

Date: 23 May 2014

**For the attention of Honourable Judge Nicola Lettieri,
Judge in the Trial Chamber of the Special Tribunal for Lebanon**
Through the Registrar

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Further to your proposal dated 13 May 2014, we hereby submit to you our observations regarding the proceedings initiated against Al Jadeed TV station before your Honourable Tribunal under Rule 131 (A) of the Rules of Evidence and Procedure.

Out of a sincere desire to see the Tribunal function properly, we hereby submit a few observations to point out what we consider to be flaws which could impair justice and, consequently, cause harm to people and - particularly - companies, the accusation of which constitutes a precedent in international tribunals.

- 1- The Special Tribunal for Lebanon broadened its jurisdiction to encompass individuals and companies which have no relation to the assassination of Prime Minister Hariri. The jurisdiction of the Tribunal, however, applies exclusively to this crime. Since the Tribunal's establishment, the Lebanese government has provided it necessary funding in hopes of uncovering the truth about the assassination, not to get side-tracked and waste time and money prosecuting journalists.
- 2- In this context, the Special Tribunal for Lebanon has extended its arms to strike at the sovereignty of Lebanon and set itself up as a judicial authority which engages in media censorship, a practice that had been abolished since the *Mutasarrifiyya* era. The Lebanese have waged many battles in recent years to prevent the reinstatement of such censorship: there are no articles in the local Audio-visual Media Law mentioning it directly, or similar articles or ones which could be construed so as to permit such practice.
- 3- Based on our observations of the facts, we have found that the Tribunal has transformed the local judicial body into judicial police or, at best, a post box for the Tribunal. However, most of the time it does not even give it this kind of distinction since it refrains from informing it of serious cases such as this one, the focus of the present prosecution.

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- 4- The Tribunal has imposed the penalty and delegated itself to execute it. One form of this substitution is the assuming by the STL of the role the Lebanese Court of Publications, which is the only Lebanese authority competent to decide on crimes related to publications and the Lebanese media.
- 5- The unjust indictment issued by the President of the Tribunal against the Lebanese media violates Article 19 of the Universal Declaration of Human Rights which states that **everyone shall have the right to hold opinions without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.** Article 8 of the same Declaration also grants the right to an effective remedy by the competent **national** tribunals for acts violating the fundamental rights granted him by the constitution or by law. Under this Declaration, the Tribunal is today violating a Resolution adopted 66 years ago by the United Nations as an international rights document.
- 6- The long arm of the International Tribunal violates the very Rule 60 *bis* of the Rules of Procedure and Evidence, which prosecutes persons involved in its activity, including its embedded journalists, who have the right to access the documents related to the proceedings and who can facilitate the dissemination thereof.
How, then, can the Tribunal prosecute Lebanese persons for acts which do not fall within its jurisdiction, especially given that the media companies being accused today were never affiliated with the Tribunal, meaning that their work is not governed by the misconduct clause in Section 8 of the Rules of Procedure and Evidence, which contains Rule 60 *bis*?
- 7- Moreover, before launching investigations into any crime which may fall within its jurisdiction, the Tribunal must inform the Lebanese State and get its approval, which did not happen in the case of this litigation.

ACCORDINGLY

The Tribunal, to date, has committed a bundle of errors: expanding its jurisdiction to encroach upon Lebanese sovereignty; replacing Lebanese laws; failing to inform authorities of the methods of accountability; and violating the Lebanese judicial system by interfering in cases of its jurisdiction without coordinating with the State concerned with the crime.

As far as we know, the Special Tribunal for Lebanon is a hybrid tribunal which functions both under the Rules of Procedure and Evidence and Lebanese law, with the provision most favourable to the accused prevailing. However, in its decision relating to subject of the litigation, it selected the provisions most favourable to the Prosecution and not the accused. It prosecuted Al Jadeed under Lebanese law and decided to prosecute persons (journalist Ibrahim Al-Amin and Al-Akhbar newspaper) under the Rules of Procedure and Evidence. As for the penalty, it decided to apply its own regulations (7 years' imprisonment and a fine of 100 thousand euros).

The Tribunal has therefore chosen the maximum penalty and used both the Lebanese law and the Rules of Procedure and Evidence as it pleases. It exhibited the first signs of injustice by failing to apply local laws which protect the media and oppose the imprisonment of those working in the media for voicing their opinion.

Even though the Tribunal knew that Lebanese law was more favourable to the journalists, it demonstrated its injustice and deceit in the indictment and by adopting the principle of selectivity.

As for holding companies accountable, the Tribunal has made a serious, unprecedented move which could open up the doors to international companies, with Al Jadeed serving as a key towards the lifting of confidentiality.

BASED ON THE ABOVE

In our capacity as *Amicus curiae* in accordance with Rule 131 of the Rules of Procedure and Evidence, we present to you the present submission, and we ask you, Honourable Judge, to issue a decision ordering the suspension of the prosecution of the Lebanese media because it violates the sovereignty of the Lebanese State, undermines the Lebanese judicial body and infringes on media freedoms.

We invite you to take the appropriate legal measure to clear the name of the Tribunal and prove its credibility, justice and transparency in order to unveil the truth sought by the Lebanese regarding the perpetrators of the assassination of Prime Minister Rafic Hariri through a transparent trial which guarantees the proper administration of justice.

Respectfully yours,
Lawyer Omar Zein
General Secretary of the Arab Lawyers Union
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