

**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:** 27 June 2017

**Original language:** English

**Classification:** Public

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**DECISION ON THE DEFENCE REQUEST FOR ADJOURNMENT OF THE  
HEARING OF EVIDENCE OF WITNESS PRH230**

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(Extract from Official Public Transcript of Hearing on 27 June 2017, page 38, line 8 to page 41, line 24)

Mr. Andrew Donaldson's report, "Evidence of Telephone Attribution - Assad Hassan Sabra," is Exhibit P1953, marked for identification. It's dated the 13th of November, 2015, and is in Version 3. It contains several hundred footnotes, the last one is footnote 258; however, a number have been removed and there are a number of other footnotes which have been inserted with the numbers, for example, (a), (b), and (c).

The report contains statements or conclusions relating to Prosecution evidence which is either not in evidence or the Prosecution has decided or elected not to tender the documents or the witness statements or to call the witness to provide evidence. So in that respect, Mr. Donaldson's conclusions, in some respects, which have not been clearly identified, rely upon matters which are not in evidence.

The Chamber has brought this to the Prosecution's attention and has indicated its dissatisfaction with the fact that Mr. Donaldson is testifying about reports that are not in a final form.

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The Prosecution has said that they are attempting to finalize the reports as in relation to the accused Mr. Sabra, the other three accused and the former accused, Mr. Mustafa Amine Badreddine, as soon as possible.

Defence counsel have made legitimate complaints that the reports are not finalized and have addressed the Chamber on the fact that this is an unsatisfactory situation and is causing some prejudice and lack of fairness to the Defence in the manner in which the evidence is being presented.

Counsel for the accused Mr. Assad Hassan Sabra today in court made an oral application to adjourn Mr. Donaldson's evidence pending the completion of a final report. There is also an outstanding motion filed by counsel for Mr. Sabra, supported by other accused, for the Prosecution to provide a final report [...] filed by counsel for Mr. Ayyash, supported by other accused, asking [...] the Trial Chamber to order the Prosecution to file a final report in relation to Mr. Ayyash. There is much merit in the substance of that motion which the Prosecution is due to respond to today.

Counsel for the four accused are seeking the immediate adjournment of Mr. Donaldson's evidence to allow him to work on finalizing the reports or preparing final versions in which all references to evidence which is not relied upon is deleted from the reports and the footnotes and the footnotes are all updated to reflect the exhibit number of the underlying source material from which he draws his conclusions.

The Prosecution counsel has said that this is "a massive" task which will take some time to do. The Chamber doesn't necessarily agree with the Prosecution's pessimistic view of how long it should take to do this and emphasizes, in its view, that this should have been done in advance of Mr. Donaldson coming to testify in chief.

Although the Chamber, of course, recognizes that there are some pieces of evidence which the Chamber has not yet decided upon, but in the Chamber's view that could have been addressed by the reports referring to those pieces of evidence in some way in the footnote as to indicate that they were awaiting a decision. So some significant amendment is required of the footnotes, and in relation to the Sabra attribution report, every footnote has to be amended to either delete a reference to material which is not being relied upon or to insert an exhibit number. This is fairly obvious for the reasons that the Chamber can't rely, nor can Mr. Donaldson, on material which is not in evidence. The Chamber can only rely upon material which is, of course, in evidence.

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The Chamber has to balance whether there is any prejudice to the Defence against the requirement that there must be a fair and expeditious trial. The Chamber is of the view in the circumstances that any prejudice to the Defence is minimal because the Defence should be aware, although we do, of course, agree that it's difficult to work out from the reports what is and what isn't in evidence, but the Defence should be in a position to ascertain this with a high degree of certainty.

The Chamber agrees that this is far from ideal, it is very unsatisfactory, and Defence counsel and the Chamber should not have been put in this position as we have been today.

However, there is a practical way of addressing it and the Chamber intends to proceed in this fashion: That is, to hear the evidence in relation to the accused to the point that we can in chief with Mr. Donaldson's evidence, and for the Prosecution to address, as they go with Mr. Donaldson, any obvious things that need to be rectified in the reports, such as identifying footnotes which should be removed or paragraphs or sentences which should be removed.

The alternative would be to adjourn the trial. And on the current Prosecution estimate, they wouldn't have these reports completed for some time, meaning that Mr. Donaldson wouldn't complete his examination-in-chief until sometime, it would appear, in late August.

This is also not in the interests of justice and a fair and expeditious trial.

So for these reasons the Chamber will not grant the adjournment.

However, the Chamber emphasizes that this work must be completed before Defence counsel cross-examine Mr. Donaldson. The reports must be finalized before Mr. Donaldson is cross-examined by counsel for any of the accused. So if necessary, Mr. Donaldson can be recalled to provide further evidence in chief in relation to any of the four accused and Mr. Badreddine, if necessary, after he has rectified and completed the final version of the reports.

The Chamber also emphasizes that it will have made all the necessary decisions on the outstanding evidence long before Mr. Donaldson has to finalize his reports.

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