



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

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

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

Registrar: Mr. Daryl Mundis, Registrar

Date: 8 November 2013

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THE PROSECUTOR

v.

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

DECISION ON PROSECUTION'S APPLICATION TO AUTHORISE NECESSARY REDACTIONS PURSUANT TO RULE 116 DATED 18 OCTOBER 2013

Office of the Prosecutor:
Mr. Norman Farrell

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Victims' Legal Representative:
Mr. Peter Haynes

Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz
Mr. John Jones

Counsel for Mr. Hussein Hassan Oneissi:
Mr. Vincent Courcelle-Labrousse
Mr. Yasser Hassan

Counsel for Mr. Assad Hassan Sabra:
Mr. David Young
Mr. Guénaél Mettraux



INTRODUCTION

1. On 18 October 2013, the Prosecution sought authorisation for redactions to three witness statements pursuant to Rule 116 (A) of the Rules of Procedure and Evidence.¹ On 25 October 2013, the Pre-Trial Judge submitted his report under Rule 95 seizing the Trial Chamber with the case file and a number of undecided applications and motions, including this one.²

APPLICABLE LAW

2. Rule 116, *Application and Grounds for Non-Disclosure* provides relevantly:
 - (A) Where information in the possession of the Prosecutor is not obtained under or otherwise subject to Rule 118, and its disclosure would ordinarily be required under Rule 110 or 113, but such disclosure (i) may prejudice ongoing or future investigations, (ii) may cause grave risk to the security of a witness or his family, or (iii) for any other reasons may be contrary to the public interest or the rights of third parties, the Prosecutor may apply *ex parte* to the Trial Chamber sitting *in camera* to be relieved in whole or in part of an obligation under the Rules to disclose that material. When making such application the Prosecutor shall provide the Trial Chamber with the information that is sought to be kept confidential, together with a statement relating to the proposed counterbalancing measures including, *inter alia*: identification of new, similar information; provision of the information in summarised or redacted form; or stipulation of the relevant facts.
 - (B) The Trial Chamber shall decide whether the information that is the subject of the application would ordinarily have to be disclosed in the absence of an application under this Rule. If this is the case, the Trial Chamber shall consider *ex parte* the Prosecutor's statement relating to proposed counterbalancing measures including, *inter alia*: identification of new similar information; provision of the information in summarised or redacted form; or stipulation of the relevant facts.

PROSECUTION SUBMISSIONS

3. The Prosecution submits that non-disclosure has been permitted regarding information that would threaten the safety of witnesses (i.e., reference to telephone numbers, how they commute to and from work, the security of their residences, etc.), while redactions applied to such information constitutes an appropriate counter-balancing measure.³ The Prosecution then refers to the 'Redaction Methodology', a memorandum produced by the Prosecution and the Registry's

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, Case No. STL-11-01/PT/PTJ, Prosecution's Application to Authorize Necessary Redactions Pursuant to Rule 116, Confidential and *Ex-Parte*, 18 October 2013 (Redaction Application). A CD-ROM containing the three witness statements accompanied the application.

² Affaire n° STL-11-01/PT/PTJ, Rapport du Juge de la mise en état établi conformément à l'article 95, paragraphe A) du Règlement de procédure et de preuve, confidentiel, 25 octobre 2013.

³ Redaction Application, para. 5.

Victims and Witnesses Unit (VWU), as a document that outlines the procedure used to apply redactions according to Rule 116.⁴

4. More specifically, the Prosecution submits that the proposed redactions in the three witness statements pertain to information related to: i) a witnesses' personal safety; and, ii) a witnesses' personal opinion about his/her own security.⁵ The Prosecution highlights that the Pre-Trial Judge has previously approved similar redactions, and that the VWU concurs with the proposed redactions.⁶ Additionally, the Prosecution submits that no evidence or any information previously disclosed will be redacted.⁷ Separately, the Prosecution noted that the statements of two witnesses contain redactions of information that is not subject to disclosure under Rule 111.⁸

DISCUSSION

5. According to Rule 116 (B), the Trial Chamber shall first decide whether the information sought to be redacted would ordinarily be subject to disclosure. As the Prosecution intends to disclose the three witness statements under Rule 110, the Trial Chamber is satisfied in this regard.
6. When material must be disclosed under Rules 110 or 113, an application must satisfy one of the three criteria of Rule 116 (A) to relieve (in whole or in part) the Prosecution of its obligation, namely if disclosure: (i) may prejudice ongoing or future investigations, (ii) may cause grave risk to the security of a witness or his family, or (iii) for any other reasons may be contrary to the public interest or the rights of third parties. The Redaction Methodology elaborates on specific circumstances which may affect the security of a witness or his family.
7. The Prosecution must support its application with a statement relating to the proposed counterbalancing measures (e.g., redactions). The Prosecution has done so, and the Trial Chamber is satisfied that the proposed redactions will not prejudice the right of the Accused to a fair trial. Further, the Trial Chamber is satisfied that the proposed redactions relate exclusively to content

⁴ Redaction Application, para. 6. The Redaction Methodology is attached to the Redaction Application as confidential and *ex-parte* Annex B. It was produced following the Pre-Trial Judge's Decision of 20 December 2012, which established a framework for non-disclosure pursuant to Rule 116 (See, Case No. STL-11-01/PT/PTJ, Decision on Prosecution Application for Non-Disclosure of Certain Statements of Witnesses Pursuant to Rule 116, Confidential, 20 December 2013).

⁵ Redaction Application, para. 7.

⁶ Redaction Application, para. 7.

⁷ Redaction Application, para. 8.

⁸ Redaction Application, para. 9. Rule 111, titled *Disclosure of Reports, Memoranda or Other Internal Documents*, reads: 'Reports, memoranda, or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under the Rules. For purposes of the Prosecutor, this includes reports, memoranda, or other internal documents prepared by the UNHCR or its assistants or representatives in connection with its investigative work'.

which may cause risk to the security of the witnesses or their families. Accordingly, the Trial Chamber authorises the Prosecution to implement the proposed redactions prior to disclosure to the Defence.

CONFIDENTIALITY

8. The Prosecution submitted its application confidentially and *ex-parte*, in accordance with Rule 116, and requested that this status be maintained until decided otherwise. The Prosecution's request is granted.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

PURSUANT TO Rules 77 and 116 of the Rules,

GRANTS the application to redact the three witness statements; and

ORDERS that the Prosecution's application and the annex to this decision shall remain confidential and *ex-parte*.

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

Leidschendam,
The Netherlands

8 November 2013

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

