

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: **Judge Daniel Fransen**

The Registrar: **Mr. Herman von Hebel**

Date: **22 August 2011**

Original language: **English**

Type of document: **Public**

**ORDER ON PROSECUTION'S SUBMISSION OF AMENDED REDACTED
INDICTMENT FOR SERVICE ON THE ACCUSED DATED 17 AUGUST 2011**

Office of the Prosecutor:
Mr. Daniel A. Bellemare, MSM, Q.C.

Defence Office:
Mr. François Roux



1. The Pre-Trial Judge of the Special Tribunal for Lebanon (“the Pre-Trial Judge” and “the Tribunal”, respectively) is in receipt of the Prosecutor’s Submission of Amended Redacted Indictment for Service on the Accused dated 17 August 2011 (the “Submission”).¹ In its Submission, the Prosecution requests the Pre-Trial Judge to approve its proposed redactions to a specific version of the indictment of 10 June 2011 in the case concerning the attack against Rafiq Hariri (“the Indictment”).

I. Background

2. In his 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 and Mr. Assad Hassan Sabra dated 28 June 2011 (the “Decision of 28 June 2011”), the Pre-Trial Judge confirmed the Indictment.² In the Decision of 28 June 2011, the Pre-Trial Judge also ordered *inter alia* that the Indictment remains confidential until its service on the accused or until further notice, except for the purposes of the transmission of individual redacted versions thereof to the relevant Lebanese authorities or other states identified by the Prosecutor for eventual service. Consequently, the Prosecution prepared individual redacted versions of the Indictment for service on the Accused (the “10 June 2011 redacted version” of the Indictment).

3. On 16 August 2011, the Pre-Trial Judge issued the Order Relating to the Lifting of the Confidentiality of the Indictment and Other Documents (the “Order Lifting Confidentiality”).³ It had as its effect *inter alia* the lifting of the confidentiality of the Indictment, subject to several redactions proposed by the Prosecution and authorised by the Pre-Trial Judge. This shall be referred to as the “16 August 2011 public redacted version”.⁴

4. In the Submission, the Prosecution now files “new proposed amended redacted Indictments in English (Annex A) and Arabic (Annex B) specifically for purposes of service on the accused.”⁵ This version of the Indictment is not the same as either the 10 June 2011

¹ Case No. STL-11-01/I/PTJ, Prosecution’s “Submission of Amended Redacted Indictment for Service on the Accused”, filed confidentially and *ex parte* on 17 August 2011. The Submission contains two annexes: Annex A contains the English version of the Indictment with the Prosecution’s proposed redactions; Annex B contains the Arabic version of the same.

² 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 and Mr. Assad Hassan Sabra”, 28 June 2011.

³ Case No. STL-11-01/I, “Ordonnance relative à la levée de la confidentialité de l’acte d’accusation établi à l’encontre de MM. Ayyash, Badreddine, Oneissi et Sabra et d’autres documents”, 16 August 2011.

⁴ The Prosecution refers to this as the “Public version of the indictment”; Submission, para. 1.

⁵ *Ibid.*, para. 2.

redacted version or the 16 August 2011 public redacted version. The Prosecution points out that certain information — which in the 10 June 2011 redacted version is redacted — “need no longer be withheld from the accused, given that it is now in the public domain” by virtue of the 16 August 2011 public redacted version.⁶

5. Nevertheless, the Prosecution maintains that certain redactions to the version of the indictment intended for service on the accused are still required. These proposed retained redactions fall into two categories: information relating to the identities of certain witnesses, and information revealing the identities of the victims of the attack against Mr. Hariri (Annex B to the Indictment).⁷ Revealing this information to the accused at this stage would, the Prosecution avers, allow “adverse action” to be taken against “potential witnesses/surviving victims”, it “may adversely impact the security of the victims and their families” and it “may lead to interference with witnesses and victims”.⁸

II. Statement of Reasons

6. In his Decision of 28 June 2011, the Pre-Trial Judge ordered that the Indictment and its supporting materials must remain confidential. The Pre-Trial Judge based this decision, in accordance with Rule 74 of the Rules of Procedure and Evidence (“the Rules”), on the determination that such confidentiality would ensure the integrity of the judicial procedure and, in particular, ensure that the search for and — where appropriate apprehension of — the accused are carried out effectively. Furthermore, such confidentiality would ensure the protection of witnesses and safeguard ongoing investigations.⁹

7. In his Order Lifting Confidentiality, the Pre-Trial Judge found that the reason of ensuring that the accused are apprehended no longer justifies the confidentiality of those aspects of the Indictment. He considered nevertheless that ensuring the protection of witnesses and safeguarding ongoing investigations is a valid reason which remains applicable.¹⁰

⁶ *Ibid.*, para. 2.

⁷ *Ibid.*, para. 4.

⁸ *Ibid.*, paras 5, 7-9.

⁹ Decision of 28 June 2011, para. 101 (see n. 11 below).

¹⁰ Order Lifting Confidentiality, p.4 : “*Attendu que le Juge de la mise en état estime cependant fondée la demande du Procureur d’expurger certains éléments de l’Acte d’accusation, de ses annexes et de la Décision relative à l’Acte d’accusation pour protéger l’enquête en cours et la sécurité des victimes et des témoins, et ce, jusqu’à nouvel ordre.*”

8. The Pre-Trial Judge therefore finds that, in accordance with Rule 74 of the Rules, the redactions proposed by the Prosecution remain justified in order to ensure the protection of victims and witnesses, and to safeguard ongoing investigations.

9. The Pre-Trial Judge furthermore considers that the proposed amended redacted indictment for service on the accused dated 17 August 2011 shall remain confidential, as it contains information which the Order Lifting Confidentiality did not render public, and the confidentiality of which is still justified.¹¹

III. Disposition

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rule 74 of the Rules,

ORDERS that the redactions to the individual redacted versions of the Indictment prepared for service on the accused be varied in a manner consistent with the proposals of the Prosecution and contained in Annexes A and B of the Submission;

ORDERS the Registry to replace the 10 June 2011 redacted versions of the Indictment with copies of the amended redacted indictment for service on the accused filed 17 August 2011, and to transmit the same, in the appropriate form, to the Lebanese authorities; and

ORDERS that this version of the amended redacted indictment for service on the accused shall otherwise remain confidential until a further order, with the exception that it may be disclosed to the relevant authorities of the Lebanese Republic and to those of other States to whom the Prosecutor might transmit the Indictment pursuant to Rule 74 of the Rules.

¹¹ Cf. Decision of 28 June 2011, para. 101: "...ensure the integrity of the judicial procedure and, in particular, ensure that the search and, where appropriate, apprehension of the accused are carried out effectively. [Confidentiality] should likewise assist in ensuring the protection of the witnesses concerned by not revealing their identity and in safeguarding the ongoing investigations by not disclosing the techniques that have been employed and the information that has been gathered"

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

Leidschendam, 22 August 2011.



Daniel Fransen
Pre-Trial Judge

