

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: 31 January 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ON THE PROSECUTION MOTION FOR THE ADMISSION OF 36
DOCUMENTARY EXHIBITS AND FOUR WITNESS STATEMENTS**

Office of the Prosecutor:
Mr Norman Farrell & Mr Alexander 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 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 in its amended consolidated indictment pleads that five interconnected mobile telephone groups were involved in the assassination of the former Lebanese Prime Minister, Mr Rafik Hariri, on 14 February 2005.¹ To assist the Trial Chamber in attributing various telephone numbers to the Accused and Mr Mustafa Amine Badreddine,² the Prosecution seeks to tender 36 documents under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence. The Prosecution also seeks the admission into evidence, under Rule 155, of four witness statements relevant to demonstrate the reliability of a number of these documents. Further, as a prerequisite to their admission, the Prosecution requests the Trial Chamber's leave to add two documents to its exhibit list.³ Counsel for Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi and Mr Assad Hassan Sabra responded to the motion. Counsel for Mr Ayyash and Mr Merhi do not oppose it. Counsel for Mr Sabra object to two documents being admitted.⁴

THE EVIDENCE

The 36 documents

2. The evidence and the Prosecution's submissions are dealt with simultaneously. The Prosecution requests the admission into evidence of the following 36 documents:

- a) 30 customer records extracted from the customer databases of four private companies;
- b) two records extracted from an electronic list of registered medical practitioners;
- c) three customer records in computer print-out form received from two private companies; and
- d) a receipt for the payment of university fees to the University of Balamand.

¹ STL-11-01/T/TC, *The Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended consolidated indictment, 12 July 2016, para. 14.

² Mr Badreddine is named in the amended consolidated indictment as a co-conspirator; see paras 3 and 48-51.

³ F2897, Prosecution Motion to Admit 36 Documentary Exhibits and Four Related Witness Statements pursuant to Rules 154 and 155, 9 December 2016 (confidential with confidential annexes A-E) ('Prosecution motion'), paras 1, 3, 6, 37.

⁴ F2924, Sabra Defence Response to "Prosecution Motion to Admit 36 Documentary Exhibits and Four Related Witness Statements pursuant to Rules 154 and 155", 22 December 2016 (confidential with confidential annex A) ('Sabra response'); F2927, Merhi Defence Response to the "Prosecution Motion to Admit 36 Documentary Exhibits and Four Related Witness Statements pursuant to Rules 154 and 155", 3 January 2017 (confidential) ('Merhi response'); F2928, Ayyash Defence Response to "Prosecution Motion to Admit 36 Documentary Exhibits and Four Related Witness Statements pursuant to Rules 154 and 155", 3 January 2017 (confidential) ('Ayyash response').

3. Each document contains an individual's name and at least one contact telephone number. The Prosecution submits that they are all relevant and probative as they assist in identifying various 'third party contacts'. These are users of telephone numbers that were allegedly in contact with those attributed to the Accused and Mr Badreddine. This in turn assists in attributing numbers to them.⁵

a) 30 customers records

4. Fifteen records have been extracted from the customer databases of a sales company; ten from the customer database of a tow-truck company; two from the customer database of a publishing house; and three from the customer database of Rainbow Systems of Lebanon, a telemarketing company.⁶

5. As to reliability, the Prosecution submits that they were obtained from company representatives (Witnesses PRH464, PRH474, PRH466 and PRH299) who handed over the relevant company customer databases to the Prosecution and that these witness explained, in written statements proposed for admission into evidence, that the information contained in the databases was provided by the company's clients and retained by the competent department of the company in the ordinary course of its business. Prosecution analysts then created the 30 extracts from these customer databases.⁷

b) Two records from a list of registered medical practitioners

6. These records were extracted from an electronic list of registered medical practitioners received from the Lebanese Order of Physicians (Beit Al Tabib). The CD containing this list was received by the Prosecution in response to a request for assistance.⁸

⁵ Prosecution motion, paras 2-5. The 36 documents are listed in confidential annex A, where the relevance and probative value of each is detailed. Annex E details the call sequence tables for each number sought to be attributed to the Accused and Mr Badreddine. They show that the numbers of the third party individuals were in contact with numbers attributed to the Accused and Mr Badreddine. The Prosecution underlines that the attribution of a telephone number is based on an analysis of the totality of the evidence, and that each individual subscriber record fits into the Prosecution's case as one piece of evidence to be considered in the analysis of the telephone attribution.

⁶ See annex A to the Prosecution motion, rows 1-30, Prosecution motion, paras 22-25.

⁷ The Prosecution analysts queried the relevant numbers in the databases, extracted the information for them and inserted it into Microsoft Word documents. Prosecution analysts then verified that the content of the extracted exhibits mirrored the original source content. Prosecution motion, paras 11-14.

⁸ See annex A to the Prosecution motion, rows 31-32; Prosecution motion, para. 16. The same process described with regard to the customer databases from the four companies was adopted for the creation of the extracts.

c) Three customer records in computer print-out form

7. Two customer records in computer print-out form were received from a company named Jibayat, a collection agency which acts on behalf of the Lebanese mobile telecommunications company Alfa. In a written statement, Mr Alasdair Macleod (Witness PRH486), a Prosecution investigator, described the hand-over of the Jibayat customer records. The third customer record in computer print-out form was received from a company named Khoury Home Stores, a retail business selling home appliances. The company representative who handed the record to the Prosecution provided a statement in relation to the chain of custody.⁹

d) Receipt for the payment of university fees to the University of Balamand

8. This document is a receipt for the payment of university fees in the name of a son of Mr Merhi and has a handwritten telephone number on it. This is alleged to be the number of a personal mobile phone used by Mr Merhi and members of his family. The Prosecution submits that it assists in the attribution of a phone number to Mr Merhi. This document was provided by the University of Balamand in response to a request for assistance. The University retained this document in its records.¹⁰

9. The Prosecution seeks to add to its exhibit list this document received from the University of Balamand and one of the two proposed computer print-out forms from the Jibayat company. According to the Prosecution, it has good cause to add them to its exhibit list at this stage. The Jibayat record is an extract from a larger collection of documents supplied by that company which was created to assist in the analysis of a third party contact to a number attributed to Mr Ayyash. It allows the tendering into evidence of only the relevant portions of the document, thereby streamlining the trial proceedings. It was disclosed to the Defence on 10 December 2012. The document obtained from the University of Balamand is a clearer version of a document that was already disclosed and included on the Prosecution's

⁹ See annex A to the Prosecution motion, rows 33-35; annex C to the Prosecution motion, rows 9, 11; Prosecution motion, paras 8, 17-18. Witness PRH707, who testified as the official representative of the Lebanese telecommunications provider Alfa, described Jibayat as a collection agency acting on behalf of Alfa. See transcript of 17 February 2016, pp 29-32. In the statement listed in annex C, at row 11, the company representative of Khoury Home Store stated that, upon a request from the Special Tribunal's investigators to search the centralised company database, he produced, among other things, a screen print printout of the search results for a certain number (which is here proposed for admission into evidence). See ERN 60307395-60307433, at 60307405, para. 23.

¹⁰ See annex A to the Prosecution motion, row 36; Prosecution motion, paras 8, 19.

exhibit list. It was requested from the university because the copy of the document previously obtained was unclear.¹¹

The four witness statements

10. Witnesses 464, 474, 466 and 299 explained that their respective companies maintained customer databases. They provided them to the Special Tribunal's investigators or interviewers, or the Special Tribunal's investigators retrieved them.¹² In particular:

- Witness 463 stated that his company sells products on behalf of certain organisations. The business is to contact people by telephone and try to sell products. The company has a database containing information concerning potential customers since 2001. The witness stated that, during a second interview, the Special Tribunal's investigators retrieved a copy of the company clients database, which covers the period 1 January 2001 to August 2010.¹³
- Witness 474 stated that his company provided tow-truck services to cars which had technical problems on the roads. The company had a database containing information received from the customers when calling. It was updated by the employees at the customer service. The information included the phone number in order to communicate with the customer. The witness gave the interviewer a copy of the company database on a CD.¹⁴
- Witness 299 stated that his company was a publishing house with a telemarketing platform to sell books. They place telephone calls and send text messages dialling numbers randomly from a sequence. Since 2000, the company has recorded in a database information as to customers who purchased its products, including name and telephone number. The witness handed to the Special Tribunal's investigators two CDs containing a complete copy of the company customer database.¹⁵

¹¹ Prosecution motion, paras 6, 32-35. Annex D to the Prosecution motion lists the two exhibits which the Prosecution seeks permission to add to its exhibit list. According to paragraph 32 of the motion, 'eight' exhibits are requested to be added to the exhibit list. The Trial Chamber understands this to be an inadvertent mistake.

¹² Prosecution motion, paras 21-25. The witness statements are listed in confidential annex B.

¹³ Annex B to the Prosecution motion, row 1 (Statement of Witness 463; ERN 60313153-60313193); Prosecution motion, para. 22.

¹⁴ Annex B to the Prosecution motion, row 2 (Statement of Witness 474; ERN 60221766-60221778_D_EN); Prosecution motion, para. 23.

¹⁵ Annex B to the Prosecution motion, row 4 (Statement of Witness 299; ERN 60309938-60309961); Prosecution motion, para. 25.

- Witness 466 explained that Rainbow Systems is a telemarketing company selling household appliances and that telemarketers call people and try to arrange an appointment for a salesperson to visit them. The company has a database of customers who purchased the company's products and handed a DVD containing the database to the Special Tribunal's investigators.¹⁶

11. The Prosecution submits that the statements are relevant to demonstrate the reliability and chain of custody of the customer databases from which 30 customer records proposed for admission into evidence were extracted and contain the necessary indicia of reliability. They do not go to the proof of the acts and conduct of the Accused.¹⁷

Defence submissions

12. Counsel for Mr Ayyash and Mr Merhi take no position on admitting the documents and witness statements into evidence.¹⁸ However, they submit that this does not amount to acceptance of the documents' probative value or of the Prosecution's attribution of phone numbers to Mr Ayyash or Mr Merhi.¹⁹ Counsel for Mr Merhi submit that the admission of the receipt of payment obtained from the University of Balamand is superfluous, given that the previous copy of the document on the exhibit list is perfectly legible.²⁰ Counsel for Mr Ayyash and Mr Merhi express their concern that the Prosecution relies on untendered or unadmitted documents in support of the documents' reliability, relevance and probative value.²¹

13. Counsel for Mr Sabra limit their response to the four documents relevant to the attribution of numbers to Mr Sabra. They oppose the admission into evidence of two of them,

¹⁶ Annex B to the Prosecution motion, row 3 (Statement of Witness 466; ERN 60289037-60289059); Prosecution motion, para. 24.

¹⁷ Prosecution motion, paras 21-31. The statements of three witnesses (Witnesses PRH464, PRH466 and PRH299) have been re-taken to comply with the requirements of Rule 155 and the relevant Practice Direction. The witness statement of a fourth one (Witness PRH474) includes some departures from the Practice Direction requirements; however they do not affect its overall reliability.

¹⁸ Ayyash response, para. 2; Merhi response, paras 3-4, p. 2. Counsel for Mr Merhi limit their response to the 11 documents and three witness statements concerning Mr Merhi. They submit they do not oppose the motion in consideration of the low admissibility threshold set by the Trial Chamber, despite not being convinced of the admissibility of the documents. In this regard, they refer to previous filings where their positions were submitted. *See* Merhi response, para. 3, fn. 2. The Trial Chamber has already issued decisions on those. *See* F2894, Decision on the Admission of the Consolidated OGERO Statement, 7 December 2016; F2899, Decision on the Prosecution Motion for the Admission of Records received from the Traffic, Truck, and Vehicle Management Authority, 9 December 2016 ('Decision of 9 December 2016'), para. 26; F2871, Decision on the Prosecution Motions for the Admission of Hajj Applications, 5 December 2016 ('Decision of 5 December 2016').

¹⁹ Ayyash response, para. 3; Merhi response, para. 4.

²⁰ Merhi response, para. 3, fn. 3. The Trial Chamber understands the Merhi Defence taking issue with the necessity to have the proposed document added to the exhibit list and to its admission in lieu of the admission of the one previously on the exhibit list.

²¹ Ayyash response, paras 4-5; Merhi response, para. 3, fn. 2.

a customer record from the sales company and an extract from the list of registered medical doctors.²² Counsel take no position with regard to the admission into evidence of the witness statements tendered under Rule 155, and—subject to certain ‘conditions’—of the two other documents, which are customer records from the tow-truck company.²³

14. One condition is that the Trial Chamber verifies that these exhibits satisfy the criteria for admissibility. In this regard, the Sabra Defence submits that the two tow-truck customer records bear no direct relevance to the alleged attribution because their dates either fall outside of or ‘exceed’ the purported attributable period of the relevant phone numbers attributed to Mr Sabra. In addition, with regard to one of them,²⁴ the lack of formal opposition is premised on the Defence having the opportunity to cross-examine Witness 79, who is identified as the alleged user of the relevant number. Should the Prosecution not call this witness to testify, this would result in a negative inference to be drawn on the attribution of the number and would be considered a ground for reconsideration of any decision on the motion and valid ground for any other relief. Further, the absence of formal objection should not be considered as acceptance of the attribution of numbers alleged by the Prosecution.²⁵

15. With regard to the two documents the admission of which into evidence is opposed, it is submitted that the Trial Chamber should refuse their admission as they fall short of the basic requirements of Rule 149 (C). The Prosecution seeks to use both documents to attribute the same number to the same individual. Counsel for Mr Sabra submit that they bear no direct relevance to the attribution of the relevant number for the period deemed relevant by the Prosecution.²⁶ They reiterate their previous position that admission into evidence should be refused as the Prosecution fails to provide attribution evidence for the precise and correct time period. The Sabra Defence also reiterates its previously expressed stance that the Prosecution

²² Annex A to the Prosecution motion, rows 13 and 32; Sabra response, paras 15, 22.

²³ Annex A to the Prosecution motion, rows 22 and 23. They concern the attribution of phone numbers, respectively, to a relative of Mr Sabra’s wife, and to Witness PRH079. *See* Sabra response, paras 2-3.

²⁴ Annex A to the Prosecution motion, row 23. The Trial Chamber notes that, in paragraph 12 of their response, counsel for Mr Sabra refer to a different document: ‘the exhibit mentioned at Paragraph 1 d)’. However, the Trial Chamber understands this to be an inadvertent mistake, as it clearly results from their submissions that counsel for Mr Sabra intend to address the exhibit mentioned at paragraph 1 (c) of the response. *See* Sabra response, in particular, paras 1-14.

²⁵ Sabra response, paras 3-14.

²⁶ Counsel for Mr Sabra note that the two documents are undated. However, they acknowledge, with regard to the sales company record, that the witness statement of the company representative indicates the period covered by the database and, with regard to the relevant extract from the list of registered doctors, that the information appears to be contemporaneous with the response to the request for assistance.

fails to provide information regarding the relevance of this attribution number with regard to Mr Sabra.²⁷

16. In addition, the Sabra Defence challenges the reliability of the record extracted from the sales company database because the company representative, in his witness statement, remarked that: the contact information in the database was obtained from, *inter alia*, open sources materials like yellow pages; there were cases where the company could not reach the customers; and the information within the database was not necessarily verified—although not commenting specifically on the customer information at issue. Finally, the Sabra Defence reserves the right to make further submissions as to the reliability of both the sales company’s and tow-truck company’s customer databases.²⁸

DISCUSSION

Admitting the 36 documents into evidence

17. The Trial Chamber has previously set out the standards for admitting evidence ‘from the bar table’ under Rule 154 without requiring a witness to produce or to identify a document. These principles apply to this decision.²⁹

18. The Trial Chamber has carefully examined the 36 documents. It is satisfied that they are relevant, since the attribution of mobile telephones to the Accused and Mr Badreddine is a key part of the Prosecution’s case as alleged in the amended consolidated indictment.³⁰ They are *prima facie* probative as they assist in identifying users of phone numbers in contact with numbers attributed to the Accused and Mr Badreddine, which may assist in then attributing those numbers to the Accused and Mr Badreddine. Further, one document may assist in identifying and attributing a personal mobile phone used by Mr Merhi and members of his family.

19. As to the challenges to the relevance of the documents—on the ground that their dates either fall outside of or ‘exceed’ the purported attributable period of the relevant numbers attributed to Mr Sabra or, generally, do not relate to the precise and correct relevant time

²⁷ Sabra response, paras 15-19.

²⁸ Sabra response, paras 2, 17.

²⁹ F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 7; F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, paras 4-6.

³⁰ See Amended consolidated indictment, paras 14-47.

period—they substantially reiterate positions previously expressed and already adjudicated.³¹ Matters of alignment between dates of documents relevant to identifying the users of a number—in this case a third party contact number—and the alleged attributable period of a number to an Accused may be rather pertinent to the issue of the weight to be given to the evidence, but not to their relevance or *prima facie* probative value, which is established.

20. Also with regard to the other Sabra Defence's challenge to the relevance of two documents, the Trial Chamber has previously held that matters concerning the relationship between identified third parties and the Accused may be rather pertinent to the issue of weight to be given to the evidence.³² The Sabra Defence does not contest that the number appearing on the documents was in contact with a number attributed to Mr Sabra. These documents are relevant.

21. The documents also bear the necessary indicia of *prima facie* reliability. The Prosecution received them from—or extracted them from documents provided by—private companies, a professional organization (the Lebanese Order of Physicians) and a university in response to requests for assistance. As it emerges from the Prosecution's submissions, the documents, or the source documents from which several are extracted, are business or documentary records retained by private companies, an organization and a university, in the normal course of their business. The Sabra Defence's challenges concern the possible sources of the information in the sales company database, or the possibility that the information in the database was not verified by the company. The sales company representative indeed stated that, in some cases, information about customers originated from sources like yellow pages—this occurred when the company 'tried to call without getting an answer'—and that their employees may have not verified customer information.³³ The witness added that the company cannot verify the customers' identity, but only records details provided over the phone by the customers. The Trial Chamber finds that this does not deprive the information of the *prima facie* reliability required for admission.

22. Furthermore, the identification of the user of the number in the contested sales company customer record³⁴ is consistent with, and corroborates, the attribution of that number to the same individual as found in two other documents here proposed for admission—an

³¹ Decision of 9 December 2016, para. 19. Counsel for Mr Sabra raise these challenges with regard to all four documents addressed, including the two of which they declare not to oppose the admission into evidence.

³² Decision of 9 December 2016, para. 20 (the challenge adjudicated there concerned the same third party contact).

³³ Statement of Witness 463 (ERN 60313153-60313193, at 60313171, para. 7).

³⁴ Annex A to the Prosecution motion, row 13.

extract from the publishing company database and an extract from the list of registered medical practitioners received from the Lebanese Order of Physicians³⁵—and in four other documents previously tendered by the Prosecution: a subscriber note extracted from a subscriber database from the mobile telecommunications company Alfa;³⁶ a vehicle registration record provided by the Lebanese Traffic, Truck and Vehicle Management Authority;³⁷ and two extracts from the Hajj databases containing lists of applicants for different pilgrimages.³⁸ This supports the *prima facie* reliability of the contested customer record. More generally, the identification of the users for numerous numbers in the extracts from the sales company database—ten out of fifteen³⁹—is consistent with, and corroborates, the attribution of those numbers to the same individuals as resulting from subscriber notes previously admitted into evidence.⁴⁰ This supports the *prima facie* reliability, generally, of the information contained in that database.⁴¹

23. As to the Sabra Defence's caveat that the lack of objection to the admission of one of the documents is based on the understanding that it will be able to cross-examine a certain witness, the Trial Chamber has previously dismissed the identical submissions concerning, among others, the same witness.⁴²

24. With regard to the general concerns from the Ayyash and Merhi Defence that the Prosecution relies on untendered documents (the documents listed in annex C) to show the reliability and chain of custody of the proposed documents, the Trial Chamber has previously held that, in determining the admission of evidence, the Trial Chamber may examine

³⁵ Annex A to the Prosecution motion, rows 29 and 32, respectively.

³⁶ P901.

³⁷ P1759.

³⁸ P1724 and P1726.

³⁹ See annex A to the Prosecution motion, rows 1-6, 8, 10, 12-13. Thirteen out of fifteen, on the basis of the Prosecution's submissions, if including customer records where differences between customer's surnames and those of subscribers for the same phone numbers would result from: identification of the customer by the husband's surname, subscription of the number to the husband's customer, intervention of a judicial order permitting a change in family name (see annex A, rows 9, 11, and 15).

⁴⁰ With regard to certain items, the names of customers and subscribers of phone numbers differ for being spelled in a slightly different way (in one of these instances the Prosecution acknowledges that the names are different English transliterations of the same Arabic name).

⁴¹ The Trial Chamber notes that it has previously admitted into evidence two extracts from the sales company database (P673 and P682).

⁴² See F2955, Decision on Prosecution Motion for the Admission of Seven Documents relating to the Attribution of Telephone Numbers to the Accused Assad Hassan Sabra, 26 January 2017, para. 27 (the same reasoning applies here: the Defence had notice, before submitting its response, that the Prosecution no longer intends to call this witness. Further, the document—in this instance a tow-truck customer record—was not produced by this witness; its relevance, *prima facie* reliability and probative value could be established without the witness's oral testimony; therefore there is no need to call this witness to testify to this document).

supporting documents that are neither in evidence nor moved for admission into evidence.⁴³ Whether it is necessary to admit such documents is to be decided on a case-by-case basis. Here, annex C and the reliability column of annex A identify the documents and what they purport to show. Their admission into evidence is not warranted.

25. As to the more vague submissions from counsel for Mr Ayyash that the Prosecution relies on untendered documents and ‘nebulous future motions’ to demonstrate the relevance and probative value of the documents, the Trial Chamber has already held that no statutory provision specifies the order of receiving onto the trial record pieces of evidence that may be contingent upon each other.⁴⁴ Furthermore, the Prosecution, with limited exceptions, refers to documents already admitted into evidence in its submissions on the relevance and probative value of each document.

26. In conclusion, the Prosecution has demonstrated that the proposed documents are relevant, *prima facie* reliable, and have probative value. Furthermore, the Prosecution has satisfactorily demonstrated how the evidence fits into its case, as these are individual pieces of evidence to be considered in the analysis of the totality of evidence on telephone attribution. The present decision only concerns the admissibility into evidence of the proposed documents. Counsel for the Accused may of course challenge the attribution of any number to the Accused.

27. Concerning the sought addition to the Prosecution’s exhibit list of two documents, the content of both is already on the exhibit list as part of larger collections of documents.⁴⁵ The Trial Chamber has previously denied the Prosecution leave to amend the Rule 91 exhibit list on the basis that the proposed new exhibits were already contained within existing exhibits on that list.⁴⁶ This also applies here. While the Prosecution submits that the receipt of payment of fees for the University of Balamand is a clearer version of the document already disclosed, the Trial Chamber finds that the document sought to be added (*‘versement en especes’*) is legible in its existing version on the exhibit list, as noted by Defence counsel. It is therefore not necessary to add the purportedly clearer version to the exhibit list.

⁴³ Decision of 9 December 2016, para. 26.

⁴⁴ F2584, Decision on Prosecution Rule 154 Motion for the Admission of Documents relating to the Telephone Subscriber Records from the Alfa Company, 3 May 2016, para. 16; Decision of 5 December 2016, para. 16.

⁴⁵ See ERN 60277991-60278136 (at ERN 60278021; R91-300720) and ERN 60108076-60108102 (at ERN 60108082; R91-801057).

⁴⁶ Decision of 9 December 2016, para. 28.

Admission of the four witness statements into evidence

28. 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 and, if going to proof of the acts and conduct of the Accused, may not be admitted without cross-examination.⁴⁷ These principles are applicable here.

29. The Trial Chamber finds that the witness statements contain the necessary indicia of reliability.⁴⁸ They are relevant to, and probative of, the *prima facie* reliability of the records extracted from the databases of the four companies of which the witnesses are representatives, and do not go to the acts and conduct of the Accused. No Defence counsel objected to their admission into evidence nor requested to cross-examine any of the witnesses. The witness statements are therefore admissible under Rule 155, without cross-examination.

CONFIDENTIALITY

30. Because the motion and its annexes contain confidential information regarding the identity of numerous third party individuals, the Prosecution states that it will file a public redacted version of the motion in due course and seeks to maintain the confidential status of the annexes.⁴⁹ While the Trial Chamber reiterates the public nature of the proceedings, it is satisfied that annex A should remain confidential. However, it orders the Prosecution to file

⁴⁷ 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, Merhi, Oneissi and Sabra*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013 (‘Decision of 30 May 2013’), para. 13.

⁴⁸ Three of them were re-taken to comply with the technical requirements of Rule 155 and the Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155. With regard to a fourth statement—which was taken by authorities of a third state, in the presence of two Prosecution investigators assisted by a Special Tribunal interpreter—the Prosecution has raised in its motion the issue of existing departures from the Practice Direction. No challenge to the documents’ admissibility has been raised by the Defence, not even on this ground. The Trial Chamber finds that, notwithstanding some deviations, the statement contains the indicia of reliability necessary for admission into evidence. It contains a record of the witness’s identification, the statement was read to the witness, who approved it and signed it. Each page was signed by the witness and the interviewers. While it does not contain a formal acknowledgement of the potential consequences for providing false evidence in a statement which may be used as evidence in proceedings before this Tribunal—which has been found to be a fundamental breach of the Practice Direction (*see, e.g.*, Decision of 30 May 2013, para. 29)—the witness was put under oath before the interview. As giving a statement under oath is not required under Rule 155 or by the Practice Direction, the Trial Chamber considers that, in the circumstances, this adds to the statement’s reliability and compensates for the absence of the abovementioned declaration.

⁴⁹ Prosecution motion, para. 36.

public redacted versions of annexes B, C, D and E or to have them reclassified as public. Further, the Trial Chamber orders counsel for Mr Sabra—who have already expressed their willingness to do so—to file a public redacted version of their response.⁵⁰ Finally, it orders the reclassification of the responses of the Ayyash and Merhi Defence, which they already expressed the intention to seek.⁵¹

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES admissible under Rule 154 the 36 documents listed in annex A;

DECLARES admissible under Rule 155 the statements of Witnesses PRH299, PRH464, PRH466 and PRH474 listed in annex B;

DECIDES that it will, at a suitable stage in the proceedings, formally admit them into evidence;

ORDERS the Prosecution to file a public redacted version of its motion and annexes B, C, D and E or to have them reclassified as public; and

ORDERS counsel for Mr Sabra, Mr Ayyash and Mr Merhi to file public redacted versions of their responses or have them reclassified as public.

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

Leidschendam,
The Netherlands
31 January 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



⁵⁰ Sabra response, paras 20-21. Counsel for Mr Sabra submit that that the annex to their response is filed confidentially in light of its nature as inter-party correspondence. The Trial Chamber is satisfied that this annex should also remain confidential.

⁵¹ Ayyash response, para. 6; Merhi response, para. 5.