

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 11 February 2016  
**Original language:** English  
**Classification:** Public

**IN THE CASE AGAINST**

***AKHBAR BEIRUT S.A.L.***  
**IBRAHIM MOHAMED ALI AL AMIN**

**DECISION ON REQUEST FOR *IN ABSENTIA* PROCEDURE AND OTHER  
MATTERS RELATED TO THE LEGAL REPRESENTATION OF THE ACCUSED  
AND THEIR PRESENCE AT TRIAL**

***Amicus Curiae* Prosecutor:**  
Mr Kenneth Scott

**Counsel for *Akhbar Beirut* S.A.L. and Mr  
Ibrahim Mohamed Ali Al Amin:**  
Mr Antonios Abou Kasm

**Head of Defence Office:**  
Mr François Roux



## INTRODUCTION

1. In this decision, I rule on a number of matters concerning the status of the proceedings, the continued representation of the Accused by Assigned Counsel, the presence of the Accused during the trial proceedings and other related matters. For the reasons below, I decide:

- to dismiss the Defence’s Request to move into proceedings *in absentia*;<sup>1</sup>
- to confirm that Assigned Counsel for the Defence (“Defence”) remains the sole legal representative of the Accused unless and until otherwise ordered;
- to dismiss the Request by the *Amicus Curiae* Prosecutor (“*Amicus*”) to issue a summons to appear to the Accused;<sup>2</sup>
- to order that the Court Management Services Section (“CMSS”) permanently cease the distribution of all filings directly to the Accused Ibrahim Mohamed Ali Al Amin via email; and
- to dismiss the Defence’s Request for disclosure of confidential and *ex parte* filings.

## BACKGROUND

2. On 31 January 2014 Judge Baragwanath, in his function as the initial Contempt Judge, issued an Order in Lieu of an Indictment in which Mr Ibrahim Mohamed Ali Al Amin and *Akhbar Beirut* S.A.L. were both charged with one count each of contempt and obstruction of justice.<sup>3</sup> I was subsequently designated as the Contempt Judge in the matter.<sup>4</sup>

3. On 18 March 2014, I issued a summons to appear to Mr Al Amin and *Akhbar Beirut* S.A.L. ordering their first appearance in these proceedings for 13 May 2014.<sup>5</sup>

---

<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0161, Defence Request for Reconsideration of the Decision Excluding Proceedings *in Absentia*, 17 December 2015 (“Defence Request for Reconsideration”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0168, Response to « Requête de la Défense aux fins de réexamen de la décision excluant une procédure par défaut », 11 January 2016 (“Response to Reconsideration Request”).

<sup>3</sup> F0001, Public Redacted Version of Decision in Proceedings for Contempt with Orders in Lieu of an Indictment, 31 January 2014.

<sup>4</sup> F0002, Order Designating Contempt Judge, 31 January 2014.

<sup>5</sup> F0006, Summons to Appear (*Akhbar Beirut* S.A.L.), 18 March 2014; F0007, Summons to Appear (Mr Ibrahim Al Amin), 18 March 2014.

On 8 May 2014, Mr Al Amin filed a request to adjourn the first appearance date for “a substantial period of time” in light of the “sensitivity and critical nature of the case, and the nature of the standards required for selecting legal counsel.”<sup>6</sup> At the oral hearing of 13 May 2014, I rescheduled the date of the initial appearance to 29 May 2014.<sup>7</sup> On 27 May 2014, in response to a request for a further postponement made by Mr Al Amin, I issued an order that found there was no reason to once again postpone the initial appearance.<sup>8</sup> I reiterated the limited purpose of the initial appearance, including my duty to ensure that the Accused’s right to counsel is respected. I explained that, if required, the Head of Defence Office could assign counsel to act temporarily for an accused but that such an assignment would in no way prohibit or discourage the accused from subsequently selecting their own counsel.

4. On 29 May 2014, Mr Al Amin, representing himself and *Akhbar Beirut S.A.L* (in his capacity as the company’s chairman), attended via video-conference link from Beirut the initial appearance hearing. In conformity with Rule 98, I once again advised the Accused of their fundamental rights, including the right to the assistance of or representation by legal counsel.<sup>9</sup>

5. Towards the conclusion of the initial appearance, the Accused declared his desire to remain silent and his refusal to retain or have appointed any lawyer to represent either himself or *Akhbar Beirut S.A.L*.<sup>10</sup> Thereafter, Mr Al Amin withdrew from the proceedings.

6. I subsequently ordered the Head of Defence Office to assign counsel to the Accused.<sup>11</sup> I then requested the *Amicus* to “effectuate disclosure under Rule 110 (A) at the earliest opportunity after counsel has been assigned by the Head of Defence Office”.<sup>12</sup>

7. On 12 June 2014, I received a request by the Accused for certification to appeal the decision to assign counsel.<sup>13</sup> On 18 June 2014, I ordered the Accused to make written

---

<sup>6</sup> F0010, Correspondence from the Accused, 8 May 2014.

<sup>7</sup> STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, Initial Appearance, 13 May 2014, p. 12.

<sup>8</sup> F0016, Further Order on Initial Appearances Scheduled for 29 May 2014, 27 May 2014, paras 2, 7; see also F0017, Submission from Mr Al Amine, 26 May 2014.

<sup>9</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, Initial Appearance of Akhbar Beirut S.A.L. and Ibrahim Al Amin, 29 May 2014, (“Transcript of 29 May 2014”), pp. 3, 5-7.

<sup>10</sup> Transcript of 29 May 2014, p. 13.

<sup>11</sup> *Id.* at p. 19. I provided written reasons on 5 June 2014: F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 (“Written Reasons for Assignment of Counsel”).

<sup>12</sup> Written Reasons for Assignment of Counsel, p. 11.

submissions on whether they intended to participate in the hearings against them and, if so, whether they would appoint counsel of their own choosing or represent themselves, with legal assistance if necessary, and by being present in the courtroom.<sup>14</sup> The Accused's response of 25 June 2014 failed to respond to the questions specified in my order.<sup>15</sup>

8. On 30 June 2014, the Head of Defence Office assigned Mr Antonios Abou Kasm to represent the Accused in this case.<sup>16</sup> Mr Abou Kasm was sworn in on 3 July 2014.<sup>17</sup> On 17 July 2014, I denied the Accused's certification request.<sup>18</sup> In that decision I incidentally noted that "[a]s soon as [assignment of counsel] was effected, counsel assumed responsibility for making submissions before the Tribunal on the Accused's behalf. I will therefore, this Request excluded, no longer consider submissions from the Accused unless otherwise ordered".<sup>19</sup>

9. Thereafter, I requested CMSS, for a temporary period of time while Mr Al Amin's position on his legal representation was clarified, to send directly to Mr Al Amin via email copies of Arabic translations of all public and confidential filings.<sup>20</sup>

10. On 22 July 2014, I received an urgent request submitted by Assigned Counsel asking that I authorize the transmission of all supporting material already disclosed to counsel by the *Amicus* to the Accused themselves.<sup>21</sup> I dismissed this request on the basis that Assigned Counsel bore all responsibilities related to the Accused's defence, including receiving and sharing disclosure with the Accused.<sup>22</sup>

11. Assigned Counsel subsequently filed a Request for Reconsideration of my decision of 14 August 2014, alleging that it was merited by new circumstances in which the Accused had

---

<sup>13</sup> F0019/COR, Request for Certification to Appeal a Decision "Reasons for Decision on Assignment of Counsel" Date: 5 June 2014, 12 June 2014.

<sup>14</sup> F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014 ("Decision on Requests by Head of Defence Office"), p. 9.

<sup>15</sup> F0026, Response to Demand that I Clarify My Position Pursuant to the Order of 18 June 2014, 25 June 2014.

<sup>16</sup> F0028, Appointment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014.

<sup>17</sup> F0035, Application from Assigned Counsel for Leave to Reply to the "Further Response to Defence Request for Certification to Appeal 'Reasons for Decision on Assignment of Counsel'" filed on 7 July 2014 by the *Amicus Curiae* Prosecutor, 14 July 2014, para. 17.

<sup>18</sup> F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel, 17 July 2014.

<sup>19</sup> *Id.* at para. 11.

<sup>20</sup> See Email from Chambers Legal Officer to Court Management Services Section, 18 July 2014.

<sup>21</sup> F0039, Urgent Request from Assigned Counsel for Disclosure to the Accused of all the Evidence Disclosed by the *Amicus Curiae* Prosecutor Pursuant to Rule 110 (A) of the Rules of Procedure and Evidence, 22 July 2014.

<sup>22</sup> F0053, Decision on Urgent Defence Submissions Regarding Disclosure by *Amicus Curiae* Prosecutor and Preliminary Motions, 14 August 2014 ("Decision on Disclosure"), paras 9-10.

broken off all contact with him, preventing Assigned Counsel from sharing disclosure.<sup>23</sup> I dismissed this request in its entirety.<sup>24</sup> I reiterated that while the Accused have a right to receive the material disclosed by the *Amicus*, it was for the Accused and Assigned Counsel and not the Court to determine whether and how to exercise this right.<sup>25</sup>

12. On 4 November 2015, following an urgent request for review of my decision of 20 March 2015 that afforded temporary protective measures regarding the identities of seven witnesses for the prosecution,<sup>26</sup> I ordered the disclosure of the remaining unredacted statements of the seven witnesses and the confidential *ex parte* submissions filed by the *Amicus* in support of his applications for protective measures.<sup>27</sup>

13. As a result of my decision lifting the protected measures of certain prosecution witnesses, the *Amicus* raised concerns with CMSS in respect of its previous practice to forward courtesy emails to the Accused of all filings translated into Arabic. I therefore ordered CMSS to temporarily suspend this practice such that the parties could provide submissions on this issue and a final decision be made in the matter.<sup>28</sup> Contrary to the summary contained in the Defence's submissions,<sup>29</sup> the *Amicus* did not raise his concerns directly with me in an *ex parte* and confidential manner.

14. On 11 November 2015, I issued once again an order to the Accused that required them to indicate, in writing, whether they intended to participate in the proceedings.<sup>30</sup> The deadline for

---

<sup>23</sup> F0075, Request Seeking Leave to File a Request for Reconsideration of the Decision of 14 August 2014 Relating to the Urgent Defence Submissions Regarding Disclosure of Evidence by the *Amicus Curiae* Prosecutor and Preliminary Motions, 3 February 2015, paras 12, 15.

<sup>24</sup> F0078, Decision on Request Seeking Leave to File a Request for Reconsideration of the Decision of 14 August 2014, 17 February 2015, para. 16 (“Decision on Request for Reconsideration”).

<sup>25</sup> *Id.* at paras 13-14.

<sup>26</sup> F0088, Public Redacted Decision on the *Amicus Curiae* Prosecutor's Applications for Protective Measures, 20 March 2015, pp. 11-12.

<sup>27</sup> F0114, Decision on Urgent Request for Review of the Decision on the *Amicus Curiae* Prosecutor's Application for Protective Measures of 20 March 2015, 4 November 2015, p. 6.

<sup>28</sup> See Emails from Legal Officer of the Chambers to the Parties, 9 November 2015.

<sup>29</sup> F0121, Defence Response to the *Amicus Curiae* Prosecutor's Request Concerning the Distribution of Documents to Mr Ibrahim Mohamed Ali Al Amin, Confidential, 16 November 2015, paras 16-17 (“Defence Response on Courtesy Copies”). I note that the Defence has not filed a public redacted version of this filing. I order them to do so.

<sup>30</sup> F0118, Order on Submissions Regarding Legal Representation, 11 November 2015 (“Order on Legal Representation Submissions”).

his response—seven days following notification of the Arabic translation of the order to Mr Al Amin—passed without any response from the Accused.<sup>31</sup>

15. I convened a Pre-Trial Conference with the parties on 11 December 2015. Mr Al Amin was not present either physically or by video-link. Assigned Counsel for the Defence confirmed that the Defence still had no contact with the Accused and, as a result, requested that I classify the proceedings in this matter as *in absentia*.<sup>32</sup> At the conclusion of the Pre-Trial Conference, I indicated to the Defence that I would consider the issue further and make any appropriate orders, as necessary.<sup>33</sup>

16. I subsequently ordered the postponement of the commencement of this trial to 24 February 2015 in order to provide additional time for the Defence to prepare in light of my decision permitting the *Amicus* to amend his exhibit and witness lists.<sup>34</sup>

## DISCUSSION

### **I. *In absentia* proceedings**

#### ***A. Position of the Defence***

17. The Defence requests that I reconsider my previous decision to exclude the possibility of characterizing this trial as *in absentia* pursuant to Rule 106 (A) (i), arguing that it is necessary in order to avoid an injustice to the Accused.<sup>35</sup> As the Accused have expressly renounced their right to participate in these proceedings, and have had no contact with Assigned Counsel,<sup>36</sup> the Defence argues that the current proceedings share all of the characteristics of a trial *in absentia*; the failure to categorize it as such would thereby deprive the Accused of the right to a fair trial.<sup>37</sup>

---

<sup>31</sup> See Email from CMSS to Legal Officer of the Chambers, 27 November 2015.

<sup>32</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, Pre-Trial Conference, 11 December 2015, (“Pre-Trial Conference Transcript”), pp. 31-32.

<sup>33</sup> *Id.* at p. 43.

<sup>34</sup> F0164, Public Redacted Version of Decision on Motions to Amend the *Amicus Curiae* Prosecutor’s Exhibit and Witness Lists, 18 December 2015, p. 12.

<sup>35</sup> Defence Request for Reconsideration, para. 2.

<sup>36</sup> *Id.* at para. 17.

<sup>37</sup> *Id.* at para. 23.

18. The Defence notes that the provisions in the Rules and the Statute which provide for *in absentia* proceedings apply *mutatis mutandis* to contempt proceedings.<sup>38</sup> In the Defence's view, the present proceedings more closely mirror those of the *Ayyash et al.* case<sup>39</sup> which is taking place in the absence of the five Accused. Although Mr Al Amin attended the first appearance on behalf of himself and *Akhbar Beirut S.A.L.*, the Defence maintains that he did so in order to comply with a summons to appear<sup>40</sup> and that his departure in the middle of the proceedings renders the appearance incomplete, such that Rule 104 should not be triggered.<sup>41</sup>

19. The Defence argues that a reclassification to a trial *in absentia* would not impact the current proceedings or create any further delays, but rather it would permit the Accused to enjoy the benefits provided for in Rules 108 and 109 as well as Article 22 (3) of the Statute.<sup>42</sup>

20. Moreover, the Defence maintains that an arrest warrant need not be issued as a condition precedent to the institution of *in absentia* proceedings under Rule 106 (A) (i),<sup>43</sup> given that there has been a voluntary and express waiver of the Accused's right to be present at trial.<sup>44</sup>

### ***B. Position of the Amicus***

21. The *Amicus* opposes the merits of the Defence Motion, arguing that these proceedings cannot be categorized as *in absentia*.<sup>45</sup> He distinguishes the present proceedings from the *in absentia* trial in the *Ayyash et al.* case, given that the whereabouts of the five Accused in the latter case are unknown and extensive steps have been taken, without success, to secure their appearance before the Tribunal.<sup>46</sup> Those proceedings have advanced as *in absentia* in order to prevent the frustration of the aims and work of the Tribunal. In the present case, however, the *Amicus* notes that the identity and whereabouts of the Accused are known, they are available to the Court and subject to its process, the Accused have not provided a written waiver of their right to be present and steps to obtain their presence and participation at trial have not been

---

<sup>38</sup> Defence Request for Reconsideration, paras 20-22.

<sup>39</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC ("*Ayyash et al.*").

<sup>40</sup> Defence Request for Reconsideration, para. 26.

<sup>41</sup> *Id.* at para. 29.

<sup>42</sup> *Id.* at para. 24.

<sup>43</sup> *Id.* at para. 32.

<sup>44</sup> *Id.* at para. 32.

<sup>45</sup> Response to Reconsideration Request, para. 6.

<sup>46</sup> *Ibid.*

exhausted.<sup>47</sup> Therefore, the requirements for an *in absentia* trial found in Article 22 of the Statute and Rule 106 of the Rules are not met.<sup>48</sup>

22. The *Amicus* avers furthermore that the Accused's voluntary decision not to participate in these proceedings should prevent them from arguing unfairness or a violation of their rights.<sup>49</sup> In fact, the *Amicus* recalls that the Accused have been given repeated opportunities to attend hearings, clarify their positions, and represent themselves, amongst others, all while the Court has maintained a willingness to reconsider its position on certain aspects of the proceedings if the Accused request it.<sup>50</sup> The *Amicus* contends that the Accused's self-imposed set of circumstances cannot have any bearing on the determination to classify a trial as *in absentia*.<sup>51</sup> In particular, the *Amicus* notes that the right to re-trial that accompanies an *in absentia* classification should not be available to an accused who is available to the court and able to participate but chooses not to.<sup>52</sup>

### ***C. Discussion***

23. The Defence has framed its motion as a reconsideration request governed by Rule 140.<sup>53</sup> However, contrary to the Defence's assertion, I have not made a ruling on any request to move into proceedings *in absentia*. When addressing these arguments by the Defence during the Pre-Trial Conference I stated only that I would consider the issue further and make any appropriate orders as necessary.<sup>54</sup> I therefore do not regard the request as a reconsideration motion but as a motion to hold the trial *in absentia* and will address its merits accordingly.

24. Rule 106—reflecting Article 22 of the Statute—sets out the conditions under which the Tribunal can exceptionally proceed to hold a trial in the absence of the Accused. They include the waiver by the Accused—express and in writing—to be present during the proceedings. However, Rule 104 provides that “proceedings shall not be *in absentia* if an accused appears before the Tribunal in person, by video-conference, or by counsel appointed or accepted by him”. Here, I recall that Mr Al Amin appeared on behalf of both Accused by video-link for their

---

<sup>47</sup> Response to Reconsideration Request, para. 6.

<sup>48</sup> *Id.* at para. 12.

<sup>49</sup> *Id.* at para. 14.

<sup>50</sup> *Id.* at para. 14.

<sup>51</sup> *Id.* at para. 15.

<sup>52</sup> *Id.* at para. 16.

<sup>53</sup> Under Rule 140 of the Rules, a Chamber may, “at the request of a Party with leave of the Presiding Judge, reconsider a decision, other than a Judgement or sentence, if necessary to avoid injustice.”

<sup>54</sup> Pre-Trial Conference Transcript, p. 43.



initial appearances. Consequently, as I have noted previously, the proceedings against the two Accused cannot be conducted *in absentia*.<sup>55</sup>

25. The Defence now asserts that Rule 104 is inapplicable because the Accused's appearance was incomplete and only made in order to comply with the obligations of a summons.<sup>56</sup> However, the Defence fails to advance any argument as to how the Accused's voluntary withdrawal from the first appearance, following an explanation of the Accused's rights, and a subsequent refusal to participating in these proceedings, would somehow entitle the Accused to an *in absentia* trial and the concordant procedural guarantees. The Rules do not provide for such an eventuality. Indeed, there is no requirement that an accused's appearance be of a certain length in order to fall within the meaning of an "appearance" under Rule 104. Consequently, once an accused has appeared, even for just one hearing, the proceedings will be deemed to take place as if the accused were always present (*semel praesens semper praesens*).<sup>57</sup>

26. Moreover, the guarantees attached to the decision to hold a trial in the absence of an accused—in particular an accused's right to a retrial<sup>58</sup>—exist to cure any prejudice to an accused that could conceivably arise from such a trial.<sup>59</sup> They do not apply in circumstances where an accused appears before the Tribunal, is informed of the proceedings and given the opportunity to defend himself, and then relinquishes the right to be present at his trial. Indeed, it would be fundamentally inequitable and contrary to the administration of justice to permit an accused in such a case to later claim a remedy—such as a retrial—for not having exercised that same right.<sup>60</sup> An accused benefits from the protections of due process but also bears a responsibility to diligently exercise his rights without frustrating the aims of justice.<sup>61</sup> In this respect, I recall that at the initial appearance Mr Al Amin clearly and unequivocally identified himself as the Accused

---

<sup>55</sup> Written Reasons for Assignment of Counsel, para. 13.

<sup>56</sup> Defence Request for Reconsideration, para. 29.

<sup>57</sup> Written Reasons for Assignment of Counsel, para. 13.

<sup>58</sup> See Art. 22 STL St.; Rule 108 STL RPE provides for the procedure to follow in the event that an accused appears during the course of *in absentia* proceedings, while Rule 109 STL RPE stipulates the rights and courses of action available to an accused where he appears after the completion of *in absentia* proceedings. Both provisions prescribe circumstances in which the accused may opt for a retrial.

<sup>59</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, AR126.1, F0012, Decision on Defence Appeals Against Trial Chamber's Decision on Reconsideration of Trial *In Absentia* Decision, 1 November 2012, para. 14.

<sup>60</sup> Cf. ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Judgement, 28 November 2007 ("*Nahimana et al.* Appeal Judgment"), para. 107 (noting that a right "cannot be violated when the accused has voluntarily chosen to waive it").

<sup>61</sup> Written Reasons for Assignment of Counsel, paras 22, 24; Decision on Requests by Head of Defence Office, para. 8.

and representative of *Akhbar Beirut* S.A.L., and that before he chose to withdraw explicitly and unequivocally from the hearing, he was fully briefed in a language that he understood of his judicial rights in this matter.<sup>62</sup>

27. The Defence next argues that it finds itself in a situation akin to the defence counsel in the *Ayyash et al.* proceedings, citing its complete lack of communication with the Accused. However, this comparison is misplaced. In the present case, the Accused have decided to not communicate with Assigned Counsel. They of course remain free to do so, for example, in order to further discuss their defence, examine disclosure and provide any relevant instructions. Consequently, the Accused may not later allege an infringement of their rights by refusing to interact with counsel at this stage. Conversely, counsel representing the interests of the accused in the *Ayyash et al.* matter are prohibited from carrying out any type of communication with the accused or from discussing any element of the case with them.<sup>63</sup>

28. Furthermore, I disagree with the position advanced by the Defence that it would be possible to hold these proceedings *in absentia* pursuant to Rule 106 (A) (i) without issuing an arrest warrant, on the basis that the Accused have expressly and voluntarily waived their right to be present at trial. I recall that the Accused's presence at the initial appearance has triggered Rule 104 and consequently rendered Rule 106 inapplicable even if the Accused choose not to appear again in the course of the proceedings.

29. Thus, I dismiss the request to move into proceedings *in absentia*. Notwithstanding, I must make a separate determination below as to whether steps must be taken to secure the physical presence of the Accused at their trial, as requested by the *Amicus*.

## II. Legal representation of the Accused

### A. Position of the Defence

30. During the Pre-Trial Conference and in his written submissions, the Defence repeatedly asserted that Assigned Counsel was not the legal representative of the Accused.<sup>64</sup> It claimed that since Counsel was not chosen by the Accused, the Defence's mandate is limited to defend their

---

<sup>62</sup> Written Reasons for Assignment of Counsel, para. 20.

<sup>63</sup> See Article 8 (E) (i) Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims Appearing before the Special Tribunal for Lebanon, STL/CC/2012/03, 14 December 2012.

<sup>64</sup> Pre-Trial Conference Transcript, pp. 30-31, 40-41; Defence Request for Reconsideration, para. 26 iv).

rights and interests during the trial phase.<sup>65</sup> Without providing further specification, the Defence also argued that a legal representative is different from a person representing the rights and interests of an accused.<sup>66</sup> Finally, the Defence noted the absence of any communications between Counsel and the Accused and questioned Counsel's ability to properly defend the Accused given the lack of any instructions.<sup>67</sup>

### ***B. Position of the Head of Defence Office***

31. The Head of Defence Office supports the Defence's position.<sup>68</sup>

### ***C. Position of the Amicus Curiae***

32. The *Amicus* has not taken a position with respect to the modalities of the representation of the Accused.

### ***D. Discussion***

33. I note that despite giving the Accused the opportunity on several occasions to clarify their position vis-à-vis their representation at trial since I ordered the assignment of counsel, they have failed to do so.<sup>69</sup> I have also noted with surprise the most recent position unilaterally adopted by the Defence as regards the scope of the legal representation of the two Accused, namely, that Counsel does not represent the Accused but is limited to defending their rights and interests. I therefore find it necessary to clarify the matter of the Accused's representation in this decision. Given that I have rejected the Defence's request to move into trial *in absentia* proceedings and absent any other change in circumstances, I affirm my previous decision that these proceedings will continue with Assigned Counsel representing both Accused.

34. I recall that I explicitly ordered the Head of Defence Office to assign counsel *to represent* both Accused pursuant to Rule 59 (F).<sup>70</sup> The Head of Defence Office then assigned Mr Abou Kasm on the same terms, namely, "to represent Akhbar Beirut S.A.L. and Mr Ibrahim Mohamed Ali Al Amin before the Special Tribunal for Lebanon in the proceedings before the

---

<sup>65</sup> Defence Request for Reconsideration, para. 30; Pre-Trial Conference Transcript, pp. 40-41.

<sup>66</sup> Pre-Trial Conference Transcript, p. 41.

<sup>67</sup> Defence Request for Reconsideration, para. 26 iv); Pre-Trial Conference Transcript, pp. 32, 34.

<sup>68</sup> Pre-Trial Conference Transcript, p. 39.

<sup>69</sup> See above, paras 7, 14.

<sup>70</sup> Written Reasons for Assignment of Counsel, p. 11.

Contempt Judge”.<sup>71</sup> Counsel’s sudden desire for a different and undefined role in order to “respect the wish and desires of the Accused”—which remain vague and unexplained—is therefore all the more puzzling.<sup>72</sup> Indeed, in his order the Head of Defence Office explicitly stated that in accepting the assignment, Counsel had agreed to “represent an accused against his will and in accordance with the code of professional conduct of his Bar”, and in particular, that “duly informed of the position of Mr Ibrahim Mohamed Ali Al Amin, who wishes to represent himself and refuses any representation or assistance from a lawyer, Mr Antonios Abou Kasm notified his acceptance of the mandate conferred on him by way of the present assignment”.<sup>73</sup>

35. Furthermore, while I appreciate the difficulties that the Defence faces absent communication with the Accused, this circumstance does not render it impossible for Counsel to present a coherent defence.<sup>74</sup> Indeed, it is not unprecedented that an accused refuses to instruct counsel. This has occurred regularly in both domestic and international settings.<sup>75</sup> Permitting counsel to withdraw in such a situation or to transform the status of counsel representing the accused to the somewhat amorphous and legally non-existent status of counsel “defending the rights and interests of the accused” would infringe on the accused’s right to proper defence counsel. While Assigned Counsel of course defends the rights and interests of the Accused, his role is not limited to that—indeed he represents the Accused for all intents and purposes in the proceedings.

---

<sup>71</sup> F0028, Assignment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014 (“Assignment of Counsel”), para. 17.

<sup>72</sup> See Pre-Trial Conference Transcript, p. 41.

<sup>73</sup> Assignment of Counsel, paras 8, 14, 15.

<sup>74</sup> Decision on Disclosure, paras 9-10; see also Decision on Request for Reconsideration, paras 13-14.

<sup>75</sup> See ICTR, *Prosecutor v. Barayagwiza*, ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000, para. 21 (“Counsel must carry through to conclusion all matters undertaken for a client, as long as the representation is not terminated. [...] Counsel are under an obligation to mount an active defence in the best interest of the Accused.”); ICTY, *Prosecutor v. Blagojević*, IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003, para. 54 (“[W]here an Appellant unjustifiably resists legal representation from assigned Counsel, Counsel’s professional obligations remain.”) ICTY, *Prosecutor v. Slobodan Milosević*, IT-02-54-T, Decision on Assigned Counsel’s Motion for Withdrawal, 7 December 2004, paras 19, 21 (“It is argued that ‘Assigned Counsel are unable to know and therefore cannot protect the Accused’s best interests in circumstances where he will not communicate with them’. The Trial Chamber finds that to be an erroneous analysis of the position of assigned counsel. What is required of counsel is that they act in what they perceive to be the best interests of the Accused.” The Chamber also refers to the Criminal Procedure (Scotland) Act, 1995 c.46, s.288D (4) where a court-appointed solicitor in a sexual offence trial must “act in the best interests of the accused” [...]“where the accused gives no instructions or inadequate or perverse instructions...”); see also Germany, Bundesgerichtshof [Federal Supreme Court], BGHSt 39, 110 (115) (26 August 1993).

36. I also reject the Defence's argument that I invited a different categorization of Assigned Counsel's role by language used in my Order on Legal Representation.<sup>76</sup> Indeed, no ambiguity could arise from this decision where I simply stated that my order on assignment of counsel to represent the Accused would in principle stand should the Accused fail to provide the requested submissions concerning their intention to participate in these proceedings.<sup>77</sup> In light of the persistent failure of the Accused to make the requested submissions, my decision will not be altered.

37. Finally, I note with concern that since 15 December 2015, Assigned Counsel has referred to himself in all filings as "Lead Counsel assigned to defend the rights and interest of the Accused". This unilateral change is contrary to my orders and the terms under which the Head of Defence Office assigned Counsel, as explained above. It was therefore wholly improper for Counsel to change his designation in this manner without seeking and obtaining prior approval. I therefore order Counsel to revert to the correct designation of "Counsel assigned to represent the Accused" in all future filings and to issue corrected versions of those filings in which he has improperly identified himself. In this regard, I remind the Head of Defence Office of his responsibilities under Rule 57 (G) (i) which include ensuring that Counsel complies with the terms of his assignment.

### **III. Presence of the Accused at trial**

#### ***A. Position of the Amicus***

38. The *Amicus* requests that I issue a summons to appear to the Accused. He argues that under the Rules, the presence of the accused appears to be the norm and his absence the exception. In support of this argument, he refers to Rule 106 which states that the Judge shall "consult with the President and ensure that all necessary steps have been taken with a view to ensuring the accused may, in the most appropriate way, participate in the proceedings".<sup>78</sup> He states further that both Accused are easily reachable.<sup>79</sup>

---

<sup>76</sup> Order on Legal Representation Submissions.

<sup>77</sup> *Id.* at para. 15.

<sup>78</sup> Response to Reconsideration Request, para. 22.

<sup>79</sup> *Id.* at para. 23.

39. The *Amicus* further recalls the Trial Chamber's decision that "it is in the interests not only of the accused, but also of the Tribunal [...] for each accused to be present and to fully participate in his own defence".<sup>80</sup> He also relies on the case-law and practice of other international courts and tribunals which require the presence of the accused in the courtroom.<sup>81</sup>

40. The *Amicus* argues that while the Tribunal's image should not be the determinative factor, it would be detrimental for the Tribunal if the Lebanese and the wider international public saw that an accused decides by himself, with impunity, whether to come before the Court or not.<sup>82</sup>

41. In the present case, according to the *Amicus*, the circumstances do not allow for the Accused's absence. Given their obstructive behaviour and the Tribunal's awareness of their whereabouts, the Court should take the necessary steps to secure the Accused's presence at trial and a summons to appear must be issued to the Accused.<sup>83</sup>

42. The *Amicus* stresses that at this juncture, he is not requesting that I issue an arrest warrant under Rule 79 but reserves the right to resort to such an application in the event that the Accused are not brought before the Court by summons.<sup>84</sup>

### ***B. Position of the Accused***

43. The Defence asserts that forcing the Accused to be physically present at trial would be disproportionate and impractical given that "we are not dealing with a crime and, certainly not a mass crime".<sup>85</sup> The Defence avers that Lebanese Law, which is applicable in this case, does not allow the arrest of journalists.<sup>86</sup> According to the Defence, "the right of the accused to be present at his trial, as guaranteed by Article 16 of the Statute, has its corollary in the right of the accused not to be present".<sup>87</sup>

---

<sup>80</sup> Response to Reconsideration Request, para. 21.

<sup>81</sup> *Id.* at paras 24-25.

<sup>82</sup> *Id.* at para. 20.

<sup>83</sup> *Id.* at para. 26; Pre-Trial Conference Transcript, p. 39.

<sup>84</sup> Response to Reconsideration Request, para. 26.

<sup>85</sup> Reconsideration Request, para. 34; *see also* Pre-Trial Conference Transcript, pp. 33, 42

<sup>86</sup> Pre-Trial Conference Transcript, p. 42.

<sup>87</sup> Reconsideration Request, para. 36.

44. The Defence refers to the Appeals Chamber's holding that an accused may waive his right to be present tacitly or expressly.<sup>88</sup> It avers further that in my decision assigning counsel, I stated that the Accused were free to participate in the proceedings<sup>89</sup> and that I later failed to warn the Accused that his absence from court may have serious repercussions on his liberty.<sup>90</sup>

45. The Defence further avers that since Counsel has been assigned to ensure that the interests of the Accused are safeguarded, there is no need to order the Accused's physical presence during hearings if they prefer not to attend.<sup>91</sup>

46. Finally, the Defence argues that as no summons to appear was issued in the *New TV S.A.L./Khayat*<sup>92</sup> case and since the Statute provides that all accused shall be equal before the Tribunal, no summons to appear may be issued against the Accused in this matter.<sup>93</sup>

47. The Defence further lays out a series of arguments that pertain specifically to the issuance of an arrest warrant against the Accused.<sup>94</sup> However, since the *Amicus* does not request the issuance of an arrest warrant at the present time, I need not address those arguments.

### ***C. Discussion***

#### **1. Preliminary observations**

48. On a preliminary note, I reject the Defence's assertion that the charges in the Order In Lieu of an Indictment are "not a criminal accusation"<sup>95</sup> and that "[w]e are not here in the face of a crime".<sup>96</sup> I recall that the Accused are charged with contempt and obstruction of justice of this Tribunal, an offence stipulated by Rule 60 *bis* and for which a conviction may lead to imprisonment and/or a substantial fine.<sup>97</sup> The fact that similar conduct as that alleged here may not be considered criminal under the laws of Lebanon is of no relevance. As confirmed

---

<sup>88</sup> Reconsideration Request, para. 38.

<sup>89</sup> *Id.* at para. 39.

<sup>90</sup> *Id.* at para. 40.

<sup>91</sup> *Id.* at para. 46.

<sup>92</sup> STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ ("*New TV S.A.L./Khayat* case").

<sup>93</sup> Reconsideration Request, para. 47.

<sup>94</sup> *Id.* at para. 42-45.

<sup>95</sup> Pre-Trial Conference Transcript, p. 33.

<sup>96</sup> *Id.* at p. 42.

<sup>97</sup> Rule 60 *bis* (J) STL RPE.

previously, the Tribunal has an inherent power to protect the administration of its justice and its proceedings.<sup>98</sup> Rule 60 *bis* is an expression of this power.<sup>99</sup>

49. Next, I strongly caution the Defence against the use of language that could be perceived as intimidating or threatening. I note that at the Pre-Trial Conference, Counsel “advised” the *Amicus* “not to touch upon the issue of arrest of the Accused” stating that “[t]his is an issue that will have serious consequences”.<sup>100</sup> Counsel further stated that the Tribunal was “not created in order to terrorize accused, especially and particularly not to terrorize journalists”.<sup>101</sup> He warned that “[a]ny arbitrary measures taken against both accused will prompt [him] to take a firm decision with regards to the defence of the Accused”.<sup>102</sup> He further averred that it is “better not to try to implicate the Lebanese authorities in an issue that [they] had nothing to do with”.<sup>103</sup> In its written submissions, the Defence argues that attempting to impose the “writ of the STL on Lebanon by means of intimidation, which could have consequences on the Tribunal’s image” would be counter-productive.<sup>104</sup> The Defence also contends that any involvement of the Lebanese authorities would have repercussion on the internal stability of Lebanon and that the *Ayyash et al.* case has shown that no arrest warrant can be executed by force.<sup>105</sup>

50. These types of arguments are unacceptable. Indeed, I remind Counsel of his role as an officer of the court. In particular, I find the Defence’s submissions that lay claim to the alleged political and security-related consequences of a Tribunal order not only unhelpful to my decision on this matter but also highly inappropriate. Judicial decisions at this Tribunal are made on the basis of the law, not on conjecture or concerns of any alleged political fallout.

51. The same applies to Counsel’s use of portentous language towards the *Amicus*.<sup>106</sup> The *Amicus*, as a party to these proceedings, may pursue any and all lawful courses of action provided for in the Rules and Statute of this Tribunal. This includes seeking a summons to appear for the Accused. I recall Counsel’s obligations under the Code of Conduct, namely, to

---

<sup>98</sup> F0069, Decision on Motion Challenging Jurisdiction, 6 November 2014, para. 16.

<sup>99</sup> *Ibid.*

<sup>100</sup> Pre-Trial Conference Transcript, p. 41.

<sup>101</sup> *Id.* at p. 42.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> Reconsideration Request, para. 44.

<sup>105</sup> *Id.* at para. 45.

<sup>106</sup> Pre-Trial Conference Transcript, p. 41 (“serious consequences”).



“conduct himself [...] professionally and in accordance with the law, rules and ethics of the legal profession”.<sup>107</sup> I consequently warn him that further conduct of this nature will no longer be tolerated.

## 2. Merits

52. With respect to the merits of the *Amicus’s* request for a summons to appear, I note that under Rule 78 (A) I may issue such a summons “when warranted by the interests of justice”.<sup>108</sup> Here, I am not persuaded that this is the case at the present time. In particular, and for the reasons set out below, the *Amicus* has not demonstrated that under the Statute and the Rules, an accused must, as a matter of principle, be present during the proceedings against him or that there are other cogent reasons requiring the enforced presence of the Accused—who are represented by Assigned Counsel—at trial.

53. First, the *Amicus’s* reliance on Trial Chamber case-law concerning the presence of the Accused with respect to in *absentia* proceedings is inapposite. I recall that I have rejected the Defence request to hold a trial *in absentia* pursuant to Rule 106. Moreover, nothing in the cited jurisprudence indicates that an accused person has the obligation under all circumstances to be present in the proceedings.<sup>109</sup>

54. I also do not find persuasive the *Amicus’s* reliance on certain provisions of the International Criminal Court for his argument that, in the abstract, an accused must always be present at the proceedings against him. Indeed, Article 61 (2) of the ICC Statute states that “[t]he accused *shall* be present during the trial”.<sup>110</sup> To the contrary, Article 16 (4) (d) of the Statute of this Tribunal provides for an accused’s *right* to be tried in his presence. In other words, the Statute does not set a requirement of physical presence—it simply states that, as a minimum guarantee, an accused is *entitled* to be tried in his or her presence. Rule 78 (A) likewise does not

---

<sup>107</sup> Art. 1(a) of A Code of Professional Conduct for Counsel Appearing Before the Tribunal, STL-CC-2011-01, 28 February 2011.

<sup>108</sup> While the wording of the English version of Rule 78 suggests that “the interests of justice” may inform the Chamber’s decision only with respect to a *proprio motu* decision but not when a summons is requested by the Prosecution, the French and Arabic versions make it plain that the Chamber’s decision is based on the “interests of justice” regardless of whether or not the Prosecution has requested the summons. A proper interpretation of Rule 78 in light of Rule 3 therefore militates in favour of assessing whether a summons to appear is warranted in the interests of justice in all cases.

<sup>109</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision to Hold Trial *in Absentia*, 2 February 2012.

<sup>110</sup> Emphasis added.

require a Chamber to issue a summons to appear—unlike the relevant Article of the ICC Statute<sup>111</sup>—but gives the court the discretionary power (“may”) to issue a summons “when warranted by the interests of justice”.<sup>112</sup> This determination must be made on a case-by-case basis. Therefore I find irrelevant the fact, raised by the Defence, that I did not issue a summons to appear to the accused in separate contempt proceedings.<sup>113</sup>

55. In determining what constitutes the interests of justice, I am guided by the relevant case-law of other international criminal tribunals in regards to the need of an accused to be present during the proceedings. While the factual circumstances at those tribunals differed—in particular because the accused were in the custody of the court—I find that the principles developed in the jurisprudence may be of assistance in my determination of the present issue.

56. At the Special Court for Sierra Leone, faced with a refusal by the accused to attend court, the Trial Chamber held “that it is settled law, nationally and internationally, that while an accused has the right to be present, there are circumstances under which a trial in the absence of the accused can be permitted”.<sup>114</sup> The Trial Chamber noted that

[A]n Accused person charged with a serious crime who refuses to appear in court should not be permitted to obstruct the judicial machinery by preventing the commencement or continuation of trials by deliberately being absent, after his initial appearance, or by refusing to appear in court after he has been afforded the right to do so.<sup>115</sup>

The Chamber thus focused on the potential for the obstruction of the court proceedings caused by the absence of the accused. In the circumstances of the case, it ordered that the trial continue despite the accused’s refusal to attend because it was satisfied that the accused had waived their right to attend and that they were represented by counsel.<sup>116</sup>

57. Similarly, the Appeals Chamber of the International Criminal Tribunal for Rwanda has held that a trial can take place in the absence of the accused where the accused was previously apprehended and informed of the charges against him but thereafter refused to be present for

---

<sup>111</sup> See Art. 58 (7) ICC St. (“If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person’s appearance, it *shall* issue the summons [...]” (emphasis added).

<sup>112</sup> See above, fn. 108.

<sup>113</sup> *Contra* Reconsideration Request, para. 47.

<sup>114</sup> SCSL, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Ruling on the Issue of the Refusal of the Accused Sesay and Kallon to Appear for Their Trial, 19 January 2005, para. 15 (“*Sesay et al.* Decision”).

<sup>115</sup> *Ibid.*

<sup>116</sup> *Sesay et al.* Decision, para. 16.

trial.<sup>117</sup> The Appeals Chamber noted that the accused himself can choose not to exercise his right to be present.<sup>118</sup> It stressed however that the court must ensure that the accused had prior notification as to the place and date of the trial, the charges against him and his right to be present at trial.<sup>119</sup> In addition, the Chamber must be satisfied that the accused's waiver of his right to be present is "free, unequivocal (though it can be express or tacit) and done with full knowledge".<sup>120</sup> Finally, where the accused voluntarily decides not to be present, counsel must be assigned in order to guarantee the effective exercise of the accused's other rights as enshrined in the Statute of the Tribunal.<sup>121</sup>

58. In applying these principles, I first note that the Accused were duly informed of the charges against them and the rights that assist them as accused before this Tribunal, including the right to be present at their trial and to appoint counsel of their own choosing.<sup>122</sup> I interpret their repeated refusal to clarify their intention to participate in these proceedings,<sup>123</sup> as an indication that they have unequivocally waived their right to be present at trial.

59. I am also satisfied that both Accused are represented by Assigned Counsel in these proceedings, which guarantees the protection of the Accused's rights under the Statute. I am therefore satisfied that the rights of the Accused to a fair trial are fully safeguarded.

60. Contrary to the submissions by the *Amicus*, I am also not persuaded that the Accused's absence from the trial would obstruct the proceedings *per se*. The *Amicus* has not further substantiated his arguments in this regard. In particular, the Accused's waiver of their right to be present in the proceedings cannot constitute obstruction, because such a finding would effectively frustrate the Accused's choice as to whether to be present or not.

61. Finally, I dismiss the *Amicus's* arguments on the alleged damage to the Tribunal's public image should the Accused not be present during the trial. As set out above, judicial decisions at

---

<sup>117</sup> *Nahimana et al.* Appeal Judgment, para. 99.

<sup>118</sup> *Id.* at paras 99, 107; *see also* ICTR, *Zigiranyirazo v. Prosecutor*, ICTR-2001-73-AR73, Decision on Interlocutory Appeal, 30 October 2006, para. 14; *see also* Written Reasons for Assignment of Counsel, para. 14.

<sup>119</sup> *Nahimana et al.* Appeal Judgment, para. 109.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> Transcript of 29 May 2014, pp. 5-9.

<sup>123</sup> *See* Email from Chief of CMSS to Chambers Legal Officer confirming that Mr Al Amin had received by email and downloaded the file containing the Arabic translation of the Order on Submissions regarding Legal Representation, 19 November 2015; Email from Chief of CMSS to Chambers Legal Officer confirming that Mr Al Amin had not responded to the Order on Submissions regarding Legal Representation, 27 November 2015.

this Court are made on the basis of the law and not on the basis of conjectures concerning how the absence of the Accused would be publicly perceived.

62. In light of these considerations, I find that at this stage of the proceedings, the presence of the Accused at trial is not required and that resorting to coercive measures to compel the Accused's presence at trial would not serve the interests of justice. I therefore dismiss the *Amicus's* request to issue a summons to appear to the Accused.

63. I emphasize that this decision is made in light of the specific circumstances of this case and apply to the proceedings at this point in time. Accordingly, I may revisit the issue of the Accused's appearance in these proceedings at any time should these circumstances change.

#### **IV. Submissions on the practice of courtesy emails**

##### ***A. Position of the Amicus***

64. The *Amicus* states that he has confidence that Counsel will comply with court orders and confidentiality. However, he asserts that since the nature of the charges in this matter relate to the disclosure of sensitive information and Mr Al Amin has stated on the record that he does not intend to comply with orders or the Rules of this Tribunal, Mr Al Amin should not have access to confidential information.<sup>124</sup>

65. The *Amicus* notes that this issue is of particular importance in light of the reclassification of *Amicus* filings related to protected witnesses. The *Amicus* submits that a concrete risk exists that Mr Al Amin would not honour the confidentiality of the information he receives.<sup>125</sup>

##### ***B. Position of the Accused***

66. The Defence opposes the request.<sup>126</sup> It recalls the right of an accused under Article 16 (4) (f) of the Tribunal's Statute to examine all incriminating evidence to be used at

---

<sup>124</sup> F0117, Redacted Version of "*Amicus* Prosecutor's Submissions on the Transmission of Documents to the Accused" dated 10 November 2015, 10 November 2015, para. 6.

<sup>125</sup> *Id.* at paras 8-10.

<sup>126</sup> Defence Response on Courtesy Copies, para. 1.

trial and avers that, in light of the presumption of innocence, mere allegations relating to the revelation of witness information should not deprive an accused of his fundamental rights.<sup>127</sup>

67. The Defence invokes the prosecutorial duty to serve on the accused a copy of the list of witnesses, an obligation which can be exceptionally delayed on an interim basis where protective measures are in place.<sup>128</sup> As a result, the Defence argues that there is no basis in law to support the request of the *Amicus* as it would deprive the Accused of key evidence from the case file on the eve of trial in violation of their rights under the Tribunal's Statute, the Lebanese New Code of Criminal Procedure and the European Convention on Human Rights.<sup>129</sup>

68. The Defence asserts that the fact that the Accused have no contact with Counsel should not deprive them of the disclosure of evidence.<sup>130</sup>

69. Lastly, the Defence requests the disclosure of purported confidential and *ex parte* filings from the *Amicus* prompting the interim suspension of courtesy emails to Mr Al Amin and that all filings are once again forwarded to Mr Al Amin.<sup>131</sup>

### **C. Discussion**

70. The previous practice of forwarding all Arabic-language filings directly to Mr Al Amin via email was a temporary measure enacted out of courtesy at a time when the Accused's position on his legal representation was still unclear.<sup>132</sup> This is no longer the case. The Accused have steadfastly refused to communicate with this Tribunal and have failed to comply with orders to put into writing their intentions with respect to their participation in this trial.<sup>133</sup> They have unequivocally waived their rights to be present and are represented by Counsel.

71. I note that I have already dismissed the Defence's request to authorize the transmission of all supporting material already disclosed by the *Amicus* to the Accused themselves on two separate occasions.<sup>134</sup> As all confidential and reclassified filings from this case have already been disclosed to the Defence, the Accused are able to exercise their fundamental right to examine

---

<sup>127</sup> Defence Response on Courtesy Copies, paras 7-8.

<sup>128</sup> *Id.* at paras 9-10.

<sup>129</sup> *Id.* at paras 10-12.

<sup>130</sup> *Id.* at para. 13.

<sup>131</sup> *Id.* at paras.16-17.

<sup>132</sup> See Email from Chambers Legal Officer to CMSS, 18 July 2014.

<sup>133</sup> Order on Legal Representation Submissions.

<sup>134</sup> Decision on Disclosure, p. 5; Decision on Request for Reconsideration, p. 7.

evidence to be used against them in advance of trial, by communicating with Counsel.<sup>135</sup> As I have clearly stated before,<sup>136</sup> the Accused remain unrestricted in their ability to communicate with Counsel in order to examine disclosure and provide any instructions on the course of their defence. I therefore reject the argument that requiring the Accused to access disclosure through Counsel in any way infringes their rights.

72. Accordingly, I find it proper to permanently cease the practice of sending the Arabic translations of filings in this case to the Accused by email. It is for Assigned Counsel to bear all responsibilities related to the Accused's defence, including receiving and sharing disclosure with the Accused.<sup>137</sup>

73. Finally, I dismiss the Defence's request for disclosure of purported confidential and *ex parte* filings. Contrary to the Defence's submissions and as I already clarified with the parties,<sup>138</sup> the *Amicus* did not raise his concerns directly with me in an *ex parte* and confidential manner and as a result, there is no *ex parte* material to disclose.

---

<sup>135</sup> Decision on Disclosure, paras 9-10.

<sup>136</sup> *Id.* at paras 9-10; *see also* Decision on Request for Reconsideration, paras 13-14.

<sup>137</sup> F0059, Decision on Defence Request for Reconsideration of Decision on Certification, 1 September 2014, para. 14; *see also* Decision on Disclosure, para. 9; *see also* Decision on Request for Reconsideration, paras 11-14.

<sup>138</sup> *See* Email from Chambers Legal Officer to Parties, 11 November 2015.

## DISPOSITION

### FOR THESE REASONS;

**PURSUANT to** Rules 60 *bis*, 78, 104, and 140 of the Rules and Articles 16 and 22 of the Statute;

### I

**ORDER** Assigned Counsel for the Accused to cease any previous practice in which he refers to himself as “counsel assigned to represent the rights and interests of the Accused” and to issue corrected versions of those filings in which he has improperly identified himself;

**ORDER** the Defence to file a public redacted version of filing F0121;

**ORDER** the CMSS to permanently cease the previous practice in which the Arabic translations of all filings in this matter were forwarded directly to the Accused via email;

**DISMISS** the Defence request for disclosure of confidential and *ex parte* filings;

**DISMISS** the Defence request to move into proceedings *in absentia*; and

**DISMISS** the *Amicus*'s request to issue a summons to appear to both Accused.

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

Dated 11 February 2016

Leidschendam, the Netherlands



Judge Nicola Lettieri  
Contempt Judge

