

The Pre-Trial Judge



المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN

Le Juge de la mise en état

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/I**

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

The Registrar: **Mr Herman von Hebel**

Date: **16 August 2011**

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**ORDER ON LIFTING THE CONFIDENTIALITY OF THE INDICTMENT AGAINST MESSRS.
AYYASH, BADREDDINE, ONEISSI AND SABRA AND OTHER DOCUMENTS**

Office of the Prosecutor:
Mr Daniel A. Bellemare, QC

Defence Office:
Mr François Roux



NOTING the Decision relating to the Indictment issued on 28 June 2011 by the Pre-Trial Judge of the Tribunal (respectively the “Decision on the Indictment” and the “Pre-Trial Judge”),¹ pursuant to which Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra (the “Accused”) were charged with regard to the attack of 14 February 2005 committed against Mr Rafiq Hariri and other persons;

NOTING the arrest warrants including transfer and detention orders issued against the Accused by the Pre-Trial Judge on 28 June 2011 (the “Arrest Warrants”);²

CONSIDERING that, upon request of the Prosecutor and in accordance with Rule 74 of the Rules of Procedure and Evidence of the Tribunal (the “Rules”), the Indictment remained confidential in order to facilitate the effective arrest of the Accused, and was to remain confidential until further notice;

CONSIDERING that, *proprio motu* and for the same reasons, the Pre-Trial Judge decided that the Decision on the Indictment would remain confidential;

CONSIDERING that, in accordance with the Prosecutor’s request, the Pre-Trial Judge ordered that the Arrest Warrants not be made public before the effective arrest of the Accused or until further notice;

CONSIDERING that, upon request of the Prosecutor, on 28 July 2011 the Pre-Trial Judge amended the order for non-disclosure of the Indictment, in order to make public, in particular, the full names and pseudonyms of the Accused, as well as the charges laid against them;³

¹ Case No. STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011 (the “Decision on the Indictment”).

² Case No. STL-11-01/I, Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Order, 28 June 2011; Case No. STL-11-01/I, Warrant to Arrest Mr Mustafa Amine Badreddine including Transfer and Detention Order, 28 June 2011; Case No. STL-11-01/I, Warrant to Arrest Mr Hussein Hassan Oneissi including Transfer and Detention Order, 28 June 2011; Case No. STL-11-01/I, Warrant to Arrest Mr Assad Hassan Sabra including Transfer and Detention Order, 28 June 2011.

³ Case No. STL-11-01/I, Order on the Prosecutor’s Motion for Variation of the Order for Non-Disclosure of the Indictment, 28 July 2011.

CONSIDERING that on 11 August 2011, upon receiving the report submitted by the Lebanese authorities on 9 August 2011 pursuant to Rule 76 paragraph (C) of the Rules, the President announced publicly that the Indictments had not been served on the Accused and that, to date, they had not been arrested;

CONSIDERING that Rule 76 paragraph (E) of the Rules provides that, if reasonable attempts have been made to serve the indictment and the arrest warrant on the accused, but that they have failed, the President of the Tribunal (the “President”), after consulting the Pre-Trial Judge, may order the service of the indictment to be effected in an alternative manner, in particular, by way of the procedure of public advertisement;

CONSIDERING that on 11 August 2011, the Pre-Trial Judge asked the Prosecutor to give him his opinion and observations with regard to lifting the confidentiality of the Indictment, the Arrest Warrants and the Decision on the Indictment in order to be able to publicly advertise the Indictment, in accordance with Rule 76 paragraph (E) of the Rules;

CONSIDERING that on 12 August 2011, the Prosecutor replied confidentially to the Pre-Trial Judge that he had no objection to the lifting of the confidentiality of the Indictment, its Annexes and the Decision on the Indictment, after they have been redacted, as well as the Arrest Warrants, with the exception of their Annexes, and that would be done for the purposes of protecting the interests of the investigation, the victims and the witnesses;⁴

⁴ Case No. STL-11-01//PTJ, Motion for Variation of the Order for Non-Disclosure of the Arrest Warrants dated 26 June 2011, the Indictment and the Decision Relating to the Examination of the Indictment dated 28 June 2011, 12 August 2011.

CONSIDERING that, in support of his confidential reply, the Prosecutor filed suggested redactions for the English version of the Indictment, its Annexes and the Decision on the Indictment;

CONSIDERING that the Pre-Trial Judge is of the opinion that, at the present stage of the proceedings and for the requirements thereof, it is appropriate to lift the confidentiality of the Indictment, its Annexes, the Decision on the Indictment and the Arrest Warrants;

CONSIDERING that the Pre-Trial Judge finds however that the Prosecutor's request is well-founded with regard to the redaction of some parts of the Indictment, its Annexes and the Decision on the Indictment so as to protect the ongoing investigation and the safety of the victims and witnesses, and that shall remain so until further notice;

CONSIDERING that the Pre-Trial Judge finds that the suggested redactions of these documents submitted by the Prosecutor on 12 August 2011 are justified;

CONSIDERING that, upon request of the Pre-Trial Judge, the Prosecutor filed today the redacted versions in English, Arabic and French of the Decision on the Indictment;

CONSIDERING that the Pre-Trial Judge verified that the redactions in the French and English versions of the Decision on the Indictment are faithful to the proposed redactions suggested by the Prosecutor on 12 August 2011;

CONSIDERING, however, that the Pre-Trial Judge has not been able to conduct the same verification with regard to the Arabic version of the Decision on the Indictment and that it is appropriate, therefore, to ask the Registry to do so;

CONSIDERING, lastly, that the Pre-Trial Judge finds that it is in the interest of the ongoing investigation that the confidential Annexes to the Arrest Warrants remain confidential;

CONSIDERING furthermore that nothing prevents the lifting of the confidentiality of the two other orders issued during the examination of the Indictment, namely, the *ex parte* and confidential Order of the Pre-Trial Judge of 9 June 2011 for clarification of the Indictment⁵ and the *ex parte* and confidential Order of the Pre-Trial Judge of 14 June 2011 for the dismissal of the additional material filed by the Prosecutor on 10 June 2011;⁶

FOR THESE REASONS,

PURSUANT TO Rules 74 and 77 paragraph (E) of the Rules,

THE PRE-TRIAL JUDGE,

ORDERS

- (1) the lifting of the confidentiality of the Indictment and its Annexes, subject to the redactions suggested by the Prosecutor as well as the Arrest Warrants, with the exception of their Annexes, and that shall remain until further notice;
- (2) the lifting of the confidentiality of the redacted Decision on the Indictment, and that shall remain until further notice;
- (3) the lifting of the confidentiality of the Order of 9 June 2011 for clarification of the Indictment and the Order of 14 June 2011 for the dismissal of the additional material filed by the Prosecutor on 10 June 2011;

⁵ Case No. STL-11-01/I, Order for Clarification of the Indictment, 9 June 2011.

⁶ Case No. STL-11-01/I, Order for Dismissal of the Additional Material Filed by the Prosecutor on 10 June 2011, 14 June 2011.

ORDERS the Prosecutor to file with the Registry the redacted versions of the Indictment, and its Annexes, in English, Arabic and French by Tuesday, 16 August 2011 at 15:30 at the latest;

ORDERS the Registry to verify that the redacted Arabic version of the Decision on the Indictment is faithful to the French and English redacted versions of that Decision, attached to this Order, by Tuesday, 16 August 2011 at 15:30 at the latest.

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

Leidschendam, 16 August 2011

[signature]

Daniel Fransen
Pre-Trial Judge

