



**THE PRE-TRIAL JUDGE**

Case No.: **STL-11-01/PT/PTJ**  
The Pre-Trial Judge: **Judge Daniel Fransen**  
The Registrar: **Mr. Daryl Mundis, Acting Registrar**  
Date: **28 May 2013**  
Original language: **English**  
Classification: **Public**

**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH**  
**MUSTAFA AMINE BADREDDINE**  
**HUSSEIN HASSAN ONEISSI**  
**ASSAD HASSAN SABRA**

**PUBLIC REDACTED VERSION OF “DECISION ON THE SABRA DEFENCE’S  
FIFTH REQUEST OF THE FOURTH MOTION FOR DISCLOSURE” DATED  
21 DECEMBER 2012**

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## I. INTRODUCTION

1. The Pre-Trial Judge of the Special Tribunal for Lebanon is seised of a motion by counsel for Mr. Sabra (“Sabra Defence”) seeking disclosure by the Prosecution of several requested categories of material (the “Fourth Disclosure Motion”). On 8 November 2012, the Pre-Trial Judge rendered his decision ruling on four out of five requests of the Fourth Disclosure Motion with the exception of group of requests termed the “Fifth Request”. This Fifth Request which remained outstanding, pertains to material [REDACTED] who is referred to in the indictment against Messrs Ayyash, Badreddine, Oneissi and Sabra (the “Indictment”). The Pre-Trial Judge hereby issues his ruling on the Fifth Request of the Fourth Disclosure Motion (the “Fifth Request”).

## II. PROCEDURAL BACKGROUND

2. On 19 October 2012, the Sabra Defence filed its Fourth Disclosure Motion seeking the disclosure of specific material.<sup>1</sup> This motion consisted of a series of six individual requests by the Sabra Defence seeking specific disclosure of material pursuant to Rules 110(B) and/or 113.<sup>2</sup> The Fourth Disclosure Motion annexed, *inter alia*, a letter from the Sabra Defence to the Prosecution, dated 4 October 2012, requesting several categories of material [REDACTED], which was purported to constitute the Fifth Request of that motion.<sup>3</sup>

3. On 25 October 2012, the Pre-Trial Judge issued orders for a Working Plan pursuant to Rule 91(A) and also established a regime for the disclosure of discrete material specifically requested pursuant to Rules 110(B) and 113 (“Specific Disclosure Regime”).<sup>4</sup>

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Sabra’s Fourth Motion for an Order for Disclosure – Information Pertaining to [REDACTED], 19 October 2012 (“Fourth Disclosure Motion”).

<sup>2</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Sabra’s First Motion for an Order for Disclosure – Phone Numbers Allegedly in Contact with the Number Attributed to Mr. Sabra, 10 October 2012; Sabra’s Second Motion for an Order for Disclosure – Theoretical Cell Coverage, 11 October 2012; Sabra’s Third Motion for an Order for Disclosure – Information Relating to the Telecard, Attributed SIM and Statements of Staff of News Agencies, 18 October 2012; Sabra’s Fifth Motion for an Order for Disclosure – SMS Records, Confidential, 29 October 2012; Sabra’s Sixth Motion for an Order for Disclosure – Information Relating to Addresses Attributed to Mr. Sabra and Alleged Associates, 31 October 2012.

<sup>3</sup> Fourth Disclosure Motion, Annex D.

<sup>4</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Order on a Working Plan and on the Joint Defence Motion regarding Trial Preparation, 25 October 2012 (“Working Plan Order”), pp. 15-16. Relevantly, in relation to requests by the Defence for Rule 110(B) material, the Specific Disclosure Regime prescribes that the Prosecution is to, within five working days of any request, either: (a) respond in writing, disclosing the material sought; or (b) respond in writing, explaining the Prosecution’s reasons as to why the material being

4. On 1 November 2012, the Sabra Defence filed a corrigendum to its Fourth Disclosure Motion.<sup>5</sup> The letter originally annexed to the Fourth Disclosure Motion purporting to be the Fifth Request was in fact an unrelated letter attached inadvertently. The Corrigendum annexed the correct letter by the Sabra Defence to the Prosecution, also dated 4 October 2012, containing categories of material sought by the Sabra Defence.

5. On 8 November 2012, the Pre-Trial Judge issued his decision on the six motions by the Sabra Defence requesting specific disclosure, including the Fourth Disclosure Motion.<sup>6</sup> The Pre-Trial Judge granted the motions in part, and ordered *inter alia* the application of the Specific Disclosure Regime for Rule 110(B) requests validly made and, in any event, the filing of a notice of compliance by the Prosecution by 30 November 2012.<sup>7</sup> However, in relation to the Fifth Request, which remained pending, the Pre-Trial Judge ordered the Prosecution to file, in accordance with Rule 8, any response to the corrected categories of disclosure sought by the Sabra Defence.<sup>8</sup>

6. On 21 November 2012, the Prosecution filed its response to the Fifth Request. Additionally, the Prosecution made an application seeking an extension of time to disclose any relevant material.<sup>9</sup>

7. On 29 November 2012, the Sabra Defence filed a consolidated response replying to a number of the Prosecution's applications for extensions of time for pending disclosures, *inter alia*, the Fifth Request.<sup>10</sup>

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sought falls outside the Prosecution's disclosure obligations; or (c) respond in writing, specifying a date within a further 10 working days of that date on which the request for disclosure will be met (d) Only where exceptional circumstances justify it, may the Prosecution seize the Pre-Trial Judge with a request to vary the foregoing time limits, in respect of a specific request for disclosure from the Defence. *See*, Working Plan Order, para 24.

<sup>5</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Corrigendum to Sabra's Fourth Motion for an Order for Disclosure – Information Pertaining to [REDACTED], Confidential, 1 November 2012 (“Corrigendum”).

<sup>6</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on the Sabra Defence's First, Second, Third, Fourth, Fifth and Sixth Motions for Disclosure, 8 November 2012 (“Specific Disclosure Decision of 8 November 2012”).

<sup>7</sup> Specific Disclosure Decision of 8 November 2012, pp. 19-20. Only the first four motions by the Sabra Defence, being motions filed prior to the issue of the Working Plan Order, were determined. The Fifth and Sixth Motions, filed after the issue of the Working Plan Order, were not determined but subjected to the application of the Specific Disclosure Regime generally.

<sup>8</sup> Specific Disclosure Decision of 8 November 2012, Disposition, paragraph (d), p. 20.

<sup>9</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Response to the Fifth Request of the Fourth Sabra Motion and Prosecution Request for Extension of Time to Disclose Applicable Material, Confidential, 21 November 2012 (“Prosecution Response and Request for Extension of Time”).

<sup>10</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Sabra's Consolidated Response to Prosecution Motions Regarding Disclosure, Confidential, 29 November 2012 (“Consolidated Response”) para. 1.

### III. APPLICABLE LAW

8. The Sabra Defence relies on Rules 110(B) and 113 in its motion seeking disclosure of specific material. Rule 110(B) obliges the Prosecution to provide disclosure by way of inspection of the requested material, while Rule 113 governs the disclosure of exculpatory material. In all cases, the Defence must demonstrate the existence of specific conditions when seising the Pre-Trial Judge of a motion relying on the two provisions.

9. The requisite elements of Rule 110(B) are well settled in the jurisprudence of international criminal tribunals dealing with equivalent procedural provisions. The Defence bears the burden of:

- a) demonstrating *prima facie* that the requested items are “material to the preparation of the defence” (or intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused);
- b) demonstrating *prima facie* that the requested items are in the Prosecutor’s “custody or control”; and
- c) identifying the items sought with sufficient specificity.<sup>11</sup>

10. In relation to the element of specificity, the International Criminal Tribunal for Rwanda (“ICTR”) Appeals Chamber has usefully provided the following general guideline:

The Defence may not rely on a mere general description of the requested information but is required to define the parameters of its inspection request with sufficient detail. Suitable parameters for such specification may be an indication of a specific event or group of witnesses which the request focuses on, a time period and/or geographic location which the

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<sup>11</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Motion to Compel Inspection of Items Material to the Sarajevo Defence Case, 8 February 2012 (“*Karadžić* 8 February 2012 Decision”), para. 8; ICTY, *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34, Decision on Joint Motions for Order Allowing Defence Counsel to Inspect Documents in the Possession of the Prosecution, 16 September 2002, pp. 2-3; ICTY, *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, Esad Landžo*, Case No IT-96-21-T, Decision on the Motion by the Accused Zejnil Delalić for the Disclosure of Evidence, 26 September 1996 (“*Delalić* 26 September 1996 Decision”), para. 9; ICTY, *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, Esad Landžo*, Case No IT-96-21-T, Decision of the President on the Prosecutor’s Motion for the Production of Notes Exchanged Between Zejnil Delalić and Zdravko Mucić, 11 November 1996, para. 40; ICTR, *Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-AR73.18, Decision on Joseph Nzirorera’s Appeal from Decision on Alleged Rule 66 Violation, 17 May 2010, para. 12 (“*Karemera* 17 May 2010 Decision”); ICTR, *Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-AR73.11, Decision on the Prosecution’s Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008, paras 13-15; ICTR, *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No, ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal’s Rules of Procedure and Evidence, 25 September 2006, paras 9-10.

material refers to, or any other features defining the requested items with specific precision. A request may also refer to a category of documents defined by criteria which apply to a distinct group of individuals. The scope of what constitutes a “discrete group of individuals” for the purpose of an inspection request, as well as the determination whether the required level of specificity has been met, is considered in light of the specific framework of the case.<sup>12</sup>

11. Rule 113 comprises of the following elements which imposes on the Defence the burden of:<sup>13</sup>

- a) demonstrating *prima facie* that the requested “information” is in the Prosecution’s “possession or actual knowledge”;
- b) demonstrating *prima facie* that such items requested may “reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor’s evidence”; and
- c) identifying the items sought with sufficient particularity,<sup>14</sup> or “identify[ing] precisely the facts in question” before establishing the *prima facie* exculpatory nature of those facts.<sup>15</sup>

12. In the case of both Rules 110(B) and 113, “sweeping ‘catch-all’ phrases”,<sup>16</sup> “conclusory allegations or a general description of the information”,<sup>17</sup> would not satisfy the requirement that categories of items sought are particularised with sufficient specificity. Nor do these provisions entitle to Defence to embark on a speculative “fishing expedition” to obtain material.<sup>18</sup>

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<sup>12</sup> *Karemera* 17 May 2010 Decision, para. 32.

<sup>13</sup> ICTR, *Prosecutor v. Édouard Karemera, Mathieu Ngirumpase, Joseph Nzirorera*, Case No. ICTR-9-44-PT, Decision on Joseph Nzirorera’s Motion to Compel Inspection and Disclosure, 5 July 2005 (“*Karemera* 5 July 2005 Decision”), para. 14; ICTR, *Prosecutor v. Casimir Bizimungu et al*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza’s Motion Pursuant to Rule 68 for Exculpatory Evidence Related to Witness GKI, 14 September 2004, para. 11, ICTR, *Juvénal Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 262.

<sup>14</sup> *Karemera* 5 July 2005, para. 14.

<sup>15</sup> ICTY, *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Order on Vojislav Šešelj’s Motions for Disclosure of Documents by the Prosecution with the Separate Opinion from Presiding Judge Antonetti in Annexed Thereto, 3 September 2010, para. 31.

<sup>16</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue, 17 December 2008 (“*Karadžić* 17 December 2008 Decision”), para. 20.

<sup>17</sup> *Delalić* 26 September 1996 Decision, para. 9

<sup>18</sup> In relation to Rule 110(B), see, *Karadžić* 8 February 2012 Decision, para. 8; ICTY, *Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Motion by Momir Talić for Disclosure of Evidence, 27 June 2000, para. 7. Similarly in relation to Rule 113, see, ICTY, *Prosecutor v. Dragomir Milošević*, Decision on Motion Seeking Disclosure of Rule 68 Material, 7 September 2012, para. 5; ICTY, *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006, para. 30.

#### IV. SUBMISSIONS OF THE PARTIES AND REASONS

13. The Sabra Defence points to the central role of [REDACTED] in the establishment by Messrs Sabra and Oneissi of a “false claim of responsibility” for the Hariri attack alleged in the Indictment.<sup>19</sup> The Sabra Defence submits that the material it seeks concerning the background, associates and activities of [REDACTED], the nature of his participation in the “false claim of responsibility” and his eventual disappearance, is necessary to understand the case made by the Prosecution and to prepare a defence accordingly.<sup>20</sup> In particular, for this purpose, the Sabra Defence claims it requires evidence relating to Mr. Adass’ prior contacts with extremist groups, his ability to communicate or obtain information with such groups by phone, through the internet or in person, as well as any information relating to his disappearance.<sup>21</sup>

14. As noted by the Prosecution, the Fifth Request is, in fact, comprised of ten separate sub-requests.

15. Of the ten sub-requests, the Prosecution does not oppose two, namely, Sub-request 1 (witness statements and/or records of interview of [REDACTED]) and Sub-request 8 (copy of a partly written book by [REDACTED] about “true Islamic behavior”). However, the Prosecution seeks an extension of time until 7 December 2012 (in the case of Sub-request 8),<sup>22</sup> and 14 December 2012 (in the case of Sub-request 1),<sup>23</sup> to fulfill its disclosure obligations with respect to these two sub-requests.<sup>24</sup> The Pre-Trial Judge notes that the Prosecution has already disclosed the documents covered by Sub-requests 1 and 8. This issue is therefore moot.

16. The Prosecution opposes disclosure of the balance of the ten sub-requests, and seeks the dismissal of those sub-requests in their entirety, or in part, on the basis of five main objections:

- a) The Sabra Defence has failed to explicitly state which legal provision of the Rules is relied on.

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<sup>19</sup> Fourth Disclosure Motion, paras 3-4.

<sup>20</sup> Fourth Disclosure Motion, para. 5

<sup>21</sup> *Ibid.*

<sup>22</sup> Prosecution Response and Request for Extension of Time, para. 20.

<sup>23</sup> Prosecution Response and Request for Extension of Time, para. 6.

<sup>24</sup> Prosecution Response and Request for Extension of Time, paras 7 (Sub-request 1) and 20 (Sub-request 8).

- b) The disclosure request impermissibly seeks intangible “information” which falls outside the Prosecution’s obligations according to the terms of Rule 110(B).
- c) The Prosecution may be required to create new work product or require the notification of existing internal work product.
- d) The Sabra Defence has failed to demonstrate on a *prima facie* basis that the material sought is in the custody or control of the Prosecution.
- e) The description by the Sabra Defence of its categories of sub-requests are deficient as they fail to meet the criterion of specificity.

Each of these arguments will be considered in turn below.

#### **A. Legal Basis for Specific Disclosure Requests**

17. The Prosecution submits, at the outset, that the Fifth Request should be dismissed in its entirety for failing to state explicitly the legal provision it relies on.<sup>25</sup> By way of example, the Prosecution observes that the Sabra Defence invoked in blanket fashion, both Rules 110(B) and 113 in a single sentence within a lengthy letter containing numerous categories of requests for material without demonstrating how each category individually satisfied the elements of Rules 110(B) and/or 113.<sup>26</sup>

18. The Pre-Trial Judge considers that the requested disclosure is not justified on the basis of Rule 113. In this instance, the Sabra Defence has not provided any submissions demonstrating that the Prosecution has any “information in [its] possession or actual knowledge” which is exculpatory in nature, that is, information “which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor’s evidence” in accordance with the terms of Rule 113.

19. Nevertheless, as the Sabra Defence has submitted, given the central role of [REDACTED], the Pre-Trial Judge is satisfied that the Sabra Defence has discharged its onus to a *prima facie* standard in relation to Rule 110(B) insofar as the categories of disclosure sought are “material to the preparation of the defence”.<sup>27</sup> Accordingly, in the present circumstances, a finding that the Rule 110(B) requirements are satisfied, suffices to warrant

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<sup>25</sup> Prosecution Response and Request for Extension of Time, paras 3-5.

<sup>26</sup> Prosecution Response and Request for Extension of Time, para. 3.

<sup>27</sup> *Delahić* 26 September 1996 Decision, paras 8-9, *Karemera* 17 May 2010 Decision, para. 13.

the disclosure sought by the Sabra Defence subject to the two other fundamental elements being fulfilled. Those criteria, to be more fully considered below, relate to whether the material is in the “custody or control” of the Prosecution and whether the material sought has been specifically described in sufficient detail.

### **B. Requests for “Information”**

20. The Prosecution submits that in accordance with the terms of Rule 110(B), it is only required to provide inspection of “tangible objects” such as “books, documents and photographs”, rather than broad ranging and intangible “information”.<sup>28</sup> Accordingly, the Prosecution argues that Sabra Defence’s use of the term “[a]ny information” in its sub-requests goes beyond what is permitted by Rule 110(B) and that in itself forms the basis for dismissal of the disclosure requests.

21. The Pre-Trial Judge considers that the Prosecution is correct to the extent that the Prosecution’s obligations to provide inspection under Rule 110(B) are limited to tangible objects, in contrast to Rule 113 which would permit disclosure of “information”.<sup>29</sup> Nevertheless, the use of the term “information” is permissible and can simply be understood to be restricted to “tangible objects” including, but not limited to, “books, documents and photographs”. It does not form a basis for the outright dismissal of the Sabra Defence’s specific requests for disclosure as contended by the Prosecution.

### **C. Internal Documents**

22. The Prosecution objects to disclosure of material sought by the Sabra Defence on the basis that it may be required to create new work product or to disclose existing work product with reference to the exception from disclosure of “internal documents” embodied in Rule 111.<sup>30</sup>

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<sup>28</sup> Prosecution Response and Request for Extension of Time, paras 11 (Request 2), 14 (Request 3), 17 (Requests 4, 5 and 7), 19 (Request 6) and 21 (Requests 9 and 10)

<sup>29</sup> Rule 113 provides: “[...] the Prosecutor shall, as soon as practicable, disclose to the Defence any *information* in his possession or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor’s evidence” (emphasis added).

<sup>30</sup> Prosecution Response and Request for Extension of Time, paras 13 (Sub-request 3), 17 (Sub-requests 4, 5 and 7), 19 (Sub-request 6), 21 (Sub-requests 9 and 10). Rule 111 provides: “Reports, memoranda, or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under the Rules. For the purposes of the Prosecutor, this includes reports, memoranda, or other internal documents prepared by the UNIIC or its assistants or representatives in connection with its investigative work.”



23. The Pre-Trial Judge accepts, to an extent, the Prosecution's submission that Rule 110(B) applies only to evidence that is collected and not to any internal analysis or resulting work product produced by the Prosecution.<sup>31</sup> In the Specific Disclosure Decision of 8 November 2012, the Pre-Trial Judge referred in passing to the Rule 111 exception in the context of a particular request by the Sabra Defence for "lists" of persons interviewed by the Prosecution.<sup>32</sup> For the avoidance of doubt, all Rule 110(B) disclosure is subject to the exception in Rule 111 in relation to internal documents prepared by a Party in connection with the "investigation or preparation of a case".<sup>33</sup>

24. However, the potential or actual existence of Rule 111 exempt material in the Prosecution's custody or control *per se*, would not be a basis for the outright denial of a specific request for disclosure in its entirety. There may well be other material in the Prosecution's custody or control which does not fall within the description of Rule 111, which the Prosecution remains obliged to disclose.

#### D. Custody or control of the Prosecution

25. The Pre-Trial Judge notes that the Sabra Defence has failed to address the element requiring that the requested material *prima facie* be within the "custody or control" of the Prosecution. The Pre-Trial Judge recalls that this is one of the three fundamental elements required in order to justify a request for inspection pursuant to Rule 110(B).<sup>34</sup>

26. The Prosecution, in its response, does not object on this basis save for Sub-request 2.<sup>35</sup> On the contrary, the Prosecution seeks extensions of time, for the majority of

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<sup>31</sup> Prosecution Response and Request for Extension of Time, p. 7, fn. 18.

<sup>32</sup> Specific Disclosure Decision of 8 November 2012, para. 48.

<sup>33</sup> STL, *In the matter of El Sayed*, Case No. CH/AC/2011/01, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge's Decision of 12 May 2011, 19 July 2011, para. 79 ("Appeals Chamber Decision of 19 July 2011"); See also, ICTY, *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Decision on Vidoje Blagojević's Expedited Motion to Compel the Prosecution to Disclose its Notes from Plea Discussions with the Accused Nikolić & Request for an Expedited Open Session Hearing, 13 June 2003, p.4; ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Redacted Decision on the Prosecution's Disclosure Obligations Arising out of an Issue Concerning Witness DRC-OTP-WWWW-0031, 20 January 2011, para. 16. The Appeals Chamber of this Tribunal however has provided detailed analysis on the scope of Rule 111 which qualifies the findings of the *Lubanga* Trial Chamber with respect to preliminary versions of witness' evidence which has been held to fall outside the scope of Rule 111 and may be subject to disclosure: see, Appeals Chamber Decision of 19 July 2011, paras 87-89.

<sup>34</sup> See, para. 9(b).

<sup>35</sup> Prosecution Response and Request for Extension of Time, para. 11.

sub-requests, to confirm or determine whether the requested material is indeed in its custody or control.<sup>36</sup>

27. Given this general approach by the Prosecution to voluntarily undertake the necessary searches, the Pre-Trial Judge is prepared to proceed on the basis that the requested material is possibly, if not probably, in the custody or control of the Prosecution in relation to all categories of sub-requests. In doing so, the Pre-Trial Judge also takes into consideration the general nature of the documents requested and the overriding fundamental rights of the accused to adequate time and facilities to prepare for his or her defence as enshrined in Article 16(4)(b) of the Statute.

### **E. Specificity**

28. Having considered that the Sabra Defence Sub-requests have generally satisfied two of the three criteria required by Rule 110(b), namely, that they are “material to the preparation of the defence” (Section IV.A), and secondly, that they are in the “custody or control” of the Prosecution (Section IV.C above), it is necessary to turn to the third fundamental requirement of specificity.

29. The Prosecution objects to the balance of the Sabra Defence’s requests, largely on the basis of lack of specificity. Issues of specificity are particular to the context of each individual case and each separate category of request should be approached on a case-by-case basis. The Prosecution’s objections on the basis of insufficient specificity must be analysed individually and closely with reference to the terms of each Sub-request.

#### **1. Sub-request 2**

30. The Sabra Defence seeks specific disclosure of:

[REDACTED]<sup>37</sup>

31. The Prosecution submits that this request should be dismissed in part, to the extent that it seeks, “[a]ny information, or documentary evidence provided to UNIIC, OTP or

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<sup>36</sup> *Id.*, paras 7 (Sub-request 1), 13 (Sub-request 3), 20 (Sub-request 8), 23 (Sub-requests 9 and 10).

<sup>37</sup> [REDACTED]

Lebanese investigating authorities by [REDACTED]” which is merely a general description that fails to provide the requisite level of specificity and detail.<sup>38</sup>

32. The Prosecution has nevertheless indicated its willingness to provide disclosure of the balance of this request, namely, the “[REDACTED], several newspaper articles about [REDACTED] and the whole story, [REDACTED] and some documents which are products of the work of [REDACTED]”, subject to its request for an extension of time to undertake searches and comply with its disclosure obligations.<sup>39</sup>

33. In light of the [REDACTED] is alleged to have played in this case, the Pre-Trial Judge is not persuaded that [REDACTED] is overly broad, particularly given that the identities of [REDACTED] are known to the Prosecution. Such a request can be described as a permissible “category of documents defined by criteria which apply to a distinct group of individuals”. Accordingly, the Pre-Trial Judge grants this sub-request in its entirety.

## 2. Sub-request 3

34. The Sabra Defence seeks specific disclosure of:

[REDACTED]<sup>40</sup>

35. The Prosecution submits that the only valid request is sub-paragraph (i), namely, relevant statements of the ten named individuals, and requests an extension until 21 December 2012 to comply.<sup>41</sup>

36. The Pre-Trial Judge considers that there are enough parameters which allow this sub-request to be sufficiently specific. The “Hariri attack” in sub-paragraph (ii) is a “specific event” circumscribing disclosure and, together with the discrete list of individuals specified, is sufficiently particularised. Likewise, the “terrorist activities” and associations with terrorist or jihadist groups, in sub-paragraphs (iii) and (iv) respectively, must be read with reference to the specified individuals. The balance of sub-paragraphs (ii) to (iv) are not unduly broad. Accordingly, the Pre-Trial Judge grants disclosure of Sub-request 3 in its entirety.

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<sup>38</sup> Prosecution Response and Request for Extension of Time, para. 11.

<sup>39</sup> *Id.*, para. 10.

<sup>40</sup> [REDACTED]

<sup>41</sup> Prosecution Response and Request for Extension of Time, para. 13.

### 3. Sub-requests 4, 5 and 7

37. The Sabra Defence seeks specific disclosure of:

[REDACTED]<sup>42</sup>

38. The Prosecution argues that these categories are insufficiently specific to conduct a feasible search and should be dismissed. In particular, the Prosecution observes that the Sabra Defence has failed to identify tangible objects (or even a category of tangible objects) for inspection. Moreover, the parameters of the category are not specified and the reference to certain documents do not add to the level of specificity required.<sup>43</sup> The Prosecution gives as an example the witness statement of Mr.[REDACTED] which indicates there are “plenty” of internet cafes in Beirut. The Prosecution also complains that the requests arise from a one-line response. For instance, a witness was asked if Mr.[REDACTED] ever went to [REDACTED] and the response was “No. None of us have ever been to [REDACTED]”.<sup>44</sup>

39. In the circumstances, the Pre-Trial Judge accepts that Sub-requests 4 and 5 are insufficiently specific. However, there are sufficient parameters regarding [REDACTED] association with the particular [REDACTED] group. Accordingly, the Pre-Trial Judge allows Sub-request 7 but denies Sub-requests 4 and 5.

### 4. Sub-request 6

40. The Sabra Defence seeks specific disclosure of:

[REDACTED]<sup>45</sup>

41. The Prosecution argues that the given name [REDACTED] would “result in a number of hits far too great to yield meaningful results”.<sup>46</sup> The Pre-Trial Judge accepts this submission. An incomplete, common and possibly assumed name is unduly vague as a parameter for delimiting the scope of a request, even in conjunction with an affiliated group, and constitutes a “mere general description” which is insufficient to activate the Prosecution’s disclosure obligations under Rule 110(B). As stated in the jurisprudence considering equivalent provisions to Rule 110(B), the character of such a request is “framed

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<sup>42</sup> [REDACTED]

<sup>43</sup> Prosecution Response and Request for Extension of Time, para. 18.

<sup>44</sup> *Ibid.*

<sup>45</sup> [REDACTED]

<sup>46</sup> Prosecution Response and Request for Extension of Time, para. 19.

in language too vague for the Prosecution to be able to determine in every case whether a particular document falls into a particular category”.<sup>47</sup> Accordingly, the Pre-Trial Judge denies this sub-request.

#### **5. Sub-requests 9 and 10**

42. The Sabra Defence seeks the specific disclosure of:

[REDACTED]<sup>48</sup>

43. The Prosecution argues that these requests fail to identify tangible objects (or even a category of tangible objects) that it wishes to inspect, and has not defined the parameters of its inspection request with sufficient detail. The request regarding [REDACTED] or [REDACTED], unlike other requests, does not refer to any disclosed document, so the context of the request is unknown. Furthermore, the request regarding an individual by the first name of [REDACTED] would produce hits on a search which would be too numerous to yield meaningful results.<sup>49</sup>

44. Nevertheless, the Prosecution indicates that it is prepared to provide any witness statements from [REDACTED] or [REDACTED] that may be in its custody or control and which have not already been disclosed.

45. The Pre-Trial Judge finds that, as formulated by the Sabra Defence, these categories are overly broad and speculative. The failure to identify specific tangible objects or categories may not necessarily be a basis to deny a request *per se*. With respect to Sub-request 9, while the Houri mosque may be considered a “geographic location” and a possible specifying parameter, as formulated merely in terms of an alleged activity (someone who walked with [REDACTED] to that mosque) the request remains vague. With respect to Sub-request 10, seeking disclosure of “any information” with respect to specified individuals with no other context other than being persons who “may have been in contact with [REDACTED]” does not conform to the requirements of specificity. Except to the extent that witness statements are required to be produced by Rule 110(B), Sub-requests 9 and 10 are denied.

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<sup>47</sup> *Karadžić* 17 December 2008 Decision, para. 20.

<sup>48</sup> [REDACTED]

<sup>49</sup> Prosecution Response and Request for Extension of Time, para. 22.

## V. EXTENSIONS OF TIME

46. The Prosecution submits that if it is required to disclose the material sought, it should be granted an extension of time until 21 December 2012 due to its heavy workload and limited resources in dealing with a high number of Defence requests, which are often wide in scope and complex in nature.<sup>50</sup> Since the order of 28 August 2012 which fixed the date of the filing of the Prosecution's pre-trial brief by 15 November 2012, the Prosecution explains that it was required to meet its disclosure obligations under Rules 91, 110(B) and 113.<sup>51</sup> It states that by necessity, it has "been obliged to approach these requirements incrementally in steps, and redeploy resources upon reaching a deadline" which meant that it could not deal with Rule 110(B) requests because it was working at capacity to meet its Rule 91 disclosures by 15 November 2012, and only since then has it been in a position to deal with the Rule 110(B) requests.<sup>52</sup>

47. The Pre-Trial Judge considers that the reasons invoked by the Prosecution to extend the deadline are justified. He also notes that the Prosecution confirmed on 20 December 2012 its intention to meet the 21 December 2012 deadline with respect to the Sub-requests it considered to be valid. For any material falling within the Sub-requests granted in this decision that has not been disclosed by that date, the Pre-Trial Judge orders the Prosecution to do so by 8 January 2013 at the latest.

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<sup>50</sup> *Id*, para. 8.

<sup>51</sup> *Ibid*

<sup>52</sup> *Ibid*

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Article 16 of the Statute and Rule 110(B) of the Rules,

**GRANTS** the Sabra Defence's Fifth Request to the Fourth Disclosure Motion in part;

**GRANTS** the extension of time requested by the Prosecution and **TAKES NOTE** of the Prosecution's intention to meet the 21 December 2012 deadline with respect to the Sub-requests it considered to be valid;

**ORDERS**, if necessary, the Prosecution to provide disclosure of the Sabra Defence's Fifth Request to the Fourth Disclosure Motion, in relation to Sub-requests 2, 3, 7, 9 (only insofar as the Prosecution is required by Rule 110(B) to provide witness statements of [REDACTED] and 10 (only insofar as the Prosecution is required by Rule 110(B) to provide any witness statements of [REDACTED] or [REDACTED] by 8 January 2013 at the latest;

**ORDERS** the Prosecution to file a Notice of compliance with this order on 8 January 2013 at the latest.

Done in Arabic, English and French, the English version being authoritative.

Leidschendam, 28 May 2013



Daniel Fransen  
Pre-Trial Judge

