

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: 31 January 2017

Original language: English

Classification: Public

The PROSECUTOR

v.

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

ORDER TO THE REGISTRAR UNDER RULE 13 IN RELATION TO A WITNESS**Office of the Prosecutor:**

Mr Norman Farrell & Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad Mair

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

1. The Trial Chamber, on 30 June 2016, requested the President of the Special Tribunal, under Rule 13 of the Special Tribunal's Rules of Procedure and Evidence, to invite a 'Third State'—a country in which a Prosecution witness unwilling to testify before the Special Tribunal was residing—to provide assistance to the Special Tribunal in securing the witness's evidence.¹ The President's office thereafter informed the Trial Chamber of communications with the authorities of the Third State about the possible forms of assistance available to the Special Tribunal, under Rule 125, 'Evidence Collected by Judicial Authorities of a State'.

2. Consequently, on 27 September 2015, the Trial Chamber referred the matter back to the President 'to engage with the Third State to enter into *ad hoc* arrangements under Rule 125 (A) and to explore—in consultation with the Trial Chamber and the Registrar—the modalities of collecting the witness's evidence under Rules 125 (B) and (C)'.²

3. On 30 January 2017, the President referred the matter back to the Trial Chamber, stating that the authorities of the Third State were willing to agree with the modalities set out in a draft letter—written in the Registrar's name and awaiting his signature—annexed to her referral.³

4. Under Rule 125 (A), the judicial authorities of the relevant State, at the request of a Party may collect testimony in accordance with a bilateral agreement or *ad hoc* arrangements, if that State objects to the taking of testimony under Rules 123 or 124. Rule 123, is the 'Taking of Depositions upon Order of Pre-Trial Judge', relevantly, on the request of a Party or pursuant to a *proprio motu* order from the Trial Chamber, utilising Rule 130 (B).⁴ Rule 124 provides for evidence by video-conference link. The modalities for collecting the evidence are specified in Rules 125 (B) and (C). Rule 125 (B) provides:

The judicial authorities of the State concerned shall allow the Party calling the witness as well as the other Party and, if held necessary by the Pre-Trial Judge or a Chamber, legal representatives of victims participating in the proceedings, to attend the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Mehri, Oneissi, and Sabra*, F2630, Public Redacted Version of "Decision under Rule 13 in Respect of a Witness" of 30 June 2016, 30 June 2016, paras 1, 5-6 and disposition. Rule 13 'Arrangements or Agreements before National or International Entities and the Tribunal' provides for the President to invite a Third State or entity to provide assistance to the Special Tribunal.

² F2738, Referral to the President of the Special Tribunal to enter into *ad hoc* arrangements with a State under Rules 13 and 125, 27 September 2016, para. 6.

³ STL-11-01/T/PRES, F2961, Concerning the Trial Chamber Referral Pursuant to Rule 13, 30 January 2017, para. 4.

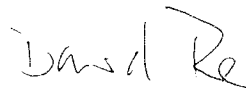
⁴ Rule 130 (B) provides that the Rules governing the proceedings before the Pre-Trial Judge apply, as applicable, to proceedings before the Trial Chamber—with three specified exceptions, none of which are relevant here.

questioning of the witness by a judicial authority of the State on the basis of questions submitted to that authority by the Parties or the legal representative. Where the law of the State concerned so permits, the judicial authority shall also allow them to ask questions directly to the witness.

5. The Trial Chamber is satisfied that the draft letter attached to the President's referral of 30 January 2017—awaiting the Registrar's signature—is consistent with Rule 125 and the rights of the Accused to a fair and expeditious trial. The Trial Chamber therefore **directs the Registrar, as a matter of urgency**—to take all necessary steps under Rule 13 to facilitate the collection of the witness's evidence by the Third State, including signing and sending the draft letter to the Third State. The Registrar should report back to the Trial Chamber as soon as this is done.

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

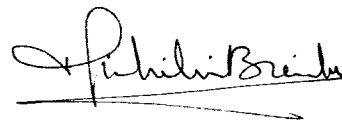
Leidschendam,
The Netherlands
31 January 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

