

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: 26 August 2016

Original language: English

Classification: Public with confidential and *ex parte* Annex A

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**FURTHER DECISION ON SABRA DEFENCE MOTION FOR A FINDING OF
NON-COMPLIANCE WITH THE SPECIAL TRIBUNAL**

Office of the Prosecutor:
Mr Norman Farrell and Mr Alexander
Hugh Milne

Defence Office:
Mr François Roux

**Legal Representatives of Participating
Victims:**
Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

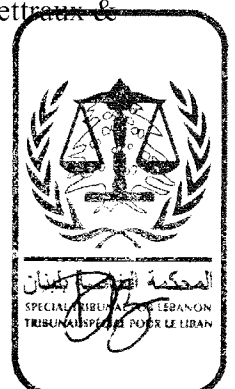
**The Government of the Lebanese
Republic**

Counsel for Mr Salim Jamil Ayyash:
Mr Emile Aoun, Mr Thomas Hannis & Mr Chad
Mair

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 Yasser
Hassan & Ms Natalie Von Wistinghausen

Counsel for Mr Assad Hassan Sabra:
Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts



BACKGROUND

1. The Trial Chamber remains seised of long-standing requests from counsel for the Accused, Mr Assad Hassan Sabra, to make findings of non-compliance against the Government of the Lebanese Republic for failing to respond to the Trial Chamber's order to Lebanon to cooperate with the Special Tribunal, and to answer Defence requests for assistance seeking information for their investigations and preparations for trial.

2. One hundred and nineteen requests for assistance were initially argued by the Sabra Defence to be outstanding.¹ The Trial Chamber, in decisions of 31 January 2014, 31 March 2014, a clarification order of 23 June 2014, a decision of 27 March 2015, and a further clarification order of 22 May 2015, directed the Government of the Lebanese Republic to cooperate with the Special Tribunal by responding to and answering—in the Trial Chamber's assessment—an enumerated 43 outstanding Defence requests for assistance.² These decisions specifically addressed each outstanding request for assistance; for example, the decision of 31 January 2014 related to 11 requests, while that of 31 March 2014 referred to 32.

3. Counsel for Mr Sabra have made several requests to the Trial Chamber to issue, under Rule 20 (C) of the Special Tribunal's Rules of Procedure and Evidence, a finding of non-compliance directed to the Government of the Lebanese Republic in relation to requests for assistance that they submit remain outstanding—in breach of the Trial Chamber's orders.³ Counsel have asked the Trial Chamber to inform the President of the Special Tribunal of this

¹ STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1234, Public Redacted Version of "Further Clarification Regarding Sabra Defence Motion for Stay of Proceedings", 6 December 2013, para. 2.

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1379, Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal, 31 January 2014; F1471, Further Decision on Motions under Rule 20 (A) by Counsel for Assad Hassan Sabra and Four Orders to Lebanon to Cooperate with the Tribunal, 31 March 2014; F1590, Clarification regarding Orders to Lebanon to Cooperate with the Special Tribunal, 23 June 2014; F1889, Decision on Updated Request for a Finding of Non-Compliance, 27 March 2015; F1960, Order Clarifying Decision on Updated Request for a Finding of Non-Compliance of 27 March 2015, 22 May 2015.

³ STL-11-01/PT/PTJ, F0702, Second Motion Seeking the Cooperation of Lebanon – Telecommunications Information, 4 February 2013; F1079, Fifth Motion Seeking the Cooperation of Lebanon, 28 August 2013; STL-11-01/T/TC, F1495, Consolidated Request for Finding of Non-Compliance, 14 April 2014; F1810, Updated Request for a Finding of Non-Compliance, 8 January 2015, Confidential and *ex parte* (a confidential version, F1811, (redacted version of F1810) Updated Request for a Finding of Non-compliance, was filed the same day, as was a public redacted version of F1810); F2412, Submission in Relation to the Trial Chamber's "Invitation to the Government of the Lebanese Republic in Relation to the Sabra Defence Request for a Finding of Non-Compliance", 21 January 2016.

finding of non-compliance so that she may engage in consultations with the relevant Lebanese authorities with a view to obtaining the required cooperation.⁴

4. After receiving more information from the Lebanese Government, the Sabra Defence, in August 2015, submitted that 21 requests remained outstanding,⁵ and, in January 2016—after receiving further material—that this had been reduced to 17.⁶ Since then, they have received additional documentation from the Lebanese Government.

5. On 17 August 2016, the Defence of Mr Sabra filed a further submission detailing the requests said to remain outstanding, and stating that another four requests (numbers 16, 23, 47 and 63 in the annex to the Sabra submission) were no longer outstanding.⁷ The annex itself, however, still referred to 17 supposedly outstanding requests, including what appeared to the Trial Chamber to be already satisfied requests (13 in total).⁸ The contradiction between this submission and that of January 2016 is resolved only by the Trial Chamber itself examining the actual content of the responses.⁹

6. The Trial Chamber has therefore carefully examined the annex to the latest submission, compared it to the previous Sabra Defence submissions and annexes, and analysed itself the content of the responses from the Lebanese Government.

7. The Trial Chamber has accordingly evaluated that the number of outstanding requests for assistance appears to have now been reduced to four, notwithstanding that the annex to the

⁴ STL-11-01/T/TC, F2412, Submissions in Relation to the Trial Chamber’s “Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance”, 21 January 2016 (‘January 2016 submissions’). Counsel for Mr Sabra made requests for a finding of non-compliance in F2139, Ninth Notice to “Decision on Updated Request for a Finding of Non-Compliance” and Request for a Finding of Non-Compliance, 24 August 2015 and F2322, Clarification to Notices to “Decision on Updated Request for a Finding of Non-Compliance”, 16 November 2015 (‘Ninth notice’); F2527, Further Submissions in Relation to the Trial Chamber’s “Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance”, 31 March 2016; F2571, Further Submissions in Relation to the Trial Chamber’s “Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance”, 26 April 2016.

⁵ Ninth notice, para. 3.

⁶ January 2016 submissions, paras 5, 6.

⁷ F2692, Further Submissions in Relation to the Trial Chamber’s “Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for A Finding of Non-Compliance”, 17 August 2016.

⁸ The January 2016 submissions stated that no material was outstanding in respect of two Lebanese telecommunications providers, Touch (MTC Communications) or Ogero, paras 38, 60, yet the copy-pasted annex to the August 2016 submission still refers to these providers. The Trial Chamber therefore views these requests as satisfied in respect of Touch and Ogero.

⁹ The January 2016 submissions state that 17 were then outstanding. The August 2016 submission inconsistently states that four more had been satisfied, yet its annex still referred to 17 as outstanding.

submission appears to suggest that more (17) are outstanding. The other 13—on the basis of previous Sabra Defence submissions and the content of the responses—seem to have been answered.

OUTSTANDING REQUESTS FOR ASSISTANCE

8. Each of these remaining four requests relates to information said to be held by one Lebanese telecommunications provider.

First request – job titles and descriptions

9. The first outstanding request has been answered except in relation to providing Defence counsel with some job titles and job descriptions. The omission of this information, however, may have been a clerical oversight by the telecommunications provider. The simplest resolution may have been for Defence counsel to have recontacted the provider to obtain the information, but this seems not to have occurred.

Second, third, and fourth requests – technical information

10. The second, third, and fourth outstanding requests seek specific information in relation to cellular networks, to which the response has been that only former employees have this information. Counsel for Mr Sabra submit that the Lebanese Government has not obtained this information from those former employees and has thus not provided a definitive response to the requests for assistance.

11. The Trial Chamber is not convinced that only former employees would have this kind of specific information. On its face, the information—if it exists—should be in the provider's possession. However, if the assertion that only former employees have it is correct, reasonable attempts should be made to contact them to ascertain if the information can be retrieved.

CONCLUSION

12. Following the Trial Chamber's orders, it appears that the Government of the Lebanese Republic has now obtained and submitted responses to almost all of the Defence requests for assistance. The Trial Chamber recognizes and appreciates the work of the Lebanese Government in obtaining responses to all bar these four Defence requests for assistance. The Trial Chamber urges it to continue with its efforts. The Trial Chamber therefore extends the date for enforcement of its previous orders for another 21 days from the notification of this

decision, in Arabic, to the Government of the Lebanese Republic, in relation to the four outstanding requests for assistance listed in the annex to this decision.

DISPOSITION

FOR THESE REASONS, and pursuant to Article 15 (1) of the Agreement between the United Nations and the Government of Lebanon annexed to United Nations Security Council Resolution 1757 (2007), and Rule 20 (A) of the Special Tribunal's Rules of Procedure and Evidence, the Trial Chamber;

INSTRUCTS the Registrar to immediately notify the Government of the Lebanese Republic of this decision, and to annex to it:

F2692, Further Submissions in relation to the Trial Chamber's "Invitation to the Government of The Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for A Finding of Non-Compliance", 17 August 2016;

EXTENDS for twenty-one days from the notification of this decision to the Government of the Lebanese Republic, in Arabic, the time for it to provide to the Special Tribunal the information specified in the annex to this decision; and

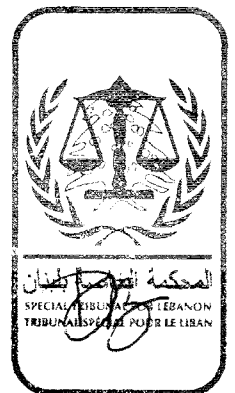
INSTRUCTS counsel for Mr Assad Hassan Sabra to continue to provide the Trial Chamber, within two weeks of the Government of Lebanon receiving these documents in Arabic, with fortnightly progress updates.

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

Leidschendam,
The Netherlands
26 August 2016

David Re

Judge David Re, Presiding



Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy