



### 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:** 28 January 2014

**Original language:** English

**Classification:** Public

### THE PROSECUTOR

v.

**SALIM JAMIL AYYASH  
MUSTAFA AMINE BADREDDINE  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

### DECISION ON PROSECUTION'S MOTION TO ADMIT INTO EVIDENCE PHOTOGRAPHS, QUESTIONNAIRES AND RECORDS OF VICTIMS

**Office of the Prosecutor:**

Mr Norman Farrell  
Mr Graeme Cameron  
Mr Alexander Milne

**Victims' Legal Representatives:**

Mr Peter Haynes  
Mr Mohammad F. Mattar  
Ms Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**

Mr Eugene O'Sullivan  
Mr Emile Aoun  
Mr Thomas Hannis

**Counsel for Mr Mustafa Amine Badreddine:**

Mr Antoine Korkmaz  
Mr John Jones  
Mr Iain Edwards

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse  
Mr Yasser Hassan  
Mr Philippe Larochelle

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young  
Mr Guénaël Mettraux  
Mr Geoffrey Roberts



## INTRODUCTION

1. The Prosecution requests the admission into evidence, under Rule 154 of the Rules of Procedure and Evidence, of 129 documents or records,<sup>1</sup> consisting of 113 records of interviews with victims or similar questionnaires, two compilations of death certificates, one of names and photographs of 22 victims, one of photographs of an injured victim, and 12 documents or records relevant to the recovery of bodies or the provision of medical treatment.<sup>2</sup> Many of these documents are extracts from the Lebanese investigation case file from 2005. Here, the Prosecution wishes to tender these documents into evidence ‘from the bar table’, without requiring a witness to produce or identify them and has not sought to tender them into evidence under Rule 155.

2. Counsel for Mr. Salim Jamil Ayyash do not oppose the motion,<sup>3</sup> and counsel for Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra filed no response.

## PRELIMINARY APPLICATION TO AMEND EXHIBIT LIST

3. The Prosecution seeks leave to amend its exhibit list by adding one compilation of ‘recently obtained’ photographs of deceased victims and one questionnaire completed by an injured victim, which was inadvertently omitted from previous Rule 91 submissions.<sup>4</sup> No counsel for the four Accused opposes this request.<sup>5</sup> With respect to the photographic compilation, the Trial Chamber has already, without objection from the Defence, granted the request by admitting it into evidence as exhibit P1.<sup>6</sup>

4. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list, having regard to the *prima facie* relevance and probative value of the material in question, the existence of good cause, the stage of the proceedings, and the risk of undue delay.<sup>7</sup> The Trial Chamber considers that it is in the interests of justice to permit the Prosecution to amend its exhibit list given the limited impact on the Defence of the additions and their practical utility. This will neither delay the proceedings nor prejudice the preparation of the Defence for trial.

---

<sup>1</sup> *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/T/TC, Corrected Version of ‘Prosecution Rule 154 Motion for the Admission of Photos, Questionnaires and Records related to Victims’, filed 10 January 2014, 16 January 2014. The Prosecution filed corrigenda to its original motion, correcting typographic and data entry errors and omissions, on 14 and 16 January 2014.

<sup>2</sup> See Motion, paras 2, 13-16; Annex A.

<sup>3</sup> STL-11-01/T/TC, Ayyash Defence Response to Prosecution Rule 154 Motion for the Admission of Photos, Questionnaires and Records related to Victims, 22 January 2014, para. 4.

<sup>4</sup> Motion, paras 4, 19.

<sup>5</sup> See Ayyash Response, para. 2.

<sup>6</sup> Transcript of 22 January 2014, pp. 19-20.

<sup>7</sup> STL-11-01/PT/TC, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 (‘First Rule 154 Decision’), para. 3.

### **APPLICABLE LAW ON ADMITTING EVIDENCE ‘FROM THE BAR TABLE’**

5. The Trial Chamber has previously acknowledged that admitting certain evidence ‘from the bar table’, without requiring a witness to produce or to identify it, is a well-established practice before international courts and tribunals.<sup>8</sup> The combination of Rules 149 and Rule 154 makes this permissible at the Special Tribunal.

6. Rule 154, ‘Admission of Documents’, provides:

Subject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149 (C) and (D).

Rule 149 (C) states that a ‘Chamber may admit any relevant evidence which it deems to have probative value’. Under Rule 149 (D), a ‘Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial’.

7. Material tendered under Rule 154—like any other evidentiary material—must meet the basic requirements for the admission of evidence in being relevant and probative; its probative value must not be outweighed by its prejudicial effect.<sup>9</sup> The offering Party must also be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>10</sup> A document or record is admissible if sufficient indicia of reliability are established; definite proof of reliability need not be shown. Probative value, in this sense, is distinct from the weight ultimately attributed to a document or record by the Trial Chamber.<sup>11</sup>

### **DISCUSSION**

8. The Prosecution seeks to admit into evidence photographs and records related to the victims of the explosion in Beirut which killed, among others, the former Lebanese Prime Minister, Rafik Hariri, on 14 February 2005.<sup>12</sup> The Prosecution submits that these documents or records, which ‘record the injuries and fatalities suffered by victims as a result of the explosion’ or ‘provide biographical details’, relate to ‘facts that are not contested by the Defence’.<sup>13</sup> The Prosecution further

---

<sup>8</sup> First Rule 154 Decision, paras 4-5.

<sup>9</sup> First Rule 154 Decision, para. 6.

<sup>10</sup> First Rule 154 Decision, para. 6.

<sup>11</sup> First Rule 154 Decision, para. 8.

<sup>12</sup> Motion, paras 2, 13-16, Annex A.

<sup>13</sup> Motion, paras 2, 6, 13, Annex D. *See also* para. 7 (submitting that the tendered material demonstrates the ‘human impact’ of the crime and is ‘in the interests of victims’).

submits that judicial economy favours the admission of these materials under Rule 154, avoiding the need to call witnesses and especially those who have suffered physical and emotional injury.<sup>14</sup>

9. Counsel for Mr. Ayyash agree that ‘this evidence, combined with the facts non-contested by the Defence, should in fact serve to “streamline” the presentation of evidence at trial’ and therefore do not object to the motion.<sup>15</sup>

10. The Trial Chamber considers that the questionnaires and interview records of the victims provide basic biographical information and detail the injury and material damage they suffered as a consequence of the explosion of 14 February 2005.<sup>16</sup> These records are thus relevant to this trial. The Trial Chamber finds that these records—given their content, appearance and form, and the information provided about their collection—bear sufficient indicia of reliability to admit them into evidence.<sup>17</sup>

11. The death certificates are relevant as they provide evidence of the deaths of certain victims of the explosion of 14 February 2005.<sup>18</sup> The Trial Chamber finds that these documents bear sufficient indicia of reliability—including relevant stamps and signatures—for admission into evidence.

12. The hospital and other records provide relevant information as to the measures taken with respect to certain victims after the explosion of 14 February 2005.<sup>19</sup> Their content, appearance and form, and the information about their collection provide sufficient indicia of reliability for their admission into evidence.<sup>20</sup>

13. The photographs of PRH-285,<sup>21</sup> an injured victim,<sup>22</sup> are explained in and appended to PRH-285’s witness statement—which the Trial Chamber has previously decided to admit into evidence under Rule 155, ‘Admission of Written Statements and Transcripts in Lieu of Oral Testimony’.<sup>23</sup> Likewise, the compilation of names and photographs of 22 deceased victims is now exhibit P1.<sup>24</sup>

---

<sup>14</sup> Motion, para. 6.

<sup>15</sup> Ayyash Response, paras 3-4.

<sup>16</sup> Motion, para. 13.

<sup>17</sup> See Motion, Annex C, items 8-23. The Trial Chamber notes that it could not locate items 14, 20 or 22 on the CD of materials served upon it.

<sup>18</sup> Motion, para. 14.

<sup>19</sup> Motion, para. 16.

<sup>20</sup> See Motion, Annex C, items 1, 3-6, 24. The Trial Chamber notes that it could not locate item 24 on the CD of materials served upon it.

<sup>21</sup> Motion, Annex A, item 126.

<sup>22</sup> Motion, para. 15.

<sup>23</sup> See STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, Disposition, item 23 (deciding to admit into evidence a statement with ERN range 6000-4777-6000-

**DISPOSITION**

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

**ALLOWS** the motion;

**GRANTS** the Prosecution leave to amend its exhibit list by adding the two documents listed in Annex B of the motion; and

**DECIDES** that it will, at a suitable stage in the proceedings, formally admit into evidence the material marked as items 1-115, 117-125, 127-29 in Annex A of the motion.

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

Dated 28 January 2014  
Leidschendam  
The Netherlands



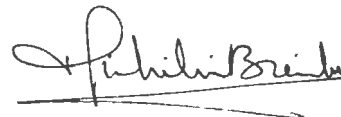
---

Judge David Re, Presiding



---

Judge Janet Nosworthy



---

Judge Micheline Braidy



---

4795A). *Compare* Motion, Annex A, item 126 (tendered photographs with ERN range 6000-4788-6000-4794). It awaits formal tender in the proceedings in court.

<sup>24</sup> See transcript of 22 January 2014, pp. 19-20. *Compare* exhibit P1 with Motion, Annex A, item 116.