

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**BEFORE 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:** 12 July 2016

**Original language:** English

**Classification:** Public

**PROSECUTOR**

v.

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

**CORRECTED VERSION OF 'DECISION ON PROSECUTION MOTION  
FOR THE ADMISSION OF CIVIL RECORDS' DATED 12 JULY 2016**

**Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron &  
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 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 Guénaél Mettraux &  
Mr Geoffrey Roberts



## **INTRODUCTION**

1. The Prosecution requests the admission, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, of 58 documents relevant to the identification of the Accused and others related or acquainted with them.<sup>1</sup> It also seeks leave to add two of the 58 documents to its exhibit list filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence.<sup>2</sup> Counsel for the Accused, Mr Hussein Hassan Oneissi, and counsel then acting for the then Accused, Mr Mustafa Amine Badreddine, responded to the motion.<sup>3</sup> The Prosecution replied to one response.<sup>4</sup>

## **SUBMISSIONS**

### *Prosecution's submissions*

2. The Prosecution seeks the admission of 58 documents it describes generally as 'civil records', consisting of birth, marriage, divorce and death certificates, and personal and family status extracts.<sup>5</sup> These 'civil records' are copies of official documents issued by the Lebanese Directorate General of Civil Status, and provided to the Office of the Prosecutor by the Lebanese Ministry of Interior and Municipalities, and the Ministry of Finance. The Prosecution obtained them following an official request for assistance to the Lebanese authorities. For these reasons they display the requisite indicia of reliability.

3. The documents provide biographical information helping to identify the Accused, and some of their family members and acquaintances. The identification of the Accused and these others is relevant to the attribution of telephone numbers to the Accused. Prosecution Witness PRH230 (Mr Andrew Donaldson), notably, will rely on the civil records in his reports on the attribution of telephones to the Accused.

4. A confidential annex to the motion lists the documents, and for each one, includes a brief description of the family relations between the relevant person and the Accused, or relatives of the Accused.<sup>6</sup> To better visually illustrate these links, the Prosecution also

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2430, Prosecution's Rule 154 Motion for the Admission of Civil Records, 1 February 2016.

<sup>2</sup> Prosecution motion, para. 3.

<sup>3</sup> F2456, Badreddine Defence Response to the "Prosecution's Rule 154 Motion for the Admission of Civil Records", 15 February 2016; F2454, Response to the "Prosecution's Rule 154 Motion for the Admission of Civil Records", 15 February 2016.

<sup>4</sup> F2464, Prosecution Reply to Badreddine Defence Response to the "Prosecution's Rule 154 Motion for the Admission of Civil Records", 22 February 2016.

<sup>5</sup> Prosecution motion, para. 2.

<sup>6</sup> Prosecution motion, paras 1 and 8, and annex A.

annexes, as Annex B, family trees. Annex C is a list of supporting material of the provenance and chain of custody necessary to prove the reliability of each document.

5. The Prosecution also seeks leave to add two of the 58 documents to its exhibit list. One relates to Mr Badreddine and provides biographical information on two relatives. The other is the birth certificate for one of the children of the Accused, Mr Hassan Habib Merhi.<sup>7</sup> Good cause exists for adding these exhibits now as the documents were only recently identified as relevant.

#### *Defence submissions*

6. Counsel for Mr Oneissi filed a one-paragraph response stating that as the civil records ‘relate directly to the Accused’, they have ‘strong reservations’ regarding the probative value and authenticity of the documents in question.<sup>8</sup>

7. Counsel for Mr Badreddine take no position on the admissibility of 56 of the 58 civil records but challenged adding the two documents to the exhibit list on the basis that the Prosecution offers no good cause for their late addition. Counsel cite a previous decision by the Trial Chamber to argue that the ‘fact that a document was only recently identified as being relevant is not, of itself, good cause for not having sought the amendment earlier’.<sup>9</sup>

#### *Prosecution’s reply*

8. The Prosecution replied to what it considered a ‘new issue’ in the Badreddine Defence’s response, that is counsel’s arguments in relation to the legal standard for amending an exhibit list. The Prosecution submits that good cause for not seeking the amendment at an earlier stage is a discretionary factor that the Trial Chamber may consider in deciding whether to authorise an amendment of the exhibit list.

## **DISCUSSION**

### *Admitting exhibits into evidence under Rule 154*

9. Admitting evidence ‘from the bar table’ under Rule 154 without requiring a witness to produce or to identify a document is a well-established practice before international criminal

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<sup>7</sup> Prosecution motion, paras 13-16 and annex D.

<sup>8</sup> Oneissi response, para. 1.

<sup>9</sup> Badreddine response, para. 3, referring to F2258, Decision on Prosecution Motion for the Admission of Evidence Related to the Locations of Residences Associated with the Accused, 9 October 2015, para. 9 (Decision of 9 October 2015).

courts and tribunals.<sup>10</sup> Material tendered under this Rule must meet the basic requirements for admission in Rules 149 (C) and (D) of relevance and probative value, and its probative value must not be outweighed by its prejudicial effect.<sup>11</sup> Only *prima facie*—rather than definite—reliability and probative value is required at the admission stage,<sup>12</sup> as probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give a document or record. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>13</sup>

10. The Trial Chamber is satisfied that the 58 civil records are relevant to the Prosecution's case. The motion itself is scant in terms of details but confidential Annex A provides sufficient information to establish each document's relevance, notably in terms of the link between those named in the documents and each Accused person. Specifically, the civil records are probative of the Prosecution's case on the use of mobile telephones by Accused persons and the attribution of these telephones to them.

11. Counsel for Mr Oneissi's broad statement of having 'strong reservations' regarding the probative value and authenticity of the civil records because 'those documents relate directly to the Accused' is unhelpful. Counsel do not elaborate on what those reservations are, their foundation, or how their personal doubts as to authenticity could affect the probative value of the documents. They also fail to recognise that the civil records are defined by the Lebanese Code of Civil Procedure as official acts, the contents of which are presumed proven unless the documents themselves are proven to be false.<sup>14</sup> But counsel make no attempt to do this.

12. The documents were maintained and issued by the Lebanese General Directorate for Civil Status, which falls under the authority of the Ministry of Interior and Municipalities.<sup>15</sup> That Ministry and the Lebanese Ministry of Finance provided the civil records to the

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<sup>10</sup> F1876, Decision on three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, paras 5-7; STL-11-01/PT/TC, F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps and 3-D Models, 13 January 2014, para. 4.

<sup>11</sup> Decision of 8 December 2014, para. 4.

<sup>12</sup> Decision of 28 January 2014, para. 7; Decision of 13 January 2014, para. 8.

<sup>13</sup> Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4-6.

<sup>14</sup> Articles 143 and 145, Lebanese Code of Civil Procedure; Decision of 9 October 2015, para. 19.

<sup>15</sup> Art. 2, Decree no. 2867 of 16 December 1959.

Prosecution.<sup>16</sup> For these reasons, the Trial Chamber is satisfied of the provenance and the *prima facie* reliability of the documents. The 58 civil records are admissible under Rule 154.

*Amending the exhibit list*

13. The Trial Chamber may, in the interests of justice, allow a party to amend an exhibit or witness list but must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial.<sup>17</sup> The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider general factors that include: (i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; (iii) whether granting the amendment would result in undue delay.<sup>18</sup>

14. Two sets of civil records from the 58 are not on the Prosecution's exhibit list: one concerns a family related to Mr Badreddine, and the other concerns a member of Mr Merhi's family. The Prosecution submits that it only recently identified these documents as relevant.

15. Considering the stage of the Prosecution's case, this application was late, but adding these documents to the exhibit list now will cause no prejudice to the Defence. The documents are long disclosed, and those named in the documents are known to the Defence, having been mentioned in reports by Prosecution analysts on the attribution of mobile telephones to the Accused. Moreover, the documents are relevant and probative. The request to add them to the Prosecution's exhibit list is accordingly granted.

**CONFIDENTIALITY**

16. The Prosecution states that it will file public redacted version of Confidential Annexes B, C and D to its motion in due course, but asks that Annex A remain confidential as it contains information regarding the identity of numerous persons who are not party to the case. The Trial Chamber is satisfied that Annex A should remain confidential.

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<sup>16</sup> Prosecution motion, para. 8.

<sup>17</sup> F2149, Decision on Prosecution Motion to Admit 62 Photographs, 28 August 2015, para. 3; F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence', 9 July 2015, para. 62.

<sup>18</sup> Decision of 28 August 2015, para. 3.

**DISPOSITION**

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

**GRANTS** the Prosecution leave to amend its exhibit list by adding the two exhibits listed at Annex D to its motion;

**DECLARES** the civil records admissible under Rule 154; and

**DECIDES** that it will, at a suitable stage in the proceedings, formally admit the documents into evidence.

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

Leidschendam,  
The Netherlands  
12 July 2016

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

