

**BEFORE THE TRIAL CHAMBER**

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

Before: Judge Robert Roth, Presiding
Judge Micheline Braidy
Judge David Re
Judge Janet Nosworthy, Alternate Judge
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Herman von Hebel

Date: 2 November 2011

Original language: English

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THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA**

**DECISION ON THE PROSECUTION'S
PRELIMINARY SUBMISSION ON RULE 106**

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

Head of the Defence Office:
Mr. François Roux





1. The Trial Chamber is seized of the "Prosecution's Preliminary Submission on Rule 106" dated 25 October 2011,¹ requesting the Trial Chamber to, *inter alia*, grant leave to file supplementary submissions upon receipt of the response from the Government of Lebanon to a Request for Assistance dated 7 October 2011 ("RFA"), by 10 November 2011; and, to invite the Lebanese authorities to participate in the 11 November 2011 hearing to assist the Trial Chamber in determining the application of Rule 106 to the case.²
2. On 26 October 2011, the Trial Chamber requested the Defence Office to respond to the Prosecution's Submission by Monday 31 October 2011,³ pursuant to Rule 9, in view of the dates set out in the Chamber's Scheduling Order of 20 October 2011.
3. The Defence Office responded on 31 October 2011,⁴ requesting that the Trial Chamber:
 - i) order the prosecution to provide the Defence Office with a copy of the response to the RFA by 6 November 2011, or as soon as possible thereafter;
 - ii) grant an extension of time of fourteen working days from the date of the filing of the Prosecution's supplementary submissions for the Defence Office to file its written submissions regarding the application of Rule 106(A);
 - iii) grant an extension of time for the hearing on the application of Rule 106(A) to be held nine days after the expiration of the deadline for a possible reply by the Prosecutor to the written submissions of the Defence Office; and,
 - iv) grant the request of the Defence Office for the confidential and *ex parte* documents listed in the Annex to the 17 October 2011 Order of the Pre-Trial Judge.⁵

¹ Case No. STL-11-01/I/TC, Prosecution's Preliminary Submission on Rule 106, 25 October 2011 ("Prosecution's Submission").

² *Ibid.*, paras. 19 (ii)-(iii).

³ Email to Mr. François Roux, Head of the Defence Office, from the Trial Chamber's Legal Officer, 26 October 2011.

⁴ Case No. STL-11-01/I/TC, Defence Office Response to the Prosecution's Preliminary Submission on Rule 106, 31 October 2011.



4. Pursuant to the Trial Chamber's Scheduling Order of 20 October 2011, submissions are to be filed by the Prosecution, each of the four Accused (Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra), and the Defence Office by 2 November 2011.
5. Having been provided with the RFA in a confidential Annex attached to the Prosecution's Submission, the Trial Chamber considers that the RFA is relevant to Rule 106 and therefore any response to the RFA, due on 6 November 2011, could assist the Trial Chamber in making its determination under Rules 105 *bis* and 106. Noting that the Defence Office does not object to the Prosecution's request to file supplementary submissions, it is appropriate for the Prosecution to make supplementary submissions on this discrete issue.
6. At this stage of the proceedings, given that a response from the Government of Lebanon is not expected until 6 November 2011, the Trial Chamber also considers that the RFA should remain confidential.
7. The Trial Chamber acknowledges that the Defence Office has received a copy of the RFA. Given the Trial Chamber's invitation to the Defence Office to make submissions on Rule 106, it is therefore appropriate for any response to this RFA to be provided to the Defence Office. For the same reasons, the Defence Office should be provided with the confidential and *ex parte* documents in the Annex to the 17 October 2011 Order of the Pre-Trial Judge.⁶
8. However, the Trial Chamber does not consider it necessary to delay the hearing scheduled for 11 November 2011, or to extend the time given for the Defence Office to respond to the supplementary submissions to the fourteen working days sought since the Defence Office may respond during the oral hearing on 11 November, and in writing thereafter if necessary.
9. In relation to the Prosecution's request to invite the Lebanese authorities to participate in the 11 November 2011 hearing, the Trial Chamber will defer its decision on the participation of

⁵ *Ibid.*, para. 17.

⁶ Affaire n° STL-11-01/I, Ordonnance de Saisine de la Chambre de Première Instance conformément à l'Article 105 *bis* paragraphe A) du Règlement de Procédure et de Preuve aux fins de Statuer sur l'Engagement d'une Procédure par Défaut, et les documents détaillés dans l'annexe de l'ordonnance, 17 octobre 2011.



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the Lebanese authorities in any future hearings until it has had the opportunity to consider the written and oral submissions requested in its Scheduling Order of 20 October 2011.

FOR THESE REASONS the Trial Chamber:

- (i) Grants leave to the Prosecution to file supplementary submissions related to the anticipated response to the RFA by 10am on 10 November 2011;
- (ii) Orders the Prosecution to provide the Defence Office with a copy of any response to the RFA by 6 November 2011 or as soon as possible thereafter;
- (iii) Instructs the Registry to immediately provide the Defence Office with the confidential and *ex parte* documents listed in the Annex to the 17 October 2011 Order of the Pre-Trial Judge;
- (iv) Rejects the Defence Office's request for an extension of time of fourteen working days to file its response to the Prosecution's supplementary submissions;
- (v) Invites the Defence Office to respond to the Prosecution's supplementary submissions at the hearing on 11 November 2011 or in writing by 18 November 2011;
- (vi) Rejects the Defence Office's request for an extension of time for hearing the application under Rule 106 (A);
- (vii) Rejects the Prosecution's request to invite the Lebanese authorities to participate in the 11 November 2011 hearing;
- (viii) Will decide whether to invite the Lebanese authorities to participate after receiving all of the anticipated submissions, including those to be made at the hearing on 11 November 2011; and
- (ix) Orders that the RFA contained in the confidential Annex to the Prosecution's Submission remain confidential until further order of the Trial Chamber.



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

2 November 2011,

Leidschendam, The Netherlands

Judge Robert Roth, Presiding

Judge Micheline Braidy

Judge David Re

