



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:** 19 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**

**DECISION ON THE PROSECUTION MOTION FOR  
ADMISSION UNDER RULE 155 OF WRITTEN STATEMENTS IN LIEU OF  
ORAL TESTIMONY RELATING TO 'RED NETWORK'  
MOBILE TELEPHONE SUBSCRIPTIONS**

**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:**

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& 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 Youssef  
Hassan & Mr Philippe Larochelle

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Métra  
& 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, eight statements made by eight Witnesses—PRH004, PRH010, PRH021, PRH077, PRH113, PRH114, PRH117, and PRH118—in lieu of oral testimony and without cross-examination of the witnesses.<sup>1</sup> The Prosecution also seeks leave to amend its exhibit list filed under Rule 91 by adding the eight statements to this list.<sup>2</sup>

2. In the consolidated indictment and the pre-trial brief, the Prosecution refers to eight mobile telephones as the ‘red network’. These eight mobile telephones were allegedly used in the surveillance of the former Lebanese Prime Minister, Rafik Hariri, between 14 January 2005 and 12 February 2005. According to the Prosecution, six of the eight ‘red network’ mobile telephones were used by the team—allegedly consisting of the Accused, Mr Salim Jamil Ayyash, and five other unidentified individuals—that carried out the attack against Mr Hariri on 14 February 2005.<sup>3</sup> The Prosecution submitted that the proposed statements will provide evidence relating to certain residents of Tripoli, Lebanon, whose names were listed (in mobile telephone contracts) as the subscribers of a group of seven of the eight mobile telephones but whose identification documents were used without their knowledge. The Prosecution further submits that the eight statements are relevant, probative and do not go to the acts or conduct of any of the five Accused.<sup>4</sup> Counsel for three of the Accused, Mr Salim Jamil Ayyash, Mr Hussein Hassan Oneissi, and Mr Mustafa Amine Badreddine, responded to the motion.<sup>5</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1773, Prosecution Rule 155 Motion for the Admission of Statements in Relation to “Red Network” Telephone Subscriptions in Lieu of Oral Testimony, 1 December 2014.

<sup>2</sup> Prosecution motion, paras 1, 6-13.

<sup>3</sup> F1444, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, Annex A: Consolidated Indictment, 7 March 2014, para. 15 (a); F1077, Prosecution’s Submission of Updated Pre-Trial Brief pursuant to Rule 91(G)(i) and the Pre-Trial Judge’s Order of 7 August 2013 and Decision of 16 August 2013, Annex A: Prosecution’s Updated Pre-Trial Brief, dated 23 August 2013, 23 August 2013, para. 6.

<sup>4</sup> Prosecution motion, paras 4, 7-9, 14-18.

<sup>5</sup> F1792, Response by the Ayyash Defence to the Prosecution Rule 155 Motion for the Admission of Statements in Relation to “Red Network” Telephone Subscriptions, 16 December 2014; F1793, Consolidated Response to the “Prosecution Rule 155 Motion for the Admission of Statements in relation to the ‘Red network’ Phone Subscriptions in Lieu of Oral Testimony” and to the “Prosecution Rule 154 Motions for the Admission of Documents relevant to the Acquisition of ‘Network’ Mobile Phones and Handsets, 39 Mobile Phone Contracts and 99 Mobile Phone Business Records”, dated 1, 2 and 3 December 2014, 16 December 2014; F1789, Badreddine Defence Consolidated Response to the Prosecution’s Rule 155 Motion Dated 1 December 2014 and Three Rule 154 Motions Dated 2-3 December 2014, 12 December 2014.

## DISCUSSION

3. In earlier decisions, the Trial Chamber has determined the procedural safeguards for admitting statements into evidence under Rule 155.<sup>6</sup> 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 proof of the acts or conduct of the accused, may not be admitted without cross-examination. Those principles are applicable to this decision.

### **1. Amending the Prosecution's exhibit list**

4. The Prosecution submits that the statements of the eight witnesses do not contain any new evidence and merely replace the previously disclosed statements with re-formatted versions, as mandated by the Practice Direction.<sup>7</sup> Accordingly, good cause exists to grant the amendment sought, and the additions to the exhibit list will not result in undue delay to the proceedings.<sup>8</sup> Counsel for Mr Ayyash take no position on the Prosecution's requested amendments to the exhibit list.<sup>9</sup> Counsel for Mr Oneissi and Mr Badreddine, in their responses, do not oppose the amendment of the exhibit list.

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

6. The Trial Chamber considers that the eight statements are *prima facie* relevant and probative because they are connected with the proposed witnesses with which they are associated and who

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<sup>6</sup> 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; F1785, 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, 11 December 2014, para. 3.

<sup>7</sup> Prosecution motion, paras 2 and 10. 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.

<sup>8</sup> Prosecution motion, paras 10-13.

<sup>9</sup> Ayyash Defence response, para. 2.

<sup>10</sup> F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1780, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists, para. 15; F1785, 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, 11 December 2014, para. 7.

appear on the Prosecution's witness list filed under Rule 91. Further, the proposed statements do not contain new evidence, but merely replace existing statements on the exhibit list with versions compliant with the Practice Direction. 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 eight 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**

7. The Prosecution submits that the eight witness statements are relevant, 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).<sup>11</sup>

8. Counsel for Mr Ayyash take no position on the admission of the eight statements and make no admissions related to the submissions by the Prosecution regarding the relevance of these statements.<sup>12</sup> They also note that they are unaware of any protective measures requested for any of the witnesses listed in the Prosecution motion and that it is unclear why the information contained in the annexes to this motion is confidential.<sup>13</sup> Counsel for Mr Badreddine take no position on the admissibility of the eight statements.<sup>14</sup> Counsel for Mr Oneissi neither accept nor contest the admissibility of the statements.<sup>15</sup> Counsel, however, note that their objections to the admission into evidence of the documents which are the subject of the Prosecution's three motions under Rule 154 filed on 2 and 3 December 2014<sup>16</sup>—in particular, in relation to the interpretation the witnesses the

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<sup>11</sup> Prosecution motion, paras 14-18 and 27-28. 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.'

<sup>12</sup> Ayyash Defence response, paras 3-4

<sup>13</sup> Ayyash Defence response, para. 5.

<sup>14</sup> Badreddine Defence motion, para. 2.

<sup>15</sup> Oneissi Defence response, para. 6.

<sup>16</sup> F1774, Prosecution Rule 154 Motion for the Admission of Documents relevant to the Acquisition of "Network" Mobile Phones and Handsets, 2 December 2014 (Prosecution first motion); F1775, Prosecution Rule 154 Motion for the Admission of 39 Mobile Phone Contracts, 2 December 2014 (Prosecution second motion); F1776, Prosecution Rule 154 Motion for the Admission of 99 Mobile Phone Business Records, 3 December 2014 (Prosecution third motion).

Prosecution intends to call could give to the eight statements—also apply to the admissibility of the eight witness statements.<sup>17</sup>

9. The evidence of the eight witnesses relates to the use of their name or the name of their spouse as the subscribers of mobile telephone lines belonging to what the Prosecution refers as the ‘red network’, namely:

- Witness 004, who lived in Tripoli, described purchasing a SIM card<sup>18</sup> in Tripoli, in early January 2005. The shopkeeper, at the time of purchase, kept a copy of his identity card. The witness stated that he did not provide a copy of his identity card to anyone else in 2004 or 2005. The witness identified a copy of the application form to which is attached a copy of his identity card, but states that he did not apply for the mobile number (3)125636<sup>19</sup> and that the details on the application form with respect to his personal information are incorrect;<sup>20</sup>
- Witnesses 118 and 010—who each made one statement—are married and live in Tripoli. Witness 010 purchased a SIM card at a store in Tripoli in around January 2005. Witness 010 used Witness 118’s identity card—which was copied at the mobile telephone store—to purchase the telephone. The witnesses identified the application form with Witness 118’s identity card attached. They state that they had not subscribed to mobile telephone 3123741<sup>21</sup> and they do not recognize this mobile telephone number nor the signature on the application form;<sup>22</sup>
- Witness 021 described how, since 2003, he had purchased a number of SIM cards and handsets from a mobile telephone store in Tripoli. He provided a copy of his identity card to the shopkeeper in 2003 and again in 2005, before Mr Hariri’s assassination. The witness identified a copy of the application form with his identity card attached. The witness stated that he did not

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<sup>17</sup> Counsel for Mr Oneissi argue, among other things, that it is impossible to determine the reliability, probative value and prejudicial effect of the documents mentioned in the three Prosecution motions, as Prosecution witnesses will rely upon them in conjunction with other, as yet unidentified, documents. Counsel submit that the admissibility of the documents should be determined when these witnesses testify and not before. *See* Oneissi Defence response, paras 6 and 9-13.

<sup>18</sup> A SIM card, also known as a subscriber identity module, is a smart card that stores data for mobile telephone subscribers. Such data includes user identity, location and telephone number, network authorisation data, personal security keys, contact lists and stored text messages.

<sup>19</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as ‘Red 636’. The Prosecution explains in its motion that the witnesses each refer to a six-digit telephone number on the Alfa Active application forms with their subscriber information and the telephone numbers were listed without the prefix ‘3’. Ancillary evidence from Alfa Company will provide the complete Red Network telephone number as a seven-digit number, which includes prefix ‘3’ plus area code. *See* Prosecution motion, footnote 7.

<sup>20</sup> Prosecution motion, para. 20.

<sup>21</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as ‘Red 741’.

<sup>22</sup> Prosecution motion, para. 21.

make the application for mobile number (3)478662.<sup>23</sup> Some information in the application form, such as his address, education level, and profession was incorrect; he did not recognise the signature and handwriting on the application form;<sup>24</sup>

- Witness 077, who lives outside Tripoli, had bought a number of mobile telephone lines and handsets. The witness recalled providing an identity card when purchasing one of the mobile telephones. He identified a copy of the application form with his identity card attached, for the mobile number (3)129678.<sup>25</sup> According to the witness, although his identity card was attached to the mobile telephone contract for number (3)129678, he does not recognise the telephone number and did not use this mobile telephone. Further, the witness did not recognise the handwriting or the signature on the application form and, according to him, the personal information is incorrect;<sup>26</sup>
- Witness 113, who lives in Tripoli, bought a SIM card from a store in Tripoli in 2005, before Mr Hariri's assassination. The shopkeeper copied his identity card. The witness identified a copy of the application form, with his identity card attached, for mobile number (3)129652.<sup>27</sup> The witness stated that he had not applied for mobile number (3)129652, that the personal information on the mobile telephone application is incorrect, and that he does not recognise the handwriting or signature on the form;<sup>28</sup>
- Witness 114 described purchasing a SIM card in a store in Tripoli in 2004. He provided a copy of his identity card to the shopkeeper. When shown a copy of the application form (with his identity card attached) for mobile number (3)129893,<sup>29</sup> he stated that he did not purchase this particular SIM card. He noted that personal information on the mobile telephone application was incorrect,<sup>30</sup> and
- Witness 117, who lives in Tripoli, purchased a SIM card and handset from a store in Tripoli, before 3 February 2005. The shopkeeper copied her identity card during the transaction. The

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<sup>23</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as 'Red 662'.

<sup>24</sup> Prosecution motion, para. 22.

<sup>25</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as 'Red 678'.

<sup>26</sup> Prosecution motion, para. 23.

<sup>27</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as 'Red 652'.

<sup>28</sup> Prosecution motion, para. 24.

<sup>29</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as 'Red 893'.

<sup>30</sup> Prosecution motion, para. 25.

witness identified a copy of the application form for mobile number (3)292572,<sup>31</sup> with her identity card attached. She did not recognise the application form for mobile number (3)292572, the handwriting, or the signature. Further, some of the personal information on the application form was incorrect.<sup>32</sup>

10. The Prosecution submits that the proposed evidence is cumulative in nature. In particular, Witness PRH553<sup>33</sup>—the mobile telephone dealer who sold the SIM cards—will testify in the court room about how the identity cards of mobile telephone customers from the Tripoli area had been associated with the ‘red network’ mobile telephones. The proposed eight witness statements will supplement this evidence and further explain how the ‘red network’ mobile telephone lines were falsely subscribed in the names of seven of the eight witnesses.<sup>34</sup>

11. The Prosecution also notes that two statements contain minor departures from the Practice Direction. The statement of Witness 118 does not mention the witness’s religion on the witness information sheet. The Prosecution submits that this minor deviation from the Practice Direction is inconsequential to the reliability of the statement. In addition, the statement of Witness 114 does not contain a signed declaration by the interviewer stating that he verified the witness’s identification.<sup>35</sup>

12. In its previous decisions, the Trial Chamber has held that it may depart from a strict application of the Practice Direction regarding non-compliant witness statements where the interests of justice so require. Consequently, a witness statement may be admitted into evidence, despite a minor or inconsequential breach of the Practice Direction if it does not affect that statement’s reliability.<sup>36</sup>

13. With respect to the statement of Witness 118, the Trial Chamber considers that compelling reasons exist to overlook this minor breach as the specification of the witness’s religion on the cover page of his statement does not affect the reliability of his statement. As for Witness 114, a copy of the witness’s passport is attached to the statement in lieu of the declaration. The Prosecution has therefore complied with the Practice Direction’s requirement to verify Witness 114’s identity.

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<sup>31</sup> In the consolidated indictment and the pre-trial brief, the Prosecution refers to this mobile number as ‘Red 572’.

<sup>32</sup> Prosecution motion, para. 26.

<sup>33</sup> Witness PRH553 is not currently scheduled to testify.

<sup>34</sup> Prosecution motion, para. 28.

<sup>35</sup> Prosecution motion, para. 29.

<sup>36</sup> F937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements Under Rule 155, 30 May 2013, paras 25-28; F1218, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 11-12.

14. The Trial Chamber is satisfied that the eight witness statements are relevant to the allegations pleaded in the consolidated indictment, in particular in paragraphs 14-19 and 25, and are probative of the material facts pleaded. The statements provide evidence about the alleged use by the Accused, Mr Ayyash, and others, of the 'red network' mobile telephones to carry out the attack against Mr Hariri. The statements are probative in that they could demonstrate that the 'red network' mobile telephones were acquired in a manner that obscured the true identity of the mobile telephone users. Accordingly, they are admissible under Rule 149 (C). The evidence of the purchase of the mobile telephones and SIM cards is not alleged to 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. Moreover, no Defence counsel have sought to have the witnesses called for cross-examination. All of the documents which are the subject of this motion and are associated with the statements of these eight witnesses are also admissible under Rule 154 as an indispensable part of the statements.

### **3. Confidentiality**

15. Because they contain confidential witness information, the Prosecution seeks to maintain the confidential status of the annexes to its motion.<sup>37</sup> The Prosecution must either file a public redacted version of the annexes or have them reclassified as public; this may await the formal admission into evidence of the statements of the eight witnesses.

### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**ALLOWS** the Prosecution leave to amend its exhibit list by adding the eight witness statements listed in Annex A of its motion;

**DECLARES** admissible under Rule 155 the statements of Witnesses PRH004, PRH010, PRH021, PRH077, PRH113, PRH114, PRH117, and PRH118, and under Rule 154 the documents associated with these statements; and

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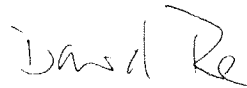
<sup>37</sup> Prosecution motion, para. 31.



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

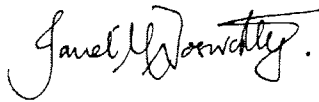
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands  
19 January 2015



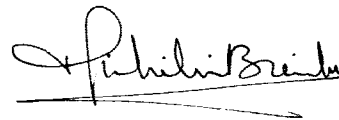
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

