



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE PRE-TRIAL JUDGE**

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransen**

The Registrar: **Mr. Daryl Mundis**

Date: **19 September 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 ISSUES RELATED TO THE  
INSPECTION ROOM AND CALL DATA RECORDS” DATED 18 JUNE 2013**

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## I. INTRODUCTION

1. In this decision, the Pre-Trial Judge rules on certain matters in relation to the CDRs, the Z:\ Drive, and the Inspection Room.
2. Since the assignment of Defence Counsel on 2 February 2012,<sup>1</sup> the Parties have been engaged in establishing and improving a mechanism whereby certain material either supporting the Indictment<sup>2</sup> or otherwise disclosed to the Defence pursuant to the Rules of Procedure and Evidence (the “Rules”) is provided to the Defence in an effective manner. Two categories of materials are relevant to this decision. One is the Call Data Records (“CDR” or “CDRs”). The other is material provided to the Defence on the so-called “Z:\ Drive” pursuant Rules 91, 110 and 113. Both are described below.<sup>3</sup>
3. The technical nature of the issues addressed herein necessitates a short overview.

## II. OVERVIEW

4. CDRs refer to information in the Prosecution’s possession and related to communication via either a fixed or mobile telephone, and include Short Message Service or “SMS” records. The primary purpose of a CDR is to generate records, and they include the dates, times and durations of calls made, type of call (voice or SMS), the callers and recipients of the calls, as well as the identities of the cell towers used to transmit the call (in the case of mobile telephony) which provides information on the telephone handset’s location when the call was made. It may also include other technical information, depending on the service provider, such as the IMEI numbers<sup>4</sup> of the handsets used to place and receive the calls. SMS content is not stored in CDRs. CDRs in respect of landline telephone phone numbers are similar to those generated for mobile telephones but tend to contain less information.

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, Case No.STL-11-01/PT/PTJ, Assignment of Counsel for the Proceedings Held *In Absentia* Pursuant to Rule 106 of the Rules, 2 February 2012. All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>2</sup> In this decision, the “Indictment” refers to the Prosecution’s Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge’s Decision of 12 April 2013 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, with confidential annexes A and B, 17 April 2013, Annex A Signed Amended Indictment dated 6 February 2013, confidential, 17 April 2013, with a public redacted version of the Amended Indictment filed on 28 May 2013 (“Indictment of 6 February 2013”).

<sup>3</sup> Paras 4-8, 10.

<sup>4</sup> The IMEI (International Mobile Station Equipment Identity) number is an identity number unique to a mobile telephone handset that serves to identify it.

5. To the extent that CDRs relate to the Prosecution's case against the accused, they have been provided to the Defence in two formats.

6. The first format is original information or "Raw Data" which was provided to the Prosecution by the relevant service providers in Lebanon, pursuant to a series of requests for assistance ("RFA" or "RFAs"). The Raw Data contains records for one or more phone numbers and/or cell towers, as well as other technical information. The Raw Data is voluminous and largely unintelligible without further analysis.

7. The second format is processed or analysed information, in the form of a database, against which searches and analysis can be performed more easily. Since the programming language used by the Prosecution for processing and managing the Raw Data in this case was a 'structured query language' or SQL, the resulting database is referred to herein as the "SQL Database".

8. For the purposes of this decision, it is understood that copies of the CDRs in either format are accessible in three locations. The first location is in the Office of the Prosecutor's evidentiary holdings.<sup>5</sup> The second location is in the Inspection Room.<sup>6</sup> The third location is the Z:\ Drive, the nature of which is explained in paragraph 10 below.

9. The SQL Database is generated and controlled by the Prosecution. The Defence has access to it in the "Inspection Room", a facility created within the Tribunal for that purpose.<sup>7</sup> It is noteworthy that the SQL Database relates to a smaller subset of Raw Data than the Prosecution has in its possession. This is because the Prosecution has only analysed and/or uploaded those CDRs which it considers are relevant to its case, and which in its opinion the Rules require it to provide for inspection. Furthermore, data [REDACTED].

10. The Parties have also made use of a restricted-access drive on the Tribunal's network called the Z:\ Drive, which serves two purposes. First, the Z:\ Drive is used to enable the Prosecution to provide to the Defence materials in addition to the CDRs which would — but for their size — ordinarily be provided to the Defence via the Tribunal's Legal Workflow System ("LWS"). This is because LWS does not support the transmission of data above a

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<sup>5</sup> The Prosecution's raw data is referred to as [REDACTED].

<sup>6</sup> The Inspection Room raw data is referred to as [REDACTED].

<sup>7</sup> The Pre-Trial Judge notes that, owing to the creation of remote terminals with access thereto, the Inspection Room is no longer technically a "room", and is more akin to a secure network with remote terminals, but he retains the term of art nevertheless.

specific size limit. Second, the Z:\ Drive is the location of the Raw Data which underlies the SQL Databases, and which the Prosecution has provided to the Defence. The Z:\ Drive therefore contains two categories of material: CDRs, on the one hand, and other material that the Prosecution has disclosed or made available for inspection, pursuant to Rules 91, 110 and 113, on the other.

### **III. PROCEDURAL BACKGROUND**

11. During the Status Conference held on 27 November 2012, the Defence raised certain concerns with respect to its effective access to telecommunications data provided to it by the Prosecution, as well as with regard to the nature of that data.<sup>8</sup>

12. On 19 December 2012, the Pre-Trial Judge convened a meeting pursuant to Rule 91 during which the problems associated with effective Defence access to the CDRs and the Z:\ Drive were discussed. The Pre-Trial Judge requested the Parties to work together to achieve a practical solution by 15 January 2013.<sup>9</sup>

13. On 15 January 2013, pursuant to the Pre-Trial Judge's instructions, the Prosecution circulated a letter concerning the Defence's access to CDRs and other relevant databases.<sup>10</sup>

14. On 30 January 2013, the Pre-Trial Judge convened a Status Conference at which this topic was once again discussed, one of the outcomes of which was the establishment of an informal "Working Group" to seek to address and resolve the issues remaining.<sup>11</sup> The Working Group, chaired by a Legal Officer in the Pre-Trial Chamber, includes representatives from the Prosecution, the Defence, the Defence Office, and the Registry. Furthermore, following the Status Conference during which it was discussed, the Defence Office filed a memorandum dated 31 January 2013 outlining the Defence's views.<sup>12</sup>

15. The Working Group first met on 7 February 2013, and has engaged in correspondence and held further meetings on an *ad hoc* basis since that date. It continues to do so.

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<sup>8</sup> Status Conference before the Pre-Trial Judge, 27 November 2012, Transcript, p. 60, l. 25 *et seq.*

<sup>9</sup> Confidential Meeting Pursuant to Rule 91, 19 December 2012, Transcript, p. 62, l. 8; p. 63, ll. 8, 21; p. 64, l. 3.

<sup>10</sup> The Pre-Trial Chamber was copied on this correspondence, which included a table detailing the Prosecution's raw data holdings and the status of their provision to the Defence.

<sup>11</sup> Status Conference before the Pre-Trial Judge, 30 January 2013, Transcript, p. 16, ll. 15-18.

<sup>12</sup> Defence Office Internal Memorandum Regarding Call Data Records, 31 January 2013 (the "Defence Office Memorandum"). The Defence Office Memorandum was filed before the Pre-Trial Judge "in close co-operation with the Defence counsel for the four accused", Status Conference before the Pre-Trial Judge, 30 January 2013, Transcript, p. 8, ll. 2-4.

16. On 20 February 2013, the Prosecution responded to the Defence Office Memorandum by way of a letter.<sup>13</sup>

17. On 5 March 2013, the Pre-Trial Judge convened a further meeting pursuant to Rule 91, at which the current status of the Inspection Room, the CDRs and the Z:\ Drive was discussed extensively.<sup>14</sup> The Pre-Trial Judge — while also continuing the work of the Working Group in respect of all other matters — requested the Defence and the Prosecution to seise him with formal filings in respect of those issues which the Parties consider should be determined judicially.<sup>15</sup>

18. In respect of matters being addressed by the Working Group and not falling to be determined by the Pre-Trial Judge at this stage, on 14 March 2013, Defence counsel sent a letter to the Prosecution in order to try to resolve a number of issues with the Prosecution and without the intervention of the Pre-Trial Judge.<sup>16</sup>

19. On 18 March 2013, the Defence filed a joint submission regarding matters on which it seeks judicial determination,<sup>17</sup> to which the Prosecution responded on 22 March 2013.<sup>18</sup>

20. On 21 March 2013, the Prosecution responded to the Defence letter of 14 March 2013.<sup>19</sup>

21. On 28 March 2013, the Defence filed additional submissions,<sup>20</sup> to which the Prosecution responded on 9 April 2013.<sup>21</sup>

22. On numerous occasions, meetings have been convened under the auspices of the Working Group in order to resolve outstanding issues, and in order to assist the Pre-Trial Judge's deliberations in arriving at pragmatic solutions to the various matters arising.

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<sup>13</sup> This letter is annexed to the document cited in fn. 17 as Annex I ("Prosecution letter of 20 February 2013").

<sup>14</sup> Confidential Meeting Pursuant to Rule 91, 5 March 2013, pp. 13-40.

<sup>15</sup> *Id.*, p. 22, ll. 16-22.

<sup>16</sup> The 14 March 2013 letter is annexed to the document cited in fn. 20 as Annex A ("Defence letter of 14 March 2013").

<sup>17</sup> Defence Submissions Regarding the Prosecution's Inspection Room and Call Data Records on the "Z Drive", confidential with confidential annexes A-J, 18 March 2013 (the "Defence Submissions").

<sup>18</sup> Prosecution Response to the Defence Submissions regarding the Prosecution's Inspection Room and Call Data Records, confidential, 22 March 2013 (the "Prosecution Response").

<sup>19</sup> The 21 March 2013 letter is annexed to the document cited in fn. 20 as Annex B.

<sup>20</sup> Additional Defence Submissions Regarding the Prosecution's Inspection Room and Call Data Records on the "Z Drive", confidential with confidential annexes A-B, 28 March 2013 ("Supplementary Defence Submissions").

<sup>21</sup> Prosecution Response to the Additional Defence Submissions regarding the Prosecution's Inspection Room and Call Data Records, confidential, 9 April 2013 ("Supplementary Prosecution Response").

#### IV. MATTERS IN CONTENTION

23. The Pre-Trial Judge notes that the Parties have managed to resolve a number of issues both bilaterally and within the context of the Working Group.<sup>22</sup> Nevertheless, the Defence has identified several matters in contention that require the intervention of the Pre-Trial Judge, which are addressed in sub-sections (A)-(F) below. The Pre-Trial Judge also addresses a further matter (G) *proprio motu*.

##### A. The requirement of an audit

###### 1. Submissions

24. In order to safeguard the data provided in the Inspection Room, the Prosecution has included in its information provision mechanism an audit function. The Defence has consistently expressed its reservations about this audit function, given that it means that the Defence conducts part of its investigations on an auditable database controlled and operated by the Prosecution.<sup>23</sup>

25. The Defence requests the Pre-Trial Judge to issue an order stating that an audit can only be conducted pursuant to an order of a Judge or Chamber, after hearing submissions from the Defence, and that any audit ordered can only be performed by the Registry via its Information, Technology Services Section (“ITSS”) “with the assistance of OTP database administrators, if necessary.”<sup>24</sup>

26. The Prosecution states that no audit of Defence-related work would be performed absent a judicial order,<sup>25</sup> and has itself sought an order that would alleviate the concerns of the Defence.<sup>26</sup> The Prosecution therefore concurs with the Defence but points out that such audit need not be subject to hearing submissions from the Defence should a Judge or Chamber wish to order an audit on an *ex parte* basis.<sup>27</sup>

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<sup>22</sup> Defence Submissions, para. 9.

<sup>23</sup> *Id.*, para. 17.

<sup>24</sup> *Id.*, para. 19.

<sup>25</sup> *Id.*, para. 17.

<sup>26</sup> Confidential Meeting Pursuant to Rule 91, 5 March 2013, Transcript, p. 26, ll. 1-7.

<sup>27</sup> Prosecution Response, para. 5.

## 2. Discussion

27. The Pre-Trial Judge, taking into account both the concerns of the Defence and the consensus between the Parties in this regard, considers that the audit process should indeed be formalised. Accordingly, the Pre-Trial Judge decides that no audit of any Defence activity in the Inspection Room may be conducted absent an order by a Judge or Chamber, and that any such audit shall only be performed by a member of the Registry, with the assistance of the Prosecution's database administrators if required where a Judge or Chamber considers it necessary.

### **B. The temporal scope of the CDRs to be made available in the Inspection Room**

#### **1. Submissions**

28. The Defence notes that the Prosecution's case "rests in large part on the use of mobile telephones and their alleged attribution to the four accused and others" and that the periods of attribution "often extend well beyond the period covered by the Indictment." Consequently, the Defence submits that it needs to be able to examine "call patterns" falling without the temporal scope of the records provided by the Prosecution to date, and in respect of other callers who were in contact with telephones allegedly attributed to the accused in this case.<sup>28</sup>

29. For the Defence, the entirety of the telephone records in the possession of the Prosecution is relevant and material to its preparations for trial, consistent with Rule 110(B).<sup>29</sup> Furthermore, the effective disclosure of CDRs requires access thereto in both raw and SQL formats, in order to allow their effective analysis by the Defence. Raw Data on the Z:\ Drive must therefore be effectively accessible and "complemented by the uploading of the same data into the SQL database of the Inspection Room."<sup>30</sup>

30. In order of priority, the Defence requests an order requiring the Prosecution to provide the following CDRs in SQL format in the Inspection Room, in addition to what has already been provided:

- a. [REDACTED]<sup>31</sup> -

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<sup>28</sup> Defence Submissions, para. 20.

<sup>29</sup> *Id.*, paras 21-22.

<sup>30</sup> *Id.*, para. 22.

<sup>31</sup> The Pre-Trial Judge notes that, to the extent that CDRs from [REDACTED] and [REDACTED] have not yet been provided at all, their inclusion in this list is not strictly related to expanding the temporal scope of CDRs

- |    |                          |   |
|----|--------------------------|---|
| b. | [REDACTED] <sup>32</sup> | -   |
| c. | [REDACTED]               | [REDACTED] <sup>33</sup>  |
| d. | [REDACTED]               | individual responses as uploaded in [REDACTED], namely: any response by [REDACTED] to an RFA requesting CDRs for [REDACTED] <sup>34</sup> |
| e. | [REDACTED]               | Any response by [REDACTED] to an RFA requesting CDRs for [REDACTED] <sup>35</sup>   |
| f. | [REDACTED] <sup>36</sup> | -   |
| g. | [REDACTED]               | -   |
| h. | [REDACTED]               | [REDACTED]  |
| i. | [REDACTED]               | [REDACTED]  |
| j. | [REDACTED]               | [REDACTED]  |
| k. | [REDACTED]               | [REDACTED]  |
| l. | [REDACTED]               | [REDACTED]  |
| m. | [REDACTED]               | [REDACTED]  |
| n. | [REDACTED]               | [REDACTED]  |
| o. | [REDACTED]               | [REDACTED]  |
| p. | [REDACTED]               | [REDACTED]  |

31. The Defence lists specific CDRs — some of which are on the Prosecution’s Rule 91 Exhibit List — whose provision in the Inspection Room it is not currently seeking, but it reserves the right to do so in the future.<sup>37</sup>

32. The Defence notes that the Defence Office, in its memorandum, referred to a witness statement from a Prosecution employee in which it is stated that CDRs up to and including

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already received, but rather to the provision of new CDRs from different service providers. They are included here for convenience.

<sup>32</sup> The Prosecution avers that its use of [REDACTED] data “appears on CSTs of landlines (for sake of completeness) which have been disclosed. The Defence Submissions make no offer of proof as to the relevancy of this database to Defence preparations, nor indicate a timeframe or what particular evidence is sought.” Prosecution Response, para. 14.

<sup>33</sup> The Defence notes that this would involve uploading the individual RFA responses in order for them to be searchable, Defence Submissions, para. 23(c).

<sup>34</sup> Defence Submissions, para. 23(d).

<sup>35</sup> *Id.*, para. 23(e).

<sup>36</sup> The term [REDACTED] refers to what is commonly referred to as [REDACTED].

<sup>37</sup> Defence Submissions, para. 24.



[REDACTED] were uploaded into the database containing Raw Data accessed by the Defence during its creation (known as [REDACTED]).<sup>38</sup>

33. The Prosecution counters that the Defence has not established how data related to these supplementary call periods are required or relevant for trial.<sup>39</sup> The Prosecution submits that it has already disclosed individual CDRs for relevant phones “for periods outside that available in the Inspection Room, but only where relevant”, and that such disclosure does not necessarily render all CDRs for these entire other periods relevant for trial.<sup>40</sup>

34. The Prosecution recognises its obligation to provide to the Defence specific CDRs spanning a timeframe greater than the relevant period for trial, but maintains that this “does not automatically make all CDRs from [REDACTED] relevant for the trial in the case of the attack of 14 February 2005.”<sup>41</sup> Where CDRs relate only to the Prosecution’s assertions of attribution of individual phones, the Prosecution avers that it “has disclosed individual CDRs for other particular, relevant phones for periods outside that available in the Inspection Room, but only where relevant.”<sup>42</sup>

35. The Prosecution also highlights the amount of time that would be required to provide these materials in the format requested. In respect of calls made using ‘[REDACTED]’ — should the Pre-Trial Judge conclude that they are relevant to the Defence case — it would take “6 weeks of exclusive work” to make the period “[REDACTED]” available to the Defence in SQL format, but that records outside this time period are not relevant. In respect of calls made using the “[REDACTED]” service provider (relating to [REDACTED] use), it would take the Prosecution a further “6 weeks of exclusive work” following a court order to make the period “[REDACTED]” available to the Defence. The Prosecution submits that there is “no demonstrated need” to provide the data in SQL format outside this time period.<sup>43</sup>

36. The Prosecution also responds to particular aspects of what the Defence seeks. In respect of individual RFA responses, the Prosecution argues that individual or

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<sup>38</sup> Defence Submissions, para 25.

<sup>39</sup> Prosecution Response, para. 6.

<sup>40</sup> *Id.*, para. 11.

<sup>41</sup> *Id.*, para. 9.

<sup>42</sup> *Id.*, paras 9-11.

<sup>43</sup> *Id.*, paras 12-14.

number-specific CDRs have already been provided to the Defence and that in any event, disclosure and inspection obligations relate to evidence, not RFA responses.<sup>44</sup>

37. Regarding [REDACTED], the Prosecution observes that the Defence neither specifies a time period for its request, nor explains the materiality of it. In any event, the Prosecution “does not possess such CDRs processed into database form” except for the period from “[REDACTED] for [REDACTED] only”.<sup>45</sup>

38. Likewise, for other materials sought by the Defence ([REDACTED]) the Defence neither specifies a time period for its request, nor explains the materiality of it. In addition, the Prosecution “does not possess such CDRs processed into database form”, the Prosecution and the Defence have the same access to the same CDRs in SQL format and the Prosecution is under no obligation to process CDRs into a database for the Defence.<sup>46</sup>

39. For the remaining materials sought ([REDACTED] and [REDACTED] and [REDACTED]) the Prosecution submits that the materiality of these three databases has not been established, and the disclosure to date of these materials in raw form suffices.<sup>47</sup>

## **2. Discussion**

40. The Prosecution’s case is based largely on the use of mobile telephones and their alleged attribution. The Parties disagree, however, on the temporal scope of the CDRs to be provided to the Defence in SQL format.

### **a. Requests for RFAs**

41. Before turning to the determination of the temporal scope, the Pre-Trial Judge will first consider the Defence’s requests for specific RFAs. RFAs are a mechanism by which the Prosecution<sup>48</sup> (and indeed the Defence, via the Defence Office<sup>49</sup>) request assistance during an investigation *inter alia* to undertake investigative measures. Where evidence received via an RFA has been provided to the Defence by the Prosecution (either by disclosure or inspection), the specific RFA that resulted in the Prosecution’s receipt of that evidence is not

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<sup>44</sup> *Id.*, para. 15; see para. 30(c) above.

<sup>45</sup> *Id.*, para. 16.

<sup>46</sup> *Id.*, para. 17.

<sup>47</sup> *Id.*, para. 18.

<sup>48</sup> Rule 18(B) STL RPE.

<sup>49</sup> Rule 18(C) STL RPE.

relevant. The Pre-Trial Judge has determined that RFAs themselves must be distinguished from the materials that address them. That material “enclosed under cover of a response to an RFA constitutes primary documentary evidence which is capable of being characterised as ‘real evidence’ as it is capable of evidencing a fact itself, and that in principle such materials “may trigger the Prosecution’s disclosure obligations”, as opposed to the RFAs.<sup>50</sup>

42. It follows that the Defence request for RFAs must be denied. The Pre-Trial Judge recalls that where the Defence is concerned that the Prosecution possesses evidence it is required to provide to the Defence but has not done so, it is entitled to request that evidence pursuant to Rule 110(B) and the specific disclosure regime.<sup>51</sup>

43. The Pre-Trial Judge considers that the determination of the pertinent temporal scope of the CDRs to be made available for inspection in SQL format requires that a distinction be drawn between two discrete purposes for which they have been used by the Prosecution, namely: analysis and attribution.

44. Where the Prosecution has analysed the CDRs in order to investigate patterns of calls made between specific phones, or specific groups of phones, thereby leading to the identification of certain networks of telephones in use at specific times and locations, the CDRs for the period of this analysis — together with their being reflected in the SQL Database — are required.

45. The attribution of a telephone number to a person, on the other hand, relies on evidence that supports the assertion that a specific telephone number was used by a specific person during a particular time period or on a particular occasion. The attribution of specific telephone numbers to certain individuals is ordinarily a simple matter where accurate and reliable subscriber details relate to the phone number in question. Where these details are inaccurate or unreliable, attribution may require recourse to supplementary information.

#### **b. The temporal scope of CDRs for analysis**

46. According to the Rules, the Prosecution is obliged to make available to the Defence copies of:

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<sup>50</sup> Decision on Sabra’s Ninth Motion for Disclosure – Requests for Assistance, 6 June 2013, para. 14.

<sup>51</sup> See Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012, paras 24 *et seq.*

- a. the material supporting the Indictment when its confirmation was sought (pursuant to Rule 110(A)(i)); and
- b. the list of exhibits it intends to offer at trial, together with copies of the exhibits so listed or access thereto (pursuant to Rule 91(G)(iii)).

47. To the extent, then, that the Prosecution relied on CDRs when seeking confirmation of the Indictment, or on which it intends to rely on at trial, data relating to these CDRs ought already to have been provided to the Defence. Indeed, the Prosecution asserts that it has discharged this obligation.<sup>52</sup>

48. The Pre-Trial Judge notes that, with respect to the analysis of the CDRs, the Prosecution has either disclosed, or provided for inspection, all the CDRs necessary for a specific time period which it has in SQL format. This conforms to the obligations incumbent on the Prosecution; the Defence must have effective access to all CDRs in SQL format for the relevant time period that allows it to conduct its own analysis.

49. On the other hand, where the Prosecution has relied on CDRs outside of the relevant time period of analysis in order to support its attribution of telephone numbers to certain individuals, it has provided the Raw Data, as well as the relevant CDR or CDRs to the Defence on an individual basis.

50. The questions, then, are what this relevant time period is, and whether the Prosecution is under an obligation to include CDRs in SQL format in the Inspection Room which fall outside that relevant time period.

51. The Prosecution does not specify, in its submissions in this matter, what it considers the relevant time period to be. The Pre-Trial Judge nevertheless notes that, in the Indictment, the Prosecution alleges the existence of several networks of mobile telephones that were used in the attack of 14 February 2005, at least one of which came into existence on or by 30 September 2004, and at least one of which remained active until 1 October 2005.<sup>53</sup> A further specific group of phones was used from at least 1 January 2003 until

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<sup>52</sup> Prosecution Response, para. 9.

<sup>53</sup> Indictment of 6 February 2013, para. 15(c).

16 February 2005.<sup>54</sup> In its letter of 20 February 2013, the Prosecution states that it “does not rely on the large CDRs [REDACTED]”.<sup>55</sup>

52. From this information, the Pre-Trial Judge considers the relevant time period to be from 1 January 2003 until 1 October 2005. This determination is subject to two caveats, however. First, the Pre-Trial Judge has previously determined that the Prosecution is not obliged to perform analyses or to create work products which are not in its custody or control, possession or actually known to it. The Prosecution cannot disclose or allow the inspection of materials that it does not have.<sup>56</sup> Where the Prosecution is not in possession of CDRs or analysis of Raw Data in SQL format falling within the relevant time period, it cannot be required to provide them.

53. It follows therefore, that since the Prosecution does not currently possess the following CDRs in SQL format,<sup>57</sup> it cannot be obliged to make them available for inspection<sup>58</sup>:

- a. [REDACTED];
- b. [REDACTED] (other than for [REDACTED] for the period from [REDACTED] until [REDACTED]);
- c. [REDACTED];
- d. [REDACTED].

54. The second caveat is that other CDRs in Raw Format on which the Prosecution has otherwise stated it intends to rely at trial must also be provided pursuant to the Prosecution’s obligations under Rule 91, and this decision does not serve to relieve the Prosecution of those obligations.

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<sup>54</sup> *Id.*, para. 15(e).

<sup>55</sup> Prosecution letter of 20 February 2013, p. 2. The Prosecution also clarifies that, in addition to the CDRs for [REDACTED], it does not rely on the “[REDACTED]”, [REDACTED], or “[REDACTED]” CDRs.

<sup>56</sup> Decision on the Sabra Defence’s First, Second, Third, Fourth, Fifth and Sixth Motions for Disclosure, 8 November 2012, para. 31.

<sup>57</sup> Letter from the Office of the Prosecutor to Defence Counsel entitled ‘Call Data Records (CDR) and Databases’, 15 January 2013 (“Prosecution Letter of 15 January 2013”), which included “an updated table of the CDR data holdings intended to assist in understanding the holdings in the [Prosecution’s] possession”. That table demonstrated that some call data records falling outside the relevant time period have been provided to the Defence in SQL format.

<sup>58</sup> Should the Prosecution be provided with these CDRs in the future, this decision shall not be read as removing any obligation it is under to disclose them to the Defence.

55. In light of and subject to the foregoing, the Pre-Trial Judge finds that the Prosecution must nevertheless provide to the Defence all CDRs in SQL format that are in its possession at least for the period from 1 January 2003 until 1 October 2005 (or part thereof where the Prosecution does not currently have the materials), namely the following, in order of priority as requested by the Defence:

- a. [REDACTED];<sup>59</sup>
- b. [REDACTED];<sup>60</sup>
- c. [REDACTED] only, from [REDACTED].<sup>61</sup>

56. This does not prevent the Prosecution from providing — on a voluntary basis — data in SQL format falling outside the relevant time period, which it has already done to a limited extent.<sup>62</sup>

57. The Pre-Trial Judge notes the letter from the Prosecution to the Defence dated 7 September 2012, a courtesy copy of which he received. In that correspondence, entitled “Call Data Records for 2006 are now available in the Inspection Room”, the Prosecution informed the Defence that: “[...] CDRs for all of 2003, 2004, 2005, and 2006 — the same records used by OTP — [...] have been made available for inspection” in SQL format.<sup>63</sup>

58. The temporal scope of the CDRs in SQL format already made available to the Defence therefore partially exceeds the relevant time period of 1 January 2003 until 1 October 2005. The Defence is thus able to access — in SQL format via the Inspection Room — all CDRs to which it is entitled in that form, save for those listed in para. 55(a)-(c) above. Furthermore, the Defence has received, via disclosure, the Raw Data for CDRs regarding [REDACTED], [REDACTED], and [REDACTED].<sup>64</sup>

### **c. The temporal scope of CDRs for attribution**

59. Turning now to the CDRs the Prosecution has relied upon for attribution, the Pre-Trial Judge makes two observations. First, the Prosecution has disclosed the entirety of CDRs for

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<sup>59</sup> Prosecution Response, para. 13.

<sup>60</sup> *Id.*, para. 14.

<sup>61</sup> *Id.*, para. 16.

<sup>62</sup> Prosecution Letter of 15 January 2013.

<sup>63</sup> Prosecution Letter of 7 September 2012, Confidential.

<sup>64</sup> Prosecution Response, para. 18.

the relevant time period in their original or Raw Data format.<sup>65</sup> Second, the Prosecution continues to respond to Defence requests, made pursuant to Rule 110(B), for CDRs for particular telephones for periods outside that available in the inspection room where they are “material to the preparation of the defence.”<sup>66</sup> Third, CDRs in the Prosecution’s possession in Raw Data format which fall outside of the relevant time period have also been provided to the Defence in their raw form as follows<sup>67</sup>:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED] (all)
- e. [REDACTED](all)

60. The Prosecution has therefore provided all the call data it has in its possession — in both Raw Data format and in SQL — for the relevant time period. The Prosecution has furthermore provided — in Raw Data format — the call data in Raw Format that falls outside of the relevant time period but which it is nevertheless required to disclose since it is relied upon for attribution. The Prosecution has also undertaken to respond to specific requests from the Defence made pursuant to Rule 110(B). The Pre-Trial Judge therefore considers that the approach that the Prosecution has followed serves to discharge its obligations pursuant to Rule 110, and that no further provisions need be ordered.

61. The Pre-Trial Judge notes that the Defence has reserved the right to request CDRs in SQL format for [REDACTED] for [REDACTED].

## C. [REDACTED]

### 1. Submissions

62. The Defence raises a number of distinct issues presented by the [REDACTED].

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<sup>65</sup> Prosecution Response, paras 9, 18.

<sup>66</sup> Rule 110(B) STL RPE, *and see* Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2013, para. 24.

<sup>67</sup> Prosecution Letter of 15 January 2013. The Pre-Trial Judge also notes that all CDRs related to SMSs in the Prosecution’s possession have also been disclosed to the Defence, but as this concerns Section IV **Error! Reference source not found.** below, it is not included here.

63. The Defence is able to query and view CDRs [REDACTED] in the Inspection Room database ([REDACTED]), inasmuch as it is similar to the data provided for telephone calls (sending number, receiving number, date, time, etc.) in raw form. [REDACTED].<sup>68</sup>

64. First, the Defence requests [REDACTED] which it avers are relevant, probative, and necessary for the Defence to prepare adequately for trial, and in a way that would not require the Defence to divulge potential lines of Defence to the Prosecution.<sup>69</sup>

65. Second, the Defence avers that the provision of [REDACTED] — which is relatively simple to implement — would provide this facility.<sup>70</sup>

66. Third, the Defence contests the notion that receiving the [REDACTED].<sup>71</sup> The Defence has furthermore affirmed that the protective measures ordered by the Pre-Trial Judge in his decisions of 25 May 2012<sup>72</sup> and 14 June 2012<sup>73</sup> apply to the material made available in the Inspection Room, a position that is also acknowledged by the Prosecution.<sup>74</sup>

67. The Prosecution responds that the Defence already has access to [REDACTED] when requested by the Defence under Rule 110(B)<sup>75</sup> which in any event is more efficient and does not “unduly compromise Defence strategies”.<sup>76</sup> Populating the Inspection Room with the [REDACTED] is “not warranted”, given that it is not material to the Defence, and it would in any event present the Tribunal [REDACTED].<sup>77</sup> Furthermore, it is not as simple as the Defence suggests, and would take four to six months of development to implement.<sup>78</sup>

68. The Prosecution also points out that where the Defence seeks [REDACTED] from the Prosecution other than on the existing number-by-number basis, it is already available to

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<sup>68</sup> Defence Submissions, para. 26.

<sup>69</sup> *Id.*, paras 26-27, 30.

<sup>70</sup> *Id.*, paras 28, 31, 32.

<sup>71</sup> *Id.*, para. 29.

<sup>72</sup> Decision Relating to the Prosecution Request Seeking Measures for the Non-Dissemination of Material of 2 May 2012, 25 May 2012 (“Decision of 25 May 2012”).

<sup>73</sup> Decision Authorising the Withdrawal of the Prosecution Application of 21 December 2011 and the Modification of the Application of 15 March 2012 Requesting Protective Measures for Witnesses, 14 June 2012 (“Decision of 14 June 2012”). In this regard, see Section G below.

<sup>74</sup> Defence Submissions, para. 29, citing a letter from the Prosecution of 24 July 2012 annexed as Annex H to the Defence Submissions.

<sup>75</sup> Prosecution Response, para. 19.

<sup>76</sup> *Id.*, paras 23-24.

<sup>77</sup> *Id.*, paras 20, 22.

<sup>78</sup> *Id.*, para. 20.



them in raw format in the materials disclosed on 29 November 2012.<sup>79</sup> The Prosecution suggests that the Pre-Trial Judge [REDACTED].<sup>80</sup>

69. Lastly, the Prosecution declares that it is open to alternative ways of [REDACTED].<sup>81</sup>

## **2. Discussion**

70. As stated above,<sup>82</sup> the materials which the Prosecution is obliged to make available to the Defence are governed by Rules 110(A)(i) and 91(G)(iii). To the extent, then, that the Prosecution relied [REDACTED] seeking confirmation of the Indictment, or on which it intends to rely on at trial, data relating to [REDACTED] — ought already to have been provided to the Defence. Indeed, the Prosecution asserts that it has discharged this obligation.<sup>83</sup>

71. In addition, pursuant to Rule 110(B), the Prosecutor “shall, on request, permit the Defence to inspect any books, documents, photographs and tangible objects in the Prosecutor’s custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.”<sup>84</sup> This obligation the Prosecution has likewise discharged. Where the Defence submits requests for [REDACTED] pursuant to Rule 110 (B), the Prosecution complies, and it has in any event provided the Defence with the [REDACTED] in its entirety.

72. To the extent that the Prosecution has already provided the entirety of the [REDACTED] to the Defence in raw form, this undermines the Prosecution’s submission that providing it in SQL format would somehow present the Tribunal [REDACTED]”. Nevertheless, and in light of the foregoing, the Pre-Trial Judge is not persuaded that the Prosecution is obliged to provide [REDACTED] in an enhanced manner, and dismisses this aspect of the Defence request.

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<sup>79</sup> *Id.*, para. 25.

<sup>80</sup> *Id.*, para. 22.

<sup>81</sup> *Id.*, para. 26: “This may include considering the possibility of the Defence providing a list of phone numbers to a neutral Registry-ITSS staff member to run for [REDACTED], provided the same extraction mechanism as that used for the Inspection Room for CDR work product- namely using CMSS to preserve a digital record-is put in place.”

<sup>82</sup> See para. 46 above.

<sup>83</sup> Prosecution Response, para. 19: “the Prosecution has already disclosed [REDACTED] relevant phones, and [Call Sequence Tables]”.

<sup>84</sup> Rule 110(B) STL RPE.

## D. The information retrieval process

### 1. Submissions

73. Where the Defence conducts analysis and research in the Inspection Room, it generates a work product which it then extracts from the Inspection Room and uses on a discrete network. Out of concern for protecting the integrity of its databases, and ensuring an oversight mechanism, the Prosecution has put in place a protocol with which the Defence takes issue. In order to retrieve their work product, members of the Defence are required to request a representative of the Tribunal's Court Management Services Section ("CMSS") to attend the Inspection Room in person, to copy the work product [REDACTED], and to transfer it onto the Defence network.<sup>85</sup> The Defence considers that this process is inefficient for a host of reasons.

74. The Defence seeks an order to [REDACTED] to extract information without the intervention of CMSS.<sup>86</sup> The Defence notes that all materials on the Inspection Room database has been disclosed to the Defence via the Z:\ Drive,<sup>87</sup> and that the Prosecution has not advanced valid reasons for not improving the efficiency of the current data extraction regime to the benefit of the Defence.<sup>88</sup> In the alternative, the Defence requests the Pre-Trial Judge to order that the Defence Office be allowed to assume the role currently performed by CMSS with regard to the extraction of data required.<sup>89</sup>

75. The Prosecution argues that the Defence's request is without legal basis, and the Defence has not shown how "the existing mechanism is unduly onerous" and that purported "limitation" from which the Defence seeks relief "is entirely consistent with the inspection regime established by the Rules."<sup>90</sup> Rather, the Prosecution's obligations to ensure the integrity of its holdings, and to maintain the security and custody of the evidence, justify the existing work product retrieval process.<sup>91</sup>

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<sup>85</sup> Defence Submissions, para. 36.

<sup>86</sup> Supplementary Defence Submissions, paras 12, 16.

<sup>87</sup> *Id.*, para. 14.

<sup>88</sup> *Id.*, para. 16.

<sup>89</sup> Supplementary Defence Submissions, para. 20.

<sup>90</sup> Supplementary Prosecution Response, paras 10-13.

<sup>91</sup> *Id.*, para. 13.

76. In addition, the Prosecution raises concerns about how the mechanism proposed by the Defence would constitute “a significant departure [REDACTED],<sup>92</sup> [REDACTED].<sup>93</sup> With respect to the Defence’s alternative that the Defence Office assume the role of CMSS, the Prosecution’s conclusion is that this is “not advisable.”<sup>94</sup> The Prosecution nevertheless continues to engage via the Working Group towards elaborating a work product retrieval process that is more acceptable to the Defence while continuing to protect the Prosecution’s data.

## 2. Discussion

77. While the Pre-Trial Judge notes the utility of the Inspection Room and the efforts that have gone into its creation (including the willingness and good faith participation of CMSS and the Defence Office to date) and the security requirements of the Prosecution, he remains concerned about the sustainability of the existing work product retrieval regime. The existing regime has sufficed while the Defence has familiarised itself with the materials in the Inspection Room and the methods required to access and analyse it. With the Defence conducting more extensive searches and analyses on a more frequent basis, it appears as though the current regime will soon become unworkable.

78. The Prosecution’s primary objections to the Defence’s request [REDACTED] amount to two concerns. The first concern is that [REDACTED]. The second concern is that [REDACTED].<sup>95</sup>

79. These concerns are not unfounded, but they are not unmanageable either.

80. The Defence teams are subject to and aware of the ethical rules to which they are bound.<sup>96</sup> The Defence teams are likewise aware of and sensitive to the nature of the SQL Database and other materials to which they have been granted access in the Inspection Room. With that context as a starting point, the Pre-Trial Judge — taking into consideration the practical necessities of conducting research and analysis in the Inspection Room — considers that the extraction of work product by the Defence and the Legal Representative of Victims (“LRV”) from the Inspection Room must be enhanced and made less onerous.

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<sup>92</sup> *Id.*, para. 14.

<sup>93</sup> *Id.*, para. 15.

<sup>94</sup> *Id.*, para. 17.

<sup>95</sup> There is the third, related matter of the ability to conduct an audit, addressed above.

<sup>96</sup> *Cf.* Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon (STL/CC/2012/03) adopted 14 December 2012.

81. While noting the availability of both CMSS and the Defence Office to assist through their good offices, the Pre-Trial Judge has concluded that the required enhancement(s) should aim to remove the additional step that these organs' participation constitutes.

82. The Pre-Trial Judge, through the Working Group, has examined the practical implications and technical requirements of granting the Defence request for a more efficient way in which to exploit the Inspection Room. Such examination has included regular consultation with the relevant Registry experts and the Prosecution, and has culminated in the presentation of a list of technical requirements by the Prosecution which the Registry has agreed can be implemented, subject to several reservations. Those technical requirements are summarised in a memorandum to the Pre-Trial Judge from the Acting Registrar, dated 10 June 2013.<sup>97</sup>

83. In light of the foregoing, the following shall be the approach which the Registry, together with the input and cooperation of the Prosecution, shall implement:

- 1) The Registry will procure and install a [REDACTED] for the CDRs in the Inspection Room, in order to provide a location for secure, shared disc access. [REDACTED] or a suitable alternative will be used on the new [REDACTED], subject to the policies to be agreed between the Registry and the Prosecution. Two shared drives will be created on the [REDACTED] Drives 1 and 2 respectively.
- 2) In respect of Drive 1:
  - a. Drive 1 shall have sufficient storage capacity, and in any event such capacity shall be at least [REDACTED].
  - b. Drive 1 shall be enabled for [REDACTED] must be applied.
  - c. Each user shall be limited to [REDACTED] on Drive 1, and [REDACTED] is not strictly necessary.
- 3) In respect of Drive 2:
  - a. Drive 2 shall serve as the [REDACTED]. A so-called [REDACTED] to run frequently and at least hourly, [REDACTED].

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<sup>97</sup> Internal Memorandum entitled "Implementation of the Prosecution's requirements regarding the Inspection Room", 10 June 2013.

- b. Drive 2 shall have sufficient storage capacity, and in any event such capacity shall be at least [REDACTED].
  - c. Drive 2 shall be enabled for [REDACTED] from Drive 2 shall be [REDACTED] will be applied.
  - d. It shall not be possible for files or folders on Drive 2 to [REDACTED] shall be exercised.
  - e. Drive 2 shall be auditable by existing security and audit mechanisms, and in a manner consistent with this decision.<sup>98</sup> The Prosecution shall be responsible for ensuring audit files are available when an audit is ordered.
  - f. CMSS will retain a copy of the regular backups of Drive 2 in an independent, secure location. CMSS will be required to amend the Inspection Room policy to formalise this procedure.
- 4) The following are the requirements of the Defence desktop computers (PCs) which shall have access to the work product on Drive 1:
- a. The [REDACTED].
  - b. Drive 1 shall be [REDACTED].
  - c. [REDACTED].
  - d. The Defence PCs themselves shall be [REDACTED].
- 5) The following are the requirements of the work product extraction PC:
- a. The [REDACTED].
  - b. The [REDACTED].
  - c. The [REDACTED] only.
  - d. The work product extraction PC shall be [REDACTED].
- 6) Mechanisms shall be put in place to ensure that:

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<sup>98</sup> See para. 27 above.

- a. users cannot import any data into the Inspection Room via this set-up, only data export is permitted;
  - b. users cannot delete any data placed on the network drives; and
  - c. no unauthorised PC is connected to the CDR / Inspection Room network.
- 7) The Defence shall be able to retrieve data from the network drive for storage and use on the Defence network within the Tribunal's premises in Leidschendam. However, no such data shall be removed from the premises of the Tribunal, except in exceptional circumstances and with prior authorisation of a Judge or Chamber (such restriction shall apply *inter alia* but shall not be limited to USB keys, laptops, and expedition by email).

84. In the Pre-Trial Judge's opinion, this approach has the benefits of retaining the isolated nature of the CDRs in the Inspection Room, minimising the risk of malware to the Prosecution's data, retaining a reliable audit mechanism, liberating the Registry and the Defence Office from the work product retrieval process, all the while according a more practical work product retrieval facility to the Defence.

85. Accordingly, the Pre-Trial Judge orders the Registry, together with the input and cooperation of the Prosecution, to implement the foregoing work product retrieval regime within six weeks of the date of this decision.

## **E. The validation of databases containing the Raw Data**

### **1. Submissions**

86. The Defence has expressed its concern that it may not be using the same Raw Data that the Prosecution submitted in support of the Indictment, since different [REDACTED] files in particular were used to create the [REDACTED] database (which was in use by the Prosecution when the Indictment was originally submitted for confirmation) and the [REDACTED] database (which is currently in use). The Defence therefore requests the Pre-Trial Judge to order the Prosecution to provide information (in the form of a column

added to a table already provided by the Prosecution) on the number of rows uploaded into the [REDACTED] database in operation at the time the Indictment was confirmed.<sup>99</sup>

87. The Prosecution responds that the information sought by the Defence does not exist, because the majority of uploads for this database was completed by the United Nations International Independent Investigation Commission (“UNIIC”) at a time when upload logs were not generated, and such logs cannot be created after the upload.<sup>100</sup>

88. The Prosecution also avers that the Defence has not shown how the requested information with respect to the [REDACTED] database is required or relevant for trial.<sup>101</sup> Furthermore, the Prosecution argues that “[a]bsent a showing of an anomaly in the data disclosed or made available for inspection, when compared to the Indictment, there is no legal basis for this request, which seeks to impose an extraordinarily expansive obligation” on the Prosecution.<sup>102</sup>

## **2. Discussion**

89. The Pre-Trial Judge has himself expressed his concerns that he, together with the Parties and the LRV, are all working off the same version of material supporting the Indictment, and on which the Prosecution intends to rely at trial:

Regarding the call data, I’m not sure that it’s only a question between the parties. Let me recall that I confirmed the indictment on the basis of information that you provided me and on the basis of an access that I requested to see how the IT systems were working, what was made available to everyone, and I’m not sure that it only concerns an exchange between the parties.<sup>103</sup>

I’m no expert, and yet what I do understand at the same time is that the Defence wants to be assured - and quite rightly so – that everybody is working on the same data. And I don’t know what system could be implemented to make sure that this occurs, but we do need to reassure the Defence that we’re all working from the same data. And I think that’s actually the concern that the Defence expressed, and I go along with that.<sup>104</sup>

90. The concerns of the Defence are therefore clear and established: the Prosecution must validate the replication of the original version of the Raw Data to the version of the Raw Data being relied upon by the Pre-Trial Judge, the Trial Chamber, the Defence and the LRV in this case.

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<sup>99</sup> Supplementary Defence Submissions, paras 7, 9.

<sup>100</sup> Supplementary Prosecution Response, para. 5.

<sup>101</sup> *Id.*, para. 7.

<sup>102</sup> *Id.*, para. 9.

<sup>103</sup> Status Conference before the Pre-Trial Judge, 27 November 2012, Transcript, p. 68, ll. 14-25.

<sup>104</sup> Confidential Meeting Pursuant to Rule 91, 19 December 2012, Transcript, p 61, ll. 12-18.

91. The reasons for this imperative are simple. The Prosecution is constrained to rely on the same versions of materials, at trial, that it provided to the Pre-Trial Judge and the Defence when the former reviewed the supporting material to the Indictment submitted for confirmation pursuant to Rule 68, and which was subsequently disclosed to the latter. To allow otherwise would undermine the integrity of the proceedings.

92. The Prosecution's position is twofold. First, with respect to the Defence's request for an additional column in the table that the Prosecution has generated that reveals any discrepancies or irregularities in the Inspection Room's Raw Data set, the Prosecution avers that this is not possible for technical reasons. That element of the Defence's concerns — which was effectively a suggested solution to a deeper problem — cannot therefore be satisfied in this way.

93. Second, with respect to the validation of the integrity of the two versions of the Raw Data in existence, which is the deeper problem to which the Defence seeks a solution, the Prosecution seems to maintain that it is for the Defence to identify any anomalies in the two sets of Raw Data. This is not correct. It is the Prosecution's responsibility to attest to the validity of the materials — and their faithfulness to the versions the Pre-Trial Judge relied upon to confirm the Indictment — that are before him (pursuant to Rule 91) and have been disclosed to the Defence (pursuant to Rules 110 and 113). It is not for the Defence, or indeed the Pre-Trial Judge, to search for and identify anomalies.

94. The Prosecution has made it clear that for technical reasons it cannot validate the faithfulness of the Raw Data in the Inspection Room in the manner requested by the Defence. But the Prosecution has not proposed how it plans to validate the data either. Instead, it submits that it has no legal obligation to do so.

95. This being a technical issue, it is beyond the competence of the Pre-Trial Judge to issue an order to the Prosecution detailing how it must furnish the required validation. The Prosecution is however under an obligation — pursuant to this decision — and is instead ordered to propose its own method, subject to its technical capacities, to meet this obligation.

#### **F. The Z:\ Drive**

96. The Defence has brought to the Pre-Trial Judge's attention various problems associated with the Z:\ Drive. While the Defence is able to open the files on the Z:\ Drive



containing the Raw Data, it is unable effectively to use them, to search them, or to filter the data contained within them.<sup>105</sup> The Defence is not seeking a remedy but is rather reserving its rights in this regard.<sup>106</sup>

97. The Pre-Trial Judge takes note of the Defence's submissions. An effective resolution of the issues associated with the Z:\ Drive is being pursued by the Working Group, and remains without prejudice to any further decision or order that the Pre-Trial Judge may issue.

#### **G. Protection of materials for inspection**

98. In addition to the foregoing matters, the Pre-Trial Judge notes the exchange between the Parties in respect of the ethical obligations incumbent on the Defence regarding confidential information.<sup>107</sup> For the avoidance of doubt, the Pre-Trial Judge confirms that his decisions of 25 May 2012<sup>108</sup> and 14 June 2012<sup>109</sup> apply equally to materials that the Prosecution permits the Defence to inspect, pursuant to Rule 110(B).

#### **V. CONFIDENTIALITY**

99. The Defence filed its submissions confidentially because the majority of the materials to which it refers are so classified. The Defence does not however oppose its submissions being made public, or public with redactions, in due course.<sup>110</sup>

100. The Prosecution also filed its responses confidentially but otherwise makes no submissions in this regard.

101. The Pre-Trial Judge has consistently sought to uphold the principle of transparency in these proceedings, save for in those circumstances where a degree of confidentiality is necessary. While considering that this decision ought to be rendered publicly, it does contain material that reveals the inner workings of the Prosecution and the Defence. As an exercise of caution, therefore, the Pre-Trial Judge invites the Parties to seise him with proposed redactions to this decision in order that a public redacted version of it may be issued, as the case may be. Such submissions must be filed within five working days of this decision.

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<sup>105</sup> Defence Submissions, para. 34.

<sup>106</sup> *Id.*, para. 35.

<sup>107</sup> See para. 66 above.

<sup>108</sup> Decision of 25 May 2012.

<sup>109</sup> Decision of 14 June 2012.

<sup>110</sup> Defence Submissions, para. 38; Supplementary Defence Submissions, para. 19.

102. Finally, and to the extent they have not already done so, the Parties must file public redacted versions of their submissions — consistent with the redactions to the public version of this decision where applicable — within five working days of the filing of that public version.

## **VI. DISPOSITION**

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rules 77(A) and 89(B) of the Rules;

**DECIDES** that an audit of any Defence activity in the Inspection Room may only be conducted pursuant to an order of a Judge or Chamber, and that any such audit shall only be performed by the Registry, with the assistance of the Prosecution's database administrators if required where a Judge or Chamber considers it the necessary;

**ORDERS** the Prosecution either to provide to the Defence all CDRs in Raw Data format and SQL format for the period from 1 January 2003 until 1 October 2005, or to clarify that it is not in possession of any CDRs falling within this time frame which have not been disclosed or made available for inspection in these formats;

**ORDERS** the Prosecution to file a notice before the Pre-Trial Judge either confirming that all relevant CDRs have been provided to the Defence in the appropriate formats, or identifying the dates by which this will be done, within five working days of this decision;

**ORDERS** the Registry, together with the input and cooperation of the Prosecution, to implement the work product retrieval regime consistent with this decision within six weeks of the date of this decision;

**ORDERS** the Prosecution, within five working days of this decision, to propose a method it shall use (including the projected time required) to validate the replication of the original

version of the Raw Data to the version of the Raw Data being relied upon by the Pre-Trial Judge, the Defence and the LRV;

**DENIES** all other requests; and

**INVITES** the Parties to file before him their submissions containing motivated reasons for not reclassifying this decision as public, together with proposed redactions as the case may be, within five working days of this decision; and

**ORDERS** the Parties , to the extent they have not already done so, to file public redacted versions of their submissions — consistent with the redactions to the public version of this decision where applicable — within five working days of the filing of that public version.

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

Leidschendam, 19 September 2013.



Daniel Fransen  
Pre-Trial Judge

