

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case Number IT-04-84bis-PT

IN TRIAL CHAMBER II

**Before: Judge Bakone Justice Moloto, Presiding
Judge Burton Hall
Judge Guy Delvoie**

Registrar: Mr John Hocking

Date filed: 11 July 2011

THE PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

PRE-TRIAL BRIEF ON BEHALF OF LAHI BRAHIMAJ

The Office of the Prosecutor

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I. INTRODUCTION

1. In response to the Prosecution’s Pre-Trial Brief, filed 20 June 2011, (“Prosecution Pre-Trial Brief”),¹ Counsel for Lahi Brahimaj respectfully file this Pre-Trial Brief pursuant to Rule 65 *ter* (F) of the Rules of Procedure and Evidence (“the Rules”) of the Tribunal. Our client has not seen the Pre-Trial Briefs filed on behalf of his co-accused. In the event that these raise further issues of law and fact relevant to Lahi Brahimaj’s case, his Defence may apply for leave to make further submissions on such points.

(i) *The Burden and Standard of Proof*

2. Article 21(3) of the Rules places the burden of proof firmly on the prosecutor and reiterates the basic international human rights principle of the presumption of innocence. This burden remains on the prosecutor throughout the entire trial. Rule 87(A) sets the standard by which that proof must be established: “A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.”

¹ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84**bis**-PT, Prosecution’s Submission Pursuant to Rule 65 *ter* (E) with Confidential Annexes I, II, and III, 20 June 2011 (hereinafter, “Prosecution Pre-Trial Brief”).

3. The Office of the Prosecutor (“OTP”) brings the case against Lahi Brahimaj and the OTP must prove beyond a reasonable doubt every element alleged against Lahi Brahimaj in its Revised Fourth Amended Indictment (“the Indictment”) dated 21 January 2011.² Where more than one inference may reasonably be drawn from evidence presented to the Trial Chamber, it is the duty of the Chamber to consider with care whether any such inference may be inconsistent with the guilt of the accused. If such an inference may reasonably be drawn, then the burden and standard of proof require that an acquittal be entered in respect of that count.³

4. This limited partial re-trial is unique. The OTP failed to discharge their burden of proof in the original trial in relation to all but two of the counts alleged against Lahi Brahimaj. His Defence maintains that, regardless of such additional testimony as the OTP now seek to adduce on the re-trial, they remain incapable of providing evidence of the standard and quality which could prove guilt beyond a reasonable doubt.

5. It is agreed by the parties that there was an armed conflict in existence from 22 April 1998.⁴ This is not in dispute in this retrial. Thus, in the context of the present indictment, the OTP must prove in respect of each count alleged in the Indictment against Lahi Brahimaj:
 - 5.1. **First**, that a nexus existed between such armed conflict and each of the alleged violations of the laws and customs of war;

 - 5.2. **Secondly**, an agreement between Lahi Brahimaj and his co-accused, as well as those who are alleged to have agreed together with them, to consolidate the total control of the KLA over the Dukagjin Operational Zone by the unlawful

² *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84bis-PT, Submission of Revised Fourth Amended Indictment, 21 January 2011.

³ *Prosecutor v. Delalic, Mucić, Delic, and Landžo (“Čelebići case”)*, IT-96-21-A, Judgement, 20 February 2001, (hereinafter, “*Delalic et. al. Appeals Judgement*”) paragraph 458.

⁴ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84bis-PT, Joint Prosecution and Defence Submission on the Existence of an Armed Conflict in Kosovo with Annex A, 19 November 2010.
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removal and mistreatment of Serb civilians and by the mistreatment of Kosovar Albanian and Kosovar Roma/Egyptian civilians, and other civilians, who were, or were perceived to have been, collaborators with the Serbian Forces or otherwise not supporting the KLA;

- 5.3. **Thirdly**, the existence of an unlawful detention camp at Jabllanicë;
 - 5.4. **Fourthly**, the responsibility of Lahi Brahimaj for such camp;
 - 5.5. **Fifthly**, the commission in such camp of crimes within the jurisdiction of the Tribunal by Lahi Brahimaj or by those allegedly acting in concert with him; and
 - 5.6. **Sixthly**, the responsibility of Lahi Brahimaj for planning, instigating, ordering, committing, or otherwise aiding or abetting in the planning, preparation or execution of any crimes as are alleged in the Indictment to have been committed at other times and places by other persons allegedly acting in concert with him.
6. For the purposes of the present Indictment, the Prosecution must prove beyond a reasonable doubt in relation Lahi Brahimaj that a nexus existed between the armed conflict, and each of the crimes alleged in the Indictment. In determining whether or not such a nexus existed, the Chamber may take into account, *inter alia*, whether the perpetrator is a combatant, whether the victim is a non-combatant, whether the victim is a member of the opposing party, whether the act may be said to serve the ultimate goal of a military campaign, and whether the crime is committed as part of or in the context of the perpetrator's official duties.⁵

⁵ *Kuranac, Kovac and Vukovic*, IT-96-23 & IT-96-23/1-A, Judgement, paragraph 59; *Prosecutor v. Limaj, Musliu and Bala*, IT-03-66-T, Judgement, 30 November 2005 (hereinafter, "*Limaj Trial Judgement*"), paragraph 91.

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7. For the reasons set out below, we will submit that the OTP will not be able to satisfy this Trial Chamber of these threshold requirements to the high standard required under the Statute and Rules.

(ii) *Particular evidentiary issues: the Credibility of Witnesses*

8. The Defence for Lahi Brahimaj respectfully draws the attention of the Trial Chamber to principles of assessing the credibility of witnesses.

9. Particularly in cases of uncorroborated testimony from a witness, it is crucial to exercise caution in whether the witness is deemed to be a credible source of evidence. In Common Law jurisdictions judges have a duty: "to advise a jury to proceed with caution where there is material to suggest that a witness's evidence may be tainted by an improper motive."⁶ Care must be taken in evaluating the evidence of a witness whose evidence may be coloured by motives of jealousy, spite, levelling of an old score, or hope of financial advantage.⁷

(iii) *Particular legal issues: Alibi*

10. Lahi Brahimaj has consistently maintained that throughout the indictment period he was a member of the General Staff of the KLA, based in the area of the Berisha Mountains in Drenica. For the majority of that period he was not physically present in Jabllanicë, still less was he able to exert command or control there. He accepts that he visited Jabllanicë and stayed overnight there on more than one occasion during the indictment period. Since the Indictment does not specify precise dates on which individual criminal acts are alleged to have occurred, Mr. Brahimaj is not in a position to provide notice that he was elsewhere when such acts were committed, if indeed they were committed. In these circumstances, Mr. Brahimaj is not in a position to aver that he could not have committed the crimes alleged against him.

⁶ See, eg, *R. v Beck*, 74 Cr App R 221, CA (Court of Appeal for England & Wales), at p 228.

⁷ Commentary in *Archbold, Criminal Pleading and Evidence*, at §4-404o.

11. The purpose of Rule 67 is to ensure that the Prosecution is not taken by surprise and “to allow the Prosecution to prepare its case adequately and is consistent with the principle of the presumption of innocence and the duty of the Prosecution to prove guilt beyond reasonable doubt.”⁸ As a matter of law, the defence for Lahi Brahimaj does not consider that this constitutes a defence of alibi, as generally understood. However, as the Appeals Chamber has pointed out in *Čelebići*:

“It is a common misuse of the word to describe an alibi as a ‘defence.’ If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he was charged. That is not a defence in its true sense at all. By raising the issue, the Defendant does no more than require the Prosecution to eliminate the possibility that the alibi is true.”⁹

12. In the context of this re-trial, there can be no question of the Prosecution being taken by surprise, since the same defence was raised by Mr. Brahimaj in his original trial, without objection by the Prosecution, although no formal notice pursuant to Rule 67 was given. Indeed, the OTP in the original trial never challenged: (a) that Mr. Brahimaj was at all relevant times a member of, and finance director of, the Main Staff (General Staff) of the KLA; and (b) that at all relevant times the Main Staff of the KLA was located in the Berisha Mountains.

13. For the avoidance of all doubt, Mr. Brahimaj hereby gives notice pursuant to Rule 67 that, by virtue of his duties on the Main Staff of the KLA and his presence in the Berisha Mountains for much of the indictment period, he was a staff officer of the KLA and not in a position to exercise the responsibilities of commander of Jabllanicë or of any other “field command” position. The prosecution is already aware of the evidence of certain witnesses, such as Bislim Zyrapi¹⁰ and Jakup Krasniqi,¹¹ confirming this assertion. If the defence for Lahi Brahimaj becomes aware of the

⁸ See, e.g., *Prosecutor v. Lukic & Lukic*, Case IT-98-32/1, Judgement, 20 July 2009, paragraphs 23-26.

⁹ *Delalic et. al.* Appeals Judgement, para. 581

¹⁰ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.3202, 3212, (23 April 2007) 3283, 3290-3293 (24 April 2007) (testimony of Bislim Zyrapi).

¹¹ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 5056, 5070-5071, 5072-5075, 5077 (30 May 2007) (testimony of Jakup Krasniqi).

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existence of any additional witnesses who can provide further evidence in this regard, timely notice thereof will be provided to the OTP.

(iv) *Particular Legal Issues: Disclosure*

14. The Prosecution Pre-Trial Brief relies upon information not yet disclosed to the Defence, including Witness Statements only provided in heavily redacted form. It is therefore not possible for the Defence to know the degree to which we take issue with such parts of the Prosecution Pre-Trial Brief. We are mindful that this disclosure may raise further issues of law or fact that may need to be addressed. If this is the case, the Defence for Lahi Brahimaj will apply to make further submissions on such points.

(v) *The Indictment in Context*

15. The overall historical, political and military context of the emergence of the *Ushtria Çlirimtare e Kosovës* ("UÇK") or Kosovo Liberation Army ("KLA") is central to an understanding of why Lahi Brahimaj and other patriotic Kosovars felt both morally compelled and legally justified in taking the momentous decision to risk their own lives and those of their families and neighbours to take up arms and defend their homes and villages in the struggle for self-determination. We wish to draw the attention of this Trial Chamber to the historical realities of the Serbian government's persecutory campaign against Kosovar Albanians from 1988 onwards, which included:

15.1. Revoking in 1988-89 Kosovo's autonomous status, guaranteed since 1974 under the former Constitution of the Socialist Federal Republic of Yugoslavia;¹²

15.2. Abolishing the Assembly of Kosovo (1990);¹³

¹² See *Prosecutor v. Milutinović et. al.*, IT-05-87-T, Judgement, 26 February 2009 (hereinafter, "*Milutinović* Trial Judgement") at paras. 213-222, particularly at para. 221

¹³ *Milutinović* Trial Judgement, para 223

15.3. From 1990 onwards, creating a regime of discrimination, including in labour relations. There were mass dismissals of Kosovar Albanians from positions in industry and the public sector, being replaced with Serbs. Kosovar Albanians suffered difficulties in gaining employment. By 1993, some 150,000 Kosovar Albanian workers in Kosovo had lost their jobs;¹⁴

15.4. Denying Kosovars access to university education;¹⁵

15.5. Banning teaching in schools in the Albanian language, spoken by the vast majority of the population;¹⁶ and

15.6. Inflicting numerous human rights violations on the people of Kosovo, including arbitrary arrests and imprisonment; extrajudicial executions, torture, inhuman and degrading treatment of those whom the Serbian regime branded as “subversives” or “terrorists.”¹⁷

16. The ICTY has previously found that there was a “systematic terrorisation of Kosovo Albanian civilians by the forces of the FRY and Serbia” which involved removal from their homes, looting and deliberate destruction of property, killing, sexual assaults, and the intentional destruction of mosques.¹⁸ By 1999, at least 715,158 people, mainly ethnic Albanians, had fled Kosovo.¹⁹

17. The Defence for Lahi Brahimaj also reiterates the right of Kosovar Albanians to self-determination. The right all peoples to freely determine their political status and

¹⁴ *Milutinović* Trial Judgement, paras. 224-230; *Prosecutor v. Đorđević*, IT-05-87/1-T, Judgement, 23 February 2011, para 29; see also Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992, paras. 99–113.

¹⁵ *Milutinović* Trial Judgement, para. 225

¹⁶ *Id.*, para. 225, fn.416

¹⁷ Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992, paras. 99–113; OSCE Report Kosovo/Kosova, As Seen, As Told: An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999.

¹⁸ *Milutinović* Trial Judgement para. 1178

¹⁹ *Milutinović* Trial Judgement, paras. 1150, 1156, and 1178.

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pursue their economic and cultural development is clearly articulated in international law.²⁰ Indeed, in the period between the Final Trial Judgement and the Appeals Chamber Judgement being rendered, the people of Kosovo exercised this inalienable right on 17 February 2008 by declaring their country to be independent from Serbia. On 22 July 2010, the International Court of Justice held that this declaration is not contrary to international law.²¹ The Republic of Kosovo has to date received 76 diplomatic recognitions, and has become a member of the World Bank and the International Monetary Fund. On 12 December 2010, Kosovo held its first elections since its declaration of independence.

18. The actions of the KLA were integral to this declaration of independence. The KLA possessed all of the characteristics of a national liberation movement and was entitled to and did receive the support of the international community in resisting the forces of the FRY and Serbia whose forcible actions were aimed at depriving the people of Kosovo of their right to self-determination.

²⁰ This right is articulated in many international instruments: See Article 1(2) of the United Nations Charter provides that the purposes of the United Nations include: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." See also UN Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples; see also Common Articles 1 and 2 of the 1966 International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights.

See also UN Resolution 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, of 1970, which states in relevant part: "Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter."

See also UN Resolution 3314 (XXIX) Definition of Aggression, which states in relevant part: "Nothing in this Definition ... could in any way prejudice the right to self-determination freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration."

²¹ International Court of Justice, Advisory Opinion, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, 22 July 2010.

19. It was against this background, then, that the KLA began to emerge. In 1998, the KLA was in its nascent stages of organisation, with a limited number of people acting clandestinely.²² In or about March-April 1998, villagers, particularly in the Drenica/Drenicë and Dukagjin areas, began spontaneously to organize themselves into defence units, often electing a village commander.²³ Arms were scarce, and people were using any weaponry they could access.²⁴ Villagers would organize rotas between themselves to keep watch, dig trenches and fortifications around their villages; and in the majority of cases they would elect their own village commanders.²⁵ None of this was centrally organised.²⁶

20. Gradually, a limited and "horizontal" organisation began to emerge. In the summer of 1998, the KLA General Staff and local commanders began the process of attempting to co-ordinate these village defence units.²⁷ Meetings were held, such as that in Jabllanicë on 23 June 1998, to attempt to organise the KLA from a village-based structure into a regional structure. The creation of brigades did not effectively happen during the Indictment period: rather, this was a slow and discontinuous process, interrupted by Serb offensives. Until August 1998 – after the Indictment period – the KLA had no rigid hierarchical structure, instead possessing a horizontal command structure.²⁸ Communication between KLA groups was extremely limited.²⁹ For example, the *Limaj* Trial Chamber has accepted that some members of the KLA "relied on basic means, such as gun shots, as means of communication".³⁰

²² *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5007:16-5008:22 (30 May 2007) (testimony of Jakup Krasniqi).

²³ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement, 3 April 2008, paragraphs 66, 68. See also *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5047:1-4; 5047:18-21 (30 May 2007) (testimony of Jakup Krasniqi).

²⁴ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5047:7-10 (30 May 2007) (testimony of Jakup Krasniqi).

²⁵ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5047:11-17 (30 May 2007) (testimony of Jakup Krasniqi).

²⁶ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5047:18-21 (30 May 2007) (testimony of Jakup Krasniqi).

²⁷ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5047:22-5048:2 (30 May 2007) (testimony of Jakup Krasniqi); see also T.5007:16-5008:22 (30 May 2007) (testimony of Jakup Krasniqi).

²⁸ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement, 3 April 2008, paragraph 68.

²⁹ *Ibid*, see also *Limaj* Trial Judgement, paragraph 124.

³⁰ *Limaj* Trial Judgement, para. 124.

II. THE NATURE OF LAHI BRAHIMAJ'S DEFENCE

21. Lahi Brahimaj is not guilty of the crimes alleged against him in the Indictment. He was never a party to the alleged or any Joint Criminal Enterprise. He was never a party to any agreement with his co-accused or any other person or persons, named or unnamed in the Indictment, whereby any of the criminal acts and/or omissions alleged therein were committed, whether in furtherance of a common criminal plan or, as alleged, as "natural and foreseeable consequences thereof."
22. Contrary to the assertion in the Prosecution's Revised Pre-Trial Brief, Lahi Brahimaj did not run or control any "detention facility" at Jabllanicë, neither was he constantly present in Jabllanicë.³¹ In any event, his role on the KLA General Staff would have made it impracticable for Lahi Brahimaj to exert control over Jabllanicë or over any alleged "detention facility" located there.

(i) *Lahi Brahimaj and Jabllanicë*

23. Lahi Brahimaj was born 26 January 1970 in his home village of Jabllanicë, where several members of his immediate and extended family lived. In 1990, after completing his military service, Mr Brahimaj set up a small travel agency in Gjakova. The following spring, he was arrested by the police in Gjakova and detained without trial. After 40 days he was eventually released from prison. In March 1993, the police left a message at his travel agency that he should again go to the police station. Mr Brahimaj did not do so and did not return to his business address. A month later, he ventured back to Gjakova but was chased by the police. He managed to escape, but these experiences meant he was forced to close his business. Thereafter, he remained mostly in Jabllanicë until early 1998.

³¹ See Prosecution Pre-Trial Brief, paras. 78, 79, 80.
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24. While many thousands of Kosovars were forced into exile abroad due to the Serbian regime of oppression, Lahi Brahimaj remained in Kosovo and became a trusted and respected figure among those in villages where resistance to Serbian repression was beginning to develop. From 1994 onwards, Lahi Brahimaj worked clandestinely, together with a small group of people, to build an underground resistance network which eventually became the KLA.
25. Jabllanicë was strategically located on a supply route from the Albanian border through to the original focal point of Kosovan Albanian resistance to Belgrade rule; Adem Jashari's centre of operations in Drenica, particularly in Prekaj and Likoshan.
26. Lahi Brahimaj's responsibilities as a member of the KLA General Staff meant that he was stationed in the area of the Berisha Mountains for the majority of the Indictment period. At this time, the journey from the Berisha mountains to Jabllanicë could take several hours.³² It was a difficult journey, often involving travel by foot, and it was undertaken at night for security reasons.³³
27. Being a command officer on the ground in the Dukagjin Zone would have conflicted with Lahi Brahimaj's duties as a staff officer of the General Staff.³⁴
28. Although Lahi Brahimaj was nominated Deputy Commander of the Dukagjin Zone on 23 June 1998, he did not exercise the duties of that position because his duties on the General Staff required that he be present and available to other General Staff members located in the Berisha Mountains. His absence from the Dukagjin Zone led to the documents relating to caution and discharge just days later.³⁵

³² *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 5143:1-3; 5142:8-25 (31 May 2007) (testimony of Jakup Krasniqi).

³³ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 5142:8-25 (31 May 2007) (testimony of Jakup Krasniqi).

³⁴ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 5077:1-11 (30 May 2007) (testimony of Jakup Krasniqi).

³⁵ 65ter 00168, "Order dated 5 July 1998 signed by Ramush HARADINAJ of dismissal of Ljah IBRAHIMAJ and appointment of Nazmi IBRAHIMAJ as Deputy commander of Dukagjin Plain Operative Staff"; 65ter 00161, "Reprimand signed by Ramush Haradinaj to Ljah IBRAHIMAJ, Deputy commander of Dukagjin region for leaving his AOR without permission and for his failure to arrange a work meeting twice, dated 4 July 1998".

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29. Lahi Brahimaj accepts that, on a number of occasions when Serb forces attacked Jabllanicë and the surrounding area, he personally assisted in the defence of his family and their neighbours. On such occasions he fought, not as a commander but as a rank and file KLA soldier, against Serb military and paramilitary forces and not against civilians.

30. There were other rare occasions when Lahi Brahimaj undertook the journey to Jabllanicë; for example in mid-July 1998, when he accompanied Bislím Zyrapi there from the Berisha Mountains.³⁶

(ii) *Lahi Brahimaj and the General Staff of the KLA*

31. At all times referred to in the Indictment, Lahi Brahimaj served in the KLA as a Staff Officer at the General Staff Headquarters.

32. The KLA General Staff members in Kosovo were forced to operate clandestinely. As the Trial Chamber in *Limaj* found, the General Staff did not have a consistent place of location and, because of the security situation, it was rarely possible for its members to meet together.³⁷

33. In 1997, the General Staff consisted of approximately ten persons, who operated so covertly that they did not necessarily even know each other's identities.³⁸ By mid-1998, there were about seven or eight members of the General Staff who were located inside Kosovo on a permanent basis.³⁹ Members of the General Staff operated in

³⁶ Bislím Zyrapi testified that he travelled with Lahi Brahimaj from the Berisha Mountains (where Brahimaj was in the capacity as Finance Director of the General Staff), to Jabllanicë in July 1998, for a meeting. After a three-day tour of the Dukagjin zone, Zyrapi and Lahi Brahimaj returned from Jabllanicë to Rahovec where the General Staff was located. See *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 3212; 3235:1-2; and 3239:18-3240:3 (23 April 2007) (testimony of Bislím Zyrapi).

³⁷ *Limaj* Trial Judgement, para. 104.

³⁸ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 5025:1-4; 5025:24-5026:2 (30 May 2007) (testimony of Jakup Krasniqi)

³⁹ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5029:5-11 (30 May 2007) (testimony of Jakup Krasniqi)

secret, meeting irregularly at a variety of separate villages in the Berisha Mountains in Drenica.⁴⁰

34. The General Staff divided responsibilities between the political and the operative areas of responsibility.⁴¹ Lahi Brahimaj's responsibilities at the General Staff Headquarters related to finance and logistical matters,⁴² including organising the procurement, transportation and distribution throughout Kosovo of military materiel, medicines and other supplies, mainly obtained from Albania. Lahi Brahimaj reported to Sokol Bashota and Rexhep Selimi.⁴³
35. The General Staff was "hardly involved in the ... developments on the ground in early 1998".⁴⁴ At this time, the experience of Lahi Brahimaj – one of the very few General Staff members who had remained in Kosovo in the time preceding the indictment period – was required by the General Staff in the Berisha Mountains. His responsibilities for the finances, procurement, and supply routes, also necessitated him being based with the General Staff and not on the ground.
36. The General Staff did not at any time hold any meetings to discuss any system, plan to organise detentions or arrests of innocent citizens.⁴⁵

⁴⁰ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5072-3 (30 May 2007) (testimony of Jakup Krasniqi). See also Bislim Zyrapi, testifying that in late May and early June the General Staff were based in a private home in Likoc, Drenica: *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.3283:23-25; 3284:1-3 (24 April 2007) (testimony of Bislim Zyrapi).

⁴¹ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5075:1-2 (30 May 2007) (testimony of Jakup Krasniqi)

⁴² See *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5075:11 (30 May 2007) (testimony of Jakup Krasniqi); T.3212; (23 April 2007) 3394; (24 April 2007) (testimony of Bislim Zyrapi)

⁴³ See *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T.5075:13 -15 (30 May 2007)(testimony of Jakup Krasniqi)

⁴⁴ See *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement, 3 April 2008, paragraph 68.

⁴⁵ See *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, T. 5090 (testimony of Jakup Krasniqi)

III. RESPONSE TO THE PROSECUTION'S PRE-TRIAL BRIEF: GENERAL ALLEGATIONS IN THE INDICTMENT

(i) *Individual Criminal Responsibility*

37. Lahi Brahimaj was not personally responsible for committing any of the offences he is charged with in the Indictment. He did not physically perpetrate any of the alleged crimes he is charged with. He is not responsible for any acts or omissions in connection with any crimes as alleged. He did not plan, instigate, order, commit, or otherwise aid or abet in the planning, preparation or execution of any crimes as alleged.

(iii) *"Joint Criminal Enterprise"*

38. Lahi Brahimaj was not a party to any Joint Criminal Enterprise ("JCE") as alleged or at all. He did not enter into agreement with any of his co-accused or with any other parties to commit crimes as alleged. He did not hold, or share with his co-accused or others, a common intent to commit crimes as alleged.

39. Mere familial ties or a "close association between the accused" do not constitute a JCE. The Prosecution, in its Pre-Trial Brief, emphasises Mr. Brahimaj's familial relations with alleged JCE members, including his nephew Ramush Haradinaj and brother Nazmi Brahimaj.⁴⁶ Indeed, the Prosecution appear to conflate notions of "family" and "Joint Criminal Enterprise". It is not correct in either law or fact to suggest that there were close working relationships between the accused based on familial relationships.

⁴⁶ Prosecution Pre-Trial Brief, paras 9, 12, 59, 60.
Case IT-04-84**bis**-PT
Pre-Trial Brief Filed On Behalf Of Lahi Brahimaj

IV. CONCLUSION

40. Lahi Brahimaj maintains his plea of not guilty in relation to each of the counts in the Fourth Amended Indictment. The OTP is put to the strict proof of each and every count alleged against Lahi Brahimaj.

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Respectfully submitted



RICHARD HARVEY



PAUL TROOP