



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

## THE TRIAL CHAMBER

**Case No.:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr. Daryl Mundis

**Date:** 25 April 2014

**Original language:** English

**Classification:** Public

### THE PROSECUTOR

v.

SALIM JAMIL AYYASH  
MUSTAFA AMINE BADREDDINE  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA

### SEPARATE AND DISSENTING OPINION OF JUDGE NOSWORTHY IN RELATION TO "REASONS FOR ORDER ON DATE FOR FILING MERHI PRE-TRIAL BRIEF"

**Office of the Prosecutor:**

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& Mr. Alexander Milne

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Mr. Peter Haynes, Mr. Mohammad F. Mattar  
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& Mr. Iain Edwards

**Counsel for Mr. Hassan Habib Merhi:**

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**Counsel for Mr. Hussein Hassan Oneissi:**

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**Counsel for Mr. Assad Hassan Sabra:**

Mr. David Young, Mr. Guénaél Mettraud  
& Mr. Geoffrey Roberts



## INTRODUCTION

1. I have reviewed the “Reasons For Order on Date For Filing Merhi Pre-Trial Brief” (Reasons for Order) delivered by the majority Judges of the Trial Chamber (the Majority) on 17 April 2014<sup>1</sup> and by reason of my respectful but fundamental disagreement with the time limit specified and in material instances the reasoning and conclusions reached, I file this separate dissenting opinion.
2. In the disposition of the Reasons for Order, the Majority ordered Counsel for Hassan Habib Merhi to file their pre-trial brief by 26 May 2014.
3. After consideration of the applicable provisions and other relevant factors, I am of the view that the time limit allotted by the Majority is, in all the circumstances of the case, insufficient to permit the Merhi Defence to file a pre-trial brief which conforms to the requirements of Rule 91(I) of the Special Tribunal’s Rules of Procedure and Evidence. In the totality of the circumstances, I am led overwhelmingly to the position that a greater period of time is necessary to ensure appropriate preparedness of the Merhi Defence to meet the task of filing a pre-trial brief in a manner consistent with his right to a fair trial and the guaranteed right to adequate time and facilities for the preparation of his defence under Articles 16(2) and 16(4)(b) respectively of the Statute of the Special Tribunal. Thought has also been given to whether there is any potential for breach of, or risk of prejudice to, his right to be equal before the Special Tribunal according to Article 16 (1) of the Statute.<sup>2</sup> These rights are of paramount importance to the fairness and integrity of proceedings before the Tribunal, including Trial and Pre-Trial proceedings.
4. My own conclusion is that in order for the Merhi Defence to be adequately prepared and to effectively carry out their function under Rule 91(I), an adequate and reasonable time limit to file its pre-trial brief would be by 18 July 2014. The reasons which have informed my conclusion are set out in the course of this opinion.

## ISSUE FOR DETERMINATION AND APPLICABLE LAW

5. The material issue for determination by the Trial Chamber is: What is the appropriate period of time which will allow the Merhi Defence to file a pre-trial brief which accords to the requirements of Rule 91(I)?

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<sup>1</sup> STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, Reasons for Order on Date for Filing Merhi Pre-Trial Brief, 17 April 2014.

<sup>2</sup> See also Article 14(1) of the International Covenant on Civil and Political Rights.

6. In determination of the above issue an examination of Rule 91(I) is not only in order, but instructive. It provides as follows:

After the submission by the Prosecutor of the items mentioned in paragraph (G), the Pre-Trial Judge shall order the Defence, within a set time-limit and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing factual and legal issues, and including:

- (i) in general terms, the nature of the accused's defence;
- (ii) the matters which the accused disputes in the Prosecutor's pre-trial brief; and
- (iii) in the case of each matter set out pursuant to paragraph (ii), the reason why the Accused disputes it.

7. By way of preliminary observation it is important to note that Rule 91 is part of Chapter 5 of the Rules, which is entitled *Confirmation of Charges and Pre-Trial Proceedings*. Rule 91 forms part of Section 4 entitled *Pre-Trial Judge*. It is therefore clear that, having joined the two cases, transfer of the case and jurisdiction over it having been effected by the Pre Trial Judge, pursuant to joinder under Rule 70(B), when the Trial Chamber purports to act by virtue of Rule 70(C) and exercises its discretion to perform a function of the Pre-Trial Judge, the Trial Chamber is performing a function in relation to a pre-trial procedure. Therefore, in seeking to set a date within which the Merhi Defence should file its pre-trial brief, the Trial Chamber acts in pre-trial mode, as a prelude to trial and its commencement, or as in this case, resumption of hearing for the four co-Accused.

***What stage should Defence preparation and investigation have reached for the purposes of Rule 91***

8. When Rule 91(I) is read together with Rule 91(G), a reasonable conclusion may be drawn, having regard to the *defence* and which facts are to be controverted or not, that it is anticipated and intended that the defence would be at a substantial stage of investigation and preparation, sufficient and adequate to permit it to perform its representational obligations to the Accused in a professional, competent and informed manner. Rule 91(I) requires the Defence to respond to factual and legal issues in the Prosecutor's pre-trial brief and indictment. Before the filing of its pre-trial brief, were the Accused present and before the Tribunal, conscientious and responsible Defence would be expected to take appropriate instructions from the Accused; to find and consult with experts, whether as potential witnesses in rebuttal or otherwise; to initiate and conduct necessary defence investigation; and to deal with identification evidence and make searches for any alibi or other evidence disputing identity.

9. There is, on a proper construction of Rule 91(I), under all sub-heads, a clear intention within the Rule that progress of the case and the state of Defence preparation and investigation should be in a mature and reasonably developed stage, rather than in a fledgling, embryonic stage as is presently the case of the Accused Merhi. I do not consider, for reasons of fairness, that because the Accused Merhi is being tried *in absentia* or by reason of joining of two cases, where trial of the four co-Accused had commenced prior to joinder, a lesser period of preparation should be allotted to the Accused Merhi. To do so would risk substantially lowering the standard of assessment of the appropriate time for delivery of the requisite pleading. To do so would significantly weaken the purpose of a pre-trial brief and render it a piece of pleading not truly reflecting the “defence” of the Accused, which cannot reasonably and objectively be what was intended under the Rule.

10. It should be stressed that although sub-rule 91(I)(i) specifies a statement of the nature of the Accused’s defence *in general terms*, a defence must be within Defence Counsel’s knowledge and possession before it may be distilled and presented in general terms. This requires a more extended, rather than short term or a highly contracted investigation or preparation period.

11. By contrast to sub-rule 91(I)(i), sub-rules (ii) and (iii) would appear to require a specific and detailed approach rather than a general statement. The fact that reasons are required to be provided under sub-rule (iii) is also relevant and material.

12. Of further note is that where sub-rule 91(I)(i) speaks to *the defence* it does not solely relate to a bold blanket denial of the facts against the Accused in the pre-trial brief and the indictment. This would be addressed and accommodated within sub-rule (ii) together with any reason, required to be given under sub-rule (iii). Whereas the term “Defence” is defined within Rule 2 of the Rules there is no definition of “defence”. The term “defence” for the purposes of criminal proceedings is thus defined according to *Black’s Law Dictionary*:

1. A defendant’s stated reason for why the plaintiff or Prosecutor has no valid case; esp. a defendant’s answer denial, or plea <her defense was that she was 25 miles from the building at the time of the robbery > [Cases; Criminal Law#31]<sup>3</sup>

13. The foregoing supports an interpretation that *the defence* of the Accused goes beyond solely denial of the facts and charges and *putting the Prosecutor to strict proof* of the assertions of facts and allegations contained in his pre-trial brief. Both in fact and in law, the term incorporates any pleas as to facts advanced by an Accused and sourced from him which establish factually that he could or

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<sup>3</sup> Black’s Law Dictionary, 9th Ed., p. 482.

may not have committed the offence. Therefore, based on the above definition and a proper interpretation of Rule 91(I), both the approach of the co-Accused in employment of a general denial plea (plea to generalities), and a more precise, instructed and informed mode of pleading may be accommodated under Rule 91(I)(i).

14. Another material and important factor in determination of this issue is the fact that the Accused is being tried *in absentia* and is therefore not available to Counsel who represent him to deliver instructions concerning facts advanced by the Prosecution in support of his guilt. At this juncture, reference is made to the fact that when Defence Counsel is assigned in a case of trial *in absentia*, it is for the purpose of giving full representation to the Accused. In these circumstances, I am of the opinion that Defence Counsel's general representational duties in fully representing the rights and interests of the Accused include engagement in ascertaining any "defence" to the charges against him. They should seek to actively controvert allegations of facts seeking to establish that the Accused committed the crimes charged and to discover and ascertain facts that challenge and undermine the case for Prosecution. This includes discovering facts of an exculpatory nature.

15. Because of the highly subjective and personalized nature of pleadings and the pre-trial brief of an Accused, they must reflect the case for, the position and the responses of the individual Accused. They must be custom-built for an Accused and settled based on the professional judgement of Counsel for each Accused, as is their professional obligation. It matters not that the Accused is one who is being tried *in absentia*. I am therefore not inclined to a "one size fits all" approach to pleading and to the contents of the pre-trial brief, and particularly in this instance, it would not serve the purpose of Merhi himself.

16. It is, in my view, obvious that Rule 91(I) is premised on Defence Counsel having performed a minimum adequate level of enquiry and investigation. This material and necessary function is therefore performed, subject to the Court allowing sufficient time for Counsel for the Defence to be adequately informed and prepared. Therefore, adequate enquiries must be carried out over a sufficient period before any meaningful or individual response may be made by Counsel on behalf of the Accused Merhi according to the mandate of Rule 91(I).

***Majority findings and observations in respect of the pre-trial brief***

17. The sub-heads (i) to (iii) under Rule 91(I) have been scrutinized individually in turn, having regard to the required manner and scope of pleading under the Rule and against the findings of the Majority, *inter alia*, that:

- (a) the Defence pre-trial brief serves the purpose of the Prosecution and Trial Chamber alone, and whether it is of value to the Merhi Defence is irrelevant;<sup>4</sup> and that accordingly
- (b) only a perfunctory Defence pre-trial brief was required to be filed by the Accused Merhi, given that the five Accused were jointly charged with conspiracy and the other four Accused had put the Prosecution to strict proof of its case by pleading to generalities rather than employing a more particularized mode of pleading;<sup>5</sup>
- (c) a Defence pre-trial brief is not a pre-condition to trial although one is specified in Rule 91(I);<sup>6</sup> and
- (d) there was no connection between readiness for filing of the Defence pre-trial brief, and when trial may commence or Defence trial readiness.

### **DISCUSSION**

18. Though I would agree that the marshalling of a defence is in an ongoing state of development, as with brick building, a foundation defence must be present before it can be further developed. There should be a skeleton or frame of a defence known to the Merhi Defence before they can be called upon to state its general nature under Rule 91(I)(i). It cannot be an unknown quantity before the start of trial or before settling of the pre-trial brief. It must be known and in existence before it may be developed. And a reasonable and appropriate time must be given to arrive at this state of knowledge of the defence and its general nature. Though the Defence's case is a work in progress it is further doubtful whether in an adversarial process there could be a radical or material shift in the defence without issues of credibility and consistency of the case being raised.

19. Whereas I agree with the finding of the Pre-Trial Judge and the Majority that the function of the pre-trial brief primarily serves the purpose of informing the Trial Chamber and the Prosecution of the Defence's disputes with the Prosecution case, I am unable to find that usefulness to the Defence is excluded. Furthermore, there are no grounds for finding that the Merhi Defence intends to plead in an excessive manner outside the scope of Rule 91(I) or in an otherwise prolix manner. Beyond the primary function referred to, there is additional utility and purpose in the settling and filing of the pre-trial brief as it permits the Defence to focus on and take stock of the Prosecution case that it will meet at trial and its own case and to render an account of the defence to the charges levelled against

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<sup>4</sup> Reasons for Order, para. 16.

<sup>5</sup> Reasons for Order, paras 15-17.

<sup>6</sup> Reasons for Order, para. 18.

the Accused. To determine which facts tendered in proof of guilt it will controvert and which (if any) will be admitted.

20. Furthermore, it is more particularized pleadings, according to the individual case of an Accused, which will give assistance to the Prosecutor when investigating the assertions of the Defence and preparing to controvert the Defence case and to rebut, during the course of the Prosecution's own case, any defence laid out in the Defence pre-trial brief. The more particularized the pleading, the fewer issues joined, the greater the evidential and tactical benefit to the Prosecutor.

21. In assessing utility and benefit, consideration should also be given to the fact that the pre-trial brief required to be filed under Rule 91(I) constitutes a material composite part of the case for the Defence. It is (most certainly in the case of this Tribunal) the primary pleading of the Defence, in which it addresses factual and legal issues. The brief constitutes a record of the nature of its defence, matters which it disputes and its reasons for such disputes. Its contents may be critical to determination of issues of fact or other matters which the Trial Chamber is called upon to determine in the course of trial. Its contents could be said to be relevant to sentencing. Its contents may well be material at the post-judgment stage before a superior court. It should be noted that the co-Accused will also have a legitimate interest in the pre-trial brief and how the Merhi Defence pleads in respect of issues relevant to their case.

22. In practical terms, within the adversarial process, the fact the Prosecutor is being put to strict proof of his assertions of fact does not minimize or render redundant the necessity for a detailed Defence pre-trial brief. Whereas all five Accused are alleged to be part of the conspiracy, their roles are singular and very differently defined based on the allegations. For example, though the Accused Merhi, Sabra and Oneissi are all allegedly involved in the false claim of responsibility, the role of the other two is distinguishable from that of the Accused Merhi as the coordinator and overseer. His alleged role in the substantive offences and preparatory acts also differ from the roles of the Accused Ayyash and Badreddine. Therefore, because of the highly subjective nature of pleadings a "one size fits all" will not serve the interest of the Accused and a more customized and individualized approach is warranted.

23. There is no doubt that the Accused is entitled to respond to the acts which pertain to him individually and exclusively in any manner that he deems appropriate within the ambit and parameters of Rule 91(I), including a more detailed response. Even given that the Accused are charged as co-perpetrators, co-conspirators and accomplices, it is the duty of the Trial Chamber in

determination of innocence or guilt to examine the case against each accused individually. To that extent, one or more Accused may be convicted or acquitted or none at all, consistent with principles of international law.<sup>7</sup> Professional prudence and discretion would therefore give strong consideration to a more particularized pleading, though in exercise of its discretion, with appropriate time, it might employ and prefer a more generalized approach, as is its right.

24. In view of the above factors, it is my belief that although the Prosecutor may suggest and seek to influence the approach which may be taken by the Merhi Defence in addressing its Rule 91(I) obligations and though the Trial Chamber may seek to guide the Merhi Defence in this matter, in law, practice and in fact, the decision is exclusively that of the Merhi Defence to make. Whereas management of the trial process is a necessary and honourable function of the Court, Judges are obliged to avoid the actuality and appearance of encroaching on the territory of Counsel or running the risk of usurping their proper function. Counsel for individual Accused must be allowed the necessary professional licence to carry out their functions and obligations vesting in them by virtue of representing an accused. In this regard, the case of *Prosecutor v. Ntwawukuliyayo*, relied on in the Reasons for Order, may be cited in support of the proposition that Judges should approach their trial management duties carefully to ensure that they do not conflict with the Accused's rights including his rights to a fair and trial and to be adequately prepared for trial.<sup>8</sup> Though this principle was applied, having regard to a motion for adjournment of a deadline set for filing of a pre-defence brief, it is of equal application to the time limit for filing of the pre-trial brief in the instant case.

***Whether there is a connection between readiness for filing a re-trial brief and preparedness for trial and/or the commencement of trial***

25. In so far as readiness for the purpose of filing a pre-trial brief is concerned, there is clearly justification for the view that a pre-trial brief does not conclusively speak to nor coincide identically with readiness for commencement of trial and progress of trial itself. There is however a substantial connection which is far from casual. I am strongly of the view that readiness for the act of settling and filing of a Defence pre-trial brief is a component part of the right of an Accused to adequate time and facilities for preparation of his defence within the terms of Article 16 (4)(b) of the STL Statute. If it is not, then the Pre-trial brief is, at the very least, in conformity with Rule 91, a precondition or

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<sup>7</sup> See e.g., ICTY, *Prosecutor v. Brđanin and Talić*, IT-99-63-PT, Decision on Motion by Momir Talić for a Separate Trial and for Leave to File a Reply, 9 March 2000, para. 32 (“trials in this Tribunal are conducted by professional judges who are necessarily capable of determining the guilt of each accused individually and in accordance with their obligations under the Statute of the Tribunal to ensure that the rights of each accused are respected”).

<sup>8</sup> ICTR, *Prosecutor v. Ntwawukuliyayo*, ICTR-05-82-T, Decision on Urgent Defence Motion for Postponement of Deadline for Filing a Pre-Defence Brief and Opening of the Defence Case, 31 July 2009, para 5.



precursor to trial readiness which cannot be dispensed with, overlooked or rendered procedurally redundant.

***Whether a Defence pre-trial brief is a necessary pre condition to commencement of trial***

26. I am of the view that in the case of the Tribunal's applicable procedural provisions, the filing of a Defence pre-trial brief is a necessary pre-condition of trial, to be filed during an Accused's obligatory pre-trial phase, whether before the Pre-Trial Judge or the Trial Chamber. The filing of a pre-trial brief may be not dispensed with, nor deferred to a date later than the commencement of trial. To the contrary, given the reasons set out below.

27. When the Trial Chamber purports to act by virtue of Rule 70(C), only Rule 95 may be dispensed with in whole or in part. Rule 91 is not listed as a Rule whose application may be dispensed with.

28. On a proper reading of Rule 91(I) the Pre-Trial Judge is mandated to order the Defence to file a Pre-Trial Brief within a specific time limit. There is no discretion as to making of the order itself. It provides that the Pre-trial Judge **shall** order.

29. Where, as in the instant case, the Trial Chamber elects to perform a mandatory function of the Pre-Trial Judge under Rule 70(C) (post-joinder after having consulted him), there is clearly no room for an interpretation or finding that the Trial Chamber could elect whether or not to make such an order.

30. Equally important is the fact that the Trial Chamber could not lawfully determine that the order should properly be made after commencement of trial. The result would be a fundamental difference in the treatment of the Accused Merhi as against his four co-Accused. This raises the issue of the fairness of the proceedings, in terms of a breach of the Accused Merhi's right to equal treatment before the Tribunal under Article 16(1) of the Statute, or in the alternate, the right of his co-Accused to equal treatment in the event that Merhi was regarded as being treated more advantageously. It should also be borne in mind that this is not a matter of several accused in single, unconnected cases being dealt with unequally. It is a group of jointly tried Accused whose cases are, by the contention of the Prosecution and the Majority, so indistinguishable and interweaved in evidential terms that no more than a perfunctory pleading in the pre-trial brief is necessary.

31. The pre-trial brief must be filed on a date before the date of the pre-trial conference which *a fortiori* precedes trial. Further, a close examination of Rule 128 does not provide for the filing of a

pre-trial brief or indeed a pre-defence brief. Hence, it may be concluded that the pre-trial brief to be filed under Rule 91 is the substantial Defence brief for the proceedings.

32. There is clearly no justifiable legal reason to support a contrary contention. Indeed the decision cited by the Majority, namely, the *Ntwawukuliyayo* case, may be readily distinguished from the instant case and is not on all fours with it.

33. The document in issue in the ICTR case was not a pre-trial brief, but a pre-defence brief filed under Rule 73ter of the ICTR Rules of Procedure and Evidence. This Rule is similar in its requirements to Rule 128 of the Tribunal's Rules, save that Rule 128 does not require the Defence to state which facts they do not dispute, in anticipation that this act will already have been satisfactorily carried out by the Defence when it filed its pre-trial brief. It is of significance that both Rule 73ter and Rule 128 differ from Rule 91 in their requirements. The order which the ICTR made in the *Ntwawukuliyayo* case was in the nature of Rule 128, rather than Rule 91. Therefore a full comparison is of little value to determination of the matter now before the Trial Chamber.

34. Furthermore, both Rule 128 and Rule 73ter are applicable during the trial phase of proceedings and are implemented only after the Prosecution has completed its case and the Defence elects to call evidence. This can be contrasted sharply against Rule 91 as the provisions are applicable long before the Prosecution moves to close its case and before the trial and the taking of evidence has commenced.

***Circumstances weighing in favour of the finding that the time awarded in the Reasons for Order is insufficient***

35. After examination of all of the attendant circumstances and pertinent considerations, I conclude that the time limit for filing of the pre-trial brief should be 18 July 2014 for the following reasons:

- A period of barely 3 months has passed since disclosure of Rule 110 (witness statements and material to be used at trial) and Rule 113 material (exculpatory material concerning the Accused Merhi.
- The high volume of documents, expert reports, and written material.
- The highly technical nature of the evidence, particularly as it relates to the material issue of identity, association and communications with co-Accused and the alleged presence of the

Accused on divers material dates at divers specific material places, all highly relevant to the issue of guilt or innocence.

- The highly circumstantial nature of the evidence in respect of material elements of charges proffered against and modes of liability of the Accused Merhi, under circumstances where he is being tried *in absentia* and is unable to provide instructions in aid of defence investigations and to aid the progress ongoing investigation and preparation.
- The likelihood of real need for defence investigations, and to submit requests for information and or co-operation under Rule 16 of the Rules in order to prepare for response and settling of the pre-trial brief. By contrast, the experience of other Defence teams, including the Accused Badreddine and the Accused Sabra, has shown that response is not likely to be expeditious nor likely to keep reasonable pace of Defence requests rendering the present date allotted unreasonable, it being foreseeable that it is unlikely that such request would be answered in an adequate manner on or before 26 May 2014.
- The necessity for the Merhi Defence to know and comprehend, if even superficially, the case against his co-Accused, and particularly the case in respect of the Accused Sabra, as relevant to the case against him, being a matter likely to impact on the content of his pleadings.
- Most importantly, the Merhi Defence has advised based on its own assessment of the state of its knowledge of the case and the early stages of its preparation, it is not presently in state of readiness to file its pre-trial brief. That applying a composite and compendious approach to the matter of the settling of its pre-trial brief, the Merhi Defence will require a full overview of the case and an opportunity to conduct appropriate searches, consultations with its own experts, and more, before it could properly exercise its professional judgement required in response to a Rule 91(I) order from the Court. In essence, it has consistently urged the Trial Chamber to give it adequate time and opportunity to place itself in a position of preparedness to act in accordance with Rule 91(I).
- The Trial Chamber has no reason to doubt the *bona fides* of Counsel's assertion.

***Absence of prejudice or risk of prejudice or unfairness to any party or interested person***

36. In fixing the appropriate time limit for filing of the pre-trial brief consideration was given to the fact that during the pre-trial conference held on 10 April 2014, neither the Prosecutor, nor the Defence of any of the four co-Accused, nor the Legal Representative for the Victims Participating in

the Proceedings, have asserted or complained that any right or interest of theirs would be breached, or that there was risk of the same, in the event that the Merhi Defence is granted the time limit requested. This equally speaks to the reasonableness of the time limit requested by the Accused Merhi's Counsel.

37. Giving the Merhi Defence a longer and more appropriate period than 26 May 2014 will provide additional time for research and investigation, and allow them to be suitably informed and bring them to a sufficient stage of preparedness. This in turn will better serve the judicial process in its search for truth and justice, being also consistent with the primary interests of the victims.

***Having regard to the circumstances, what is the appropriate time limit which should be fixed for filing of the Defence pre-trial brief***

38. Having considered all attendant circumstances, I am of the view that an appropriate time limit for filing of the pre-trial brief would be by 18 July 2014. The above time limit is set in consideration also of the assertion by the Merhi Defence that it could file its pre-trial brief before recommencement of hearing and it would be ready to commence trial at the end of September or October 2014.

**CONCLUSION**

By reason of the above, I conclude that the order contained in the disposition of the Trial Chamber's Reasons for Order should read as set out hereunder:

**ORDERS** Counsel for Hassan Habib Merhi to file their pre-trial brief by 18 July 2014.

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

Leidschendam,  
The Netherlands

25 April 2014



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Judge Janet Nosworthy

