainees were brought to, held, treated at and released from the Kukës Metal Factory.<sup>52</sup> The fact that <b>Pjetër SHALA</b>’s prior KLA service in 1998 was as a member of the KLA’s Military Police<sup>53</sup> provides a further basis to infer his intent from his failure to apply appropriate procedures for detention.</p>

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<sup>46</sup> [REDACTED]

<sup>47</sup> [REDACTED]

<sup>48</sup> [REDACTED]

<sup>49</sup> [REDACTED]

<sup>50</sup> [REDACTED]

<sup>51</sup> [REDACTED]

<sup>52</sup> See material cited under Count 1, element 1, and Counts 2-3.

<sup>53</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

(3) The victim is a person taking no active part in the hostilities.	<p>All of the victims were in detention at the Kukës Metal Factory.<sup>54</sup></p> <p>[REDACTED] and [REDACTED] arrived at the Kukës Metal Factory as civilians seeking to join the KLA. At the time of their detention, they had not yet joined.<sup>55</sup> The [REDACTED] detainees were not taking an active part in hostilities;<sup>56</sup> they were [REDACTED].<sup>57</sup> [REDACTED]<sup>58</sup> [REDACTED] had just disembarked from a ferry from Italy at the time of his arrest.<sup>59</sup> The other detainees at the Kukës Metal Factory included [REDACTED] and [REDACTED].<sup>60</sup></p>
(4) Knowledge that the victim is a person taking no active part in the hostilities.	<p>The perpetrators, including <b>Pjetër SHALA</b>, participated in and were aware of the victims' detention and/or the circumstances of their arrest.<sup>61</sup></p> <p>When <b>Pjetër SHALA</b> first encountered [REDACTED] was being transferred from one KLA vehicle to another such that it would have been apparent to <b>Pjetër SHALA</b> (who was in the second vehicle along with other KLA members) that [REDACTED] was taking no active part in hostilities at least from that time onwards.<sup>62</sup> [REDACTED].<sup>63</sup> [REDACTED].<sup>64</sup></p>

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<sup>54</sup> See material cited in respect of Count 1, element 1. *See also* [REDACTED].

<sup>55</sup> [REDACTED]

<sup>56</sup> [REDACTED]

<sup>57</sup> [REDACTED]

<sup>58</sup> [REDACTED]

<sup>59</sup> [REDACTED]

<sup>60</sup> [REDACTED]

<sup>61</sup> See material cited under Count 1, element 1.

<sup>62</sup> [REDACTED]

<sup>63</sup> [REDACTED]

<sup>64</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p><b>SHALA</b> saw [REDACTED] at the Kukës Metal Factory [REDACTED] and so <b>SHALA</b> would have seen that [REDACTED] was taking no active part in hostilities.<sup>65</sup> [REDACTED]<sup>66</sup> During this time, [REDACTED] were not armed and were awaiting their registration/enrolment into the KLA.<sup>67</sup></p>
<b>Count 2: Cruel Treatment (Article 14(1)(c)(i))</b>	
<p>(1) An act or omission that causes serious mental or physical suffering or injury to, or constitutes a serious attack on human dignity.</p>	<p>While [REDACTED] and other civilians were detained by members of the KLA, including <b>Pjetër SHALA</b> at the Kukës Metal Factory between 18 May and 5 June 1999, the following occurred:</p> <p>KLA members beat the detainees nearly every day or night.<sup>68</sup> [REDACTED] were “beaten up for a month day and night” until their bodies were black.<sup>69</sup> Apart from being allowed out of the room in which he was detained to go to the toilet, [REDACTED] was not allowed out of the room.<sup>70</sup> For the duration of his detention, [REDACTED]’s hands were always tied.<sup>71</sup></p> <p>One detainee described <b>Pjetër SHALA</b> beating a group of [REDACTED] detainees: “He beat them so bad that they were destroyed... He would line them up in the courtyard and beat them up.”<sup>72</sup> A detainee from [REDACTED] was beaten to the point that when [REDACTED] took off the man’s clothing, “skin came off with the T-shirt or jumper.”<sup>73</sup></p>

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<sup>65</sup> [REDACTED]

<sup>66</sup> [REDACTED]

<sup>67</sup> [REDACTED]

<sup>68</sup> [REDACTED]

<sup>69</sup> [REDACTED]

<sup>70</sup> [REDACTED]

<sup>71</sup> [REDACTED]

<sup>72</sup> [REDACTED]

<sup>73</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>As a result of their treatment, the detainees were severely mentally and physically traumatized.<sup>74</sup> [REDACTED]'s ribs were broken [REDACTED] and his shin was broken by Xhemshit KRASNIQI hitting him with an iron bar.<sup>75</sup> One detainee was beaten so badly [REDACTED].<sup>76</sup> [REDACTED] suffered long-term consequences from his mistreatment.<sup>77</sup> He stated, "I've seen death. There is nothing that I didn't experience."<sup>78</sup></p> <p>One detainee, [REDACTED] died as a result of his mistreatment. (<i>see</i> Count 4: Murder, below).</p> <p>The KLA members, including <b>Pjetër SHALA</b>, subjected the civilian detainees to inhumane conditions of detention. The detainees slept on a hard, dirty concrete floor.<sup>79</sup> Indeed, they were not allowed to use anything, such as their own clothes, as a pillow.<sup>80</sup> They received inadequate food<sup>81</sup> and medical care,<sup>82</sup> and were not provided water to wash themselves.<sup>83</sup> In one detention location the floor was littered with bottles filled with urine.<sup>84</sup> [REDACTED] lost 14-17 kilograms during his detention.<sup>85</sup></p>
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<sup>74</sup> [REDACTED]

<sup>75</sup> [REDACTED]

<sup>76</sup> [REDACTED]

<sup>77</sup> [REDACTED].

<sup>78</sup> [REDACTED]

<sup>79</sup> [REDACTED]

<sup>80</sup> [REDACTED].

<sup>81</sup> [REDACTED].

<sup>82</sup> [REDACTED]. *See also*, element 1 of Count 2.

<sup>83</sup> [REDACTED]

<sup>84</sup> [REDACTED]

<sup>85</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

The detention rooms were stifling, sometimes making [REDACTED] fall unconscious.<sup>86</sup> Some [REDACTED] detainees were forced to work for the KLA members, cleaning toilets and loading and unloading trucks.<sup>87</sup> On the way to the bathroom facilities, detainees were harassed by a KLA member who would try to stab them; as a result, they avoided drinking fluids to avoid needing to go to the toilet.<sup>88</sup>

**On or about 20 May 1999**

On one occasion, on or about the evening of 20 May 1999,<sup>89</sup> KLA soldiers, including **Pjetër SHALA** and Xhemshit KRASNIQI, interrogated, tortured and mistreated [REDACTED] civilian detainees, [REDACTED]

[REDACTED] was brought from an improvised holding cell, where he'd been kept for several days, to an office on the ground floor of the same building in the Kukës Metal Factory location.<sup>90</sup> Xhemshit KRASNIQI ordered **Pjetër SHALA** to hit [REDACTED] "on the hands 50 times with the rubber baton..." **Pjetër SHALA** ordered [REDACTED] to hit [REDACTED] with the rubber baton, but [REDACTED] refused and then "they beat up – they caught [REDACTED] and beat him up, the one who got killed. They punched him, kicked him, beat him with the rubber baton, with a baseball bat, until they got tired."<sup>91</sup> **Pjetër SHALA** beat [REDACTED] with a baseball bat "on the head, on the chest, also on the back, and he also broke [REDACTED] ribs... He [SHALA] ... said to [REDACTED], 'Beat this Serb'... then Xhemshit caught [[REDACTED]], and Pjetër SHALA pushed [REDACTED] over the bench... And then they started beating the soles of [[REDACTED]'s] feet as long as they could..."<sup>92</sup> A

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<sup>86</sup> [REDACTED]

<sup>87</sup> [REDACTED]

<sup>88</sup> [REDACTED]

<sup>89</sup> [REDACTED]

<sup>90</sup> [REDACTED]

<sup>91</sup> [REDACTED]

<sup>92</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>KLA soldier with a shaved head kicked [REDACTED] and broke his teeth, [REDACTED]<sup>93</sup> His captors told him that he had been “sentenced to prison and execution.”<sup>94</sup></p> <p>[REDACTED] was brought to an “office” where he saw [REDACTED] “being tortured.”<sup>95</sup> He saw [REDACTED] sitting on a chair covered with blood. KLA soldiers, including <b>Pjetër SHALA</b>, used wooden batons covered with bandages to hit him on the head.<sup>96</sup></p> <p>In the office, KLA members, including <b>Pjetër SHALA</b>,<sup>97</sup> beat [REDACTED] with batons,<sup>98</sup> iron bars, guns, sharp objects and knives.<sup>99</sup> They told [REDACTED] to hit [REDACTED].<sup>100</sup></p> <p><b>Pjetër SHALA</b> and other KLA members beat [REDACTED] so severely that he became unconscious. When the blood on [REDACTED]’s hair dried and he touched his hair, “it felt like the hair was – was breaking.”<sup>101</sup> While he was unconscious, the KLA members threw water on him.<sup>102</sup> He was stabbed with a knife in his throat in the corridor outside the room where the beating took place.<sup>103</sup> According to [REDACTED], <b>Pjetër SHALA</b> “was pretty big and strong and powerful, so he would hit people the way – in a way that people would hit animals but they would not behave like that with humans. They would not beat humans like that.”<sup>104</sup> During another session of abuse at which <b>Pjetër SHALA</b> was present, [REDACTED]</p>
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<sup>93</sup> [REDACTED]

<sup>94</sup> [REDACTED]

<sup>95</sup> [REDACTED]

<sup>96</sup> [REDACTED]

<sup>97</sup> [REDACTED]

<sup>98</sup> [REDACTED]

<sup>99</sup> [REDACTED]

<sup>100</sup> [REDACTED]

<sup>101</sup> [REDACTED]

<sup>102</sup> [REDACTED]

<sup>103</sup> [REDACTED]

<sup>104</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>was forced to drink water; had salt put in his wounds and in his eyes; and had vinegar put on the wounds and cuts on his body.<sup>105</sup></p> <p>The KLA members also put a plastic bag over [REDACTED]'s head and pushed his head in a tub of water until he couldn't breathe,<sup>106</sup> and threatened to shoot him.<sup>107</sup></p> <p>KLA members also beat [REDACTED] in the same manner as the other detainees.<sup>108</sup> The detainees were so badly beaten that "even the clothes were wet from blood."<sup>109</sup></p> <p><b>Pjetër SHALA</b> and other KLA members beat [REDACTED].<sup>110</sup> They hit him on his hands<sup>111</sup> and Xhemshit KRASNIQI hit him with a rubber baton on his nose. KLA members also submerged [REDACTED]'s feet in cold water and one soldier threatened to carve a cross on [REDACTED]'s chest with his knife.<sup>112</sup> [REDACTED] saw a KLA member trying to draw a cross on [REDACTED]'s chest with a knife.<sup>113</sup></p> <p>[REDACTED] saw [REDACTED] in a "catastrophic condition. He couldn't move... He was completely covered in blood" when [REDACTED] entered an office where <b>Pjetër SHALA</b>, Sabit GECI, Xhemshit KRASNIQI and others were present. [REDACTED] saw [REDACTED]</p>
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<sup>105</sup> [REDACTED]

<sup>106</sup> [REDACTED]

<sup>107</sup> [REDACTED]

<sup>108</sup> [REDACTED]

<sup>109</sup> [REDACTED]

<sup>110</sup> [REDACTED]

<sup>111</sup> [REDACTED]

<sup>112</sup> [REDACTED]

<sup>113</sup> [REDACTED].

Public  
Rule 86(3)(b) Outline

	<p>being beaten and saw salt being thrown into his eyes and on his injuries.<sup>114</sup> [REDACTED] was being beaten with a baseball bat and a metal bar.<sup>115</sup></p> <p>On this same occasion, KLA members beat two female detainees with their hands and feet.<sup>116</sup></p> <p><b>On or about [REDACTED]1 999</b> On or about [REDACTED] 1999, KLA members, including <b>Pjetër SHALA</b> and pointed at KRASNIQI, beat [REDACTED]<sup>117</sup> [REDACTED]<sup>118</sup> [REDACTED]<sup>119</sup> [REDACTED].<sup>120</sup> [REDACTED]<sup>121</sup></p> <p><b>On or about 4 June 1999</b> Around 4 June, [REDACTED] were again singled out for mistreatment by KLA members. <b>Pjetër SHALA</b>, Sabit GECI, Xheshit KRASNIQI and other KLA members beat [REDACTED], including with metal bars, baseball bats, and guns.<sup>122</sup> They had a recorder to record confessions.<sup>123</sup></p>
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<sup>114</sup> [REDACTED]

<sup>115</sup> [REDACTED]

<sup>116</sup> [REDACTED]

<sup>117</sup> [REDACTED]

<sup>118</sup> [REDACTED]

<sup>119</sup> [REDACTED]

<sup>120</sup> [REDACTED]

<sup>121</sup> [REDACTED]

<sup>122</sup> [REDACTED]

<sup>123</sup> [REDACTED]



Public  
Rule 86(3)(b) Outline

	<p>KLA members shot [REDACTED] at close range.<sup>124</sup> [REDACTED].<sup>125</sup> [REDACTED]<sup>126</sup> They were both beaten after they were shot.<sup>127</sup> [REDACTED]<sup>128</sup></p> <p>After the beating and shooting, KLA members brought [REDACTED] to a room in which [REDACTED] was detained.<sup>129</sup> [REDACTED] had a bullet hole [REDACTED] and he was covered in blood.<sup>130</sup> After [REDACTED]<sup>131</sup></p> <p>[REDACTED] “suffered for almost 24 hours, and he died in the morning.”<sup>132</sup> Despite requesting a doctor, [REDACTED] was only attended to by medical personnel just before he died.<sup>133</sup> “The doctor asked for him to be brought - to be sent to the hospital in Kukës, and they didn’t – they didn’t agree.”<sup>134</sup> [REDACTED]<sup>135</sup> [REDACTED] died with his head resting on [REDACTED].<sup>136</sup> KLA members “dragged him like the way that you would drag a dog out of the room.”<sup>137</sup></p>
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<sup>124</sup> [REDACTED]  
<sup>125</sup> [REDACTED]  
<sup>126</sup> [REDACTED]  
<sup>127</sup> [REDACTED]  
<sup>128</sup> [REDACTED]  
<sup>129</sup> [REDACTED]  
<sup>130</sup> [REDACTED]  
<sup>131</sup> [REDACTED]  
<sup>132</sup> [REDACTED]  
<sup>133</sup> [REDACTED]  
<sup>134</sup> [REDACTED]  
<sup>135</sup> [REDACTED]  
<sup>136</sup> [REDACTED]  
<sup>137</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>After [REDACTED] death, a KLA member kicked [REDACTED] in the head [REDACTED].<sup>138</sup> Sabit GECI beat [REDACTED] again [REDACTED]<sup>139</sup> Another KLA member pointed at the detainees, including [REDACTED] and [REDACTED] and said, "I am dealing with you three tonight."<sup>140</sup></p> <p><i>See also</i>, evidence under element 1 of <b>Count 1</b>.</p>
(2) Intent to inflict serious bodily or mental harm or commit a serious attack upon the human dignity of the victim.	<p><b>Pjetër SHALA</b>'s intent is demonstrated by his active participation in the ongoing mistreatment of the detainees at the Kukës Metal Factory,<sup>141</sup> and by inverse, his failure to undertake acts that would have been necessary to ensure humane conditions of detention. Further, he ordered one detainee to beat another<sup>142</sup> and ordered detainees to unload equipment from trucks.<sup>143</sup></p> <p><b>Pjetër SHALA</b> would have been aware of the serious harm inflicted upon the detainees, and nonetheless continued to mistreat them. Detainees were visibly wounded<sup>144</sup> and at times lost consciousness during beatings.<sup>145</sup></p> <p>[REDACTED]<sup>146</sup></p>
(3) The victim is a person taking no active part in the hostilities.	<i>See above</i> , element 3 of <b>Count 1</b> .

<sup>138</sup> [REDACTED]<sup>139</sup> [REDACTED]<sup>140</sup> [REDACTED]<sup>141</sup> *See above*, element 1 of Count 2. [REDACTED].<sup>142</sup> [REDACTED]<sup>143</sup> [REDACTED]<sup>144</sup> [REDACTED]. *See also* material referenced in Count 2, element 1 above.<sup>145</sup> [REDACTED]. *See also* material referenced in Count 2, element 1 above.<sup>146</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

(4) Knowledge that the victim is a person taking no active part in the hostilities.	<i>See above</i> , element 4 of <b>Count 1</b> .
<b>Count 3: Torture (Article 14(1)(c)(i))</b>	
(1) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.	<i>See above</i> , element (1) for <b>Count 2</b> .
(2) Aimed at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.	<p><b>Pjetër SHALA</b> actively participated in torture sessions during which KLA members accused, questioned, and punished the detainees while severely mistreating them. Often, the KLA members would have a tape recorder present during beatings, in order to record confessions.<sup>147</sup></p> <p>The beating sessions [REDACTED] were aimed at securing a confession.<sup>148</sup> During the session in which [REDACTED] was fatally shot, [REDACTED] were being asked questions while being recorded.<sup>149</sup></p> <p>[REDACTED]<sup>150</sup></p> <p>[REDACTED] heard KLA members accuse [REDACTED]'s mother of sleeping with Serbian forces, including Arkan's forces.<sup>151</sup> [REDACTED]<sup>152</sup></p> <p>[REDACTED].<sup>153</sup></p>

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<sup>147</sup> [REDACTED]

<sup>148</sup> [REDACTED]

<sup>149</sup> [REDACTED]

<sup>150</sup> [REDACTED]

<sup>151</sup> [REDACTED]

<sup>152</sup> [REDACTED]

<sup>153</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>A KLA member kicked [REDACTED], breaking his teeth [REDACTED]<sup>154</sup></p> <p>[REDACTED] was told to beat [REDACTED] with a baton, because he was Serbian.<sup>155</sup></p> <p>During the first beating described above, the KLA members asked [REDACTED] to write down names of his friends in the MUP.<sup>156</sup> On that occasion, Sabit GECI questioned [REDACTED] about working for the Serbs.<sup>157</sup> He believes at least one detainee was being held and mistreated because he had provided guns to Serb forces.<sup>158</sup></p> <p>During [REDACTED]s detention by the KLA in Durres, [REDACTED] was accused by KLA members of failing to contribute to the KLA fund.<sup>159</sup></p>
(3) Intent to inflict severe pain or suffering.	<p><b>Pjetër SHALA's</b> intent to inflict severe pain or suffering is demonstrated by the deliberate manner in which detainees were beaten and mistreated, the type of instruments used (including iron bars, batons, baseball bats, knives and guns), the threats of injury and death, and the continuation and escalation of the mistreatment despite the detainees' apparent injuries. See above element 1 and 2 of <b>Count 2</b>.</p>
(4) The victim is a person taking no active part in the hostilities.	<p><i>See above</i>, element 3 of <b>Count 1</b>.</p>
(5) Knowledge that the victim is a person taking no active part in the hostilities.	<p><i>See above</i>, element 4 of <b>Count 1</b>.</p>

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<sup>154</sup> [REDACTED]

<sup>155</sup> [REDACTED]

<sup>156</sup> [REDACTED]

<sup>157</sup> [REDACTED]

<sup>158</sup> [REDACTED]

<sup>159</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

<b>Count 4: Murder (Article 14(1)(c)(i))</b>	
(1) An act or omission resulting in the death of an individual.	<p>Around 4 June, <b>Pjetër SHALA</b>, Sabit GEÇI, Xheshit KRASNIQI and other KLA members beat [REDACTED], including with metal bars, baseball bats, and guns.<sup>160</sup> KLA members shot [REDACTED] at close range.<sup>161</sup> [REDACTED]<sup>162</sup> They were [REDACTED] beaten after they were shot.<sup>163</sup></p> <p>After the beating and shooting, KLA members brought [REDACTED] to a room in which [REDACTED] was detained.<sup>164</sup> [REDACTED] had a bullet hole [REDACTED] and he was covered in blood.<sup>165</sup> [REDACTED]<sup>166</sup></p> <p>[REDACTED] “suffered for almost 24 hours, and he died in the morning.”<sup>167</sup> Despite requesting a doctor, [REDACTED] was only attended to by medical personnel just before he died.<sup>168</sup> “The doctor asked for him to be brought - to be sent to the hospital in Kukës, and they didn’t – they didn’t agree.”<sup>169</sup> [REDACTED]<sup>170</sup> [REDACTED] died with his head on resting on [REDACTED].<sup>171</sup> KLA members “dragged him like the way that you would drag a dog out of the room.”<sup>172</sup></p>

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<sup>160</sup> [REDACTED]

<sup>161</sup> [REDACTED]

<sup>162</sup> [REDACTED]

<sup>163</sup> [REDACTED]

<sup>164</sup> [REDACTED]

<sup>165</sup> [REDACTED]

<sup>166</sup> [REDACTED]

<sup>167</sup> [REDACTED]; *see also* [REDACTED].

<sup>168</sup> [REDACTED]

<sup>169</sup> [REDACTED]

<sup>170</sup> [REDACTED]

<sup>171</sup> [REDACTED]

<sup>172</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

<p>(2) Intent to kill or to wilfully cause serious injury or grievous bodily harm which the perpetrator should reasonably have known might lead to death.</p>	<p><b>Pjetër SHALA</b>'s intent is demonstrated by his active and regular participation in violent assaults against detainees including murder victim [REDACTED], up to and including the incident during which [REDACTED] were shot. <b>Pjetër SHALA</b> assaulted detainees with a degree of violence that he should reasonably should have known might lead to death. Moreover, during earlier assaults (<i>e.g.</i>, on around 20 May and [REDACTED]), <b>Pjetër SHALA</b> willingly participated in group assaults in the course of which firearms were displayed and/or used.<sup>173</sup></p> <p>[REDACTED]<sup>174</sup></p> <p>After [REDACTED] death, a KLA member kicked [REDACTED] in the head [REDACTED]<sup>175</sup> Sabit GECI beat [REDACTED] again [REDACTED]<sup>176</sup> Another KLA member pointed at the detainees, including [REDACTED] and [REDACTED] and said, "I am dealing with you three tonight."<sup>177</sup></p>
<p>(3) The victim is a person taking no active part in the hostilities.</p>	<p>[REDACTED] was in detention at the Kukës Metal Factory and thus, taking no active part in the hostilities, at the time he was shot and subsequently, died.<sup>178</sup></p> <p><i>See also</i>, element 3 of <b>Count 1</b>.</p>
<p>(4) Knowledge that the victim is a person taking no active part in the hostilities.</p>	<p>At least as of the time of the beating session that took place on around 20 May 1999 (<i>i.e.</i>, some [REDACTED] before [REDACTED] was shot and killed), <b>Pjetër SHALA</b> knew that [REDACTED] was in detention and thus, taking no active part in the hostilities.<sup>179</sup></p>

<sup>173</sup> *See above*, references under Count 2, Cruel Treatment.

<sup>174</sup> [REDACTED]

<sup>175</sup> [REDACTED]

<sup>176</sup> [REDACTED]

<sup>177</sup> [REDACTED]

<sup>178</sup> *See above*, references under Count 2, Cruel Treatment.

<sup>179</sup> *See above*, references under Count 2, Cruel Treatment.

Public  
Rule 86(3)(b) Outline

	<i>See also</i> , element 4 of <b>Count 1</b> .
<b>MODE(S) OF LIABILITY</b>	
<b>Commission liability (Article 16(1)(a))</b>	
(1) The physical perpetration of a crime or the culpable omission of an act that was mandated by a rule of criminal law.	[REDACTED] <sup>180</sup> [REDACTED] <sup>181</sup> and [REDACTED] <sup>182</sup> identified <b>Pjetër SHALA</b> as a direct perpetrator in the arbitrary detention, cruel treatment and torture of at least nine detainees between approximately 17 May and 5 June 1999. <i>See above</i> , element 1 of <b>Count 2</b> . He participated in the incident in which [REDACTED] was beaten, shot and fatally injured. <sup>183</sup> <i>See above</i> , element 1 of <b>Count 4</b> .
(2) Intent to commit the crime, or with an awareness of the substantial likelihood that a crime would occur as a consequence of his conduct	<b>Pjetër SHALA</b> 's intent to commit the charged crimes or his awareness of the substantial likelihood that a crime would occur as a consequence of his conduct is demonstrated by his active and ongoing participation in the attacks against the victims. <i>See above</i> , element 2 of <b>Counts 1, 2 and 3</b> .
<b>JCE (Article 16(1)(a))</b> <sup>184</sup>	
(1) Plurality of persons	The operation of the detention site at the Kukës Metal Factory and the attacks on the detainees involved several KLA members, including <b>Pjetër SHALA</b> , Xhemshit KRASNIQI, Sabit GECI, "[REDACTED]" <sup>185</sup>

<sup>180</sup> [REDACTED]

<sup>181</sup> [REDACTED]

<sup>182</sup> [REDACTED]

<sup>183</sup> [REDACTED]

<sup>184</sup> 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)).

<sup>185</sup> See e.g. [REDACTED]

Public  
Rule 86(3)(b) Outline

(2) The existence of a common plan, design, or purpose which amounts to or involves the commission of a crime.	The common purpose to interrogate and mistreat persons detained at the Kukës Metal Factory is demonstrated by the acts and conduct of <b>Pjetër SHALA</b> and the other KLA members who unlawfully detained and mistreated the victims at the Kukës Metal Factory for an extended period, which involved numerous incidences of interrogation and violence. <i>See above</i> , element 1 of <b>Counts 1, 2, 3 and 4</b> .
(3) A significant contribution to the common plan/design.	<b>Pjetër SHALA</b> significantly contributed to the common plan/design through his acts and omissions such as his participation in transporting a detainee to the Kukës Metal Factory; <sup>186</sup> his participation in beatings of the detainees; his provision of assistance and support to other KLA members participating in the attacks on the detainees; and his failure to ensure the humane treatment of the detainees.  <i>See above</i> , element 1 of <b>Counts 1, 2, 3 and 4</b> .
(4) Intent to effect the common purpose and commit the crimes.	<b>Pjetër SHALA</b> 's intent can be inferred from his active and continuing participation in the attacks on the detainees at the Kukës Metal Factory.  <i>See above</i> , element 2 of <b>Counts 1, 2, 3 and 4</b> .
(5) It was foreseeable to him/her that the crime might be perpetrated by a JCE member or a non-member used by a JCE member in carrying out the common purpose; and the accused willingly took that risk that the crime might occur by participating in the JCE	It was foreseeable to <b>Pjetër SHALA</b> that a detainee at the Kukës Metal Factory might die as a result of the attacks in which <b>SHALA</b> participated; an extreme level of violence was used against the detainees throughout the time period of the Indictment and JCE members and/or non-members used by JCE members carried firearms and appeared to be willing to use them. <b>SHALA</b> 's willingness to accept the risk that a detainee might be killed is demonstrated by his continued participation in those extremely violent attacks on the detainees, including with the knowledge that firearms were being carried by KLA members participating in the attacks.

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<sup>186</sup> [REDACTED]



Public  
Rule 86(3)(b) Outline

	<p>During [REDACTED]'s transport to the Kukës Metal Factory detention site, one of the KLA soldiers who was in the vehicle together with <b>Pjetër SHALA</b> "would pull out his revolver, pull out a bullet, play with it, and in the meantime always playing with his gun, he would ask me questions."<sup>187</sup> Later, [REDACTED] was hit on the head with a handgun during a beating session on or about 20 May 1999 at which <b>Pjetër SHALA</b> was present.<sup>188</sup></p> <p>Xhemshit KRASNIQI had a handgun all the time during the period that [REDACTED] was in detention.<sup>189</sup> During the beating session at which [REDACTED] was fatally shot and in which <b>Pjetër SHALA</b> participated, other unknown soldiers were present who had revolvers on their waists.<sup>190</sup></p> <p>As for <b>SHALA</b>'s willingness to take the risk that a detainee might be killed, [REDACTED] stated that <b>SHALA</b> told him, "We're going to kill you, we're going to execute you."<sup>191</sup> The threat that detainees would be killed was repeated by other JCE members; [REDACTED]<sup>192</sup></p> <p>In addition, <i>see above</i>, element 1 of <b>Counts 1, 2, 3 and 4</b>.</p>
<b>Aiding and Abetting (Article 16(1)(a))</b>	
(1) Conduct that amounts to practical assistance, encouragement or moral support.	<b>Pjetër SHALA</b> 's acts and omissions such as his participation in transporting a detainee to the Kukës Metal Factory; <sup>193</sup> his participation in beatings of the detainees; his provision of assistance and support to other KLA members participating in the attacks on the detainees;

<sup>187</sup> [REDACTED]

<sup>188</sup> [REDACTED]

<sup>189</sup> [REDACTED]

<sup>190</sup> [REDACTED]. *See also* [REDACTED].

<sup>191</sup> [REDACTED]

<sup>192</sup> [REDACTED]

<sup>193</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

	<p>and his failure to ensure the humane treatment of the detainees, amounted to practical assistance, encouragement or moral support.</p> <p><i>See above</i>, element 1 of <b>Counts 1, 2, 3 and 4</b>.</p>
<p>(2) Which has a substantial effect on the perpetration of a crime.</p>	<p><b>Pjetër SHALA</b>'s moral and physical contributions had a substantial effect on the perpetration of the crimes. Concerning <b>SHALA</b>'s moral contribution to the perpetration of the crimes, [REDACTED] stated that, "<b>Pjetër SHALA</b> was a superior, like at the first – the first point. [REDACTED] This – they were a small chain, so they were linked together, and nobody could dare to refuse their word or their orders. We should understand who was a close friend and with who in order to understand that the not dare or who dare to reject his word [<i>sic</i>]." <sup>194</sup> He further stated that the doctors working at the Kukës Metal Factory would not have dared to provide treatment to the detainees without orders from Sabit GEÇI, Xhemshit KRASNIQI or <b>Pjetër SHALA</b>. <sup>195</sup></p> <p>Concerning <b>SHALA</b>'s physical contribution to the perpetration of the crimes, [REDACTED] stated that <b>Pjetër SHALA</b> "was pretty big and strong and powerful, so he would hit people the way – in a way that people would hit animals but they would not behave like that with humans. They would not beat humans like that." <sup>196</sup></p> <p>Meanwhile, [REDACTED] described <b>Pjetër SHALA</b> beating [REDACTED] detainees: "He beat them so bad that they were destroyed... He would line them up in the courtyard and beat them up." <sup>197</sup></p> <p>In addition, <i>See above</i>, element 1 of <b>Counts 1, 2, 3 and 4</b>.</p>

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<sup>194</sup> [REDACTED]

<sup>195</sup> [REDACTED]

<sup>196</sup> [REDACTED]

<sup>197</sup> [REDACTED]

Public  
Rule 86(3)(b) Outline

<p>(3) Knowledge that conduct assists the commission of the crime by the perpetrator.</p>	<p><b>Pjetër SHALA</b>'s knowledge that his conduct assisted the commission of the crimes of arbitrary detention, cruel treatment, torture and murder can be inferred from his active and continuing participation in the detention of and acts of violence against the detainees at the Kukës Metal Factory.</p> <p><i>See above, element 2 of Counts 1, 2, 3 and 4.</i></p>
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