

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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: 28 August 2015

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION TO REFER SABRA MOTION FOR DISCLOSURE OF A
DOCUMENT TO THE PRE-TRIAL JUDGE**

Office of the Prosecutor:

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

Counsel for Mr Salim Jamil Ayyash:

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

Victims' Legal Representatives:

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

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 Dorothée Le Fraper
du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Mr Philippe Laroche

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux &
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, to redact from four documents those passages necessary to protect the safety and security of three Lebanese officials.¹ These documents included a document, referred to as 'WAH/001'² and disclosed to the Defence,³ used during the Prosecution's interview of Mr Wissam Al Hassan in June 2012.⁴ The name of one of the three Lebanese officials is redacted from the document. This document falls under Rule 118⁵ as the Lebanese Internal Security Forces (ISF) provided it, confidentially, to the United Nations International Independent Investigation Commission.

2. On 27 January 2015, counsel for the Accused, Mr Assad Hassan Sabra, 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'.⁶ 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, Mr Rafik Hariri, in Beirut on 14 February 2005.⁷

3. On 16 April 2015, the Trial Chamber issued an interim order to the Prosecution: (i) instructing it to contact the Lebanese Government to request its consent to disclose the document in an unredacted form; and (ii) inviting it to make submissions as to whether the Lebanese official whose name appears in the document requires protective measures and,

¹ 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.

² 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 IIC 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.

³ The Prosecution disclosed on 14 March 2014 four redacted pages of document 'WAH/001'.

⁴ 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.

⁵ 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'.

⁶ F1829, Request for Disclosure of a Document, 27 January 2015.

⁷ Sabra motion, para. 3.

accordingly, whether the Rule 116 (A) redactions applied to this document are still necessary.⁸

4. On 3 June 2015, the Prosecution informed the Trial Chamber that the Lebanese official whose name is redacted still requires protective measures and that Rule 116 (A) redactions remain necessary.⁹ On 8 July 2015, the Prosecution informed the Trial Chamber that the Lebanese Government had authorized the Prosecution to disclose a less redacted version of the document. The Prosecution implemented the authorized lifting of the Rule 118 redactions and, on 8 July 2015, disclosed to the Defence the less redacted version of the document.¹⁰ Some information (redacted from the document) is therefore still subject to Rule 118.

5. At the Trial Chamber's invitation,¹¹ counsel for Mr Sabra, on 7 August 2015, filed submissions stating that they are not satisfied that the Prosecution has fully complied with its disclosure obligation and they will therefore not withdraw their motion.¹² The Prosecution subsequently replied to this filing.¹³

6. The Trial Chamber has no jurisdiction to decide requests under Rule 118, 'Information Never Subject to Disclosure without Consent of Provider'. Only the Pre-Trial Judge, under the Rules of Procedure and Evidence, has this jurisdiction.¹⁴ This matter must therefore be referred to him.

⁸ F1910, Order in relation to Sabra motion for disclosure of a document, 16 April 2015.

⁹ F1987, Prosecution Update concerning the Trial Chamber's Order in Relation to Sabra Motion for Disclosure of a Document, 3 June 2015.

¹⁰ F2016, Prosecution Further Update Concerning the Trial Chamber's Order in Relation to Sabra Motion for Disclosure of a Document, 8 July 2015.

¹¹ Email from the Legal Officer of the Trial Chamber to counsel for Mr Sabra, 27 July 2015.

¹² F2113, Further Submissions on Request for Disclosure of a Document, 7 August 2015.

¹³ F2136, Prosecution Response to Sabra Defence Further Submissions on Request for Disclosure of a Document, 7 August 2015, 21 August 2015.

¹⁴ See e.g., F1416, Decision on Prosecution Request for Protective Measures (redaction of four documents) of 27 January 2014, 20 February 2015, para. 13. See Rule 118 (C), (D), (J), (K). See also Rule 130 (B) ('Rules that govern proceedings before the Pre-Trial Judge, except for those under Rules 93, 117 and 118, shall apply *mutatis mutandis* to proceedings before the Trial Chamber after submission of the file to the Trial Chamber').

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

REFERS the matter to the Pre-Trial Judge.

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

Leidschendam,
The Netherlands
28 August 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

