



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER****SPECIAL TRIBUNAL FOR LEBANON**

**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:** 14 June 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

---

**DECISION DISMISSING SABRA DEFENCE APPLICATION FOR  
DISCLOSURE OF MATERIAL RELATED TO MR MICHAEL TAYLOR**

---

**Office of the Prosecutor:**  
Mr Norman Farrell & Mr Nigel Povoas

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair

**Legal Representatives of  
Participating Victims:**  
Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Youssef Khalil

**Counsel for Mr Hussein Hassan Oneissi:**  
Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young, Mr Geoffrey Roberts  
& Ms Sarah Bafadhel



## INTRODUCTION AND BACKGROUND

1. The Prosecution alleges that as part of the preparations for the attack against the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005, the Accused, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, were responsible for finding a suitable person to make a false claim of responsibility, on a video, for the attack. It further alleges that the two Accused chose a 22-year old Palestinian, Mr Ahmed Abu Adass. Allegedly, Mr Oneissi introduced himself as ‘Mohammed’ to Mr Abu Adass at the beginning of January 2005 at the Arab University Mosque in Beirut. He asked Mr Abu Adass to teach him how to pray, and they met several times. Mr Abu Adass left his home to meet ‘Mohammed’ on the morning of 16 January 2005 and has been missing since.<sup>1</sup>

2. Counsel for Mr Sabra allege that the Prosecution failed to investigate a ‘significant lead’ which demonstrates that on 16 January 2005 Mr Abu Adass left his home with another person—Mr Khaled Taha—and not Mr Oneissi, alias ‘Mohammed’. They contend that Mr Taha was considered a person of significant interest in the investigation of Mr Abu Adass’s disappearance. Notwithstanding that they elected not to present a case, counsel for Mr Sabra asked the Trial Chamber to order four former Prosecution investigators to testify as Chamber witnesses under Rule 165 of the Special Tribunal’s Rules of Procedure and Evidence<sup>2</sup> to assist the determination of the truth about the circumstances surrounding Mr Abu Adass’s disappearance.<sup>3</sup>

3. On 13 April 2018, the Trial Chamber partly granted the Sabra Defence’s application under Rule 165 and ordered the attendance of the former Chief of Investigations in the Office

---

<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended consolidated indictment, paras 3 (b)-(d), 23, 28; STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1077, annex A, Prosecution’s Updated Pre-Trial Brief, dated 23 August 2013 (confidential) to Prosecution’s Submission of Updated Pre-Trial Brief Pursuant to Rule 91(G)(i) and the Pre-Trial Judge’s Order of 7 August 2013 and Decision of 16 August 2013, 23 August 2013 (a public redacted version of the annex was filed on 31 October 2013), paras 62, 114, 117, 121-122, 148. See also STL-13-04/PT/PTJ, *Prosecutor v. Merhi*, F0052, annex A, Prosecution’s Pre-Trial Brief, 8 January 2014 (confidential) to Prosecution’s Submission Pursuant to the Pre-Trial Judge’s Order of 24 December 2013 (a public redacted version of the annex was filed on 13 January 2014), paras 53, 105, 107, 113.

<sup>2</sup> Rule 165—Power of Chambers to Order Production of Additional Evidence—states that after hearing the Parties, the Trial Chamber may, *proprio motu* or at the request of a Party, order either Party or a victim participating in the proceedings to produce additional evidence. It may, after hearing the Parties, *proprio motu* summon witnesses and order their attendance.

<sup>3</sup> F3600, Motion for Reconsideration of Sabra Defence Request Pursuant to Rule 165, 9 March 2018 (confidential, a public redacted version was filed on 15 March 2018); F3591, Sabra Defence Request Pursuant to Rule 165 and for Suspensive Effect of Rule 128 Order, 5 March 2018 (public, with confidential annexes A-B, and public annex C).

of the Prosecutor, Mr Michael Taylor, to testify as a Trial Chamber witness.<sup>4</sup> It subsequently dismissed a Prosecution application to reconsider this decision, and has scheduled Mr Taylor's testimony for Monday 25 June 2018.<sup>5</sup>

4. To facilitate Mr Taylor's testimony and the Trial Chamber's assessment of the witness's account, the Sabra Defence asked the Trial Chamber to order the Prosecution to provide the Trial Chamber and the other Parties with material related to Mr Taylor.<sup>6</sup> It had unsuccessfully sought this information in communications with the Prosecution, under seven categories labelled 'A' to 'G', (it no longer seeks category 'F').<sup>7</sup>

5. The Defence submits that the Prosecution must disclose this material pursuant to its disclosure obligations under the Rules. The Prosecution opposes the application submitting either that it does not have the material, has already disclosed it, or is not obliged to disclose it.<sup>8</sup> The material is:

- A – Mr Taylor's *curriculum vitae*;
- B – the terms of reference published in the vacancy announcement for Mr Taylor's post within the Office of the Prosecutor;
- C – an organigram of the Investigation Division of the Office of the Prosecutor when headed by Mr Taylor;
- D – any policies, directives or regulations introduced by Mr Taylor during the course of his employment as Chief of Investigations of the Office of the Prosecutor;
- E – any report, memorandum, or communication relating to the disappearance of Mr Abu Adass including but not limited to those relating to Mr Taha, which was

---

<sup>4</sup> F3646, Decision Partly Granting Sabra Defence Application and Ordering the Attendance of a former Prosecution Investigator to Testify under Rule 165, 13 April 2018 (circulated on 7 May 2018), scheduling Mr Taylor's testimony for 23 April 2018.

<sup>5</sup> F3686, Decision Dismissing the Prosecution Motion for Reconsideration of the Trial Chamber Decision under Rule 165 to call Mr Michael Taylor, 12 June 2018.

<sup>6</sup> F3667, Sabra Defence Request for Provision of Material Related to Michael Taylor, 22 May 2018 (public, with confidential annexes A-D) ('Sabra Defence motion'). Public redacted versions of the annexes were also filed. The annexes contain correspondence between the Parties concerning the disclosure of the Taylor material.

<sup>7</sup> The material under item 'F' was any statement or transcript record of witness interviews in which Mr Taylor was in attendance—see Sabra Defence motion, footnote 6.

<sup>8</sup> F3679, Prosecution Response to "Sabra Defence Request for Provision of Material Related to Michael Taylor", 5 June 2018 ('Prosecution response').

sent by or to Mr Taylor, or was copied to him by other members of the Office of the Prosecutor or Lebanese authorities; and

- G – any request for assistance, and subsequent responses, sent and received by either the United Nations International Independent Investigation Commission (UNIIC) or the Office of the Prosecutor in relation to efforts by the Prosecution to locate and interview or obtain evidence relevant to the role of Mr Taha in the disappearance of Mr Abu Adass, before, during or after Mr Taylor’s mandate.<sup>9</sup>

### **LEGAL PRINCIPLES**

6. The application raises the issue of whether the Prosecution is obliged to disclose material to the Defence and the Trial Chamber in respect of witnesses called by a Chamber under Rule 165.

7. As the Sabra Defence correctly states, the Rules are silent on the Parties’ disclosure obligations in respect of Chamber witnesses. Referring to the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC), the Sabra Defence submits that international case law requires Parties to provide material—which would facilitate the testimony of Chamber witnesses—to the Chamber and the other Parties. In the absence of any specific Rule, the Rules regarding *inter partes* disclosure must apply. The Prosecution contends that the cited case law does not support these propositions.<sup>10</sup>

#### *Prosecution’s disclosure obligations*

8. The following disclosure Rules apply to the Prosecution. Rule 110 sets out the Prosecution’s general disclosure obligations towards the Defence. Under Rule 110 (A) (ii), the Prosecution must disclose to the Defence the statements of all witnesses it intends to call at trial. Rule 110 (B) provides (relevantly) that the Prosecution shall, on request, permit the Defence to inspect items in its custody or control, which are material to the preparation of the defence, or the Prosecution intends to use as evidence at trial.

---

<sup>9</sup> The motion states instead ‘before, during or after the mandate of **Abu Adass**’ (emphasis added) which the Trial Chamber considers to be an error.

<sup>10</sup> See Sabra Defence motion, para. 11; Prosecution response, paras 35-36.

9. Rule 111 exempts from disclosure reports, memoranda or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case. For the Prosecution, this includes reports, memoranda or other internal documents prepared by the UNIIC or its assistants or representatives in connection with its investigative work.

10. The Special Tribunal's decisions have applied the following principles. The exemption under Rule 111 'applies to *all* disclosure that is ordinarily required between the parties, including disclosure under Rule 110 (A) (ii)' and Rule 110 (B). This exemption is confined to what a Party and its agents have created. Consequently, it has no application to statements of witnesses. These are 'not the Party's work product; *they are the product of the person interviewed*'.<sup>11</sup> Whether a document is a disclosable witness statement requires a case-by-case determination in light of the 'type of testimony the witness will give, the character of the witness, and the content, use, function and source of the document'.<sup>12</sup> Further, there is no single definition of the term 'witness statement' within the meaning of Rule 110 (A) (ii).<sup>13</sup>

11. Material under Rule 111 includes 'documents that contain the *thoughts and original work* of investigators, often in unpolished or incomplete form'. Thus, whether a document is internal work product depends not on its title but on its content, function, purpose and source. As far as the Prosecution is concerned, internal memoranda containing legal analysis, research or investigatory strategies fall outside its disclosure obligations.<sup>14</sup>

12. The exceptions to Rule 111 'must be narrow in nature and may not serve to undermine the purpose of the Rule, namely, to protect the free exchange of ideas and an open discussion within the Prosecutor's or Defence counsel's teams'.<sup>15</sup> But where material which would

---

<sup>11</sup> STL-11-01/PT/AC/AR126.5, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0003, Decision on Appeal by Counsel for Mr Sabra Against Pre-Trial Judge's "Decision on Sabra's Tenth and Eleventh Motions for Disclosure", 6 November 2013 ('Appeals Chamber's decision of 6 November 2013'), paras 25, 30; CH/AC/2011/01, *In the Matter of El Sayed*, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge's Decision of 12 May 2011, 19 July 2011 ('Appeals Chamber's decision of 19 July 2011'), para. 78 (emphasis in the original).

<sup>12</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3171, Decision on Merhi Defence Request for Disclosure of Documents Concerning Witness PRH230, 2 June 2017 ('Decision on Merhi Defence disclosure request'), para. 48.

<sup>13</sup> Decision on Merhi Defence disclosure request, para. 47.

<sup>14</sup> Appeals Chamber's decision of 19 July 2011, para. 74, fn. 117, referring to relevant case law of the *ad hoc* tribunals, and paras 95-96, 117.

<sup>15</sup> CH/AC/2013/01, *In the Matter of El Sayed*, Public Redacted Version of Decision on Appeal by the Prosecutor Against Pre-Trial Judge's Decision of 11 January 2013, Dated 28 March 2013, 28 March 2013 ('Appeals Chamber's decision of 28 March 2013'), para. 28.

ordinarily be exempt from disclosure under Rule 111 contains discussion, expressed in a categorical manner, by a decision maker, in such circumstances ‘as to suggest that what occurs “in-house” is properly to be categorized as admission of *fact*’, then ‘the Rule 111 shield disappears and is replaced by the Rule 113 obligation (subject of course to its limitations laid down in Rules 116 to 118)’.<sup>16</sup>

13. Rule 113 (A) regulates the disclosure by the Prosecution to the Defence of exculpatory material. The Prosecutor shall, as soon as practicable, disclose to the Defence ‘any information in his possession or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor’s evidence’. The Trial Chamber has determined the requirements for a successful Rule 113 application, namely that the Defence must specifically identify the material, *prima facie* demonstrate the probable exculpatory nature of the material, and show that it is in the Prosecution’s custody or control.<sup>17</sup>

*Material related to a witness called by a Chamber under Rule 165*

14. Two legal issues arise here. The first is whether the Prosecution’s disclosure obligations apply to witnesses called by the Trial Chamber.

15. Rule 110 (B) refers to material in the possession of the Prosecution that is ‘material to the preparation of the defence’. The evidence of a Chamber witness may impact the Defence, and hence its preparation for that witness’s testimony. The Prosecution’s disclosure obligations under that Rule therefore apply to Chamber witnesses if necessary for defence

---

<sup>16</sup> Appeals Chamber’s decision of 19 July 2011, para. 102 (emphasis in the original). *See similarly*, Appeals Chamber’s decision of 28 March 2013, para. 28; Appeals Chamber’s decision of 6 November 2013, paras 18-19. Under Rule 116—Application and Grounds for Non-Disclosure—the Prosecution may apply to be relieved in whole or in part of the obligation to disclose information, the disclosure of which would ordinarily be required, if it may prejudice ongoing or future investigations; may cause grave risk to the security of a witness or his family; or for any other reasons may be contrary to the public interest or the rights of third parties.

Under Rule 117—Security Interests of States and Other International Entities—the Prosecution may apply to be relieved in whole or in part of the obligation to disclose information, the disclosure of which would ordinarily be required, if its disclosure may affect the security interests of a State or international entity.

Rule 118—Information never Subject to Disclosure without Consent of Provider—governs the non-disclosure of information, which was provided on a confidential basis and affects the security interests of a State or international entity or an agent thereof, without the consent of its provider.

<sup>17</sup> F3320, Decision Denying Merhi Defence Motion Seeking Disclosure of Material Relating to Potential Users of Purple Phone 231, 13 September 2017, para. 34; STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1519, Decision on Prosecution Witness Expenses, 9 May 2014, para. 13.

preparation. The Prosecution's obligations to disclose exculpatory material under Rule 113 continue independently of whoever calls the witness.

16. The second issue is whether a Chamber itself may order the production of material relating to witnesses it is calling. Under Rule 130 the Trial Chamber may, after hearing the Parties, give directions as necessary and desirable to ensure, among other things, a fair and impartial trial. In particular, such directions may include orders relating to disclosure and directions to the Parties regarding communication with witnesses. It also has inherent powers to control its own proceedings<sup>18</sup> and to do justice to the Parties. In addition, under Rule 165 the Trial Chamber may, after hearing the Parties, order a Party to produce additional evidence which it may then admit into evidence.

17. The Trial Chamber has also examined the case law of other international criminal courts and tribunals and finds that it is consistent with this view.<sup>19</sup> At the ICTY, in *Krajišnik*, the Trial Chamber held that the Parties *may* be required to supply the Chamber with any information they may have about the whereabouts, health and legal status of the witness. Upon the Parties providing a list of material relating to prospective Chamber witnesses suitable for disclosure, the Trial Chamber would decide what it wished to receive, such as Prosecution interviews with them, subject to relevant disclosure exemptions. Moreover, the Chamber's power to request material related to its witnesses goes beyond what is in the Parties' possession—witnesses themselves would be requested to bring to their preliminary interview any documents relevant to answering questions.<sup>20</sup>

18. In *Blaškić*, the Trial Chamber ordered the Parties to provide to it *ex parte* and under seal the statements of Chamber witnesses and other related material in their possession.

---

<sup>18</sup> F3335, Decision Denying the Head of the Defence Office Certification to Appeal the Trial Chamber's 'Decision on Observations from Head of Defence Office on Lebanese Criminal Law', 22 September 2017, para. 10; F3313, Decision on Observations from Head of Defence Office on Lebanese Criminal Law, 7 September 2017, para. 20.

<sup>19</sup> See *similarly*, Rule 98 of ICTY's Rules of Procedure and Evidence; Rule 98 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda; Rule 120 of the Rules of Procedure and Evidence of the Mechanism for International Criminal Tribunals; Article 69 (3), second sentence of the Rome Statute of the International Criminal Court.

<sup>20</sup> ICTY, *Prosecutor v. Krajišnik*, IT-00-39-T, Procedure on calling and examining Chamber witnesses, annex, 7 April 2006, paras 3, 7, 10; Finalized Procedure on Chamber Witnesses; Decisions and Orders on Several Evidentiary and Procedural Matters, 24 April 2006, para. 14, and annex, paras 3, 7, 10.

Contrary to the Sabra Defence's contentions, the *Blaškić* Trial Chamber did not order *inter partes* disclosure of that material.<sup>21</sup>

19. At the ICC in *Bemba*, the Trial Chamber requested material related to two Chamber witnesses—one was a Prosecution witness, whom the Trial Chamber recalled to testify as a Chamber witness on specific issues<sup>22</sup>—but this was contingent on the Parties' intending to use the material in their questioning. The Parties were ordered to submit to the Trial Chamber in advance any applications for the admission into evidence of material related to a Chamber witness that they intended to tender.<sup>23</sup> Contrary to the Sabra Defence's submissions, the Trial Chamber's directions for the conduct of the proceedings and testimony in *Katanga* did not address the provision of material related to Chamber witnesses by or to the Parties.<sup>24</sup>

20. Rule 110 (A) (ii) applies specifically to witnesses whom *the Prosecution* intends to call at trial. The Prosecution therefore has no obligation to disclose to the Defence the statement of a witness that *it* does not intend to call at trial, but whom the Trial Chamber is calling as a witness.

21. However, the Prosecution, where legally permitted, should inform the Trial Chamber of the existence of any statement made by a Chamber witness. The Trial Chamber can also order the Prosecution, where the interests of justice require, to inform it of the existence of statements or to provide them to the Trial Chamber and the other Parties. Upon a Trial Chamber's order, the Prosecution would be obliged to reveal the existence of any

---

<sup>21</sup> *E.g.* ICTY, *Prosecutor v. Blaškić*, IT-95-14-T, Decision of Trial Chamber I in Respect of the Appearance of General Enver Hadžihasanović, 25 March 1999, p. 3; Decision of Trial Chamber I in Respect of the Appearance of the Commanders of the Seventh Muslim Brigade of the Army of Bosnia and Herzegovina, 25 March 1999, p. 3; Decision of Trial Chamber I on the Appearance of Colonel Robert Stewart, 25 March 1999, p. 3.

<sup>22</sup> ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3154-Red2, Second Redacted version of "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5 August Letter (ICC-01/05-01/08-3139-Conf)'" of 2 October 2014, 11 December 2014, para. 30.

<sup>23</sup> ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-2898, Decision on the modalities of the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute, 15 November 2013, para. 10; ICC-01/05-01/08-2863-Red, Public redacted version of Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute, 6 November 2013, para. 10; ICC-01/05-01/08-3157-Red, Public Redacted Version of Decision on the modalities of the presentation of additional evidence pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute, 8 October 2014, para. 6. *See also* ICC-01/05-01/08-3155, Notice of limited reopening of the presentation of evidence and rescheduling of closing statements, 2 October 2014, paras 8-9.

<sup>24</sup> ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-1665, Directions for the conduct of the proceedings and testimony in accordance with rule 140, 20 November 2009, paras 43-48, 103-111.



relevant statement—subject to Rules 117 and 118.<sup>25</sup> The Trial Chamber could then order its disclosure to the Parties.

22. From this the Trial Chamber is satisfied that it may (a) order the Prosecution, under Rule 110 (B) to disclose items that are ‘material to the preparation of the defence’ in respect of Chamber witnesses, and (b) order a Party to produce material that is relevant to the testimony of a witness called by the Trial Chamber.

### **DISCUSSION AND DECISION**

23. Taking in turn each category of document for which disclosure is sought:

#### ***A – Mr Taylor’s curriculum vitae***

24. The Sabra Defence submits that Mr Taylor’s qualification and experience contained in his *curriculum vitae* are relevant to its cross-examination and to the reliability of his testimony. The Prosecution responds that it has no such document.

25. Consequently, there is nothing to decide. The Sabra Defence may, of course, question Mr Taylor about his professional experience which could include his *curriculum vitae*.

#### ***B – Terms of reference of the vacancy announcement for Mr Taylor’s post within the Office of the Prosecutor***

26. The Sabra Defence submits that the terms of reference of the vacancy announcement for Mr Taylor’s post are necessary to prepare its defence and would facilitate the Trial Chamber’s assessment of his testimony. This material is disclosable under Rule 110 (B), and the Sabra Defence could not obtain the terms of reference from alternative sources such as the Special Tribunal’s Human Resources section.

27. The Prosecution contends that the material is not disclosable under Rule 110 (B). It was publicly accessible when the post was advertised, and it is not relevant, as it contains no more than a general job description and list of competencies.

28. The Trial Chamber is not convinced that the Sabra Defence has substantiated the relevance of the terms of reference of the vacancy announcement to Mr Taylor’s potential

---

<sup>25</sup> See above, footnote 16.

testimony and, accordingly, how it is material to defence preparation. What Mr Taylor actually did—as opposed to what job he applied for—may be relevant, and the Defence may cross-examine him on his work experience at the Special Tribunal. The application is therefore dismissed.

***C – Organigram of the Investigation Division of the Office of the Prosecutor when headed by Mr Taylor***

29. The Sabra Defence submits that an organigram—a management tool, showing how the Prosecution’s Investigation Division was organised, and the procedures employed to initiate investigative steps, record investigative results and pursue follow-up action—is ‘demonstrably material’ to the Defence’s preparation.

30. The Prosecution responds that this material is not subject to disclosure under Rule 110 (B), as the Sabra Defence has failed to demonstrate its relevance to defence preparation. In addition, such an organigram is internal work product not subject to disclosure under Rule 111. Since the Prosecution’s investigation is not on trial, how the Office of the Prosecutor structures its office is not relevant to Mr Taylor’s testimony and thus to defence preparation.

31. The Trial Chamber is neither convinced of the organigram’s relevance to Mr Taylor’s potential testimony nor of its materiality to defence preparation. Merely contending that the Investigation Division’s organisation is ‘demonstrably material’ does not make the organigram relevant or material to defence preparation. Furthermore, an organigram would not of itself ordinarily reveal investigative procedures, records and follow-up activities. Finally, it would also probably fall within Rule 111 as an internal document prepared by the Prosecution in connection with the investigation and preparation of its case. The application is therefore dismissed.

***D – Any policies, directives or regulations introduced by Mr Taylor during the course of his employment as Chief of Investigations of the Office of the Prosecutor***

32. The Sabra Defence argues that how investigations were conducted, organised and regulated within the Office of the Prosecutor is an integral part of Mr Taylor’s expected testimony. Consequently, any policies, directives or regulations introduced by Mr Taylor

during the course of his employment as Chief of Investigations constitutes ‘statements’ within the meaning of Rule 110 (A) (ii) for the purposes of his testimony.

33. Counsel for Mr Sabra refer to the Special Tribunal’s decisions according to which witness statements are the witness’s product rather than the calling Party’s and are thus not protected under Rule 111. Defining a witness statement must be considered on a case-by-case basis. There are no formal statements from Trial Chamber interviews with the witness or documents produced by the Trial Chamber which are intended to be used or function as a statement.

34. The Prosecution submits that Mr Taylor, as Chief of Investigations, did not have the authority to issue such documents, and they do not exist. Notwithstanding this, any policies, directives or regulations of the Office of the Prosecutor, regardless of who introduced them, are not subject to disclosure under Rule 111. The Sabra Defence fails to substantiate and sufficiently explain its contention that policies, directives and regulations can transform into witness statements under Rule 110 (A) (ii).

35. The Trial Chamber is not convinced that policies, regulations or directives could in reality be considered as ‘witness statements’ and hence disclosable on that basis, although they could conceivably be relevant under other headings. And, as noted above at paragraph 20, the Prosecution is not obliged to disclose witness statements of Rule 165 Chamber witnesses under Rule 110 (A) (ii). But as the documents do not exist there is nothing to decide. The application is therefore dismissed.

***E – Any report, memorandum, or communication relating to the disappearance of Mr Abu Adass, including but not limited to those relating to Mr Taha, which was sent by or to Mr Taylor, or copied to him by other members of the Office of the Prosecutor or Lebanese authorities***

36. The Sabra Defence argues that any report, memorandum, or communication relating to Mr Abu Adass’s disappearance including those relating to Mr Taha, which was sent by or to Mr Taylor, or copied to him by other members of the Office of the Prosecutor or Lebanese authorities, go to the core of Mr Taylor’s testimony as to which steps the Prosecution took to eliminate Mr Taha as a suspect. This category of material is exculpatory under Rule 113 because Mr Taylor’s awareness and knowledge of the decisions taken in relation to the

investigative steps concerning Mr Taha necessarily go to the credibility of the Prosecution's case against Mr Sabra.

37. This material should be considered as witness statements under Rule 110 (A) (ii) and is therefore not subject to the protection of Rule 111. The fact that there is no formal witness statement for Mr Taylor is an irrelevant determination as to whether this material falls within Rule 110 (A) (ii).

38. The Prosecution submits that the Sabra Defence fails to substantiate that Rule 110 (A) (ii) applies to Mr Taylor as he is not and has never been a Prosecution witness. Moreover, instead of a case-by-case analysis, the Sabra Defence seeks mass conversion of any report, memorandum, or communication into a witness statement. The Trial Chamber has previously rejected the extensive definition of a witness statement advanced by the Sabra Defence. This material is for the confidential, internal use within the Office of the Prosecutor and is thus not subject to disclosure under Rule 111.

39. Further, the Prosecution has fulfilled its Rule 113 disclosure obligations as an exception to Rule 111. The Sabra Defence has not substantiated its claim under Rule 113. First, its request is overly broad and imprecise and thus amounts to a fishing expedition. Secondly, it failed to show the probable exculpatory nature of the requested material and makes speculative and unexplained assertions. Lastly, the Sabra Defence cites case law which, except for one decision, does not support the application.

40. The Trial Chamber is of the view that this request is vague, speculative and lacking in specificity. It refers to 'any' report, memorandum or communication. Moreover, the application includes, but is 'not limited' to material relating to Mr Taha. Accordingly and contrary to the Sabra Defence's submission, its request for disclosure falls short of the legal requirement for specificity.<sup>26</sup>

41. Even if the Sabra Defence had identified the requested reports, memoranda or communication with the requisite specificity, its Rule 113 application would nevertheless remain unwarranted as it has failed to substantiate the probable exculpatory nature of the material. Merely stating that Mr Taylor's knowledge of investigative decisions concerning Mr Taha 'necessarily' goes to the credibility of the Prosecution's case does not advance the

---

<sup>26</sup> See *similarly*, Decision on Merhi Defence disclosure request, paras 72-73.

application. Finally, most of the material sought would fall within Rule 111; such (non-exculpatory) communications are classically the internal work product of a Party—Prosecution or Defence—and protected from disclosure by this Rule. The application is therefore dismissed.

***G – Requests for assistance and subsequent responses***

42. The Sabra Defence submits that the requests for assistance and subsequent responses, sent and received by either the UNIIC or the Prosecution in relation to its efforts to find and interview or obtain evidence relevant to Mr Taha’s role in Mr Abu Adass’s disappearance are demonstrably material to the preparation of the defence.

43. The Prosecution responds that it disclosed all the requests for assistance and responses specified under item G, therefore the Sabra Defence’s application is moot.

44. The Trial Chamber agrees that, because this material has been disclosed, the application is moot; accordingly, it is dismissed.

**DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber dismisses the application.

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

Leidschendam,  
The Netherlands  
14 June 2018

*David Re*

\_\_\_\_\_  
Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

\_\_\_\_\_  
Judge Micheline Braidy

