

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:** 22 September 2016

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

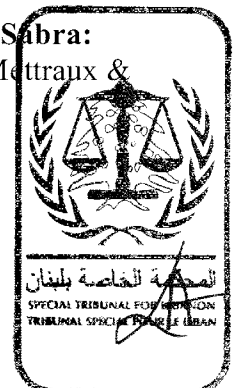
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**DECISION ON PROSECUTION MOTION TO ADMIT THE STATEMENTS  
OF WITNESSES PRH590, PRH339, PRH449 AND PRH685**

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**Office of the Prosecutor:**

Mr Norman Farrell and Mr Alexander Milne

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

## INTRODUCTION

1. The Prosecution seeks the admission into evidence, under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, of four statements by Witnesses PRH590, PRH339, PRH449 and PRH685. The statements relate to the attribution to the Accused, Mr Assad Hassan Sabra, of three telephone numbers and other telephone numbers frequently in contact with those three numbers.<sup>1</sup> Counsel for Mr Sabra oppose the motion in part, requesting the Trial Chamber to defer its decision on the admission of Witnesses 339's and 449's statements pending reliable corroboration.<sup>2</sup> The Prosecution filed a reply addressing three new issues raised in the response.<sup>3</sup>

## SUBMISSIONS

### **A. Prosecution submissions**

2. The Prosecution submits that the proposed witness statements are relevant to its case and have probative value.<sup>4</sup> In particular, the proposed evidence demonstrates the attribution of the mobile telephone 'Purple 018'<sup>5</sup> and two other personal mobile telephone numbers to Mr Sabra during the time that the Prosecution alleges Mr Sabra used 'Purple 018', in addition to the attribution of other telephone numbers that were in contact with these telephone numbers. Based on information contained in their business records or from their personal knowledge,<sup>6</sup> the witnesses either provide telephone numbers of persons close to Mr Sabra, or numbers that had been in frequent contact with one or more telephone numbers attributed to him.

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2694, Prosecution Motion to Admit the Statements of PRH590, PRH339, PRH449 and PRH685, pursuant to Rule 155, 17 August 2016 (Confidential with Confidential Annexes A and B), para. 1.

<sup>2</sup> F2707, Sabra Defence Response to Prosecution Motion to Admit the Statements of PRH590, PRH339, PRH449 and PRH685 Pursuant to Rule 155, 1 September 2016, para. 10.

<sup>3</sup> F2712, Prosecution Reply to Sabra Defence Response to Prosecution Motion to Admit the Statements of PRH590, PRH339, PRH449 and PRH685, 6 September 2016, para. 1.

<sup>4</sup> Prosecution motion, para. 4.

<sup>5</sup> In its updated pre-trial brief, the Prosecution submits that two subsequent mobile telephones, attributed to Mr Sabra or his family, were compared with the profile of 'Purple 019' and provide support for the attribution of this telephone number to Mr Sabra.

<sup>6</sup> Prosecution motion, paras 5-9; *see also* Confidential Annex A to the motion.

***(i) Witness 590's statement***

3. Witness 590 provided a screenshot from a company customer database containing a number—personal mobile telephone 546—which the Prosecution attributes to Mr Sabra. A company representative contacted Mr Sabra's wife on this number.<sup>7</sup>

***(ii) Witness 339's statement***

4. Witness 339 provides a document extracted from the database of a business containing personal mobile telephone 657 which the Prosecution attributes to Mr Sabra. This telephone number and 'Purple 018' contacted one of Witness 339's telephone numbers when Mr Sabra's wife and daughter visited the business. Further, Mr Sabra accompanied his wife and daughter during their visits.<sup>8</sup>

***(iii) Witness 449's statement***

5. Witness 449 identifies a telephone number as that of one of his employees, a relative of Mr Sabra. The identified number, which the witness used to contact Mr Sabra's relative, was one of the most frequently contacted numbers with personal mobile telephones 546, 657, and 'Purple 018' and is therefore relevant to the attribution of all three telephone numbers to Mr Sabra.<sup>9</sup>

***(iv) Witness 685's statement***

6. Finally, witness 685 is the subscriber of a landline telephone number frequently contacted by 'Purple 018' which the Prosecution attributes to Mr Sabra.<sup>10</sup>

7. The Prosecution submits that these statements do not go to the acts and conduct of the Accused, as they only provide information relevant to attributing mobile telephone numbers to Mr Sabra.<sup>11</sup> It also submits that the evidence of these witnesses is generally cumulative to documentary evidence already submitted or to be submitted and listed in Annex B to the motion. It is furthermore corroborated by the evidence of Witness PRH024 who will appear in

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<sup>7</sup> Prosecution motion, para. 5.

<sup>8</sup> Prosecution motion, paras 6-7.

<sup>9</sup> Prosecution motion, para. 8.

<sup>10</sup> Prosecution motion, para. 9.

<sup>11</sup> Prosecution motion, paras 3, 10.

court to be cross-examined by the Defence in compliance with the Trial Chamber's decision of 12 July 2016.<sup>12</sup>

8. The witness statements contain the necessary indicia of reliability as detailed in Confidential Annex A.<sup>13</sup> They fulfil the procedural and substantive requirements as set out in Rule 155 (B) and three of the statements have been re-taken in order to comply with the technical requirements set out in the Practice Direction.<sup>14</sup>

9. Further, the Prosecution submits that there is no overriding public interest in the evidence being presented orally and the interests of justice and a fair and expeditious trial exceptionally warrant the admission of the witness statements without cross-examination.<sup>15</sup> Moreover, the Defence may explore the details related to the attribution process when Prosecution analyst, Mr Andrew Donaldson (Witness PRH230), testifies in regards to, among other things, his reliance on the evidence of these four witnesses in his attribution report.<sup>16</sup>

## **B. Defence submissions**

10. Counsel for Mr Sabra oppose the Prosecution motion in part, requesting that the Trial Chamber defer its decision on the admission of the written statements of Witnesses 339 and 449 pending reliable corroboration following the in-court testimony of Witness 024.<sup>17</sup>

11. The Defence cites the Trial Chamber's decision of 12 July 2016 regarding the admission of four statements that the Prosecution uses in support of the attribution of telephone numbers to Mr Sabra.<sup>18</sup> In particular, it highlights the Chamber's previous holding that proposed evidence concerning the attribution of 'Purple 018' to Mr Sabra was a live and important issue between the parties such that it was appropriate to require cross-examination.<sup>19</sup>

12. Following this reasoning, the Defence acknowledges that the statements of Witnesses 339 and 449 are eligible for admission as they may provide some corroboration of Witness

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<sup>12</sup> Prosecution motion, paras 11-12, 15; Confidential Annex B. For each telephone number attributed through the statements, the cumulative evidence is listed in Confidential Annex B, where the Prosecution also identifies the passages, in the Sabra attribution report, mentioning the relevant telephone numbers.

<sup>13</sup> Prosecution motion, para. 13.

<sup>14</sup> STL-PD-2010-02, Practice Direction on the Procedure for Taking Depositions under Rule 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155, 15 January 2010.

<sup>15</sup> Prosecution motion, para. 15.

<sup>16</sup> Prosecution motion, paras 15, 17.

<sup>17</sup> Sabra response, para. 10.

<sup>18</sup> Sabra response, paras 3-4.

<sup>19</sup> Sabra response, para. 4.

024's proposed testimony.<sup>20</sup> However, it emphasizes that Witness 024 must testify in court with reliable corroboration of the proposed evidence as a prerequisite to its admission.

13. The Defence does not seek to cross-examine Witnesses 590 and 685 and consequently, leaves it to the Trial Chamber to determine whether their written statements meet the necessary admissibility requirements.<sup>21</sup>

14. Finally, the Defence reserves its right to challenge the attribution of 'Purple 018', personal mobile telephones 657 or 546 to Mr Sabra and further reserves its right to make additional submissions on the formal admission of all witness statements declared admissible.<sup>22</sup>

### **C. Prosecution reply**

15. The Prosecution addresses three arguments which it considers to be new issues arising from the Defence response.

16. First, it contests that corroboration is a requirement for the admission of evidence.<sup>23</sup> Although the Defence has requested that the Trial Chamber clarify that a declaration of admissibility requires live evidence and reliable corroboration before the proposed evidence is admitted, it argues that corroboration is only one of the possible indicia of reliability and not a condition for admissibility.<sup>24</sup>

17. Second, the Prosecution disputes the Defence assertion that admissibility is a two stage process and disagrees that the Parties may make further submissions at the stage at which the tendering Party seeks formal admission of evidence in court and the assignment of an exhibit number, arguing that this would constitute a reconsideration of the Trial Chamber's initial decision on admissibility.<sup>25</sup>

18. Third, the Prosecution opposes the Defence request to defer its decision on the admission of the statements of Witnesses 339 and 449, asserting that the Trial Chamber is

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<sup>20</sup> Sabra response, para. 5.

<sup>21</sup> Sabra response, para. 7.

<sup>22</sup> Sabra response, para. 8.

<sup>23</sup> F2712, Prosecution reply to Sabra Defence Response to Prosecution Motion to Admit the Statements of PRH590, PRH339, PRH449 and PRH685, Confidential, 6 September 2016, para. 2.

<sup>24</sup> Prosecution reply, paras 1-2.

<sup>25</sup> Prosecution reply, para. 3.

already in a position to determine whether the statements fulfil the requirements of Rules 149 (C) and 155.<sup>26</sup>

### DISCUSSION

19. In earlier decisions, the Trial Chamber determined the procedural safeguards for admitting statements into evidence under Rule 155. 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 the opportunity for cross-examination.<sup>27</sup> These principles are applicable here.

20. In the amended consolidated indictment, and its updated pre-trial brief, the Prosecution alleges that Mr Sabra was the user of ‘Purple 018’, which is one of a group of three ‘purple’ telephone numbers allegedly used to coordinate a false claim of responsibility for the attack of 14 February 2005.<sup>28</sup>

21. The Trial Chamber, having reviewed the four witness statements, finds them relevant to and of probative value in the attribution of three telephone numbers, including ‘Purple 018’, to Mr Sabra and the attribution of telephone numbers in contact with those three telephone numbers.

22. The Trial Chamber has previously found statements relating to the attribution of telephone numbers of the Accused admissible under Rule 155, as evidence going to proof of a matter other than the acts and conduct of the accused.<sup>29</sup> Similarly the requirements under Rule 155 (A) are also met in the present case, as the evidence in question is of a cumulative nature,

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<sup>26</sup> Prosecution reply, para. 4.

<sup>27</sup> F2644, Decision on Prosecution Motion to Admit the Statements of witnesses PRH024, PRH069, PRH106 and PRH051 Pursuant to Rule 155, 12 July 2016, para. 25; F2311, Decision on Prosecution Motion for the Admission under Rule 155 of the Statements of Witnesses PRH371 (Helena Habraken) and PRH698 (Nicole Blanch), 9 November 2015 (Decision of 9 November 2015), para. 13; F1785, 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, 13 January 2015, para. 3; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013 (Decision of 20 December 2013), paras 7-14; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013 (Decision of 30 May 2013), para. 13.

<sup>28</sup> Amended consolidated indictment, para. 15 (e); Prosecution’s updated pre-trial brief, dated 23 August 2013, para. 55. The five interconnected groups of mobile telephones allegedly involved in the attack on 14 February 2005 have been colour-coded for ease of reference. See amended consolidated indictment, para. 15.

<sup>29</sup> F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related Evidence’, 9 July 2015, para. 39.

in that other witnesses have given or will give oral testimony of similar facts. Mr Donaldson has relied upon the evidence of Witnesses 590, 339, 449 and 685 in the Sabra attribution report to attribute certain telephone numbers to Mr Sabra.<sup>30</sup> He will be called to testify and the Defence may cross-examine this witness about his reliance on these witness statements. The Trial Chamber also previously ordered the appearance of Witness 024, who attributes ‘personal mobile telephone 657’ to Mr Sabra, for the purposes of cross-examination.<sup>31</sup> Accordingly, two witnesses whose statements have been admitted and relate to the evidence in the four witness statements, will be cross-examined. The existence of cumulative documentary evidence militates in favour of the admission of the four written statements into evidence without cross-examination.

23. Moreover, Rule 155 (B) is equally met as the statements also comply with the relevant Practice Direction, in that they have been signed, dated, and are accompanied by a witness information sheet, interviewer’s certification and interpreter’s certification, amongst others. Therefore, the Trial Chamber finds that all four witness statements are sufficiently reliable and cumulative of other evidence, including that to be presented live in court, to satisfy the requirements for admission under Rule 155.

24. The Trial Chamber finds that there is no overriding public interest that would otherwise require the evidence in question to be presented orally, in whole or in part. With respect to the statements of Witnesses 590 and 685, the Defence has clarified that it does not require their attendance for the purposes of cross-examination. As for the statements of Witnesses 339 and 449, although counsel for Mr Sabra request that the Trial Chamber defer its decision on their admission into evidence until after Witness 024 appears for cross-examination, they have not argued that the attendance of those witnesses for cross-examination is required or warranted. Nor is such a deferral provided for by any Rule or procedural safeguard, given that at this stage only a *prima facie* assessment of the statement’s reliability and hence probative value is required; the weight ultimately given to the evidence contained in these four witness statements is not an issue to be decided at the admissibility stage and the Defence may make submissions on these matters at a later stage in the proceedings. The Trial Chamber therefore finds no justification in deferring admission of the written statements of Witnesses 339 and 449 until after the cross-examination of Witness 024.

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<sup>30</sup> Prosecution motion, para. 15.

<sup>31</sup> F2644, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH024, PRH069, PRH106 and PRH051 Pursuant to Rule 155, 12 July 2016, paras 3, 40.

25. As the Trial Chamber has declined to defer its decision on admissibility until after the cross-examination of Witness 024, the Defence request to reserve its right to make additional submissions before formal admission is consequently rejected. The Trial Chamber will not receive further submissions from the Defence with respect to the admissibility of these particular four statements. The statements merely await their formal admission into evidence in the courtroom, accompanied by the assignment of exhibit numbers.

### CONFIDENTIALITY

26. The Parties submitted their filings confidentially. The Trial Chamber reiterates the public nature of these proceedings and orders the Parties to file public redacted versions of their submissions and annexes or have them reclassified as public.

### DISPOSITION

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

**DECLARES** admissible under Rule 155 the statements of Witnesses PRH590, PRH339, PRH449 and PRH685, as listed in Annex A to the Prosecution's motion. It will formally admit the statements into evidence at a suitable stage in the proceedings; and

**ORDERS** the Parties to file public redacted versions of their submissions and annexes or have them reclassified as public.

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

Leidschendam,  
The Netherlands  
22 September 2016

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

