

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:** 19 June 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 DENYING DEFENCE REQUEST FOR EXTENSION OF TIME TO FILE  
QUESTIONS FOR A RULE 125 WITNESS**

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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

1. On 1 February 2017, the Registrar signed and sent a request for assistance to a Third State, asking it under Rule 125 of the Special Tribunal's Rules of Procedure and Evidence to collect evidence for the Trial Chamber, in a hearing with a witness resident in that country. The Third State responded on 14 February 2017 granting the request. The Registrar filed the agreement on 15 February 2017.<sup>1</sup> The agreement follows Rule 125 (B) and specifies that the Parties and the Legal Representatives of the Victims should submit questions and contextual information to the Third State judicial authority (i.e. a judge in a hearing after the witness is summonsed to appear).
2. The background is set out in the Trial Chamber's decision of 14 June 2017, where it ordered Defence counsel to file *ex parte* any proposed questions to the witness, and any contextual information, by Wednesday 21 June 2017.<sup>2</sup>
3. Counsel for the Accused, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, on Friday 16 June 2017, after hours, filed a request to extend this deadline to Tuesday, 27 June 2017.<sup>3</sup> They submitted that further information received from the Registry in an email on 9 June 2017 regarding the modalities of the proceedings before the Third State meant that further adjustments were needed to their proposed questions.
4. The Trial Chamber received the motion on the morning of Monday 19 June 2017 and ordered, by email, responses from the Prosecution and Registrar by 15.00 the same day.<sup>4</sup>
5. The Prosecution responded, taking no position on the application, but noting that the Defence should reasonably have been expected to have prepared for cross-examination some time ago, the Defence has known since at least 8 May 2017 of the date of the proposed hearing, and that the Prosecution has acted in a timely manner by submitting the relevant witness statements and contextual information for translation, and filed its questions to the witness on 19 May 2017. Further, the request was silent as to why the information provided on 9 June 2017 would influence the formulation of the questions, and as to why the request was only filed after hours on Friday 16 June 2017.<sup>5</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi, and Sabra*, F2992, Registry submission pursuant to Rule 48 (C) regarding the Trial Chamber's "Order to the Registrar under Rule 13 in relation to a witness", 15 February 2017 (public with confidential annexes A and B), para. 2.

<sup>2</sup> F3180, Order and Decision in relation to a witness testifying under Rule 125, 14 June 2017.

<sup>3</sup> F3183, Request for extension of time to provide proposed questions pursuant to Rule 125 (B), 16 June 2017.

<sup>4</sup> Email from Trial Chamber's legal officer to the Parties and Registrar, shortening the time for a response pursuant to Rule 9 (A) (i).

<sup>5</sup> F3185, Prosecution response to request for extension of time to provide proposed questions pursuant to Rule 125 (B), 19 June 2017.


6. The Registrar’s submissions noted that Defence counsel have stated that they wish to have approximately 5,000 pages translated into another language, but the Registry has the capacity to translate in-house ten pages per day, and an additional 30 pages by outsourcing the translation.<sup>6</sup>

7. The request, for the following reasons, is refused. The agreement follows the letter of Rule 125 (B), clearly setting out that the Parties must submit questions to the Third State judge. Defence counsel have known, since its filing on 15 February 2017, that this was the modality of the hearing. Further, the Parties have known since 8 May 2017 of the date of the hearing, in July 2017.<sup>7</sup> They have had sufficient time to prepare their written questions to the witness. Further, it is unclear how the information in the Registrar’s email to the Parties of 9 June 2017 could influence the preparation of questions requiring their reformulation. Finally, time is running out to have the questions translated. If the request were granted, the questions would not be submitted for translation until Wednesday 28 June 2017, meaning that there would be insufficient time to translate the material before the hearing. In these circumstances, the Trial Chamber must refuse the request.

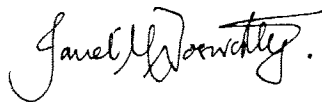
8. The Registrar’s filing is confidential; he is ordered to file a public redacted version.

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

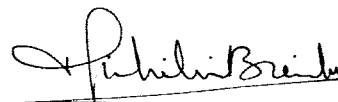
Leidschendam,  
The Netherlands  
19 June 2017



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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy



<sup>6</sup> F3187, Registrar submission pursuant to Rule 48 (C) in response to Defence counsel “Request for extension of time to provide proposed questions pursuant to Rule 125 (B)”, 19 June 2017 (confidential).

<sup>7</sup> F3128, Further Registry submission pursuant to Rule 48 (C) regarding the Trial Chamber’s “Order to the Registrar under Rule 13 in relation to a witness”, 8 May 2017 (confidential with confidential annex A).