

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:** 5 September 2017

**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 ADMITTING INTO EVIDENCE 18 WITNESS STATEMENTS UNDER  
RULES 155 AND 158, AND REASONS FOR ADMITTING TWO WITNESS  
STATEMENTS OF PARTICIPATING VICTIMS**

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**Office of the Prosecutor:**Mr Norman Farrell & Mr Alexander Hugh  
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 Youssef 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 Roberts  
Ms Sarah Bafadhel

## INTRODUCTION

1. On 31 July 2017, the Trial Chamber authorised the Legal Representatives of Victims to present the evidence of eight *viva voce* (live) witnesses<sup>1</sup> and submit 23 witness statements for admission into evidence—22 under Rule 155 and one under Rule 158 of the Special Tribunal’s Rules of Procedure and Evidence.<sup>2</sup>
2. On 21 August 2017, the Legal Representatives sought the admission into evidence of these 23 witness statements and, under Rule 155, of the additional witness statement of V027—a participating victim authorised by the Trial Chamber to testify, but who was no longer able to attend.<sup>3</sup> The Parties raised no objection and or stated they would not to respond to the application.<sup>4</sup>
3. The Trial Chamber, in two decisions delivered in court on 29 and 30 August 2017, admitted into evidence, under Rule 155, the statements of six witnesses, namely Mr Raymond Abou-Chaaya (V008), Ms Sanaa El Sheikh (V010), Mr Wissam Naji (V014), Mr Rabih Nohra (V080), V027 and V073.<sup>5</sup> This decision will deal with the admission of the remaining 17 witness statements, under Rule 155, and of one statement under Rule 158.<sup>6</sup> It also provides written reasons for the decision of 30 August 2017 admitting into evidence the witness statements of V027 and V073.

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<sup>1</sup> Seven of them are victims participating in the proceedings. The other is a victimologist, Professor Rianne Letschert.

<sup>2</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3260, Decision on the Legal Representative of Victims’ Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017 (‘Decision of 31 July 2017’), disposition.

<sup>3</sup> F3286, The Legal Representative of Victims Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with confidential Annexes A and B, 21 August 2017 (public with confidential annexes) (‘Application’), paras 1, 3, 19, 23.

<sup>4</sup> See F3293, Prosecution Response to ‘The Legal Representative of Victims’ Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with confidential Annexes A and B’, 24 August 2017, para. 2; transcript of 22 August 2017, pp 57-59; F3296, Merhi Defence Submissions relating to the Admissibility of the Documents Supporting the “Agreed Facts” Proposed by the Legal Representatives of Victims and Response to the Motion of 21 August 2017 Filed by the Legal Representatives of Victims, 25 August 2017 (confidential) (‘Merhi response’), para. 8, p. 6.

<sup>5</sup> Exhibits 1V11, 1V12, 1V13, 1V14, 1V21 and 1V22. Any witness identified only by the relevant V number has received protective measures (see F3297, Decision Granting the Legal Representatives of Victims’ Request for Protective Measures for 11 Witnesses, 28 August 2017). Mr Abou-Chaaya, Ms El Sheikh, Mr Naji and Mr Nohra, whose statements were admitted on 29 August 2017, were injured and suffered harm as a result of the explosion on 14 February 2005. See Decision Granting Legal Representative of Victims’ Rule 155 Motion with respect to V008, V010, V014 and V080 (transcript of 29 August 2017, pp 63-65); Decision Admitting into Evidence under Rule 155 the Statements of Victims V027 and V073 (transcript of 30 August 2017, p. 61).

<sup>6</sup> The Trial Chamber will deal, in a separate decision, with the Legal Representatives’ application for admission into evidence, under Rule 154, of a large number of documents—used as the source for the ‘proposed agreed facts’ the Legal Representatives submitted, for the Parties’ consideration, pursuant to the Trial Chamber’s Presiding Judge’s order as Judge Rapporteur for reaching agreement between the Parties on matters in dispute of—and of three additional documents. Confidential annexes A and B relate to this application.

4. Rules 155 and 158 provide for the admission into evidence, respectively, of written statements of a witness, in lieu of oral testimony, when the evidence goes to proof of a matter other than the acts and conduct of an accused as charged in the indictment, and the written statements of a witness who is ‘unavailable’.

### **THE EVIDENCE**

#### *a) 19 Witness Statements (17 proposed for admission and two admitted) under Rule 155*

5. The Legal Representatives have obtained the witness statements from 18 participating victims and one individual affiliated with two participating victims. With regard to V027—one of the seven participating victims permitted to give live evidence—the Legal Representatives submitted that he was unable to testify due to logistical issues and that they were satisfied with the sufficiency of his witness statement.<sup>7</sup>

6. Three witnesses were injured and suffered harm as a result of the explosion on 14 February 2005, in Beirut, that killed the former Lebanese Prime Minister, Mr Rafik Hariri; and 16 are relatives of individuals who died due to the explosion. The explosion occurred outside the St Georges Hotel, in Ain-El-Mreisseh.<sup>8</sup> The evidence of the victims injured in the explosion provides information on their whereabouts and activities on 14 February 2005, the damage caused by the explosion, and the harm they suffered.

7. The evidence of the relatives provides information on their last contacts with the victims; their relationship with them; how they learned about the explosion and, then, of the death of their relatives and, in several cases, who identified the bodies. The evidence is also of the material, physical or the mental harm they and their family members suffered due to their relatives’ deaths.

8. Most of the witnesses state that they are participating in the proceedings to achieve justice. Some witnesses are members of the same family and lost the same relative, and some lost the same relative as other participating victims.

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<sup>7</sup> Application, paras 19-21, 23.

<sup>8</sup> According to the amended consolidated indictment (*see* para. 41), the explosion occurred as Mr Hariri’s convoy passed the St Georges Hotel. One of the cameras of the HSBC (Hong Kong Shanghai Banking) Corporation Closed Circuit Television (CCTV) system, looking out towards the St Georges Hotel, showed the road and where Mr Hariri’s convoy passed the St Georges Hotel, seconds before the explosion. *See* exhibit P5 (CCTV Evidence concerning the Assassination of Rafik Hariri and 21 Others in Beirut, Lebanon on 14 February 2005), paras 4, 42, 169.

9. The Legal Representatives submit that each statement provides a unique narrative in relation to the harm that the participating victims personally suffered due to the attack. They also illustrate the hopes of the participating victims and the form of reparations they consider appropriate. The Legal Representatives, as noted in previous submissions,<sup>9</sup> reiterate that the personalisation of victims' harm in the Trial Chamber's judgement is an essential requirement, in consideration of Article 25 of the Statute of the Special Tribunal. The proposed evidence does not go to proof of the acts and conduct of the Accused as charged in the amended consolidated indictment. Its admission is favoured by Rule 155 (A) (i) (d)—as it concerns the impact of crimes upon victims—and avoids the potentially re-traumatising effects for those who find it difficult to talk publicly about the events.<sup>10</sup>

10. The Merhi Defence did not object to the Legal Representatives' application but stated that this did not amount to agreeing with the claims for financial compensation, or other claims, contained in several of the witness statements. It submitted that the Special Tribunal is not the appropriate forum for proposing, or considering, such claims, and reserved the right to make additional submissions in this regard at a later stage, if necessary.<sup>11</sup>

*Participating victims injured and or harmed in the explosion*

- Victim 033 and Mr Mehi Elddin Meneimneh (Victim 034) were members of Mr Hariri's convoy. They were severely injured in the explosion. They feel that they have been marginalised. After the attack they, like their colleagues, were not 'accepted' at the American University of Beirut Medical Centre because 'their organisation' had no contract with it. They state that they deserve a promotion at work, retroactively, since 2005, as a token of appreciation and gratitude for their services. V033 points to the need for financial compensation for the medical expenses incurred due to and after the attack; and
- Victim 073 has a shop in the area affected by the explosion. The witness' shop and car were damaged by the explosion. V073 was injured because of the shattered glass. The witness describes the financial harm suffered, including as a result of the closure of the

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<sup>9</sup> F3116, Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C, 3 May 2017 (public with confidential annexes), para. 9.

<sup>10</sup> Application, para. 22.

<sup>11</sup> Merhi response, para. 8.

'scene' for almost three years for investigations. The witness has received little compensation;<sup>12</sup>

*Relatives of individuals who died as a result of the explosion*

- Victim 026 is the mother of the deceased victim, who was in the area affected by the explosion and died. V026 describes the mental harm she suffered and the impact of the event on her husband, a deceased former participating victim;
- Victim 027's relative was in the area affected by the explosion when it occurred and died. V027 suffered mental and material harm;<sup>13</sup>
- Victim 036 had a relative who was in the area affected by the explosion and died as a result of the attack. V036 was a teenager at the time and suffered mental and material harm;
- Victim 037 also had a relative who was in the area affected by the explosion and died as a result of the attack. She suffered mental and material harm;
- Victim 038 had a relative in the area who died due to the attack. V038, then pre-teen, suffered mental and material harm;
- Ms Nivine Darwiche's (V041) brother, Mr Mohammed Darwiche, was a personal bodyguard of Mr Hariri and died in the explosion. He was the breadwinner for her parents. Ms Darwiche suffered physical and mental harm;
- Ms Clemence Tarraf's (V045) brother, Mr Ziad Tarraf, was also a member of Mr Hariri's convoy. He was the main provider for the family, and helped with Ms Tarraf's tuition fees. She describes the harm that she and other family members suffered, especially her mother;
- Ms Zeina Chehade Tarraf (V082) was Mr Tarraf's wife. She describes the impact of this loss on her and her children, who were two and four years old at the time. After some time, she left Lebanon, as she did not have a source of income there;
- Mr Kamal Nasser's (V049) brother, Mr Talal Nasser, was a leader of Mr Hariri's personal protection team. On 14 February 2005, the witness spent hours in the morgue

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<sup>12</sup> Exhibit, 1V22, admitted into evidence on 30 August 2017.

<sup>13</sup> Exhibit, 1V21, admitted into evidence on 30 August 2017.

unsuccessfully looking for his brother's body. 80 body parts were found and placed in a bag, constituting the remains of his brother and someone else. He describes the material and mental harm suffered, including by members of his family;

- Ms Roula Nasser (V052) is Mr Nasser's sister. After having heard of the explosion, she initially thought that her brother might not have been in Mr Hariri's convoy that day. Afterwards, someone who initially did not want to tell her the truth told her that her brother was fine and alive, and had been taken to the hospital. She describes the mental harm she and her mother suffered, and that she also suffered material harm;
- Victim 058's relative was a member of Mr Hariri's convoy. One of the witness' relatives identified his body. V058 suffered mental and physical harm as a result of the attack. She describes the harm suffered by other members of the family;
- Mr Hicham Osman (V068) is the brother of Mr Haitham Osman, who was in the area of the explosion and died after he was hit in his stomach by shrapnel. Mr Hicham Osman suffered mental and material harm. He also describes the harm to his family members, including the financial impact of the loss, as his brother was one of the family's breadwinners;
- Mr Mohamad Osman (V069) is also Mr Haitham Osman's brother and describes how he died after undergoing two surgeries. His liver was the most damaged organ, as shrapnel hit it and exploded inside. The witness suffered mental and material harm and describes the impact of the loss on other family members;
- Victim 078 is the mother of a deceased victim who was in the area affected by the explosion and died. She suffered material and mental harm;
- Ms Dina Ghalayini's (V086) brother, Mr Mohammed Riad Ghalayini, was one of Mr Hariri's bodyguards. She and her mother, who is also a participating victim, suffered mental and material harm due to their loss;
- Witness PRH352's deceased relative was one of Mr Hariri's bodyguards. He identified his body and describes the impact of this death on two participating victims affiliated with him;

b) *V048's statement under Rule 158*

11. Ms Bakiza Nasser (formerly V048) died on 17 February 2017. She is no longer a participating victim, as the Trial Chamber granted the Legal Representatives' request for her withdrawal, as a participating victim, from the proceedings as a result of her death.<sup>14</sup> Her witness statement describes the harm suffered by her and her family members—some of whom are participating victims—due to the death of her brother, Mr Talal Nasser, who was in Mr Hariri's convoy.

### **DISCUSSION**

12. In its decision of 31 July 2017, the Trial Chamber held that the submissions of evidence at trial may be a means for the participating victims to express their 'views and concerns', to which they have a qualified statutory right, under Article 17 of the Statute.<sup>15</sup> It considered that the identification, in the judgement, of victims and the harm they suffered, is explicitly envisaged by Article 25 of the Statute. On this basis, it found that giving recognition to, and adequately recording their harm, may make their participation meaningful.<sup>16</sup>

#### *The 19 statements*

13. 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 particular, a statement must meet the basic requirements for admission into evidence under Rule 149. However, if going to proof of the acts or conduct of the Accused, under Rule 156 a witness statement may not be admitted without cross-examination.<sup>17</sup> These principles are applicable here.

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<sup>14</sup> Transcript of 24 April 2017, pp 2-3.

<sup>15</sup> Article 17 of the Statute provides that 'where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial'.

<sup>16</sup> Decision of 31 July 2017, paras 14-15, 24.

<sup>17</sup> 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, 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, Oneissi and Sabra*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, paras 7-14; F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, paras 12-13.

14. In its decision of 31 July 2017, the Trial Chamber noted that Rule 150 (D), by providing that ‘a victim participating may be permitted to give evidence if a Chamber decides that the interests of justice so require’, does not distinguish between live evidence and evidence in the form of written statements. It found that the interests of justice allowed the Legal Representatives to present the witness statements by applying for their admission under Rule 155. This was based on the consideration that their anticipated evidence is relevant to the attack of 14 February 2005 and the harm suffered by the victims, and that it would enable the participating victims to express their views and concerns without affecting the Accused’s right to a fair trial.<sup>18</sup>

15. As to V027’s additional statement, the same considerations apply. Further, the Trial Chamber had already found that the interests of justice permitted him to give evidence, although by *viva voce* presentation.<sup>19</sup> In these circumstances, the Legal Representatives—who no longer seek his evidence to be presented live—could validly apply for its admission into evidence under Rule 155 without seeking the Trial Chamber’s prior leave to do so.

16. Having reviewed the statements, the Trial Chamber finds—and found, with regard to those of Victims V027 and V073—that the requirements for admission under Rule 155 are satisfied, as the statements are relevant to and *prima facie* probative of the effects of the attack on victims and the resulting harm suffered.<sup>20</sup> The Trial Chamber agrees with the case law of the International Criminal Court that evidentiary material is relevant if it relates to matters that are properly to be considered by the Trial Chamber in its investigation of the charges against the Accused or in its evaluation of the views and concerns of participating victims.<sup>21</sup> As the Trial Chamber noted regarding the evidence of the witnesses authorised to testify upon the Legal Representatives’ request, it will seek further submissions from the Parties as to the probative value of the witness statements to the case.<sup>22</sup>

17. That 22 people died as a result of the attack, 21 in addition to Mr Hariri, as listed in Schedule A of the amended consolidated indictment, and 226 others were injured—as listed

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<sup>18</sup> Decision of 31 July 2017, paras 87, 90-92.

<sup>19</sup> Decision of 31 July 2017, para. 83.

<sup>20</sup> Cf. F1371, Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014, para. 21; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 31 (where the Trial Chamber was satisfied of the relevance of 23 witness statements as concerning the effects of the explosion on victims).

<sup>21</sup> ICC, *The Prosecutor v. Lubanga*, ICC-01/04-01/06-2588-Red, Decision on the “Prosecution’s Application for Admission of Documents related to Witness 297 pursuant to Article 64(9)”, 12 November 2010, para. 10.

<sup>22</sup> Decision of 31 July 2017, para. 77.



in its Schedule B—is uncontested, according to agreements as to evidence between the Parties, under Rule 122. These facts may be considered as being proved.<sup>23</sup> However, pursuant to this Rule, the Trial Chamber may decide that a more complete presentation of those facts is required in the interests of justice, in particular in the interests of the victims. Further, the witness statements detail the harm the participating victims—who are either among those injured in the explosion or are relatives of those who died—suffered.<sup>24</sup>

18. The statements, as acknowledged in the decision of 31 July 2017,<sup>25</sup> go to proof of a matter other than the acts and conduct of the Accused as charged in the amended consolidated indictment, and concern the impact of crimes upon victims, which favours their admission in form of written evidence. Finally, as the Parties have not objected to the application, nor requested for the witnesses to appear, the Trial Chamber is of the view that the interests of justice warrant their admission under Rule 155, without examination or cross-examination from any Party.

19. Several statements contain information as to the ‘reparations’ the victims would consider appropriate.<sup>26</sup> The Special Tribunal cannot order reparations, including compensations, to victims.<sup>27</sup> According to Article 25 (3) of the Statute ‘Compensation to victims’, only ‘a national court or other competent body’ can order this.<sup>28</sup> The Trial Chamber advises the Legal Representatives to inform accordingly the participating victims, in case they are not fully aware of that. It is therefore evident—as noted by the Merhi Defence—that this is not the appropriate forum for making or considering claims for reparations. However, in the statements, the witnesses do not make any requests for reparations before the Trial Chamber, but only express their views on the most appropriate reparations. In the exercise of its discretion, the Trial Chamber will receive these parts of the statements into evidence as expressing the participating victims’ ‘views and concerns’, thus providing greater context.

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<sup>23</sup> F1492, Second Decision on Agreed Facts under Rule 122, 11 April 2014, para. 1.

<sup>24</sup> The Trial Chamber notes that witness V073 is not listed in Schedule B of the amended consolidated indictment, among the persons injured as a result of the explosion.

<sup>25</sup> Decision of 31 July 2017, paras 90, 97.

<sup>26</sup> V026-E006, para. 12; V033-E012, para. 12; V036-E007, para. 21; V045-E004, para. 21; V049-E003, paras 19-20; V58-E003, para.14; V078-E004, para. 12; V082-E005, para. 23; V005-E009, para. 13; exhibit 1V22, para. 12.

<sup>27</sup> Decision of 31 July 2017, para. 6.

<sup>28</sup> Article 25 relevantly provides that the Special Tribunal may identify victims who have suffered harm as a result of the commission of crimes by an Accused convicted by the Tribunal, and that victims, whether or not they have been identified as such by the Tribunal, may bring an action in a national court or other competent body to obtain compensation.

These portions, however, have no probative value and the Trial Chamber will not rely upon them for its findings in the Judgement.

*The statement of the deceased, former participating victim V048*

20. Under Rule 158, the Trial Chamber may admit into evidence the statement of a witness who has died and is therefore unavailable to testify. The Trial Chamber must be satisfied that the statement is reliable. Further, as the Trial Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial, it needs to take into account whether the evidence goes to proof of the Accused's acts and conduct, as charged in the amended consolidated indictment.

21. The Trial Chamber is satisfied that Ms Bakiza Nasser, formerly participating victim V048, is deceased—and hence unavailable to testify under Rule 158.<sup>29</sup> Her evidence provides information on the harm suffered by her family members, some of whom are participating victims. Therefore, it is relevant to and *prima facie* probative of the effects of the explosion on victims and the harm suffered by them as its result, and it does not go to proof of the acts and conducts of the Accused as charged in the amended consolidated indictment. It can therefore be admitted into evidence.

### **CONFIDENTIALITY**

22. The Trial Chamber reiterates the public nature of the proceedings and orders counsel for Mr Hassan Habib Merhi—who have already expressed their willingness to do so<sup>30</sup>—to file a public redacted version of their submissions of 25 August 2017.

### **DISPOSITION**

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

**ADMITTED**, under Rule 155, the statements of participating victims V027 and V073;

**DECLARES** admissible, under Rule 155, the statements of participating victims Mehi Elddin Meneimneh, Nivine Darwiche, Clemence Tarraf, Kamal Nasser, Roula Nasser, Hicham Osman, Mohamad Osman, Zeina Chehade Tarraf, Dina Ghalayini, V026, V033, V036, V037, V038, V058, V078 and of PRH352;

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<sup>29</sup> See transcript of 24 April 2017, pp 2-3.

<sup>30</sup> Merhi response, para. 9.

**DECLARES** admissible, under Rule 158, the statement of Ms Bakiza Nasser—the deceased former participating victim V048;

**DECIDES** that it will formally admit those witness statements into evidence during the hearings scheduled for the presentation of the evidence the Trial Chamber has called upon the request of the participating victims; and

**ORDERS** counsel for Mr Hassan Habib Merhi to file a public redacted version of F3296, ‘Merhi Defence Submissions relating to the Admissibility of the Documents Supporting the “Agreed Facts” Proposed by the Legal Representatives of Victims and Response to the Motion of 21 August 2017 Filed by the Legal Representatives of Victims’, filed on 25 August 2017.

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

Leidschendam,  
The Netherlands  
5 September 2017

*David Re*

\_\_\_\_\_  
Judge David Re, Presiding

*Janet Nosworthy*

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

*Micheline Braidy*

\_\_\_\_\_  
Judge Micheline Braidy

