

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: 14 February 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR THE ADMISSION OF
NINE DOCUMENTS RELATING TO THE ATTRIBUTION OF
TELEPHONE NUMBERS TO THE ACCUSED HUSSEIN HASSAN ONEISSI**

Office of the Prosecutor:

Mr Norman Farrell & 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 Geoffrey R. G. G. G.



INTRODUCTION

1. The Prosecution's case concerns five interconnected mobile telephone groups—colour-coded as 'red', 'green', 'blue' and 'yellow', operating in four closed networks, and one group of 'purple' mobiles. These phones were involved in planning, preparing and executing the attack that resulted in former Prime Minister of Lebanon, Mr Rafik Hariri's death, and the death and injury of many others in Beirut on 14 February 2005. A group of three mobiles, referred to as the 'purple phones', were allegedly used to coordinate a false claim of responsibility for the attack, made soon after the explosion. The Prosecution alleges that Mr Hussein Hassan Oneissi, under the coordination of Mr Hassan Habib Merhi, participated with Mr Assad Hassan Sabra in the preparatory acts and the dissemination of the statements falsely ascribing the responsibility for the attack.¹ A key part of the Prosecution's case is the attribution of mobiles to the Accused and Mr Mustafa Amine Badreddine.² The Prosecution alleges that Mr Oneissi was the user of one of the three 'purple mobile phones', 03598095 (Purple 095).

2. The Prosecution seeks the admission into evidence of documents, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, to assist in attributing 'Purple 095' to Mr Oneissi.³ Counsel for Mr Oneissi express 'strong reservations' in relation to the probative value and authenticity of the tendered documents, but without substantiating their claim.⁴ Counsel for Mr Sabra take no position on the formal admission of the documents.⁵

EVIDENCE AND SUBMISSIONS

3. The Prosecution requests the admission of nine documents in the following four categories:

- a) judicial decisions permitting members of the Issa family to change their family

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016, paras 3 (c), 14-15.

² Mr Badreddine is named in the amended consolidated indictment as a co-conspirator, paras 3 and 48-51. Amended consolidated indictment, paras 14-47; F2819, Decision on Prosecution Motion to Admit Documents relating to Telephone Subscriber Records from the Touch Company, 7 November 2016, para. 14.

³ F2933, Prosecution Motion to Admit Nine Documents relating to the attribution of telephone numbers to the Accused Hussein Hassan Oneissi, 9 January 2017 (confidential with confidential annexes A-C).

⁴ F2950, Response to the "Prosecution Motion to Admit Nine Documents relating to the Attribution of Telephone Numbers to the Accused Hussein Hassan Oneissi", 20 January 2017, confidential.

⁵ F2953, Sabra Defence Response to "Prosecution Motion to Admit Nine Documents Relating to the Attribution of Telephone Numbers to Hussein Hassan Oneissi", 24 January 2017, confidential.

name to ‘Oneissi’;

- b) records from Lebanese banking institutions;
- c) an inheritance statement in the name of one of Mr Oneissi’s relatives; and
- d) a temporary circulation permit issued to Mr Oneissi.

a) *Judicial decisions permitting members of the Issa family to change their family name to ‘Oneissi’*

4. The first set of documents consists of eight judicial decisions of the Civil Court of Jwaya. The first decision, issued on 25 March 2002, granted permission to one of Mr Oneissi’s family members to change his family name from ‘Issa’ to ‘Oneissi’. The remaining seven decisions, issued on 12 January 2004, granted permission to Mr Oneissi and six of his family members to change their family name from ‘Issa’ to ‘Oneissi’. These decisions are relevant to the Prosecution’s case as they show that Mr Oneissi was also known as Hassan Hussein Issa and assist in the identification of some of Mr. Oneissi’s relatives.⁶

5. Regarding their reliability, the Prosecution explains that it received the documents from the President of the Civil Court of Jwaya in Lebanon in response to a request for assistance sent to the Government of the Lebanese Republic.⁷

b) *Records from Lebanese banking institutions*

6. The second set of documents relates to the opening two accounts at the Audi Bank, on 15 January and 25 February 2003, in the name of Mr Hussein Hassan Issa, which was Mr Oneissi’s name before his family name was changed. The account opened on 15 January 2003 was a joint one with another of Mr Oneissi’s family members. These documents record ‘Purple 095’ that the Prosecution attributes to Mr Oneissi. Both documents also record a mobile number ending in 188. This mobile number is the highest ranked contact number with ‘Purple 095’ during the timeframe in which the Prosecution attributes it to a relative of Mr Oneissi. The documents also show an address in Hadath, southern Beirut (Al-Jamous street, Building Ahmad Abbas, 7th floor), where Mr Oneissi allegedly resided with another family member.⁸

⁶ Prosecution motion, para. 4 (a).

⁷ Prosecution motion, para. 1 (i).

⁸ Prosecution motion, para. 4 (b) (i) and (ii).

7. The third set of documents relate to an account opened by Mr Issa/Oneissi with another person at the Lebanese Canadian Bank on 1 March 2004. These documents show 'Purple 095' recorded as Mr Issa/Oneissi's number and his address in Hadath. They also record for the other person appearing in both documents a mobile number ending in 176; this number was the eleventh ranked contact with 'Purple 095' during the period that the Prosecution attributes 'Purple 095' to Mr Oneissi.⁹

8. The fourth set of documents, showing Mr Issa/Oneissi's name, originates from Blom Bank and bears various dates in September 2004. These documents show 'Purple 095' recorded for Mr Issa/Oneissi and his address in Hadath. An application for a car loan in Mr Issa/Oneissi's name records one of his relatives as the 'warrantor'. It also records numbers ending in 795, 111 and 555 as Mr Issa/Oneissi's contact numbers, numbers from his place of work and numbers attributed to his relative. All three numbers were in contact with 'Purple 095'.¹⁰

9. The last document is an application to open an account at Fransabank S.A.L. in the name of Mr Issa and one of his relatives, dated 11 November 2008. The document shows a phone number ending in 795 and provides an address for both Mr Issa/Oneissi and his relative. This number was the second ranked contact with 'Purple 095' during the period that the Prosecution attributes 'Purple 095' to Mr Oneissi.¹¹

10. The Prosecution received the bank records from the Special Investigation Commission Fighting Money Laundering of the Banque du Liban in response to a request for assistance.¹²

c) An inheritance statement in the name of one of Mr Oneissi's relatives

11. This document is an extract from an inheritance statement from a deceased member of Mr Oneissi's family. This document shows the names and mobile numbers of some of Mr Oneissi's family members. The document assists in the identification of Mr Oneissi's family members and of third party contact numbers that were in contact with 'Purple 095'.¹³ The

⁹ Prosecution motion, para. 4 (b) (iii)-(iv). The Prosecution alleges that the mobile number ending in 178 was also in contact with Purple 231 and Purple 018 during the time the Prosecution attributes these numbers to the Accused, Mr Merhi and Mr Sabra. Annex A, items 4-5.

¹⁰ Prosecution motion, para. 4 (b) (v).

¹¹ Prosecution motion, para. 4 (b) (vi).

¹² Prosecution motion, para. 1 (ii).

¹³ Prosecution motion, para. 4 (c).

Prosecution received this document from the Ministry of Finance of the Republic of Lebanon in response to a request for assistance.¹⁴

d) *A temporary circulation permit issued to Mr Oneissi*

12. This document is a temporary circulation permit, valid between 10 and 20 September 2004, for a Mitsubishi Lancer owned Mr Issa/Oneissi. The document shows ‘Purple 095’ as recorded for Mr Issa/Oneissi and his address in Hadath.¹⁵ The Prosecution received this document from the Ministry of Interior and Municipalities of Lebanon in response to a request for assistance.¹⁶

13. The Prosecution disclosed the documents to the Defence. The Prosecution submits that the probative value of these documents is not outweighed by the Accused’s right to a fair trial. Counsel are aware of the relevance of these documents because Mr Andrew Donaldson (Witness PRH230) relies upon their content in his Attribution Report,¹⁷ and they will have the opportunity to cross-examine him. Admitting these documents ‘from the bar table’ is in the interests of justice and serves a fair and expeditious trial.¹⁸ In annex C, the Prosecution lists the call sequence tables for ‘Purple 095’.

DISCUSSION

14. The Trial Chamber has held that admitting evidence ‘from the bar table’ under Rule 154 without requiring a witness to produce or identify it, is a well-established practice before international courts and tribunals. However, like with any evidentiary material, the evidence must meet the basic requirements for admission of evidence under Rule 149 (C) and (D). The evidence must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect. At this stage in the proceedings, only *prima facie* reliability and probative value is necessary. Probative value is distinct from the weight the Trial Chamber may ultimately give to the evidence. The tendering party must also demonstrate with clarity and specificity, where and how each piece of evidence fits into its case.¹⁹

¹⁴ Prosecution motion, para. 1 (iii).

¹⁵ Prosecution motion, para. 4 (d).

¹⁶ Prosecution motion, para. 1 (iv).

¹⁷ Evidence of Telephone Attribution, Hussein Hassan Oneissi, 11 November 2015, version 3.

¹⁸ Prosecution motion, para. 6.

¹⁹ F2815, Decision on the Admission of Documents Related to Telephone Subscriber and User Information, 4 November 2016, para. 6; F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight

15. The Trial Chamber has carefully reviewed each document in annexes A and B to the Prosecution motion and the submissions of the Parties, and noted the call sequence tables listed in annex C. The Trial Chamber finds that the documents are relevant because they may assist in attributing ‘Purple 095’ to Mr Oneissi or identifying users of telephone numbers—Mr Oneissi’s relatives, his place of work or a bank—which were in contact with ‘Purple 095’, allegedly attributed to Mr Oneissi. They are also relevant to proving that Mr Oneissi legally changed his surname from ‘Issa’ to ‘Oneissi’. Four sets of the documents received from banking institutions and Mr Oneissi’s temporary circulation permit show Mr Oneissi’s address in Hadath, which may assist in the analysis of the geographical profile of telephone numbers attributed to him. The Trial Chamber emphasises that this is distinct from the weight to be given to the exhibits.

16. The Prosecution obtained the documents from different Lebanese authorities: the President of the Civil Court of Jwaya, the Special Investigation Commission Fighting Money Laundering of the Banque du Liban, the Ministry of Finance of the Republic of Lebanon, and the Ministry of Interior and Municipalities of Lebanon, through requests for assistance. The Trial Chamber will not address counsel for Mr Oneissi’s ‘strong reservations’ in relation to the authenticity of the tendered documents as the Defence did not substantiate their claim. The Prosecution has provided sufficient evidence of the authenticity of these documents; their reliability is also uncontested.

CONFIDENTIALITY

17. The Prosecution requests the Trial Chamber to maintain the confidential status of the annexes to its motion as they contain confidential information regarding the identity of third party individuals. Counsel for Mr Oneissi and Mr Sabra filed their responses confidentially. While in these proceedings confidentiality is the exception, not the rule, the Trial Chamber is satisfied that annexes A, B, and C of the Prosecution motion should remain confidential, until it decides otherwise.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

DECLARES the documents listed in annex A admissible under Rule 154;

Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIC and STL’s Prosecution, 6 May 2015, para. 111.

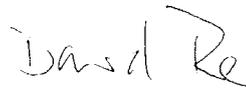
DECIDES that it will, at a suitable stage in the proceedings, formally admit the documents into evidence, and assign them exhibit numbers;

ORDERS the Prosecution and Defence counsel to file public redacted versions of their respective filings; and

MAINTAINS the confidentiality of annexes A to C of the Prosecution motion until further order.

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

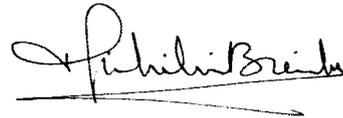
Leidschendam,
The Netherlands
14 February 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

