

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**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:** 12 July 2016

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH**  
**HASSAN HABIB MERHI**  
**HUSSEIN HASSAN ONEISSI**  
**ASSAD HASSAN SABRA**

**DECISION ON THE ADMISSION OF UNIVERSITY RECORDS****Office of the Prosecutor:**Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Hugh Milne**Counsel for Mr Salim Jamil Ayyash:**Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair**Legal Representatives of****Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothée 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 seeks to admit into evidence 67 university student records relevant to identifying the Accused and their third party contacts; the records assist in attributing telephone usage to the Accused.<sup>1</sup> Counsel for two of the Accused opposed the motion.

## **SUBMISSIONS**

### *Prosecution submissions*

2. The records come from the databases of seven Lebanese universities—the Lebanese American University, the American University of Science and Technology, the Beirut Arab University, the Business and Computer University College, the Lebanese International University, the Lebanese University, and the University of Balamand. They comprise extracts from the Lebanese universities’ databases and scanned copies of applications and student records, including their telephone contact numbers. The Prosecution obtained these records via requests for assistance sent to the Government of the Lebanese Republic which were then transmitted to the seven universities.

3. Confidential Annex A to the Prosecution motion details extracts from the university records of the student names and personal details, their family, the connection of each student with an Accused person, including the relevant telephone numbers, and the years of attendance at the university. Another column argues the probative value of each record, while another, under the heading ‘reliability’, argues the provenance of each record. Confidential Annex B provides the chain of custody of the records from each university. Confidential Annex C lists the relevant call sequence table for each telephone number sought to be attributable to an Accused person.

4. The records are relevant as they assist in identifying what are described as ‘third party contacts’ of the Accused, which enable the attribution of certain telephone numbers to each Accused. They are probative because they came directly from the universities themselves and a Prosecution analyst, Witness PRH320, has analysed each and verified their accuracy.

5. The Prosecution also seeks leave to amend its exhibit list to add two records from the Lebanese University relating to the Accused, Mr Hassan Assad Sabra. These records are

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2479, Prosecution Rule 154 Motion for the Admission of University Student Records (Public with Confidential Annexes A-D), 2 March 2016.

contained in Confidential Annex D. Counsel for Mr Sabra do not oppose the request but contest that the relevant numbers can be attributable to Mr Sabra.<sup>2</sup>

### *Defence submissions*

6. Counsel for the Accused, Mr Hussein Hassan Oneissi, opposed the admission of the records into evidence, arguing that the records are not probative, and the motion lacks information on how files from the Lebanese International University came into the hands of the Lebanese Internal Security Forces and the Lebanese Prosecutor-General of its Court of Cassation.<sup>3</sup>

7. Counsel for Mr Mustafa Amine Badreddine, who was then an Accused person, also opposed the motion, contesting the reliability of the records.<sup>4</sup> Specifically, the records appear to be manually copied by employees of the Special Tribunal's Office of the Prosecutor. How the original documents were transformed into PDF files is also unexplained. Moreover, evidence of chain of custody is not the same as indicia of reliability for the admission of the documents. Witness 320 is a Prosecution telecommunications witness and is not the appropriate person to cross-examine on the reliability of the records.

## **DISCUSSION**

### *Amending the Prosecution's exhibit list*

8. The application to amend the exhibit list to add the two documents is unopposed. The Trial Chamber is of the view that it is in the interests of justice to allow the application.

### *Admitting the 67 documents into evidence*

9. The Prosecution seeks to admit the 67 documents into evidence under Rule 154, which allows the admission of documents, consistent with Rule 149 (C) and (D). Those two Rules allow the receipt of evidence that is relevant and deemed to have probative value, so long as its probative value is not substantially outweighed by the need to ensure a fair trial.

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<sup>2</sup> F2496, Sabra Defence Response to "Prosecution Rule 154 Motion for the Admission of University Student Records", 16 March 2016.

<sup>3</sup> F2500, Response to "Prosecution Rule 154 Motion for the Admission of University Student Records", 17 March 2016.

<sup>4</sup> F2504, Badreddine Defence Response to "Prosecution Rule 154 Motion for the Admission of University Student Records", 17 March 2016.

10. The Trial Chamber has carefully examined the records. No challenge is made to their relevance and the documents are incontestably relevant to the proceedings, going to the heart of the case against the Accused.

11. Notwithstanding the Defence challenge to their reliability, the Trial Chamber is satisfied that they bear sufficient indicia of reliability to have probative value. The Lebanese universities provided the databases and the scanned records to the Prosecution. It in turn extracted relevant information from the databases. The documents, on their face, appear to be extracts from the relevant databases. Defence counsel have not pointed to any inaccuracies in any records such as to cast doubt on their authenticity. The provenance of the documents has been sufficiently explained. For these reasons, the documents may be received into evidence.

12. The Prosecution has also sought to keep Annex A to the motion confidential. As it contains the personal information of many people unconnected to the case, and there is no public interest in making this information public, the annex should remain confidential.

### **DISPOSITION**

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

**DECLARES ADMISSIBLE** under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence the 67 documents listed in Confidential Annex A to the motion;

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

**ORDERS** Annex A to the motion to remain confidential.

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

Leidschendam,  
The Netherlands  
12 July 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

