

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: 13 January 2015

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**Corrected Version of DECISION ON THE PROSECUTION MOTION FOR
ADMISSION UNDER RULE 155 OF WRITTEN STATEMENTS IN LIEU OF
ORAL TESTIMONY RELATING TO RAFIK HARIRI'S MOVEMENTS AND
POLITICAL EVENTS' of 11 December 2014**

Office of the Prosecutor:

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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 Hassan
Hassan & Mr Philippe Larochelle

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Metrat
& Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution seeks to admit into evidence, under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, nine statements made by eight witnesses.¹ These comprise two statements by Witness PRH277, and one statement each by Witnesses PRH681, PRH289, PRH084, PRH234, PRH236, PRH314, and PRH559. The Prosecution also seeks leave to amend its exhibit and witness lists filed under Rule 91 by adding the nine statements to the exhibit list, and by adding the name of one witness, Witness PRH681, to the witness list.²
2. The proposed statements will provide evidence relating to the movements of the former Lebanese Prime Minister Mr Rafik Hariri in the months before his assassination on 14 February 2005, telephone numbers that assist in establishing his movements, his security personnel, and political events occurring during the relevant period. According to the Prosecution, the statements are relevant, probative, reliable and do not go to the acts or conduct of any of the five Accused.³ Counsel for four of the Accused, Mr Hassan Habib Merhi, Mr Salim Jamil Ayyash, Mr Hussein Hassan Oneissi, and Mr Mustafa Amine Badreddine, responded to the motion.⁴

DISCUSSION

3. In earlier decisions, the Trial Chamber has determined the procedural safeguards for admitting statements into evidence under Rule 155.⁵ These allow it to receive written testimony in lieu of live oral testimony in the courtroom. In particular, a statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to the proof of the acts or conduct of the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1724, Prosecution Rule 155 Motion for the Admission of Statements relating to Rafik Hariri's Movements and Political Events in Lieu of Oral Testimony, 30 October 2014. A corrected version and a public version of this motion were filed on 4 November 2014.

² Prosecution motion, paras 19-23.

³ Prosecution motion, para. 2.

⁴ F1752, Response by the Ayyash Defence to the Prosecution Rule 155 Motion for the Admission of Statements Related to Rafik Hariri's Movements and Political Events, 13 November 2014 (a public redacted version was filed on the same date); F1753, The Defence for Hussein Hassan Oneissi Response to "Prosecution Rule 155 Motion for the Admission of Statements Related to Rafik Hariri's Movements and Political Events in Lieu of Oral Testimony" filed 30 October 2014, 13 November 2014; F1754, Badreddine Defence Response to "Prosecution Rule 155 Motion for the Admission of Statements relating to Rafik Hariri's Movements and Political Events in Lieu of Oral Testimony", 14 November 2014 (a public redacted version was filed on the same date); F1746, Réponse consolidée de la défense de Merhi aux requêtes des 21, 24 et 30 octobre 2014 en modification des listes de pièces et de témoins et en admission d'éléments de preuve relatifs aux déplacements de Rafic Hariri et au context politique, 10 November 2014.

⁵ F937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements Under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14.

accused, may not be admitted without cross-examination. Those principles are applicable to this decision.

1. Amending the Prosecution's witness and exhibit lists

A. Amending the witness list

4. The Prosecution seeks the Trial Chamber's leave to add Witness 681 to its witness list.⁶ It submits that it has recently identified the evidence—which relates to his work as an accountant, the purchase of telephones, and the attribution of a telephone number to the operator at Mr Hariri's residence—as relevant and probative. The witness's statement was disclosed to the Defence on 28 October 2014. Counsel for Mr Ayyash and for Mr Oneissi take no position in relation to the proposed amendment,⁷ while counsel for Mr Badreddine do not object to it.⁸

5. As no Defence counsel object to adding the witness to the witness list and the witness will not testify before 2015, the Trial Chamber is satisfied that adding the name to the witness list now will not prejudice Defence preparations for trial nor delay the trial. Witness 681 can therefore be added to the Prosecution's witness list.

B. Amending the exhibit list

6. Counsel for Mr Ayyash and Mr Badreddine take no position on the Prosecution's requested amendments to the exhibit list. Counsel for Mr Oneissi object to adding the statements of Witnesses 277 and 289 to the exhibit list. Counsel for Mr Merhi object to the addition to the exhibit list of Witness 277's statement about political events before the assassination of Mr Hariri, and to Witness 289's statement.⁹

7. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit list, but that, in doing so, it must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider general factors that include: (i) whether the Prosecution has shown good cause for not

⁶ Prosecution motion, paras 22-23.

⁷ Ayyash Defence response, para. 4; Oneissi Defence response, para. 3.

⁸ Badreddine Defence response, para. 3.

⁹ Ayyash Defence response, para. 6; Badreddine Defence response, para. 4; Oneissi Defence response, paras 15-17; Merhi Defence response, para. 40.

seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.¹⁰

8. The Trial Chamber considers that the nine statements are *prima facie* relevant and probative because they are connected with the proposed witnesses with which they are associated. Adding them to the exhibit list will neither delay the proceedings nor prejudice the preparation of the Defence for trial. The Trial Chamber is therefore satisfied that adding the nine statements to the exhibit list is in the interests of justice. The main issue, however, is determining their admissibility under Rule 155.

2. Admission of witness statements under Rule 155

9. The Prosecution submits that the nine witness statements are relevant and probative and contain the necessary indicia of reliability. None go to the acts and conduct of the Accused and each satisfies the factors in favour of admission listed in Rule 155 (A) (i).¹¹ Further, admitting the proposed statements into evidence is in the interests of justice, and cross-examination is not required for any witness. Finally, the Prosecution argues that documents accompanying the statement of Witness 277 are inseparable and should be admitted as an attached component of the statement.¹²

10. Counsel for Mr Ayyash object to the admission into evidence of the portions of the statements on matters they consider irrelevant, including political events in the months leading up to Mr Hariri's assassination, managing accounts and purchases, and the activities of Mr Yahya Al-Arab, the Chief of Security of Mr Hariri, who died in the attack of 14 February 2005.¹³ They take no position on the other Prosecution applications.¹⁴ Counsel for Mr Ayyash also ask the Trial Chamber to order the Prosecution's motion and its annexes to be filed publicly.¹⁵ Counsel for Mr Merhi object to the admission of the written statement of Witness 277 describing political events and the statement of

¹⁰ F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4.

¹¹ Rule 155 (A) (i) states that “[f]actors in favour of admitting evidence in the form of a written statement include, but are not limited to circumstances in which the evidence in question: (a) is of a cumulative nature, in that other witnesses have given or will give oral testimony of similar facts; (b) relates to relevant historical, political or military background; (c) consists of a general or statistical analysis relating to the composition of the population in the places to which the indictment relates; (d) concerns the impact of crimes upon victims; (e) relates to issues of the character of the accused; (f) relates to factors to be taken into account in determining sentence; or (g) has been given by the witness in the presence of the Parties who have had the opportunity to examine or cross-examine him.”

¹² Prosecution Motion, para. 19.

¹³ Ayyash Defence response, paras 8-9.

¹⁴ Ayyash Defence response, paras 5-7.

¹⁵ Ayyash Defence response, para. 10. The Prosecution filed a redacted version of its motion, but not its annexes, on 4 November 2014.

Witness 289 describing the relations between Rafik Hariri and Syria as irrelevant to any charge in the consolidated indictment; they take no position on the remaining witness statements.¹⁶

11. Counsel for Mr Oneissi object to the Prosecution's application to amend its exhibit list in order to add the statements of Witnesses 277 and 298 and its application to admit those two statements into evidence pursuant to Rule 155.¹⁷ They argue that the Prosecution failed to demonstrate the relevance and probative value of these statements and to show good cause for their late addition.¹⁸ Counsel also object to the admission into evidence of the 2005 Zawarib Atlas annexed to the statements of Witnesses 277 and 234, arguing that it does not meet the required level of reliability.¹⁹

12. Counsel for Mr Badreddine request the appearance of Witness 277 for cross-examination, arguing that he might have further relevant evidence in relation to electronic jammers and to the role and actions of the late Mr Wissam Al Hassan, who was Mr Hariri's Chief of Protocol.²⁰ They want Witness 289 to appear for cross-examination to clarify certain inconsistencies in his statement and to test the credibility of Witness 076, who already testified.²¹ More generally, they take no position either on the addition to the Prosecution's exhibit list of the other witness statements or on their admissibility, but object to the statements of Witnesses 277 and 289 being used as evidence relating to the 'political context'. They do not object to adding Witness 681 to the Prosecution's witness list, nor to adding his statement to the exhibit list, nor admitting his statement into evidence, but reserve the right to require him to appear for cross-examination.²²

13. The Trial Chamber, however, has already held that it will hear evidence relevant to the political situation in Lebanon preceding Mr Hariri's assassination. This evidence can provide background and give context to much of the other evidence adduced by the Prosecution, and even by the Defence. It could help to explain the wider circumstances leading to Mr Hariri's assassination, and, in general, could also be used to explain the non-private motives for the commission of any offence that the Trial Chamber could find proven.²³ The Trial Chamber may therefore receive further relevant

¹⁶ Merhi Defence response, paras 39-41.

¹⁷ Oneissi Defence response, paras 11-13.

¹⁸ Oneissi Defence response, paras 14-17.

¹⁹ Oneissi Defence response, para. 18.

²⁰ Badreddine Defence response, para. 5.

²¹ Badreddine Defence response, para. 6.

²² Badreddine Defence response, paras 3-4.

²³ Oral ruling on the scope of Mr Marwan Hamade's evidence, transcript of 17 November 2014, pp. 2-14, in particular pp. 10-11; Oral ruling on adding Mr Walid Jumblatt and Mr Ali Mohammad Hamade to the Prosecution's witness list, transcript of 9 December 2014, pp. 7-13.

evidence of this nature. However, it emphasises the distinction between the mere admissibility of such evidence and any weight that the Trial Chamber may give it in its assessment at a later stage in the proceedings.

14. The evidence of the eight witnesses falls into two categories: A) Mr Hariri's staff and related witnesses; and B) Mr Hariri's security personnel.

A. Mr Hariri's staff and related witnesses

15. The evidence of each witness in this category relates to matters such as Mr Hariri's movements and activities regarding his family:

- Witness 277, an employee of Mr Hariri, describes among other things the attendance of Mr Hariri at meetings and other events, and more generally political events in the months before Mr Hariri's assassination. He also describes changes in the behavior of Mr Yahya Al-Arab—Mr Hariri's Chief of Security—in the months before Mr Hariri's assassination;
- Witness 681, an accountant, describes the purchase of telephones and the attribution of a telephone number to the operator at Mr Hariri's residence; and
- Witness 289 describes Mr Al-Arab's role as both Chief of Security for Mr Hariri and as an intermediary between Mr Hariri and Syrian officials, and changes in Mr Al-Arab's behaviour. The witness also attributes a particular telephone number to Mr Al-Arab.

16. The Prosecution submits that this evidence is cumulative to the testimony of the witnesses who either have already testified or will testify about the same issues, in particular as to Mr Hariri's movements in the months before his assassination; telephone numbers that assist in establishing his movements; his security personnel; and political events occurring during the relevant period.²⁴ These witnesses therefore do not need to appear for cross-examination.

17. The Trial Chamber is satisfied that these statements provide relevant evidence as to Mr Hariri's movements in the months before his assassination and his security personnel—connected with paragraphs 14 and 22 of the consolidated indictment. They are also probative of the material facts pleaded in the consolidated indictment. Accordingly, the statements are admissible under Rule 149 (C). Furthermore, the evidence does not relate to the acts and conduct of the Accused.

²⁴ Prosecution motion, para. 12.

18. The statements of Witnesses 277, 681 and 289 have sufficient indicia of reliability according to Rule 155 and comply with the relevant Practice Direction,²⁵ and are therefore admissible, together with the associated exhibits listed in Annex B of the Prosecution's motion, without requiring the witnesses to attend for cross-examination. The statement of Witness 681 is also admissible under Rule 155; the exhibits associated with the statement are admissible under Rule 154.

19. However, as counsel for Mr Badreddine submits that Witness 277's testimony may be relevant to its case and that Witness 289 should also be called to clarify certain inconsistencies in the statement provided and to test the credibility of Witness 076, the Trial Chamber is satisfied that it is in the interests of justice to allow Defence counsel to cross-examine Witnesses 277 and 289. The Prosecution must therefore make them available for limited relevant cross-examination either in the Netherlands or via video-link.

B. Mr Hariri's security detail

20. Witnesses 559, 084, 236, 314, and 234 were all involved, in different capacities, in Mr Hariri's personal security detail. Their evidence relates to the structure, organization, activities and movements of his security, including the chain of command, itineraries followed when travelling, and communications.

21. The Trial Chamber is satisfied that the statements of these witnesses are relevant to the allegations pleaded in the consolidated indictment, particularly paragraphs 4, 14-15, 22, 39, and 42 of the consolidated indictment, and are probative of the material facts pleaded. The statements provide evidence about the witnesses' roles, functions, and activities during the period pleaded in the consolidated indictment. Accordingly, they are admissible under Rule 149 (C). The evidence does not relate to the acts and conduct of the Accused. The proposed statements have sufficient indicia of reliability under both Rule 155 and the Practice Direction and are therefore admissible into evidence without requiring the witnesses to attend court for cross-examination. All associated exhibits listed in Annex B of the Prosecution's motion related to these five witnesses are also admissible under Rule 154 as an indispensable part of the statements.

3. The 2005 Zawarib Atlas

²⁵ 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.

22. Counsel for Mr Oneissi objected to admitting into evidence the 2005 Zawarib Beirut Atlas, which is annexed to the statements of Witnesses 277 and 234.²⁶ The objection, however, is too late; on 22 October 2014, several weeks before counsel filed their submissions, the Trial Chamber admitted the atlas into evidence as exhibit P298.²⁷

4. Confidentiality

23. Because they contain confidential witness information, the Prosecution seeks to keep confidential the annexes to its motion.²⁸ Counsel for Mr Oneissi have yet to file a public redacted version of their response. The Prosecution must either file a public redacted version of the annexes or have them reclassified as public; this may await the completion of the testimony of Witnesses 277 and 289 and the formal admission into evidence of the statements of the remaining witnesses, Witnesses 681, 559, 084, 236, 314, and 234. Counsel for Mr Oneissi must file a public redacted version of their response to the Prosecution motion.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS the Prosecution leave to amend its witness list by adding Witness PRH681;

ALLOWS the Prosecution leave to amend its exhibit list by adding the nine witness statements listed in Annex B of its motion;

DECLARES admissible under Rule 155 the statements of Witnesses PRH681, PRH559, PRH084, PRH236, PRH314, and PRH234, and under Rule 154 the exhibits associated with these statements;

DECLARES admissible under Rule 155 (C) the statements of Witnesses PRH277 and PRH289—and, where applicable, associated exhibits—and requires the Prosecution to make these witnesses available for limited cross-examination by counsel for Mr Badreddine, either in The Netherlands or via video-conference link;

ORDERS the Prosecution to file a public redacted version of the annexes to the motion, or have them reclassified as public; and

²⁶ Oneissi Defence response, para. 18.

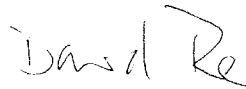
²⁷ The Trial Chamber noted the Defence counsel's objections at the time. *See* F1742, Decision on Expert and Witness Statements of Witnesses PRH009 and PRH101, 7 November 2014, para. 6.

²⁸ Prosecution motion, para. 24.

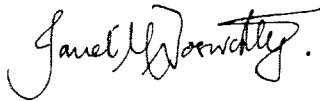
ORDERS counsel for Mr Hussein Hassan Oneissi to file a public redacted version of their response to the motion.

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

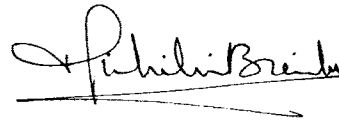
Leidschendam,
The Netherlands
13 January 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

