



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

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: 23 March 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**DECISION DENYING MERHI DEFENCE REQUEST RELATING TO
PROSECUTION DISCLOSURE OBLIGATIONS**

Office of the Prosecutor:
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Milne

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Mr Chad Mair

**Legal Representatives of
Participating Victims:**
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du Hellen & Mr Jad Youssef Khalil

Counsel for Mr Hussein Hassan Oneissi:
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Mr David Young, Mr Geoffrey Roberts &
Ms Sarah Bafadhel



INTRODUCTION AND BACKGROUND

1. In November 2017, Prosecution investigators took two statements from a witness.¹ The Prosecution promptly disclosed the statements, which follow the relevant Practice Direction's template of a 'narrative statement'.² Counsel for the Accused, Mr Hassan Habib Merhi, subsequently requested the Prosecution to disclose material from the witness interviews, including questions put to the witness during the interviews, notes taken by the investigators during those interviews, and draft versions of the witness's statements. The Prosecution responded that no such documents exist.³

2. On 26 January 2018, one of the Prosecution investigators (Witness PRH539) testified before the Trial Chamber. The Merhi Defence declined to ask him any questions in court, but interviewed him out-of-court with Prosecution counsel present. This interview was conducted pursuant to an agreement between the Parties after the Trial Chamber's intervention in court. That same day, the Trial Chamber formally received the witness's statements into evidence. The Trial Chamber then granted an adjournment for the Merhi Defence to complete its investigations.⁴ The Merhi Defence later informed the Trial Chamber that it did not intend to cross-examine the witness and invited the Prosecution to close its case. The Prosecution did so on 7 February 2018.⁵

3. The Merhi Defence now requests the Trial Chamber to order the Prosecution to disclose material from the witness interviews—namely questions put to the witness, investigator's interview notes, and draft statements—and to remind the Prosecution of its disclosure obligations in order to end its practices of destroying draft witness statements and or deleting transcribed interview questions.⁶ The Prosecution has responded opposing the application,⁷ and the Merhi Defence has replied.⁸

¹ Exhibits P2138 (confidential) and P2139 (confidential).

² STL-PD-2010-02, Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155, 15 January 2010, annex A.

³ See STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3533, Requête urgente de la Défense de Merhi pour interviewer les enquêteurs PRH539 et PRH714, 24 January 2018 (confidential), paras 2-6.

⁴ See F3546, Written Reasons for Two Decisions Denying and then Granting Merhi Defence Applications to Adjourn a Witness's Testimony, 1 February 2018 (confidential), paras 16-18, 25-28, 30, disposition.

⁵ F3545, Notification de la Défense de Merhi en réponse à l'ordonnance de la Chambre du 29 janvier 2018, 1 February 2018 (confidential); transcript of 7 February 2018, p. 69.

⁶ F3565, Requête de la Défense de Merhi relativement aux obligations de divulgation du Procureur, 9 February 2018 (confidential) ('Merhi Defence application').

⁷ F3585, Prosecution Response to "Requête de la Défense de Merhi Relativement aux Obligations de Divulgation du Procureur", 26 February 2018 (confidential) ('Prosecution response').

APPLICABLE LAW

4. Rule 110 of the Special Tribunal's Rules of Procedure and Evidence states:

Subject to the provisions of Rules 115, 116, 117 and 118:

(A) the Prosecutor shall make available to the Defence in a language which the accused understands,

(i) [...]

(ii) within the time-limit prescribed by the Trial Chamber or by the Pre-Trial Judge, copies of: (a) the statements of all witnesses whom the Prosecutor intends to call to testify at trial; (b) all statements, depositions, or transcripts taken in accordance with Rules 93, 123, 125, 155, 156, 157 and 158; and (c) copies of the statements of additional prosecution witnesses.

5. Rule 111 states:

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. [...]

6. Rule 120 states:

If either Party discovers additional evidence or information which should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose that evidence or information to the other Party and the Pre-Trial Judge or the Chamber. The Prosecutor shall disclose to the other Party any information referred to in Rule 113 [Disclosure of Exculpatory Material] notwithstanding the completion of the trial and any subsequent appeal.

SUBMISSIONS

Merhi Defence

i. Application for a disclosure order

7. The Merhi Defence requests the Trial Chamber to order the Prosecution to disclose questions put to the witness during the interviews, notes taken by the investigators during those interviews, and draft versions of the witness's statements if such versions still exist.

⁸ F3589, Réplique à la « Prosecution Response to 'Requête de la Défense de Merhi relativement aux obligations de divulgation du Procureur' », 2 March 2018 (confidential) ('Merhi Defence reply').

Obtaining the requested material is important to evaluating the witness's evidence. This application is valid despite the Prosecution closing its case, as the Prosecution's disclosure obligations continue throughout the trial. The Merhi Defence's decision not to cross-examine the witness has no bearing on the application, as the witness would not have been able to provide the information.⁹

8. According to the Merhi Defence, under international criminal law case law, the requested material is considered the product of the witness rather than of the Prosecution and is thus subject to disclosure. The Appeals Chamber has found that '[a]ll stages of the preparation of a witness's formal statement can be important' and that the Trial Chamber and the Parties 'are entitled to know how the *witness's* version has evolved'. It has also expressed disagreement with another international criminal tribunal's 'acquiescence' to the destruction of interview notes that were later 'formalized' into witness statements. The Trial Chamber has previously ordered the Prosecution to disclose draft versions of a report, finding that it would allow the Defence to determine whether the final version of the report had been 'sanitized' or otherwise modified in a way that would affect the credibility or reliability of its conclusions.¹⁰

a) Questions put to the witness

9. The Merhi Defence argues that the disclosure of the questions put to the witness would serve the interests of justice, as it would assist the Defence in understanding the full context of the statements and in making submissions on the probative value and weight of the statements. While the Prosecution submits that it does not have a list of the questions asked, the Merhi Defence seeks the interview questions in any form, format or medium in which they exist. In his interview with Defence counsel, the investigator first stated that he took the questions put to the witness from an internal Prosecution 'background' document but then corrected himself and explained that he formulated the questions himself during the interview. The Merhi Defence was unable to clarify this matter, as Prosecution counsel objected that it

⁹ Merhi Defence application, paras 1, 24, 40, 45-47; Merhi Defence reply, paras 4-6, 8.

¹⁰ Merhi Defence application, paras 10-12, 25, citing F3171, Decision on Merhi Defence Request for Disclosure of Documents Concerning Witness PRH230, 2 June 2017 ('Witness PRH230 Decision'), paras 65-66, 77-79; CH/AC/2011/01, *In the Matter of El Sayed*, F0005, Decision on Partial Appeal by Mr. El Sayed of the Pre-Trial Judge's Decision of 12 May 2011, 19 July 2011 ('*El Sayed* Decision'), paras 83, 85, 87-88 (emphasis in original); ICTR, *Niyitegeka v. Prosecutor*, ICTR-96-14-A, Judgement, 9 July 2004 ('*Niyitegeka* Appeals Judgement'), paras 33, 35.

concerned internal work product covered by Rule 111. However, a question is no longer internal work product once it is put to a witness.¹¹

b) Investigator's interview notes

10. While noting that the investigator has consistently stated—both in his testimony and his interview with Defence counsel—that no notes were taken during the interviews of the witness, the Merhi Defence is ‘sceptical’ of the Prosecution’s assertion that it does not have such notes. The Merhi Defence’s ‘scepticism’ is based on the fact that, one week after the first witness interview, the investigator gave a statement relating to possible protective measures for the witness and referred to several assertions purportedly made by the witness in that interview. However, the investigator stated—in his interview with Defence counsel—that the witness’s statements are verbatim records of the witness’s responses. As the assertions in the protective measures statement do not appear in the witness’s first statement, the Merhi Defence questions the origin of the information in the protective measures statement and suggests that the investigator prepared this statement based on notes from the first witness interview.¹²

c) Draft witness statements

11. The Merhi Defence submits that the disclosure of any draft versions of the witness’s statements is essential to understanding the statements and to Defence preparation in refuting Prosecution arguments and making submissions regarding the probative value and weight of the statements. Prosecution investigators may not destroy statements after correcting what they deem to be transcription errors, as the Defence must be able to assess the nature of such errors. This is the case whether the witness is a lay witness or otherwise. The investigator stated—in his interview with Defence counsel—that no draft versions of the witness statements were maintained, as physical drafts were destroyed and electronic versions were saved over. He did not answer the question of whether draft versions were sent to anyone in the Prosecution before they were corrected, as Prosecution counsel asserted that such internal communication would fall under Rule 111. However, any versions of the statements would be the product of the witness rather than the Prosecution.¹³

¹¹ Merhi Defence application, paras 9, 14-21, 23-24; Merhi Defence reply, para. 7.

¹² Merhi Defence application, paras 42-45.

¹³ Merhi Defence application, paras 26-34, 36, 41; Merhi Defence reply, para. 9.

ii. Application to issue a reminder to the Prosecution of its disclosure obligations

12. The Merhi Defence also requests the Trial Chamber to remind the Prosecution of its disclosure obligations in order to end its practices of deleting transcribed interview questions and or destroying draft witness statements. The destruction of draft witness statements breaches Rule 110 (A) (ii), as the Appeals Chamber has held that destroying original interview material runs counter to the Prosecution's disclosure obligations. The investigator testified that he deleted transcribed interview questions and restated the same in his interview with Defence counsel, although in the interview he corrected himself and clarified that only the witness's responses were transcribed. His testimony was evasive regarding whether he had destroyed hard-copy draft statements after making corrections suggested by the witness, but in his interview with Defence counsel, he made clear that he had done so. Such original interview material—whether electronic or hard-copy—may not be deleted or destroyed, save for the correction of spelling mistakes.¹⁴

Prosecution

i. Application for a disclosure order

13. The Prosecution submits that the application is moot, as the material does not exist. Neither draft witness statements, notes taken by investigators during the interviews, nor 'additional records of questions asked during the interview' of the witness exist. The Merhi Defence has not established that the disclosure of the witness statements in their current form could have caused it any prejudice, and has opted not to question the witness—either in an interview or through cross-examination—regarding the taking of the statements or any other topic.¹⁵

ii. Application to issue a reminder to the Prosecution of its disclosure obligations

14. The Prosecution argues that the application for an order regarding the Prosecution's witness interview practices would serve no practical purpose, as the Prosecution has closed its case. Furthermore, the Merhi Defence has not established a legal basis for its application. With respect to questions put to witnesses, the applicable Practice Direction does not require the person taking a statement to create and keep a list of questions. With respect to draft statements, the Merhi Defence incorrectly assumes that an improperly transcribed and

¹⁴ Merhi Defence application, paras 1, 9, 13-16, 22, 26-30, 35-40, 48; Merhi Defence reply, para. 9.

¹⁵ Prosecution response, paras 2, 4-5, 8.

subsequently corrected statement constitutes a prior statement. Transcription errors are not the product of the witness, and their correction cannot constitute an evolution of the witness's evidence. Regardless, the case law cited by the Merhi Defence—including that of this Trial Chamber—regarding draft versions of a report is inapplicable, as the particular circumstances in that instance—a Prosecution staff member providing professional analysis and opinion—differ importantly from those of a lay witness.¹⁶

iii. Merhi Defence interview of the investigator

15. Finally, the Prosecution submits that it is inappropriate for the Merhi Defence to quote from its interview of the investigator, as there is no official record of that interview. The Merhi Defence should have alerted the Trial Chamber to any issues arising from the interview much earlier, or at least before the close of the Prosecution case.¹⁷

DISCUSSION AND DECISION

Legal principles

16. In July 2011, the Special Tribunal's Appeals Chamber found, in the *El Sayed* case, that a witness's statements are disclosable under Rule 110 (A) (ii). They are the product of the witness rather than of the Party that prepared the statement, and therefore the Rule 111 disclosure exemption is not applicable.¹⁸ The Trial Chamber has found that investigator's notes are disclosable if they contain statements from a witness.¹⁹

17. In a decision in June 2017, the Trial Chamber identified the following general disclosure principles under international criminal law procedural law:

- i. The Prosecution has an obligation to disclose witness statements under the Rules equivalent to Rule 110 (A) (ii);
- ii. All stages of the preparation of a witness statement can be important, as they enable the Chamber and the opposing Party to know how a witness's version has evolved;

¹⁶ Prosecution response, para. 2-3, 7, 9-10, citing Witness PRH230 Decision, paras 48-49; *El Sayed* Decision, para. 87.

¹⁷ Prosecution response, para. 6.

¹⁸ *El Sayed* Decision, paras 78, 109.

¹⁹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2548, Decision on Motion by the Badreddine Defence for the Disclosure of Investigators' Notes, 13 April 2016 ('Investigators' Notes Decision'), para. 15. See also Witness PRH230 Decision, para 11.

- iii. It is not just the final signed witness statement which is subject to disclosure; questions and answers, investigator's notes and emails can also constitute 'witness statements' under Rule 110 (A) (ii);
- iv. The exemption from disclosure under the Rules equivalent to Rule 111 is confined to what has been created by a Party and its agents. The rule has no application to witness statements, which are not the Party's work product but are the witness's product;
- v. Disclosure requests must be sufficiently specific; and
- vi. The court before which a disclosure issue is raised has the ultimate responsibility for ensuring compliance with disclosure obligations under the Rules.²⁰

18. In that same decision, the Trial Chamber explained that investigator's notes and records of questions and answers are disclosable because they represent the original version of a witness's evidence, and cited the Appeals Chamber's finding that non-disclosure of such material 'runs the risk that an investigator may sanitize the original account of the witness'.²¹

Preliminary issues

i. The Prosecution's continuing disclosure obligations

19. At the outset, the Trial Chamber rejects the Prosecution's proposition that the closing of the Prosecution case renders the application moot or void of practical application. It is a basic, accepted principle that a Party's disclosure obligations do not cease upon the closing of its case, as evidenced by Rule 120 regarding the continuing nature of disclosure obligations. The application is therefore properly before the Trial Chamber, and the Trial Chamber will address it in its entirety.

ii. Applicability of the Trial Chamber's June 2017 disclosure decision

20. The Trial Chamber also rejects the Prosecution's proposition that the Trial Chamber's disclosure decision of June 2017 established precedent applicable only to 'professional witnesses'. While the situation there—concerning a Prosecution staff member providing

²⁰ Witness PRH230 Decision, para. 12.

²¹ Witness PRH230 Decision, para. 66, citing *El Sayed* Decision, para. 87.

professional analysis and opinion—has important differences to that of a lay witness, the general principles underlying the June 2017 decision—which are extracted above—are not so confined and apply fully to all witnesses in these proceedings. The Trial Chamber’s rulings on the disclosure of draft reports thus apply to the disclosure of draft witness statements.

iii. Merhi Defence interview of the investigator

21. Before turning to the merits of the application, the Trial Chamber addresses one final preliminary matter: the Merhi Defence’s reliance on what it alleges transpired in its interview with the investigator. The Merhi Defence questions the veracity of Prosecution submissions based on what it alleges the investigator said in this interview. However, the Merhi Defence deliberately chose to question the investigator outside the Trial Chamber’s presence and without recording, transcribing, or otherwise memorialising—in any form available to the Trial Chamber—the exchange. At the time, co-counsel for Mr Merhi stressed that the purpose of the interview was to facilitate the Merhi Defence’s planned cross-examination of the witness, that ‘[t]he point of the interview by Defence is to do it outside the courtroom, without the Chamber’s presence’, and that the questions to be asked of the investigator were ‘not of a cross-examination fashion’.²²

22. While the Trial Chamber does not cast doubt on the Merhi Defence’s representations of what was said in its interview of the investigator, the Merhi Defence should not now rely on statements that the Trial Chamber cannot assess. Had it intended to rely on the investigator’s alleged statements to support its submissions, as it now seeks to, the Merhi Defence was remiss in not recording or memorialising the interview in some form and or having the investigator attest to a written record of the interview.

23. With respect to two issues—whether the investigator took the questions put to the witness directly from a Prosecution internal document and whether he transcribed those questions during the interview—the Merhi Defence concedes that the investigator corrected or clarified his alleged statements in his interview with Defence counsel. The investigator’s clarified statement that he did not take the questions directly from a Prosecution internal document is consistent with the Prosecution’s representation that it does not have a record of the questions asked in the interview. As discussed further below, his clarified statement that

²² Transcript of 26 January 2018, p. 17 (private session).

he did not transcribe the questions asked during the interview is consistent with his testimony. The Trial Chamber is therefore satisfied of the investigator's position on these issues.

Application for a disclosure order

24. The Trial Chamber will first address the application for an order to the Prosecution to disclose questions put to the witness, notes taken by the investigators during the witness interviews, and draft versions of the witness's statements. The Prosecution has repeatedly asserted that it is not in possession of the requested material, and the Merhi Defence therefore challenges the veracity of the Prosecution's representations. In respect of the Parties' execution of their disclosure obligations, the Trial Chamber proceeds on the basis that the Parties carried out their duties in a regular manner and acted in good faith, unless the contrary is established. The Trial Chamber will therefore issue the requested order only should it be satisfied that there is reason to doubt the Prosecution's representation that it is not in possession of the requested material. If the requested material does not exist, there is nothing to disclose.

25. The Trial Chamber will address each of the categories of requested material in turn.

i. Questions put to the witness

26. The submissions regarding questions put to the witness are based on the Merhi Defence's assertion that—in his interview with Defence counsel—the investigator first stated that he took questions from an internal Prosecution document and then corrected himself and stated that he formulated the questions himself during the interview. The Trial Chamber is unpersuaded that this alleged and subsequently clarified statement constitutes reason to doubt the Prosecution representation that it does not possess the questions. It therefore denies the application for a disclosure order with respect to questions put to the witness.

27. The Merhi Defence suggests that the Prosecution's representation that it has no list of questions avoids the matter of whether questions exist in some other form, but the Trial Chamber is satisfied that the Prosecution's submission that it has no 'additional records of questions asked during the interview' is comprehensive.

ii. Investigator's interview notes

28. The submissions regarding interview notes are based solely on the Merhi Defence's scepticism that the investigator could have recalled the detail he provided in the protective

measures statement—which he gave one week after the witness interview—without refreshing his memory with notes taken during the witness interview. The Trial Chamber is unpersuaded that a professional investigator recalling details of an interview one week after the fact constitutes reason to doubt the Prosecution representation that it does not have notes from that interview.²³ It therefore denies the application for a disclosure order with respect to investigator’s interview notes.

iii. Draft witness statements

29. The submissions regarding draft witness statements are based on Prosecution counsel—in the Defence interview—allegedly asserting Rule 111 to prevent the investigator from answering whether he had sent drafts to anyone in the Prosecution. However, the Prosecution has clearly and repeatedly stated that it has no such draft statements, and the Merhi Defence has shown no reason to doubt this representation. The Trial Chamber therefore denies the application for a disclosure order with respect to draft statements.

Application to issue a reminder to the Prosecution of its disclosure obligations

30. The application is premised on the allegation that the Prosecution’s statement-taking practices with respect to the witness violated its Rule 110 disclosure obligations by destroying original interview material. The question presented is thus whether the practice of deleting or destroying electronic or hard-copy draft statements—including the deletion of electronically transcribed questions—would be inconsistent with the Parties’ disclosure obligations.

i. Deletion of electronically transcribed questions

31. The Merhi Defence submissions regarding the deletion of transcribed interview questions are based on its assertion that the investigator—both in his testimony before the Trial Chamber and in his interview with Defence counsel—stated that he transcribed the questions put to the witness. The Trial Chamber has reviewed the investigator’s testimony and considers that he was referring to transcribing the witness’s responses, not the questions asked.²⁴ As for the investigator’s alleged statement during his interview with Defence

²³ The Trial Chamber does not address the Merhi Defence suggestion that the first witness statement fails to capture every word spoken by the witness in that interview, as the Merhi Defence seeks no relief in this regard.

²⁴ See Merhi Defence application, para. 13, citing the private session transcript of 26 January 2018, pp 26, 34. The Merhi Defence selectively quotes the investigator testifying: ‘If sometimes we need more clarification, I did not ask the question, then my partner would immediately ask the question and I would type it.’ This omits the immediately preceding sentence: ‘Yes, Your Honour, I do ask the questions and I type the answers given by the witness.’ With this additional context, it is clear that the investigator was referring to transcribing the witness’s

counsel, the Merhi Defence concedes that the investigator corrected himself and clarified that only the witness's responses were transcribed. The Trial Chamber therefore has no reason to believe that the investigator deleted transcribed questions put to the witness. As such, there is no reason to issue a reminder to the Prosecution regarding the deletion of transcribed questions. The Trial Chamber thus denies the application to issue a reminder to the Prosecution in this respect.

32. The Trial Chamber clarifies that, while it has referred to a case from the International Criminal Tribunal for Rwanda's Appeals Chamber finding that a record of interview 'ideally' contains all questions put to a witness,²⁵ the Parties have no positive obligation to record—or to include in witness statements—the questions put to witnesses in every situation. In certain circumstances, it could be said that a witness's responses cannot be understood in their full context in the absence of the questions to which they respond. Here, however, there is no indication that this is the case. The witness signed the statements and testified in court that they are accurate, and the Merhi Defence declined to question the witness—or the investigator—as to what questions were asked. The Trial Chamber considers the witness's statements compliant with the Practice Direction for taking witness statements.

ii. Deletion or destruction of electronic or hard-copy draft witness statements

33. With respect to the deletion or destruction of draft statements, the Prosecution and the Merhi Defence disagree as to whether the Prosecution would be obligated to maintain—and presumably disclose—a witness statement that has been corrected at the prompting of the witness. The investigator testified as to Prosecution practice in this regard:

'At the end of the interview, Your Honour, we do print the interview itself. We give it -- we hand it in paper to the witness, who would read it, and if there's any correction to be made, the witness would tell me and we will be [sic] redact it and we will change it and then we will print it back again [...].'

The investigator could not recall whether the witness made any corrections to the draft statement during the first interview, but testified that any modifications were 'done automatically on the computer' and that the second interview followed 'the same

responses. The Merhi Defence also quotes the investigator testifying: 'It was the same thing as the first time. I was asking the questions, I was typing, and I was showing [the witness] the annexes to the witness statement.' The investigator does not explicitly specify what he was transcribing, but given the context of his earlier response, it appears that he was again referring to the witness's responses.

²⁵ Investigators' Notes Decision, fn. 25, citing *Niyitegeka* Appeals Judgement, para. 31.

procedures'.²⁶ As noted above, the Merhi Defence alleges that, in his interview with Defence counsel, the investigator made clear that he had destroyed hard-copy draft statements from the witness's interviews.

34. The Merhi Defence submissions are based on its assertion that deleting electronic copies of draft statements and destroying hard copies of draft statements violates the Prosecution's disclosure obligations. While the legal principles extracted above make clear that all stages of the preparation of a witness statement can be important, they fall short of a ruling that the Parties have a positive obligation to maintain or to disclose every subsequently-corrected version of a draft statement in every situation. The signed witness statements are the authoritative version of the witness's account. Furthermore, there is no suggestion here that this account has evolved or that the changes made were anything more than the correction of minor errors. The Merhi Defence has not alleged that any substantive changes were made to either statement and elected to ask neither the investigator nor the witness what was changed.

35. The application to issue a reminder to the Prosecution regarding the deletion or destruction of electronic or hard-copy draft statements is premised on the Merhi Defence's assertion that the Prosecution is improperly destroying draft statements. The Trial Chamber, however, has no reason to believe that this is the case. It therefore denies the application to issue a reminder to the Prosecution in this respect.

CONFIDENTIALITY

36. The Merhi Defence and the Prosecution filed their submissions confidentially because they contain confidential information.²⁷ In keeping with the principle of the public nature of proceedings before the Special Tribunal, the Trial Chamber orders the Merhi Defence and the Prosecution to file public redacted versions of their submissions.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DENIES the Merhi Defence application; and

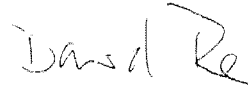
ORDERS the Prosecution and the Merhi Defence to file public redacted versions of their submissions.

²⁶ Transcript of 26 January 2018, pp 24, 26-27, 35 (private session).

²⁷ Merhi Defence application, para. 49; Prosecution response, para. 11; Merhi Defence reply, para. 11.

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

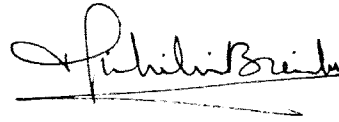
Leidschendam,
The Netherlands
23 March 2018



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

