

THE TRIAL CHAMBER

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

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

Registrar: Mr. Daryl Mundis

Date: 16 April 2015

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

ORDER IN RELATION TO SABRA MOTION FOR DISCLOSURE OF A DOCUMENT**Office of the Prosecutor:**

Mr. Norman Farrell, Mr. Graeme Cameron
& Mr. Alexander Milne

Victims' Legal Representatives:

Mr. Peter Haynes, Mr. Mohammad F. Mattar
& Ms. Nada Abdelsater-Abusamra

Counsel for Mr. Salim Jamil Ayyash:

Mr. Eugene O'Sullivan, Mr. Emile Aoun
& Mr. Thomas Hannis

Counsel for Mr. Mustafa Amine Badreddine:

Mr. Antoine Korkmaz, Mr. John Jones
& Mr. Iain Edwards

Counsel for Mr. Hassan Habib Merhi:

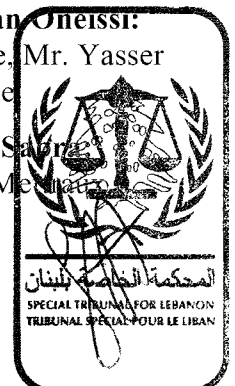
Mr. Mohamed Aouini, Ms. Dorothee Le Fraper
du Hellen & Mr. Jad Khalil

Counsel for Mr. Hussein Hassan Oneissi:

Mr. Vincent Courcelle-Labrousse, Mr. Yasser
Hassan & Mr. Philippe Larochelle

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Meunier
& Mr. Geoffrey Roberts



1. In its decision of 20 February 2014, the Trial Chamber authorised the Prosecution, under Rule 116 (A) of the Special Tribunal’s Rules of Procedure and Evidence,¹ to redact from four documents those passages necessary to protect the safety and security of three Lebanese officials.² These documents included a document, referred to as ‘WAH/001’³ and disclosed to the Defence,⁴ used during a Prosecution’s interview of Mr Wissam Al Hassan in June 2012;⁵ the name of one of the three Lebanese officials is redacted from document ‘WAH/001’. This document falls under Rule 118⁶ as the Lebanese Internal Security Forces (ISF) provided it, confidentially, to the United Nations International Independent Investigation Commission.

2. Counsel for the Accused, Mr Assad Hassan Sabra, have now requested the Trial Chamber, under Rules 110 (A) (ii), 110 (B), 113 (A) and/or 118 (B), to order the Prosecution to give them access to the full, unredacted version of document ‘WAH/001’.⁷ Counsel for Mr Sabra submitted that the unredacted document is material to their preparations for trial as it relates to the origin and circumstances surrounding the discovery of the mobile telephones allegedly used to plan the assassination of the former Lebanese Prime Minister, Rafik Hariri, in Beirut on 14 February 2005.⁸

3. The Prosecution opposed the motion arguing that ‘it is left to the discretion of the ISF to consent to the disclosure of the information in the relevant document. They have not done so’.⁹ This submission is ambiguous as it does not clarify whether the Prosecution has actually asked the Lebanese Government whether it consents to disclose document ‘WAH/001’ in an unredacted form. To assist the Trial Chamber to make an informed decision on whether it should order the Prosecution, under Rules 110 or 113 (A), to disclose the full, unredacted version of document ‘WAH/001’, and considering that Mr Al Hassan is

¹ Rule 116 (A) states that, “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 of an obligation under the Rules to disclose that material”.

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1416, Decision on Prosecution Request for Protective Measures (Redaction of Four Documents) of 27 January 2014, 20 February 2014, para. 13.

³ In the transcript of an interview with Mr Wissam Al Hassan on 16 and 17 June 2012, the Prosecution’s investigator described document ‘WAH/001’ as ‘40 pages of the record of previous meetings dated between 11 April 2008 and 14 December 2010’ and ‘memorandum written by staff from IIIC and STL following meeting with [Mr Wissam Al Hassan]’. See document with ERN 60263705_TS_O_EN_AR_01, pp 174 and 176. On 14 March 2014, the Prosecution disclosed four redacted pages of document ‘WAH/001’ following a request for full disclosure by counsel for Mr Hussein Hassan Oneissi.

⁴ The Prosecution disclosed on 14 March 2014 four redacted pages of document ‘WAH/001’.

⁵ F1829, Request for Disclosure of a Document, 27 January 2015. On 19 October 2012, Mr Al Hassan, who was Mr Hariri’s Chief of Protocol, was assassinated in a car bombing in Beirut.

⁶ Rule 118 (A) states that, “Where the Prosecutor is in possession of information which was provided on a confidential basis and which affects the security interests of a State or international entity or an agent thereof, he shall not disclose that information or its origin without the consent of the person or entity providing the information”.

⁷ F1829, Request for Disclosure of a Document, 27 January 2015.

⁸ Sabra motion, para. 3.

⁹ F1848, Prosecution Response to Sabra Defence Request for Disclosure of a Document, 9 February 2015, para. 4.

deceased, the Trial Chamber instructs the Prosecution to contact the Lebanese Government to seek its consent to disclose document 'WAH/001' in an unredacted form.

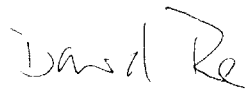
4. The Trial Chamber recognises the sensitivity of document 'WAH/001', but, having read the Prosecution's response, believes that it would be assisted by receiving more informed submissions. The Prosecution did not provide any information as to whether the Lebanese official, whose name appears in document 'WAH/001', requires protective measures and, accordingly, whether the Rule 116 (A) redactions applied to this document are still necessary. For these reasons, the Trial Chamber:

(i) **Instructs** the Prosecution to contact the Lebanese Government to request their consent to disclose document 'WAH/001' in an unredacted form; and

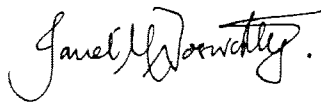
(ii) **Invites** the Prosecution to make submissions as to whether the Lebanese official whose name appears in document 'WAH/001' requires protective measures and, accordingly, whether the Rule 116 (A) redactions applied to this document are still necessary.

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

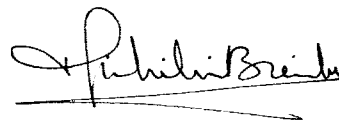
Leidschendam,
The Netherlands
16 April 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

