

**BEFORE THE CONTEMPT JUDGE****Special Tribunal for Lebanon**

**Case No. :** STL-14-06/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr. Daryl Mundis  
**Date:** 5 March 2015  
**Submitted by:** *Amicus* Prosecutor  
**Original language:** English  
**Classification:** Public with Confidential Annexes

**IN THE CASE AGAINST**  
***AKHBAR BEIRUT S.A.L***  
**IBRAHIM MOHAMED ALI AL AMIN**

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**PROSECUTION PRE-TRIAL BRIEF**  
**PURSUANT TO RULE 91(G)(i)**

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*Amicus Curiae:*  
Mr. Kenneth Scott

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



Pursuant to Rule 91 (G)(i), (ii) and (iii) of the Rules of Procedure and Evidence (“Rules”), the *Amicus Curiae* Prosecutor (“*Amicus*”) respectfully files this pre-trial brief, together with his witness list and exhibit list.

## I. INTRODUCTION

1. Al Akhbar is a daily newspaper owned, managed and published by AKHBAR BEIRUT S.A.L. which is distributed in the whole territory of Lebanon, as well as in Syria.<sup>1</sup> The newspaper Al Akhbar describes itself as “a modern daily newspaper that goes beyond the traditional approaches of journalistic work.”<sup>2</sup>

2. Mr. Ibrahim Mohamed Ali al Amin (herein after ‘IBRAHIM AL AMIN’) is a well-known Lebanese journalist. He is the Chairman of AKHBAR BEIRUT S.A.L.’s Board of Directors and the Editor-in-Chief of the Al Akhbar newspaper.

3. On 15 and 19 January 2013, Al Akhbar published two articles authored by IBRAHIM AL AMIN containing names, photographs and other personal identifying information of 17 and 15 individuals, respectively, claiming that it was revealing the identity of alleged “Surprise Witnesses” of the Prosecution at the Special Tribunal for Lebanon in the *Ayyash et al.* (“*Ayyash*”) case. Both articles were published in Arabic in Al Akhbar’s paper edition and on its Arabic language website. Edited translations of the two articles were also published on Al Akhbar’s English language website on 15 and 20 January 2013, respectively. The Arabic and English versions of the two articles were further published and spread to the public through Al Akhbar’s Arabic and English language Facebook and Twitter accounts.

4. AKHBAR BEIRUT S.A.L. and its top management, including *in primis* IBRAHIM AL AMIN, knew the significance, sensitivity and impact of the information that they were publishing. Nonetheless, Al Akhbar, through the words of Mr. AL AMIN, claimed that such publications were “necessary to counter the international campaign of fabrication targeting the Resistance” or “the launching of a campaign of political accusations” towards which “Al

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<sup>1</sup> <http://www.al-akhbar.com/about>.

<sup>2</sup> <http://www.al-akhbar.com/about>.

Akhbar cannot be neutral”.<sup>3</sup> The entire tenor of the two articles left no doubt as to the intention behind the publications to convey the message that the Special Tribunal for Lebanon (the “Tribunal” or “STL”) is a manipulated enemy institution unable to maintain the confidentiality of its information.

5. By publishing identifying information on purported confidential witnesses in the *Ayyash* case, AKHBAR BEIRUT S.A.L. and IBRAHIM AL AMIN committed contempt and obstruction of justice, punishable under Rule 60*bis* (A) of the Rules of Procedure and Evidence of the Tribunal.

## II. THE ACCUSED

### AKHBAR BEIRUT S.A.L.

6. AKHBAR BEIRUT S.A.L. (“AKHBAR BEIRUT”) is a legal person operating a media business, having its headquarters in Beirut, Lebanon, and registered before the Beirut Commercial Court, Commercial Registry Section, on 21 March 2006, registration number 1005579 (Beirut (B)/Public/2006/1005579).<sup>4</sup> According to its commercial registration, AKHBAR BEIRUT’s object is, *inter alia*, to “[o]wn periodic and non-periodic publications, political or non-political, in any language, whether in its original language or translations, covering any topic, and publish and distribute the same.”<sup>5</sup>

7. At all times relevant to the charges AKHBAR BEIRUT was, and still is, the company that owns, manages and publishes Al Akhbar newspaper.<sup>6</sup>

8. Al Akhbar is a privately-owned daily newspaper publishing general interest articles. In addition to its paper edition, Al Akhbar publishes the content of its articles on its official

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<sup>3</sup> AP1406\_006\_ENG\_00038-00039 (emphasis added).

<sup>4</sup> AP1406\_030\_ARA\_00280-00309 / AP1406\_030\_ENG\_T\_00310-00339.

<sup>5</sup> AP1406\_030\_ENG\_T\_00311-00339.

<sup>6</sup> AP1406\_074\_ARA\_01415-01415; AP1406\_074\_ENG\_T\_01416-01416; <http://www.al-akhbar.com/about>.

Arabic language website<sup>7</sup> and its English language website.<sup>8</sup> Al Akhbar also has two Facebook pages, one in Arabic<sup>9</sup> and one in English,<sup>10</sup> as well as Arabic and English Twitter accounts,<sup>11</sup> where the links to the articles from the Arabic and English websites can be found.

9. Since the establishment of the United Nations International Independent Investigation Commission and the STL, Al Akhbar has regularly published numerous articles concerning the Commission and Tribunal. A specific section devoted to the Tribunal can be found on Al Akhbar's English language website, entitled "Al Akhbar Coverage of the STL."<sup>12</sup>

### **IBRAHIM MOHAMED ALI AL AMIN**

10. IBRAHIM AL AMIN, born on 20 August 1965 in Chakra, Lebanon, is an experienced journalist and very familiar with the Tribunal's proceedings. At all times relevant to this case, IBRAHIM AL AMIN was the founder, authorized signatory and shareholder of AKHBAR BEIRUT, the Chairman of its Board of Directors, and Al Akhbar's Editor-in-Chief.<sup>13</sup>

11. In these capacities and on behalf of AKHBAR BEIRUT, IBRAHIM AL AMIN was responsible for Al Akhbar's publication and content. He had the authority to decide, on behalf of the company, which articles would be published in the Al Akhbar newspaper, on Al Akhbar's Arabic language and English language websites. Likewise, IBRAHIM AL AMIN had the authority, on behalf of AKHBAR BEIRUT, to remove content from Al Akhbar's Arabic and English websites.

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<sup>7</sup> [www.al-akhbar.com](http://www.al-akhbar.com).

<sup>8</sup> <http://english.al-akhbar.com/>.

<sup>9</sup> <https://www.facebook.com/AlakhbarNews?fref=ts>.

<sup>10</sup> <https://www.facebook.com/AlakhbarEnglish?fref=ts>.

<sup>11</sup> <https://twitter.com/akhbar> (Arabic); <https://twitter.com/alakhbarenglish> (English).

<sup>12</sup> <http://english.al-akhbar.com/stl>.

<sup>13</sup> <http://english.al-akhbar.com/about>; AP1406\_067\_ENG\_01386-01387; AP1406\_068\_ENG\_01390-01391; AP1406\_069\_ENG\_01394-01395; AP1406\_030\_ENG\_T\_00313-00339.

12. IBRAHIM AL AMIN identifies himself as the “only authority”, within the company, “that can order the publishing of all material related to the Special Tribunal for Lebanon.”<sup>14</sup>

### III. SUMMARY OF EVIDENCE

#### a. Overview

13. On 15 and 19 January 2013, Al Akhbar published in the very first pages of its newspaper two articles claiming to reveal to the public the identity of “surprise” witnesses that the STL Prosecution planned to present in the trial of the *Ayyash* case to incriminate Hezbollah for the deaths of Prime Minister Rafic Hariri and other individuals. Together, the two articles disclose the full name, photograph and other identifying information of thirty-two purported “surprise” Prosecution witnesses.

14. In both articles, the information about the identified individuals is preceded by statements about the high politicization and manipulation characterizing the Hariri investigation since 2005, including the creation of the Tribunal and its work. The entire thrust and tenor of the articles is that the STL was wholly ineffective in protecting witness and could not be relied upon, given the lack of integrity of the Tribunal’s personnel and easy accessibility to, or leakage of its files.

15. The two articles were not only published in the paper edition of the newspaper, but were also significantly disseminated through the internet: (1) the articles were reproduced on Al Akhbar’s Arabic website; (2) an edited translation of both articles was published on Al Akhbar’s English website; (3) the articles were further circulated through Al Akhbar’s Arabic and English Facebook pages; and (4) the articles were further circulated through Al Akhbar’s Arabic and English Twitter accounts.

16. To the date of this filing, these articles are still available on Al Akhbar’s Arabic and English language websites.

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<sup>14</sup> AP1406\_056\_00650-00650.

**b. The 15 January Article**

17. On 15 January 2013, Al Akhbar published an article entitled “Special Tribunal for Lebanon - Witnesses’ Leaks - the Surprise.”<sup>15</sup> The two-page long article was announced on the cover page of the newspaper and occupied the entire following two pages. While the author of the article was not immediately indicated, IBRAHIM AL AMIN later indicated that the article was written by himself and his colleague Hassan Illeik.<sup>16</sup>

18. The article announces that Al Akhbar will publish a “sample” of the Prosecution’s “surprise” witnesses. The authors begin by claiming that, since 2005, alleged suspicions had lingered concerning the investigation into the Hariri assassination, which were aggravated after the Tribunal’s establishment and the issuing of the *Ayyash* indictment. The article complains that the Defence in the *Ayyash* case had been subjected to pressure and forced “to provide ‘legal cover’ to a ‘political trial.’” The article proceeds by recalling how alleged previous leaks of information had allowed Al Akhbar and other media outlets to publish “a large number of documents pertaining to the work of the” Commission and the Tribunal. The authors describe the alleged “games” that were “played” and the “surprises” that were allegedly announced in the course of the international investigation to support its “political accusations.” According to the article, the latest one was the Prosecutor’s significant reliance on his witness files, as the most prominent among the so-called “triumph cards” mentioned by the Prosecution and composed of hundreds of witnesses divided into several categories.

19. Al-Akhbar claims to have gained access to a list of witnesses that the prosecution plans to present at the trial to incriminate Hezbollah in the assassination of Hariri and others, and provides extensive information about seventeen of these witnesses, including their:

- Full name;
- Mother’s name;
- Place and date of birth (16 individuals);
- Place of residence;

<sup>15</sup> English translation of the original title: “المفاجأة: الشهود ليكس الدولية المحكمة”. See <http://www.al-akhbar.com/node/175554>; AP1406\_002\_ARA\_00011-00013; AP1406\_001\_ENG\_T\_00007-00010.

<sup>16</sup> Article of 19 January 2013.

- Occupation (16 individuals)
- Clear close-up photograph.

In addition, in relation to the first purported witness, the alleged content of his statement is disclosed.

20. On the same day, the article entitled “Special Tribunal for Lebanon - Witnesses’ Leaks - the Surprise”, with the exact same content described above, was published on Al Akhbar’s Arabic website.<sup>17</sup> The article was further spread through the publication of its link on Al Akhbar’s Arabic Facebook page.<sup>18</sup>

21. Also on 15 January 2013, an edited translation of the Arabic version of the article was published on Al Akhbar’s English website.<sup>19</sup> The article, entitled “STL Leaks: The Prosecution’s Surprise Witnesses,” reflects the same content as the Arabic article. It reiterates that a long list of witnesses, which constitutes the “most prominent” “hidden card” of the STL Prosecutor, was leaked to Al Akhbar, with no substantiation or proof of any “leak.” In fact, Al Akhbar’s assertion that the alleged confidential information was leaked is simply an unsupported part of its effort to undermine the Tribunal, to destroy the confidence of the public and witnesses in the Tribunal, and to interfere with and obstruct the administration of justice.

22. The article states again that in past years, Al Akhbar has “revealed much of the internal proceedings of the [Ayyash] case, publishing leaked documents from both the investigation and the STL.”<sup>20</sup> As in the Arabic version of the article, the English article refers to “surprises” promised by the Tribunal, describing the “army of witnesses” as the “[m]ost prominent among these ‘trump cards’ that the prosecution has up its sleeve.” The article concludes with the same assertion that Al Akhbar gained access to a list of witnesses that the

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<sup>17</sup> <http://www.al-akhbar.com/node/175551>; AP1406\_001\_ARA\_00001-00006; AP1406\_001\_ENG\_T\_00007-00010.

<sup>18</sup> AP1406\_075\_ARA\_01417-01417.

<sup>19</sup> <http://english.al-akhbar.com/node/14665>, AP1406\_003\_ENG\_00014-00016.

<sup>20</sup> *Ibid.*, p.2 (emphasis added).

prosecution plans to present at the trial, and incorporates the link to the Arabic version of the link where “a sample of the list can be found.”

23. On the same day, the link to the English article entitled “STL Leaks: The Prosecution’s Surprise Witnesses” was posted on Al Akhbar’s English Facebook page and on Al Akhbar’s English Twitter account.<sup>21</sup>

**c. The 19 January Article**

24. On 19 January 2013, Al Akhbar published an article entitled “List of witnesses - Surprise 2: Why we had to publish this information.”<sup>22</sup> The two-page article was again announced on the cover page of the newspaper and occupied the entire following two pages. The author of the article is IBRAHIM AL AMIN, who at the bottom of the article states that the article of 15 January 2013 was written by himself and his colleague Hassan Illeik and that “both names have been mistakenly omitted.”

25. The article declares that a “huge political and judicial clamour” followed Al Akhbar’s publication of a list of (alleged) Prosecution witnesses and states its intention to give the reasons for the publication and a new, second list of witnesses.

26. The first part of the article deals with the strong reactions that followed Al Akhbar’s first article and list of alleged secret witnesses, coming from both inside and outside the STL. IBRAHIM AL AMIN describes the strong reaction of the STL spokesperson, Marten Youssef, whose personal opinion, according to Al Akhbar, reflected the general disagreement of the STL’s powerful figures and their endeavour “to prosecute Al-Akhbar for ‘contempt of court’ and the publication of documents that interfere with the judicial proceedings and endanger the lives of individuals.”<sup>23</sup> The article discusses the political, juridical and media responses to the article, some of which saw the contested publication as an attempt by Al

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<sup>21</sup> AP1406\_076\_ENG\_01420-01420; AP1406\_079\_ENG\_01426-01426; AP1406\_080\_ENG\_01427-01427.

<sup>22</sup> English translation of the original title: “المعلومات؟ هذه نشر وجب لماذا : 2 المفاجأة الشهود لائحة”. <http://www.al-akhbar.com/node/175858>; AP1406\_005\_ARA\_00033-00035; AP1406\_004\_ENG\_T\_00027-00032.

<sup>23</sup> AP1406\_004\_ENG\_T\_00027-00032 (emphasis added).



Akhbar to obstruct international justice and a violation of the law. The article also states that Al Akhbar received questions from “some of those whose personal details were published”. (Emphasis added.)

27. IBRAHIM AL AMIN defends Al Akhbar’s publication, claiming that, “[o]ver the past six years, Al-Akhbar has published tens and even hundreds of documents related to ‘breach of confidentiality’ and so will keep on doing the same ‘without delay’ . . .”<sup>24</sup> According to his words, the investigation into the Hariri assassination is a public affair “par excellence,” indeed subjected to such previous leaks in the past that allowed any observer to access the contents of all STL’s documents without having to wait for a trial that will be characterized by a high level of confidentiality measures. IBRAHIM AL AMIN stresses that, however, “Al-Akhbar was not the first to publish documents and information related to the Tribunal’s work.” He claims that other media outlets have previously published sensitive information concerning the investigation without any meaningful legal and administrative measures being taken against them.

28. Then comes the clear message that the article intends to convey:

[A]nyone in Lebanon, in the region and even in The Hague who believes there could be information or secrets unknown to anyone who wishes to know them is deluded and mistaken, if not insane and overly self-confident. [ . . . ] The interviewees who thought they had struck secret deals with the Prosecution also engaged in ample gossip, until someone inside the Tribunal started leaking their details.<sup>25</sup>

29. Al Akhbar claims to have this information and these “secrets” and says that the publication of this information is “necessary to confront an international smear campaign against the Resistance.” According to AL AMIN, the entire work of the Lebanese and international investigation commissions, ending with the Prosecution of the STL, would be highly politicized and lacking the respect of the majority of the public opinion. In addition, said Al Akhbar, the logic of justice applied at the Tribunal would be unreal and Al-Akhbar could not remain neutral towards an issue still used by certain political sides as a pretext to reach political goals.

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<sup>24</sup> AP1406\_004\_ENG\_T\_00027-00032 (Emphasis added).

<sup>25</sup> <http://www.al-akhbar.com/node/175855>; AP1406\_004\_ENG\_T\_00028-00032.

30. The article concludes with IBRAHIM AL AMIN claiming the authorship of the 15 January article together with Hassan Illeik, followed by a list of fifteen additional alleged Prosecution witnesses. The following information is disclosed for all of these individuals:

- Full name
- Mother's name
- Place and date of birth
- Place of residence
- Occupation
- A clear close-up photograph

In addition, in relation to the first purported witness, the alleged content of his statement is disclosed.

31. On the same day, the article entitled "List of witnesses - Surprise 2: Why we had to publish this information," with the same content described above, was published on Al Akhbar's Arabic website.<sup>26</sup> The article was further distributed through the publication of its link on Al Akhbar's Arabic Facebook page and on Al Akhbar's Arabic Twitter account.<sup>27</sup>

32. On the following day, 20 January 2013, an edited translation of the Arabic version of the article, bearing the signature of IBRAHIM AL AMIN, was published on Al Akhbar English website.<sup>28</sup> The article, entitled "The STL List: Why We Published," summarizes the negative reaction from those who perceived the article as an attempt to obstruct international justice and the asserted "efforts by powerful figures in the STL to take legal action against the paper on charges of contempt of court, publishing documents that compromise the fairness and integrity of proceedings, and also putting peoples' lives at risk."<sup>29</sup> The article admits and highlights that Al Akhbar "has published tens, if not hundreds, of documents that fall into the

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<sup>26</sup> <http://www.al-akhbar.com/node/175855>; AP1406\_004\_ARA\_00020-00026; AP1406\_004\_ENG\_T\_00027-00032.

<sup>27</sup> AP1406\_077\_ARA\_01421-01421; AP1406\_081\_ARA\_01428-01428; AP1406\_082\_ARA\_01430-01430.

<sup>28</sup> <http://english.al-akhbar.com/node/14710>; AP1406\_006\_ENG\_00036-00039.

<sup>29</sup> AP1406\_006\_ENG\_00036-00039 (Emphasis added).

'breach of confidence' category" and goes on: "[I]f anyone in Lebanon or the region, or even in The Hague, thinks there are any secrets or information that are unknown to those who want to know them – they are deluded and mistaken, if not deranged and excessively self-regarding." It continues: [T]he requisites of justice have not been genuinely upheld, and Al-Akhbar cannot be neutral towards something that continues to be used as a pretext to sow divisions between the Lebanese, cause domestic clashes, or discredit the Resistance."<sup>30</sup>

33. On the same day, the link to the English article entitled "The STL List: Why We Published" was posted on Al Akhbar's English Facebook page and on Al Akhbar's English Twitter account.<sup>31</sup>

**d. The availability of the articles on the web**

34. On 20 January 2013, a Notice of Cease and Desist from the STL Registrar<sup>32</sup> was served on Attorney Nizar Saghih (representative of AKHBAR BEIRUT S.A.L. and of Ibrahim Al Amin) and on Mr. Pierre Abi Saab, vice editor-in-chief of Al-Akhbar newspaper.<sup>33</sup> The letter informed Al Akhbar that its actions could constitute a knowing and wilful interference with the administration of justice and demanded "that Al Akhbar, its employees and its affiliates, immediately cease and desist from publicizing, in any means, the abovementioned information and remove, with immediate effect, all such information from its website."<sup>34</sup>

35. On 27 August 2013, the 5 June 2013 Pre-Trial Judge's "Order Requesting the Cooperation of the Lebanese Authorities to Cease Dissemination of Information"<sup>35</sup> was served

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<sup>30</sup> *Id.*

<sup>31</sup> AP1406\_078\_ENG\_01424-01424; AP1406\_083\_ENG\_01432-01432; AP1406\_084\_ENG\_01433-01433.

<sup>32</sup> AP1406\_026\_ARA\_00201-00202; AP1406\_026\_ENG\_00203-00203.

<sup>33</sup> AP1406\_027\_ARA\_00204-00211; AP1406\_027\_ENG\_T\_00212-00219.

<sup>34</sup> AP1406\_026\_ENG\_00203-00203.

<sup>35</sup> AP1406\_028\_ARA\_00220-00225; AP1406\_028\_ENG\_00226-00231.

on Mr. Moussa Farhat, who signed on behalf of Al Akhbar and IBRAHIM AL AMIN.<sup>36</sup> The Order requested the Prosecutor General of Lebanon “to notify the public, including the media in Lebanon, that pursuant to the Decision of 25 May 2012, they are prohibited from disseminating any confidential material and information of the Tribunal.”<sup>37</sup>

36. To the date of this filing, the described articles remain available on the Internet at the following links:

- Arabic article of 15 January 2013: “Special Tribunal for Lebanon – Witnesses’ Leaks – the Surprise”

Newspaper online version <http://www.al-akhbar.com/node/175554>

Web article <http://www.al-akhbar.com/node/175551>

- English article of 15 January 2013: “STL Leaks: The Prosecution’s Surprise Witnesses”

Web article <http://english.al-akhbar.com/node/14665>

- Arabic article of 19 January 2013: “List of witnesses – Surprise 2: Why we had to publish this information”

Newspaper online version <http://www.al-akhbar.com/node/175858>

Web article <http://www.al-akhbar.com/node/175855>

- English article of 20 January 2013: “The STL List: Why We Published”

Web article <http://english.al-akhbar.com/node/14710>

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<sup>36</sup> AP1406\_029\_ARA\_00232-00255; AP1406\_029\_ENG\_T\_00256-00279 (AP1406\_029\_ENG\_T\_00275-00279)

<sup>37</sup> AP1406\_028\_ENG\_00229-00231.

#### IV. APPLICABLE LAW

37. Pursuant to Rule 60bis (A), AKHBAR BEIRUT and IBRAHIM AL AMIN are charged with Contempt and Obstruction of Justice in that they interfered with the administration of justice by publishing information on purported confidential witnesses in the *Ayyash* case. The charges are based on the STL's inherent contempt power and on Rule 60bis (A) which identifies the core of the crime of contempt as any *knowing and willful interference with the administration of justice*.<sup>38</sup> The *actus reus* of contempt is conduct which “tends to obstruct, prejudice or abuse the administration of justice.”<sup>39</sup> The required *mens rea* is that the conduct be knowing and wilful.<sup>40</sup>

38. The International Criminal Tribunal for the former Yugoslavia (“ICTY”) has held that such language encompasses “[a]ny deliberate conduct which creates a real risk that confidence in the Tribunal’s ability to grant effective protective measures would be undermined [as such conduct] amounts to a serious interference with the administration of justice [as] public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal.”<sup>41</sup>

<sup>38</sup> Rule 60bis (A) makes it clear that it is not limited to the particular conduct listed in paragraph (A). See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/CJ/R60bis.1, Decision in Proceedings for Contempt with Orders in Lieu of Indictment, 31 January 2014, paras.11-13 [Decision with Order in Lieu]; *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, [Al Akhbar case] Decision on Motion Challenging Jurisdiction, 6 November 2014, para.4.

<sup>39</sup> ICTY, *Prosecutor v. Duško Tadić*, IT-94-1-A-R77, Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para.26 [Vujin]. See also, *inter alia*, ICTY, *Prosecutor v. Zlatko Aleksovski*, Judgement on Appeal by Anto Nobile Against Finding of Contempt, IT-95-14/1, 30 May 2001, para.36 [Nobile - Appeals], ICTY, *Prosecutor v. Beqa Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005, para.9 [Beqaj]; ICTR, *Prosecutor v. Nshogoza*, ICTR-07-91-T, Judgement, 7 July 2009, para.155 [Nshogoza]; ICTY, *In the Matter of Ljubiša Petković*, IT-03-67-R77.1, Redacted Version of Judgment Pronounced on 11 September 2008, 11 September 2008, para. 25 [Petković], para. 155.

<sup>40</sup> *Beqaj*, para. 22; *Nshogoza*, para. 155; ICTR, *Prosecutor v. Siméon Nchamihigo*, ICTR-2001-63-T, *Decision on Defence Motion on Contempt of Court and Reconsideration of Protective Measures for Defence Witnesses*, 9 August 2007, para.9 [Nchamihigo]; SCSL, *Independent Counsel against Brima Samura*, SCSL-2005-01, Judgement in Contempt proceedings, 26 October 2005, para.18 [Samura]; SCSL, *In the Matter of Contempt Proceedings Arising from the Case of The Prosecution v. Charles Ghankay Taylor*, SCSL-12-01-T, Judgement in Contempt proceedings, 19 October 2012, para.41 [Taylor]; *Nobile – Appeals*, para.30.

<sup>41</sup> ICTY, *The Prosecutor v. Ivica Marijačić & Markica Rebić*, IT-95-14-R77.2, Judgment, 10 March 2006, paras 49-50 [Marijačić & Rebić]. See also ICTY, *The Prosecutor v. Domagoj Margetić*, IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007, para.15 [Margetić]; ICTY, *In the Matter of Vojislav Seselj*, IT-03-67-R77.4, Public Redacted Version of Judgement Issued on 28 June 2012, 28 June 2012, para. 40 [Seselj R77.4].

39. As the President of the STL, acting as Contempt Judge, stated in the Decision with Order in Lieu, “[t]he reason for seeking confidentiality of witnesses’ particulars is to avoid exposing them to risk”.<sup>42</sup> If it was not for provisions of confidentiality, protective measures and the like, many persons would be reluctant or even refuse to give information or evidence to the Tribunal.<sup>43</sup>

40. The publication of sensitive information of witnesses frustrates the Tribunal's crucial judicial function of protecting sensitive witnesses who agree to testify on the condition that the Tribunal can afford them real and meaningful protection.<sup>44</sup> It also frustrates the Tribunal's judicial function of creating and preserving a secure environment for future witnesses who can and will only testify if their safety and confidentiality can be guaranteed.<sup>45</sup>

41. Accordingly, the *actus reus* of the offence charged consists of creating a real risk that the workings of the Tribunal (its administration of justice) and the public’s confidence in it (including its ability to grant and enforce effective protective measures) would be undermined.

42. Established jurisprudence makes it clear that the Prosecution is not required to prove that the charged conduct *actually* interfered with the administration of justice.<sup>46</sup> Where a person is charged with contempt involving interfering with a witness or potential witness, it is

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<sup>42</sup> Decision with Order in Lieu, para. 34.

<sup>43</sup> In the ICTY jurisprudence cited above, the Judges concluded that creating a real risk of undermining the public confidence in the ability of the Tribunal to grant effective protective measures amounted to serious interference with the administration of justice after noting the prosecution’s point that witnesses who are willing to give evidence but wish to do so under protective measures, as well as witnesses who did give evidence and are about to be heard before the Tribunal but anticipate that protective measures will apply to them, might be reluctant to do so as a result of the Accused conduct. See the Judgment of 10 March 2006 in *The Prosecutor v. Ivica Marijačić & Markica Rebić*, para.49.

<sup>44</sup> ICTY, *Prosecutor v. Slobodan Milšević*, Case IT-02-54-A-R77.4, Decision on Interlocutory Appeal on Kosta Bulatovic Contempt Proceedings, 29 August 2005, para. 41 (holding that “the Prosecution is quite right in stating that ‘[n]o function is more basic to a court’s administration of justice than its ability to compel witness testimony. Witness testimony and the administration of justice are in a real sense synonymous’.”).

<sup>45</sup> “Disclosure of identifying information of alleged and actual victims/witnesses has significant negative effects on them, the public and its understanding and perceptions of the international criminal tribunals as well as on the tribunals’ administration of justice”. Expert Report, AP1406\_145\_ENG\_01900-01924.

<sup>46</sup> The contempt conduct is conduct which “tends to obstruct, prejudice or abuse the administration of justice.”

required that the conduct of the Accused creates a “real risk” or is likely to interfere with a witness or potential witness.<sup>47</sup>

43. The requisite *mens rea* related to the charges is the knowledge by the Accused that his conduct will create a real risk that public confidence in the Tribunal will be undermined. The Accused must have knowledge and a will to interfere with the administration of justice.

44. With regard to AKHBAR BEIRUT and Ibrahim AL AMIN, the elements of the charged crime are:

(1) Through the acts and/or omission of Mr AL AMIN and through the acts and/or omissions of AKHBAR BEIRUT’s principals, employees, agents and/or affiliates, the Accused wilfully published, or caused to be published, information on purported confidential witnesses in the *Ayyash* case;

(2) The publication of information on purported confidential witnesses in the *Ayyash* case interfered with the administration of justice by creating a real risk that public confidence in the Tribunal would be undermined, including, *inter alia*, its ability to grant and enforce protective measures and confidentiality; and

(3) The principals, employees, agents and/or affiliates of AKHBAR BEIRUT and Mr AL AMIN knew, or should have known, that publishing information on purported confidential witnesses in the *Ayyash* case would interfere with the administration of justice by creating a real risk that public confidence in the Tribunal would be undermined, including, *inter alia*, its ability to grant and enforce protective measures and confidentiality.

45. Most national or domestic jurisdictions have developed a form of corporate criminal responsibility.<sup>48</sup> Further, and as noted by the Appeals Panel, there is an emerging shared

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<sup>47</sup> *Beqaj*, para.21; *Margetić*, para.64; ICTY, *Prosecutor v. Astrit Haraqija and Bajrush Morina*, IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008 [*Haraqija & Morina*] paras.18-19; ICTY, *Prosecutor v. Vojislav Seselj*, IT-03-67-R77.2, Public Edited Version of “Judgement on Allegations of Contempt” Issued on 24 July 2009, 24 July 2009 [*Seselj R77.2*], para. 27; ICTY, *In the Case against Vojislav Seselj*, IT-03-67-R77.2-A, Judgement, 19 May 2010 [*Seselj R77.2 - Appeals*], para.20; SCSL, *The independent Counsel Against Hassan Papa BANGURA, Samuel KARGBO, Santigie Borbor KANU, Brima Bazy KAMARA*, SCSL-11-02-T, Judgement in Contempt Proceedings, 25 September 2012 (filed 1 October 2014), para.664.

international understanding on the need to address corporate liability.<sup>49</sup> “Corporate liability is on the verge of attaining, at the very least, the status of a general principle of law applicable under international law.”<sup>50</sup> Significant weight and consideration should be given to relevant principles and practices regarding corporate criminal liability, in light of and with attention to the inherent contempt power possessed by international courts.<sup>51</sup>

46. The first of these principles is that corporations are liable for the conduct of a broad range of employees, officers and representatives<sup>52</sup> acting within the scope of their employment<sup>53</sup> and on behalf of the company.<sup>54</sup>

47. The acts committed by individuals, alone or jointly, must be performed *on behalf* of the legal person. Purely personal acts are not linked to the legal person.<sup>55</sup> The person or

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<sup>48</sup> STL, *In the case against New TV S.A.L. and Karma Mohamed Tahsin al Khayat*, STL-14-05/I/CJ (*Al Jadeed* case), *Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings*, 2 October 2014, para.44 (“Appeal Panel, *Al Jadeed* case”).

<sup>49</sup> Appeals Panel, *Al Jadeed* case, para.46.

<sup>50</sup> Appeals Panel *Al Jadeed* case, para.67.

<sup>51</sup> Appeals Panel *Al Jadeed* case, para.45.

<sup>52</sup> Article 121-2 of the French Penal Code. Under Article 121-2, legal persons are liable for the crimes committed on their behalf by their organs and representatives. When the organs or representatives have the required *mens rea* and *actus reus* of the crime, the legal entity is automatically liable. The Lebanese Criminal Code (“LCC”), Legislative Decree No. 340 of 1 March 1943, art. 210. Article 210 states that “[l]egal persons shall be criminally responsible for the actions of their directors, management staff, representatives and employees when such actions are undertaken on behalf of or using the means provided by such legal persons.” In Lebanese law, a legal entity is liable for the actions of managers, “workers” and “employees.” According to the Lebanese case law, the term “employees” or “workers” should be read as “agent” in the French equivalent. Lebanese Court of Cassation, Criminal Chamber 3, Decision No. 82, 1 January 1996 (published in *Al-Mustachar Al-Thahabi*) Lebanese Criminal Appeals Court in Bekaa, Decision of 2 March 1997 (published in *Al-Mustachar Al-Thahabi*) Investigating Civil Court Judge in North Lebanon, Decision No. 234, 20 November 1991 (published in *Al-Mustachar Al-Thahabi*). See also The Law Commission (LAW COM No 344) Contempt of Court (2): Court Reporting, Presented to Parliament pursuant to section 3(2) of the Law Commissions Act 1965 March 25, 2014, para. 2.2, 2.3; Law Commission Consultation Paper No 209 Contempt of Court, Appendix B: Contempt of Court and the European Convention on Human Rights, para. 2.77; Christina de Maglie, *Models of Corporate Criminal Liability in Comparative Law*, 4 Wash.U. Glo.Stud.L.Rev. 547 (2005), online: <<http://digitalcommons.law.wustl.edu/vol4/iss3/4>> at p.553.

<sup>53</sup> Chance, Chifford, *Corporate Liability in Europe 2012*; *United States v. Cincotta* 689 F.2d 238, 241-42 (1<sup>st</sup> Cir. 1982).

<sup>54</sup> Rone, Dana, *On Institute of Criminal Liability of Legal Entities in Eight Countries- Nordic Countries (Finland, Sweden, Norway, Iceland and Denmark) and Baltic Countries (Latvia, Lithuania and Estonia)*, Ministry of Justice of the Republic of Latvia, March 15, 2006 (In Denmark, liability does not attach to private acts of employees or “where the criminal act or omission was committed as part of the performance of work ordered, but where the offence must be considered an absolutely abnormal act carried out by the employee;” In Belgium a corporation may be liable for criminal offenses “committed on its behalf or when an offence is intrinsically linked to its activities” but not for acts committed outside the scope of professional activities).



persons need to have acted *under the name* of the legal entity or at least *on behalf* of the legal person.<sup>56</sup> It is not required that an act be specifically authorized by management, but only that a natural person or persons acted broadly within the scope of their duties.<sup>57</sup>

48. The second principle or trend is that it is not necessary to identify the specific natural person within the corporation who committed the act as long as it is established that *some* natural person(s) did.<sup>58</sup> As determined by the Appeals Panel,

[T]here can exist circumstances where the Tribunal may be unable, due to the complexity of corporate structures, internal operating progresses, and the aggregate effect of the actions of many individuals, to identify and apprehend the most responsible natural persons within a corporation. This would fail to underline and punish corporate cultures that condone and in some cases encourage illegal behavior.<sup>59</sup>

49. This principle that the identification of the precise natural person who committed the illegal act or omission is not required emanates from domestic jurisdictions, to avoid an impunity gap.<sup>60</sup>

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<sup>55</sup> B. Bouluc, *La Criminalisation du Comportement Collectif – France*, in *La Criminalisation du Comportement: Criminal Liability of Corporations* 240 (H. Doelder & Klaus Tiedemann eds. Kluwer Law Int'l, 1996).

<sup>56</sup> Christina de Maglie, *Models of Corporate Criminal Liability in Comparative Law*, 4 Wash.U. Glo.Stud.L.Rev. 547 (2005), online: <<http://digitalcommons.law.wusl.edu/vol4/iss3/4>> at p.553.

<sup>57</sup> Guy Stessens, *Corporate Criminal Liability: A Comparative Perspective* 43 Int'l & Comp. L.Q. 493 at 514.

<sup>58</sup> Under article 210 of the Lebanese Criminal Code, an individual is often identified as committing the crime and consequently their actions will link the legal entity. This strict approach applies to substantive criminal offences and is not adapted to inherent contempt powers. In light of the realities of modern times and the context of international tribunals, that approach is not consistent with the purpose of contempt charges and the principle of effectiveness. Contempt powers are, and should be more expansive and flexible. The objectives of international criminal law demand that in the case of the inherent power of contempt, the doctrinal issues be given less weight than the importance of prevention, appropriate punishment of crimes and deterrence.

<sup>59</sup> Appeal Panel, *Al Jadeed* case, para 83.

<sup>60</sup> See, e.g., Italian law, where “[t]he responsibility of the legal person subsists also when: a) the author of the crime has not been identified or is not imputable [...]. D.Lgs. 231/2001, Article 8 “Autonomy of the legal person's responsibility”. Similarly, under German procedural rules, Section 30 of German Act of Regulatory Offences (OWiG) does not make it necessary to pursue or identify an individual perpetrator in order to hold the legal person liable. Gesetz über Ordnungswidrigkeiten, OWiG, vom 24. Mai 1968, Bundesgesetzblatt 1968 I, 481 (German Act on Regulatory Offences) (“OWiG”), §30. This is also the case in the many other States such as the United States and Europe, see also US, *United States v Bank of New England* (1987) 821 F2d 844; Jennifer Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 2014, p. 36; Chance, Chifford, *Corporate Liability in Europe* 2012.

50. The third principle or trend is that it is not required that one or the same natural person is responsible for both the *actus reus* (or for all parts of the *actus reus*) and the *mens rea*. Legal persons, such as corporations, will often involve a number of natural persons in the decision-making process and the *mens rea* can arise from an aggregation or accumulation of both the *actus reus* and *mens rea*.<sup>61</sup> These can be split between, or spread among multiple persons.<sup>62</sup> It is possible to impose criminal liability to the legal entity for the acts of one employee and the *mens rea* of another employee. It is also possible that while no single employee had sufficient information necessary to form or possess the required *mens rea*, if multiple individuals within the corporation possessed the elements of such knowledge collectively, their aggregated knowledge can be attributed to the corporation.<sup>63</sup>

51. Where accountability lies beyond any one person, it would be contrary to the interest of justice and the principles international criminal law, to create an unacceptable environment of impunity simply because more than one individual participated in, or committed the acts or formed the *mens rea*.

52. The fourth principle or trend is that it is not necessary for the natural person or persons responsible for conduct in question to be charged or convicted of the offense attributed to the corporation, in order for the corporation to be convicted.<sup>64</sup> This flows from the previous principle, as no one natural person may have committed all of the *actus reus* or formed all or any of the *mens rea*.

53. Considering that it is this Tribunal which exercises its own contempt power and must protect its own administration of justice, witnesses and processes, and mindful of the demands and particular circumstances of international criminal justice,<sup>65</sup> that power should not be constrained by practices flowing from any particular national system, in their specific settings.

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<sup>61</sup> Christina de Maglie, Models of Corporate Criminal Liability in Comparative Law, 4 Wash.U. Glo.Stud.L.Rev. 547 (2005), online: <<http://digitalcommons.law.wusl.edu/vol4/iss3/4>> at p.557

<sup>62</sup> *Ibid.*, at 555, 557.

<sup>63</sup> *Ibid.*, at 555, 557.

<sup>64</sup> *Ibid.*, at 547.

<sup>65</sup> *Al Jadeed* case, Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of An Indictment, 24 July 2014, para.55.

It would be impractical and an unwise limit on the Tribunal's power and would create an impunity gap to require the conviction of a natural person before the legal person can be liable.

54. The aims and objectives of prosecuting and punishing legal persons may differ from those of the punishment of the natural person alone.<sup>66</sup> Holding the legal person accountable, separate from or in addition to any particular natural person, sends a clear message of institutional accountability to the public and the organization's management and shareholders, and any other persons involved with the legal person, resulting in a more efficient dissuasive, preventative and penal effect.

55. Taking these domestic principles and trends into account in light of the developments in international law, a legal person is liable for contempt of court pursuant to Rule 60*bis* for:

- (a) The acts committed by a broad range of its principals, officers, employees, agents, representatives and/or affiliates;
- (b) Who alone or jointly engage in conduct within the scope of their employment that amounts to contempt of court, regardless of whether the specific identity of the actor or actors is known; and
- (c) That conduct was done on behalf of the legal person.<sup>67</sup>

56. Based on the foregoing and as applied to the present charges, the additional elements for AKHBAR BEIRUT are:

- (4) The principals, officers, managers, employees, agents, representatives and/or affiliates of AKHBAR BEIRUT acted within the scope of their employment (or relation to the company);

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<sup>66</sup> Appeal Panel, *Al Jadeed* case, para.83.

<sup>67</sup> The contempt power is a broad and flexible power to respond to threats to the integrity of a court's proceedings. Hence it is important to formulate elements for legal person liability that are consistent with these characteristics. See Appeal Panel, *Al Jadeed* case, para.59.

- (5) The principals, officers, managers, employees, agents, representatives and/or affiliates had authority on behalf of AKHBAR BEIRUT to publish information on purported confidential witnesses in the *Ayyash* case; and
- (6) The principals, officers, managers, employees, agents, representatives and/or affiliates' wilfully published information on purported confidential witnesses in the *Ayyash* case on behalf of AKHBAR BEIRUT S.A.L.

## V. THE RESPONSIBILITY OF THE ACCUSED

57. AKHBAR BEIRUT and IBRAHIM AL AMIN knowingly interfered with the administration of justice by publishing identifying information about alleged confidential or "secret" Tribunal witnesses in the *Ayyash* case, in full knowledge of the confidentiality and sensitivity of the matters involved and of the real risk that the workings of the Tribunal (its administration of justice) and the public's confidence in the Tribunal would be undermined.

58. As the principal actor and official at AKHBAR BEIRUT, and pursuant to his *de jure* and *de facto* powers, authority and influence, IBRAHIM AL AMIN decided to publish, caused to be published, was and is responsible for publishing the 15 and 19 Articles on Al Akhbar newspaper claiming to reveal the identity of a number of alleged "Surprise Witnesses" of the STL prosecution.<sup>68</sup> In all respects, IBRAHIM AL AMIN acted with the requisite *mens rea*.

59. As the legal person doing business as, owning, managing and publishing Al Akhbar newspaper, AKHBAR BEIRUT is criminally responsible for the conduct and charges set out in the Order in Lieu of an Indictment<sup>69</sup> for the publication of the 15 and 19 Articles on Al Akhbar newspaper and websites. Through its principals, officers, managers, employees, agents, representatives and/or affiliates, including (without limitation) IBRAHIM AL AMIN, AKHBAR BEIRUT acted with the requisite *mens rea* and is responsible for contempt of court and obstruction of justice.

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<sup>68</sup> AP1406\_056\_00650-00650: "I found it to be my duty to publish the information."

<sup>69</sup> *Al Akhbar* case, Order in Lieu of an Indictment, 31 January 2014.

60. The entire thrust and tenor of Al Akhbar's publications were, in both articles and in the newspaper's own words, to reveal the "most prominent" "hidden card"<sup>70</sup> of the Prosecution at the Special Tribunal for Lebanon, a politicized institution unable to keep the confidentiality of its documents, as the following article excerpts demonstrate:

The prosecution team at the Special Tribunal for Lebanon (STL) investigating the assassination of Prime Minister Rafic Hariri, promises to reveal surprises that will ascertain the assumption upon which the indictment was based. The most prominent of these surprises is the list of witnesses whose actual number was concealed by the Office of the Prosecutor. Al-Akhbar publishes today a "sample" of the names of these witnesses.<sup>71</sup>

In past years, Al-Akhbar [ . . . ] have revealed much of the internal proceedings of the case, publishing leaked documents from both the investigation and the STL.<sup>72</sup>

Al-Akhbar has gained access to a list of witnesses that the prosecution plans to present at the trial to help prove their case upon which the indictment was based.

Al-Akhbar published below a brief description of a number of those witnesses, which is a "sample" of individuals whose testimonies will be used by the prosecution team to expose its strength in order to incriminate Hezbollah in the assassination of Hariri and others.<sup>73</sup>

[I]f anyone in Lebanon or the region, or even in The Hague, thinks there are any secrets or information that are unknown to those who want to know them – they are deluded and mistaken, if not deranged and excessively self-regarding.<sup>74</sup>

Those who thought they had struck secret deals with the prosecution did a lot of chattering too, before someone within the STL leaked their details. That was the leak that Al-Akhbar managed to take advantage of to publish what it deemed necessary to counter the international campaign of fabrication targeting the Resistance.<sup>75</sup>

Thus the requisites of justice have not been genuinely upheld, and Al-Akhbar cannot be neutral towards something that continues to be used as a pretext to sow divisions between the Lebanese, cause domestic clashes, or discredit the Resistance.<sup>76</sup>

61. AKHBAR BEIRUT and IBRAHIM AL AMIN were clearly aware that pursuant to the STL's Rules, their conduct of publishing "personal details"<sup>77</sup> of alleged secret Tribunal

<sup>70</sup> AP1406\_003\_ENG\_00014-00016 (emphasis added).

<sup>71</sup> AP1406\_001\_ENG\_T\_00007-00010 (emphasis added).

<sup>72</sup> AP1406\_003\_ENG\_00015-00016 (emphasis added).

<sup>73</sup> AP1406\_001\_ENG\_T\_00008-00010 (emphasis added).

<sup>74</sup> AP1406\_006\_ENG\_00038-00039 (emphasis added).

<sup>75</sup> AP1406\_006\_ENG\_00038-00039 (emphasis added).

<sup>76</sup> AP1406\_006\_ENG\_00038-00039 (emphasis added).

witnesses would constitute contempt of court. In the 19 January article, Mr. AL AMIN not only addresses the various negative reactions to his article, but specifically refers to the “efforts by powerful figures in the STL to take legal action against the paper on charges of contempt of court, publishing documents that compromise the fairness and integrity of proceedings, and also putting peoples’ lives at risk.”<sup>78</sup>

62. Moreover, on the same day, 19 January 2013, another article about the STL entitled “SKeyes Conference: Bias towards “International Justice”<sup>79</sup> was published on Al Akhbar’s Arabic website<sup>80</sup> and English website.<sup>81</sup> The author, in commenting on the reactions that followed the first article on 15 January 2013, clearly refers to Rules 60*bis*, inserting in the article a hyperlink to the Rules of Procedure and Evidence in the official STL website, and illustrates its content and meaning:

During the first session as well, a “personal” criticism was addressed at Al-Akhbar, after the newspaper published (<http://english.alakhbar.com/node/14665>) the details of some STL witnesses, as this has allegedly “jeopardized their safety.”

Personal because Marten Youssef, official spokesperson for the STL, expressed only his opinion about Al-Akhbar’s move, without ever mentioning the legal measures that may be taken against the newspaper.

This is despite the fact that there is a clear clause (<http://www.stl-tsl.org/en/documents/rules-of-procedure-and-evidence/rules-of-procedure-and-evidence>) in the STL Rules of Procedure and Evidence (Rule 60 *bis*) which refers to prosecuting all those who disclose information that is supposed to remain confidential, because doing so is deemed interference in the judicial process.

[ . . . ] Finally, Rule 60 *bis* mentioned above states the following: “The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal’s jurisdiction according to the Statute. This includes [...] any person who: discloses information relating to proceedings in knowing violation of an order of the Pre-Trial Judge or a Chamber.”<sup>82</sup>

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<sup>77</sup> AP1406\_006\_ENG\_00037-00039.

<sup>78</sup> AP1406\_006\_ENG\_00036-00039 (emphasis added).

<sup>79</sup> English translation of original title: “الدولية العدالة»-ل انحياز «سكاييز» مؤتمر”

<sup>80</sup> <http://www.al-akhbar.com/node/175854>; AP1406\_011\_ARA\_00064-00065.

<sup>81</sup> <http://english.al-akhbar.com/node/14707>; AP1406\_012\_ENG\_00068-00070; English title: “SKeyes: International Justice, STL and Al-Akhbar”.

<sup>82</sup> AP1406\_012\_ENG\_00068-00070.

63. In addition, AKHBAR BEIRUT and IBRAHIM AL AMIN received the Registrar's Notice of Cease and Desist on 20 January 2013,<sup>83</sup> through which the company and IBRAHIM AL AMIN were put on notice that their conduct "may constitute a knowing and wilful interference with the administration of justice and may place at risk the security of those individuals that have been the subject of the article."<sup>84</sup>

64. On 27 August 2013, AKHBAR BEIRUT and IBRAHIM AL AMIN were further served with the 5 June 2013 Pre-Trial Judge's "Order Requesting the Cooperation of the Lebanese Authorities to Cease Dissemination of Information,"<sup>85</sup> which requested the Prosecutor General of Lebanon "to notify the public, including the media in Lebanon, that pursuant to the Decision of 25 May 2012, they are prohibited from disseminating any confidential material and information of the Tribunal."<sup>86</sup>

65. Despite the Notice of Cease and Desist, which demanded that publication of any names, photographs, personal information interviews, statements or transcripts of individuals that are believed to be potential STL witnesses cease immediately, and the 5 June 2013 Pre-Trial Judge's Order, the articles were not removed from the internet and in fact, are still accessible on the Internet, as of the date of this filing.

66. As admitted by Al Akhbar itself in many articles,<sup>87</sup> this is not the first time, nor the last, that Al Akhbar newspaper discloses alleged sensitive Tribunal information to the public.<sup>88</sup> On the topic of the disclosure of the identity of confidential witnesses, another Al Akhbar article published on 17 April 2013 questioned:

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<sup>83</sup> AP1406\_027\_ARA\_00204-00211; AP1406\_027\_ENG\_T\_00212-00219.

<sup>84</sup> AP1406\_026\_ENG\_00203-00203.

<sup>85</sup> AP1406\_029\_ARA\_00232-00255; AP1406\_029\_ENG\_T\_00256-00279  
(AP1406\_029\_ENG\_T\_00275-00279)

<sup>86</sup> AP1406\_028\_ENG\_00229-00231.

<sup>87</sup> AP1406\_001\_ARA\_00001-00006, AP1406\_003\_ENG\_00014-00016; AP1406\_004\_ARA\_00020-00026; AP1406\_006\_ENG\_00036-00039; AP1406\_011\_ARA\_00064-00065; AP1406\_012\_ENG\_00068-00070.

<sup>88</sup> AP1406\_018\_ARA\_00163-00166 ; AP1406\_019\_ENG\_00167-00171; AP1406\_013\_ARA\_00074-00096.

But is there a moral problem in exposing names of “secret witnesses”? Well, it sure depends on the case. It can’t be said categorically that all courts should be respected and that all witnesses in any court have to be respected and protected. [ . . . ] Should the French people have respected Nazi courts? Should occupied people respect the courts that are set up by foreign occupiers? In all those cases, witnesses of such courts are dismissed (and historically punished) as collaborators. But is the Hariri court any different? Not really.

[ . . . ]

The Lebanese, or those who oppose the political faction behind the court, are under no obligation to participate in a process that aims at their own exclusion, marginalization, and even repression.<sup>89</sup>

67. The Accused have publicly stated that they do not recognize the jurisdiction or legitimacy of the Tribunal or its authority to issue charges or orders against them,<sup>90</sup> that they will not stop making information available to the public,<sup>91</sup> and that “[the] tribunal doesn't mean anything to me at all, neither what it does nor what it will do, and I will refuse to implement any decision issued by it.”<sup>92</sup>

## VI. ADMISSIONS BY THE PARTIES

68. Unfortunately, counsel representing AKHBAR BEIRUT and IBRAHIM AL AMIN does not stipulate to the authenticity and admissibility of any of the evidence listed in Annex B.

## VII. MATTERS NOT IN DISPUTE/AGREED FACTS

69. To date, counsel representing AKHBAR BEIRUT and IBRAHIM AL AMIN has not agreed to any of the agreed facts proposed by *Amicus*.

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<sup>89</sup> AP1406\_150\_ENG\_01998-01999; <http://english.al-akhbar.com/node/15549>.

<sup>90</sup> *Al Akhbar* case, Transcript of 29 May 2014, p. 13 (EN).

<sup>91</sup> AP1406\_004\_ARA\_00020-00026; AP1406\_006\_ENG\_00036-00039; AP1406\_105\_ENG\_01706-01709.

<sup>92</sup> AP1406\_117\_ARA\_1763; AP1406\_118\_ENG\_T\_01796-01800; AP1406\_129\_ENG\_01805-01808.



**VIII. DISCLOSURE PER RPE Rule 91(G)(iii) – Exhibit List**

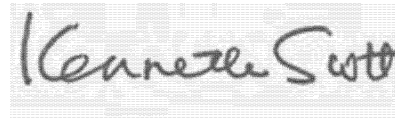
70. See Annex A to this Brief.

**IX. DISCLOSURE PER RPE Rule 91(G)(ii) – Witness List**

71. See Annex B to the Brief.<sup>93</sup>

**RESPECTFULLY SUBMITTED THIS 5 MARCH 2015.**

**Word Count:** 7.836



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Mr Kenneth Scott  
*Amicus Curiae*



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<sup>93</sup> The Annex will be submitted in two versions, one confidential (Annex B) and one confidential and *ex parte* (Annex C) to allow the Contempt Judge to identify the protected witnesses.