

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: 14 July 2017

Original language: English

Classification: Public

The PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION TO ADMIT 18 DOCUMENTARY
EXHIBITS AND THREE WITNESS STATEMENTS UNDER RULES 154 AND 155,
RELATING TO NAMED CO-CONSPIRATOR MUSTAFA AMINE BADREDDINE**

Office of the Prosecutor:

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Milne

**Legal Representatives of
Participating Victims:**

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& Ms Nada Abdelsater-Abusamra

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Mr Vincent Courcelle-Labrousse, Mr Yasser
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Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Geoffrey Roberts &
Ms Sarah Bafadhel



INTRODUCTION

1. Mr Mustafa Amine Badreddine, formerly an Accused in this case,¹ is named in the amended consolidated indictment as a co-conspirator in the 14 February 2005 Beirut attack targeting the former Lebanese Prime Minister, Mr Rafik Hariri, and resulting in his death and that of more than 20 others.² An allegedly false claim of responsibility for the attack was made shortly after it occurred, in a video featuring Mr Ahmed Abu Adass, which was then broadcast on Al-Jazeera.³

2. The Prosecution alleges that five interconnected mobile telephone networks—colour-coded as ‘red’, ‘green’, ‘blue’ and ‘yellow’, operating in four closed networks, and one group of ‘purple’ mobiles—were involved in planning, preparing and executing the attack.⁴ The green network, consisting of three mobiles, was used to monitor and coordinate the preparations for the attack, including the preparation of the false claim of responsibility.⁵ The Prosecution attributes one of the green network mobiles, ‘Green 023’, as well as ‘personal mobile phone’ (PMP) 663, PMP 354, and ‘sequential mobile phone’ (SMP) 944, to Mr Badreddine.⁶ The Prosecution also pleads that Mr Badreddine used the alias ‘Sami Issa’.⁷ The Trial Chamber has heard evidence showing that Mr Badreddine, under the name ‘Sami Issa’: (i) owned three jewellery stores named ‘Samino Jewellery’ and a boat named ‘Samino’;⁸ and (ii) used an apartment in the Sahel-Alma area of Beirut.⁹

¹ The proceedings against Mr Badreddine were terminated by the Trial Chamber on 11 July 2016, pursuant to an Appeals Chamber order; see STL-11-01/T/AC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, AR126.11_F0019, Decision on Badreddine Defence Interlocutory Appeal of the “Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings”, 11 July 2016; STL-11-01/T/TC, F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016, paras 3, 48.

³ Amended consolidated indictment, paras 23, 27-28, 44.

⁴ Amended consolidated indictment, paras 14-15.

⁵ Amended consolidated indictment, para. 15 (b).

⁶ Amended consolidated indictment, para. 18. The amended consolidated indictment pleads that ‘sequential mobile phones’ were those ‘used in sequential order, meaning that each phone was used for a period of weeks or months and then replaced by another’; see amended consolidated indictment, para. 16.

⁷ Amended consolidated indictment, para. 3.

⁸ See e.g. testimony of Witness PRH416, transcript of 1 December 2015, pp 7-8, 13-14, 96-97 (discussing exhibit P720, photograph of the ‘Samino’ boat); exhibit P1414, statement of Witness PRH416, 11 July 2016; testimony of Witness PRH306, transcript of 8 December 2015, pp 39-41 (discussing exhibit P728, business card for ‘Samino Jewellery’).

3. In an unopposed motion, the Prosecution requests the admission into evidence of 18 documents and the statements of Witnesses PRH049, PRH447 and PRH273, under Rules 154 and 155 of the Special Tribunal's Rules of Procedure and Evidence.¹⁰ It submits that these are relevant to identifying third party contacts—which in turn assists in attributing telephone numbers to Mr Badreddine—and to demonstrating that he used the alias 'Sami Issa'. Notably, the Prosecution argues that this evidence assists in attributing PMP 354, PMP 663, SMP 944, and therefore Green 023, to Mr Badreddine.¹¹

SUBMISSIONS AND EVIDENCE

Documents

4. The Prosecution submits that the 18 documents are relevant, probative and reliable for the following reasons.¹²

5. Four financial records,¹³ two obtained in response to requests for assistance to Lebanon and two provided to the Prosecution when Witness PRH523 gave a statement, provide evidence related to the Samino boat and show that Sami Issa was regarded as the owner of the Samino Jewellery Stores. The records are relevant to attributing telephone numbers to Mr Badreddine and to demonstrating that he used the alias 'Sami Issa'.¹⁴

6. Three movement, entry and exit records into or from Lebanon,¹⁵ received through requests for assistance, comprise: (i) two extracts from an entry and exit records database,

⁹ See e.g. testimony of Witness PRH416, transcript of 2 December 2015, pp 61-62; testimony of Witness PRH306, transcript of 8 December 2015, pp 75-76 (discussing exhibit P735, photograph of Sami Issa's building in Sahel-Alma, marked by Witness PRH306).

¹⁰ Rule 154 states: '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 155 (A) states: 'Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.' Rule 149 (C) states: 'A Chamber may admit any relevant evidence which it deems to have probative value.' Rule 149 (D) states: 'A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules.'

¹¹ F3120, Prosecution Motion to Admit 18 Documentary Exhibits and 3 Witness Statements pursuant to Rule 154 and Rule 155 relating to the named co-conspirator, Mustafa Amine Badreddine, 4 May 2017 (confidential with confidential annexes A-D) ('Prosecution motion'), para. 1.

¹² Prosecution motion, para. 8.

¹³ Prosecution motion, annex A, items 6-9.

¹⁴ Prosecution motion, para. 9.

¹⁵ Prosecution motion, annex A, items 2, 15-16.

providing evidence on the movement of Mr Badreddine's wife and son, relevant to identifying third party contacts to telephone numbers attributed to Mr Badreddine; and (ii) an official document showing that no person using the name 'Mustafa Amine Badreddine' is recorded as having entered or exited Lebanon since 1993. The Trial Chamber has previously found the source database to be reliable.¹⁶ The two extracts were verified by Prosecution analyst Mr Lachlan Christie (Witness PRH313).¹⁷

7. Three records of email accounts,¹⁸ extracted from CDs containing information from Google Inc. and Microsoft Corp. received in response to a request for assistance to the United States of America and collected by a Prosecution staff member, are relevant to identifying third party contacts to numbers attributed to Mr Badreddine. Mr Christie verified the extracts.¹⁹

8. Two customer records²⁰ were extracted from a business' database and handed over by its owner, Witness 049, during a witness interview with Prosecution investigators. The extracts record PMP 354 as the mobile number for Sami Issa and another mobile number ending in 088 for a person with the first name 'Zeina'. The mobile number ending in 088 had been in contact with PMP 354 and PMP 663 during the time in which the Prosecution attributes these numbers to Mr Badreddine. The extracts are therefore relevant to demonstrating that Sami Issa was the user of PMP 354, to identifying third party contacts to numbers attributed to Mr Badreddine, and to demonstrating that he used both the alias 'Sami Issa' and the name 'Safi'. The database's creation and maintenance are described in Witness 049's statement, proposed for admission in this motion, while the extracts were verified by Mr Christie.²¹

9. Five records, received from the Lebanese Government in response to requests for assistance (comprising a civil record, a passport record, a land registry record, a company

¹⁶ F2639, Decision on Admission under Rule 154 of Entry-Exit, Banking and Medical Documents Relating to Salim Jamil Ayyash, 12 July 2016, para. 4. In this decision, the Trial Chamber noted that the reliability of the extracts at issue in that decision, taken from the same database from which extracts proposed for admission in the Prosecution's present motion were also extracted, was not at issue between the Prosecution and the Ayyash Defence in that motion. It found that the extracts were *prima facie* reliable.

¹⁷ Prosecution motion, paras 10-11.

¹⁸ Prosecution motion, annex A, items 12-14.

¹⁹ Prosecution motion, paras 12-13.

²⁰ Prosecution motion, annex A, items 10-11.

²¹ Prosecution motion, paras 14-15.

registration record, and a municipal record),²² are relevant to demonstrating the paucity of Lebanese state records on Mr Badreddine by showing that: (i) no person using his name is recorded as having applied for a Lebanese passport or identity card, or as owning any real estate property; and (ii) two pieces of property, apparently owned by Sami Issa (the Samino Jewellery Stores and the Sahel-Alma apartment), were instead registered in the names of others.²³

10. A record from a Beirut school, also received through a request for assistance, is relevant to showing that a telephone number attributed to the registered owner of Samino Jewellery, Mr Ali Fayez Harb, was the contact telephone number on Mr Badreddine's daughter's school records. This is ultimately relevant to identifying a third party contact to PMP 663, PMP 354 and SMP 944, attributed to Mr Badreddine, and to showing that he used the alias 'Sami Issa'.²⁴

11. The probative value of the 18 documents is not outweighed by any prejudicial effect. They were disclosed to the Defence, their relevance is known to the Defence as Prosecution analyst—Mr Andrew Donaldson (Witness PRH230)—relies on them in his attribution report relating to Mr Badreddine, and the Defence can cross-examine him on this reliance and the attribution process generally. Their admission into evidence thus serves the interests of a fair and expeditious trial.²⁵

Witness statements

12. The Prosecution submits that the statements of Witnesses 049,²⁶ 447,²⁷ and 273²⁸ assist in attributing mobile numbers to Mr Badreddine.²⁹

13. Witness 049 was the owner of a business and gave three statements to the Prosecution.³⁰ During the first interview, the witness handed over to the investigators a CD

²² Prosecution motion, annex A, items 1, 3-5, 17.

²³ Prosecution motion, para. 16.

²⁴ Prosecution motion, annex A, item 18; Prosecution motion, para. 17.

²⁵ Prosecution motion, para. 18.

²⁶ Prosecution motion, annex B, item 1.

²⁷ Prosecution motion, annex B, item 2.

²⁸ Prosecution motion, annex B, item 3.

²⁹ Prosecution motion, para. 19.

³⁰ The statements, dated 6 August 2010 and 3 February 2011, are annexed to another statement, dated 19 February 2015, that complies with the formal requirements of the Rules and the Practice Direction; *see*

containing records of the business' customers' names and mobile numbers. The witness described how the business' employees had received and recorded this data for almost a decade. The Prosecution submits that the statement is relevant to supporting the database's reliability, of which two extracts are proposed for admission in this motion, assisting the attribution of PMP 354 and PMP 663 to Mr Badreddine.³¹

14. Witness 447 gave two statements to the Prosecution.³² During the first interview, the witness was asked to describe and locate the Sahal-Alma apartment buildings in Jounieh on a Google Earth image and a copy of a page from the Zawari Beirut Road Atlas. It is unclear in the transcript if the witness was able to locate the buildings on these maps.³³ Witness 447, however, drew a sketch and marked the location of the buildings on it. The witness did not know a person named 'Sami', 'Sam' or 'Sami Issa'. The witness' mobile telephone had PMP 663 saved as the contact for a person named 'Sami', but the witness could not remember who provided this number. The Prosecution submits that the statement is therefore relevant to the geographic profile of numbers attributed by the Prosecution to Mr Badreddine, and to the pleaded fact that he used the alias 'Sami Issa'.³⁴

15. Witness 273 was interviewed by Prosecution investigators about a man the witness knew at university as 'Sami Issa' or 'Safi'. The witness described Sami Issa's physical appearance (noting that he had a problem with his leg) and lifestyle. Witness 273 believed that Sami Issa was single and stated that he had a lot of girlfriends. Moreover, the witness stated that Sami Issa had a boat moored at 'Holiday Beach', had a jewellery business (with three branches) called 'Samino', and maintained an apartment in Sahel-Alma (which was not his family home). Witness 273 also stated that Sami Issa had a dark blue or black CLK class Mercedes, a silver Range Rover, and a black Audi A8, and that he carried a Kalashnikov in his car for security reasons and hand-held radios to communicate with his

STL-PD-2010-02, 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, 15 January 2010 ('Practice Direction'), Article 2.

³¹ Prosecution motion, para. 20, referring to annex A, items 10-11; Prosecution motion, annex B, item 1; *see also* para. 8 above.

³² The statement is annexed to the witness' statement of 10 April 2015, which complies with the formal requirements of the Rules and the Practice Direction.

³³ However, Prosecution investigators Mr Erich Karnberger (Witness PRH312) and Mr Timothy Holford (Witness PRH400), in an investigators' note dated 8 March 2011, confirm that the witness was unable to find the location of the buildings on the Google Earth images and in the atlas.

³⁴ Prosecution motion, para. 21; Prosecution motion, annex B, item 2.

armed bodyguards. The witness also identified PMP 663 as a contact number of Sami Issa and stated that Sami Issa spoke of having a friend called 'Mustafa Badreddine'. The Prosecution submits that the witness' statement is therefore relevant to showing that Mr Badreddine used the alias 'Sami Issa' and assists in attributing PMP 663 to him.³⁵

16. The Prosecution argues that the witnesses' statements contain the necessary indicia of reliability and fulfil the requirements of Rule 155 (B).³⁶ Witness 273's statement, in the form of a transcript, contains the necessary indicia of reliability as the witness produced identification, was made aware that giving false information could lead to being prosecuted and signed a witness acknowledgement.³⁷

17. Moreover, the three statements do not go to proof of the Accused's acts and conduct as charged in the amended consolidated indictment, the witnesses are on the Prosecution's witness list, and the Defence has received adequate disclosure of their evidence. There is no overriding public interest in this evidence being presented orally, and the statements' admission into evidence would be an efficient use of the Trial Chamber's time. In addition, the prejudicial effect of the evidence, if any, does not outweigh its probative value, and the interests of justice and a fair and expeditious trial exceptionally warrant admitting the statements into evidence without cross-examination. Finally, the Defence can explore details related to the attribution process with Mr Donaldson.³⁸

DISCUSSION

18. The Trial Chamber has previously set out: (i) the general principles and rules of international criminal law procedural law relating to the admission and exclusion of evidence, and the procedural safeguards for the admission of material tendered 'from the bar table' under Rule 154;³⁹ and (ii) the rules, principles and procedural safeguards for

³⁵ Prosecution motion, para. 22; Prosecution motion, annex B, item 3.

³⁶ Rule 155 (B) states: 'As a general rule, the statement must have been signed by the person who records and conducts the questioning and by the person who is questioned and his counsel, if present, as well as, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during, the questioning. If, in exceptional circumstances, the person has not signed the record, reasons shall be noted.'

³⁷ Prosecution motion, paras 23-24.

³⁸ Prosecution motion, paras 25-26.

³⁹ See F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIIC and the STL's Prosecution, 6 May 2015, paras 66, 111; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile

admitting witness statements into evidence under Rule 155, in lieu of oral testimony and without cross-examination.⁴⁰ These are applicable here.

Documents

19. After carefully reviewing the 18 documents, the Trial Chamber is satisfied that they are admissible under Rule 154. They are all relevant to the allegations pleaded in the amended consolidated indictment, have the necessary indicia to be *prima facie* reliable, and thus have some probative value.

20. The first of the four financial records is relevant to demonstrating that Sami Issa was regarded as the owner of Samino Jewellery and to identifying five third party telephone numbers in contact with ones attributed to Mr Badreddine.⁴¹ The remaining three financial records are relevant to identifying a third party contact of PMP 663, and thus to attributing the latter to Mr Badreddine, by showing that: (i) the Samino boat was insured in the third party contact's name;⁴² (ii) the third party contact was licensed, together with Sami Issa, as one of the captains of the Samino boat;⁴³ and (iii) the third party contact was responsible for administering the Samino boat and gave as his telephone number the landline of a Samino Jewellery branch (and which was in contact with PMP 663 and PMP 354, both attributed to Mr Badreddine).⁴⁴

21. The first of the three movement, entry and exit records is relevant to showing the lack of official Lebanese records under the name 'Mustafa Amine Badreddine', supporting

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, paras 5-7.

⁴⁰ See STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, paras 7-14; F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, paras 22-32. The Trial Chamber subsequently applied these principles in its decisions; see e.g. F2644, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH024, PRH069, PRH106 and PRH051 pursuant to Rule 155, 12 July 2016, para. 25; F2311, Decision on Prosecution Motion for the Admission under Rule 155 of the Statements of Witnesses PRH371 (Helena Habraken) and PRH698 (Nicole Blanch), 9 November 2015, para. 13; 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.

⁴¹ Prosecution motion, annex A, item 6.

⁴² Prosecution motion, annex A, item 7.

⁴³ Prosecution motion, annex A, item 8.

⁴⁴ Prosecution motion, annex A, item 9. The Trial Chamber notes that in the text of Annex A, items 7-9, as well as in the documents themselves, the name of the third party contact in question appears to be spelled in numerous different ways.

the Prosecution's case that he avoided official dealings with the Lebanese authorities.⁴⁵ The remaining two records show that Mr Badreddine's wife and son left and re-entered Lebanon on specified dates; in conjunction with call data records for a telephone number ending in 330 (the top contact of SMP 944) showing that this number activated cell towers in the vicinity of Beirut International Airport on the same dates, the two entry-exit records are relevant to identifying a third party contact to a number attributed to Mr Badreddine.⁴⁶

22. The three records of email accounts are relevant to identifying third party contacts to telephone numbers attributed to Mr Badreddine. The first record supports the attribution of telephone numbers ending in 989 and 777, which were both in contact with PMP 354 and the second of which was also in contact with SMP 944, to Mr Badreddine's brother (Mohammed Badreddine).⁴⁷ The second record supports the attribution of telephone numbers ending in 954 and 827, which were in contact with PMP 663 and PMP 354, to a person who worked at Samino Jewellery.⁴⁸ The third record supports the identification of a third party contact to PMP 663 and PMP 354.⁴⁹

23. The first of the two customer records is relevant to attributing PMP 354 to Sami Issa and, alongside other evidence attributing that number to Mr Badreddine, to showing that he used the alias 'Sami Issa'.⁵⁰ The second customer record is relevant to the identification of a third party contact to PMP 663 and PMP 354 (using a number ending in 088), and therefore to attributing these PMPs to Mr Badreddine and, alongside evidence of the content of SMS messages exchanged between 088 and the two PMPs, to showing that Mr Badreddine used both the alias 'Sami Issa' and the name 'Safi'.⁵¹ The two records have the necessary indicia of reliability as they were extracted from a business' customer database, which was provided to the Prosecution on CDs by Witness 049 (the business' owner) during an interview. As such, they are *prima facie* reliable as records kept in the ordinary course of business. In addition, the extracts were verified by Mr Christie.

⁴⁵ Prosecution motion, annex A, item 2.

⁴⁶ Prosecution motion, annex A, items 15-16; Prosecution motion, para. 10.

⁴⁷ Prosecution motion, annex A, item 12; *see also* exhibit P1956, chart of family links relating to the attribution of telephone numbers to Mustafa Amine Badreddine with labels. The exhibit proposed for admission by the Prosecution at annex A, item 12 uses multiple spellings of the first name, namely 'Mohammed', 'Mohamed', and 'Mohamad'.

⁴⁸ Prosecution motion, annex A, item 13.

⁴⁹ Prosecution motion, annex A, item 14.

⁵⁰ Prosecution motion, annex A, item 10.

⁵¹ Prosecution motion, annex A, item 11.

24. The first two of the miscellaneous government records (the civil and passport records) are relevant to showing the lack of official Lebanese records on both Mr Badreddine and a person by the name of ‘Sami Issa’ with a birthday of 6 April—specifically the lack of identity card applications and issued passports. This supports the Prosecution’s case that Mr Badreddine avoided official dealings with the Lebanese authorities. These documents also support the Prosecution’s case that ‘Sami Issa’ was an alias used by Mr Badreddine, by showing that these types public records do not exist for a person by that name.⁵²

25. The third miscellaneous government record (the land registry record) is relevant to showing the lack of official Lebanese records on Mr Badreddine—specifically the absence of records of real estate ownership by ‘Mustafa Amine Badreddine’—supporting the Prosecution’s case that Mr Badreddine avoided official dealings with the Lebanese authorities.⁵³ The record is also relevant to showing the available real estate ownership records of anyone with the name ‘Sami Issa’, which may support the Prosecution’s case that it was Mr Badreddine’s alias.⁵⁴

26. The fourth miscellaneous government record (the company registration record) is relevant to the Prosecution’s case that ‘Sami Issa’ was Mr Badreddine’s alias and, as such, was not used in official documents, by showing that the Lebanese Commercial Register had no information on ‘Sami Issa’ and that ‘Samino Jewellery’, which witnesses testified was owned by Sami Issa, was in fact registered in the name of Mr Ali Fayez Harb.⁵⁵ The fifth miscellaneous government record (the municipal record) is relevant to showing that the Sahel-Alma apartment, which according to witness testimony was used by Sami Issa, was owned and occupied by other persons, who either had telephone contact with PMP 663 and PMP 354 (attributed to Mr Badreddine) or worked for Samino Jewellery.⁵⁶

27. Finally, the school record is relevant to identifying a third party contact to PMP 663, PMP 354 and SMP 944 and therefore to attributing them to Mr Badreddine.

⁵² Prosecution motion, annex A, items 1, 3.

⁵³ Prosecution motion, annex A, item 4.

⁵⁴ Part of this record containing the real estate ownership records for the name ‘Sami Issa’ does not specify the birth dates of anyone listed. It therefore cannot support the Prosecution’s contention in annex A that none of these persons has a birthday of 6 April.

⁵⁵ Prosecution motion, annex A, item 5.

⁵⁶ Prosecution motion, annex A, item 17.

Specifically, it shows that a number ending in 880, attributed to Mr Ali Fayez Harb (the registered owner of Samino Jewellery) and which was in contact with the three telephone numbers attributed to Mr Badreddine, was a contact telephone number listed on the school records of Mr Badreddine's daughter.⁵⁷ This record has the necessary indicia of reliability as it was received from the school in question, via the Lebanese authorities, in response to a request for assistance.

28. The Trial Chamber is therefore satisfied that the 18 documents are relevant to the Prosecution's case.

29. The 18 documents all have the necessary indicia of reliability. First, they all originate from records which were created in the ordinary course of business by the Lebanese Government,⁵⁸ businesses,⁵⁹ or a school.⁶⁰ Second, they were: (i) provided to the Prosecution in response to requests for assistance, either via the Governments of Lebanon⁶¹ or the United States of America,⁶² or directly from a business;⁶³ or (ii) were handed over directly by witnesses.⁶⁴ Moreover, some of the documents, which are extracts, were verified by Mr Christie.⁶⁵ The Trial Chamber finds that the 18 documents are therefore *prima facie* reliable and so have some probative value.

30. In addition, taking into account the Prosecution's submissions on the matter and the lack of opposition to the Prosecution's request, the Trial Chamber is satisfied that no prejudice to the Defence arises from the admission of these documents into evidence under Rule 154. Finally, the Trial Chamber finds that admitting them into evidence in this way is an efficient use of the court's time and is in the interests of a fair and expeditious trial. It is therefore satisfied that the 18 documents are admissible under Rule 154.

⁵⁷ Prosecution motion, annex A, item 18.

⁵⁸ Prosecution motion, annex A, items 1-5, 8 (in part), 15-17.

⁵⁹ Prosecution motion, annex A, items 6-7, 8 (in part), 9-14

⁶⁰ Prosecution motion, annex A, item 18.

⁶¹ Prosecution motion, annex A, items 1-6, 15-18.

⁶² Prosecution motion, annex A, items 12-14.

⁶³ Prosecution motion, annex A, item 7.

⁶⁴ Prosecution motion, annex A, items 8-11.

⁶⁵ Prosecution motion, annex A, items 10-16.

Witness statements

31. The Prosecution attributes PMP 663 and PMP 354 to Mr Badreddine, and alleges that he used the alias ‘Sami Issa’.⁶⁶ The Trial Chamber has carefully reviewed the witnesses’ statements and finds that they are relevant to these pleaded facts. Each witness’ evidence assists in the attribution of one or both of the mobile numbers to Mr Badreddine. Additionally, Witness 049’s statement is relevant to the *prima facie* reliability of the business records provided to the Prosecution. The statements of Witnesses 447 and 273 can also support the inference that ‘Sami Issa’ was Mr Badreddine’s alias.

32. The initial statements of Witnesses 049 and 447, which did not comply with all of the formal requirements of the Rules and Practice Direction, are annexed to statements dated 19 February and 10 April 2015 respectively, in which the witnesses adopt their earlier statements and which do comply with the formal requirements. This gives the statements, each viewed as a whole, the necessary indicia of reliability to be admitted under Rule 155.

33. Witness 273’s statement is an audio record with a transcript, which does not contain identification information, save for the witness’ name. The Trial Chamber has therefore considered additional documents, in the form of Prosecution investigators’ notes and the witness’ acknowledgement. The Prosecution investigators conducting the interview, Mr Karnberger and Mr Holford, produced a 15 July 2011 investigators’ note summarising the witness’ evidence. This document contains the witness’ personal identification data, based on which the Trial Chamber concludes that the witness had been identified by the investigators. Moreover, this document provides the elements which render the statement compliant with the Practice Direction and Rule 155 (B). Accordingly, the Trial Chamber finds that the witness’ statement has some probative value.

34. Furthermore, the statements are cumulative to other evidence identifying the users of PMPs 354 and 663 and showing that Mr Badreddine used the alias ‘Sami Issa’.⁶⁷ The statements do not go to the acts and conduct of any of the Accused as charged in the

⁶⁶ Amended consolidated indictment, paras 3, 18.

⁶⁷ See e.g. exhibit P1139, Information from Lebanese American University relating to Mustafa Amine Badreddine; exhibit P1661, Witness PRH423’s statement of 7 December 2015; testimony of Witness PRH306, transcript of 8 December 2015, pp 31-32.

amended consolidated indictment. The Trial Chamber therefore considers that the statements may be admitted into evidence under Rule 155, without requiring the witnesses to appear for cross-examination.

CONFIDENTIALITY

35. The Prosecution requests that the motion and its annexes remain confidential until the Trial Chamber decides otherwise, as they contain the identity and personal details of third party individuals. It notes that it will file a public redacted version of its motion.⁶⁸ The Trial Chamber finds that, in the circumstances of this motion and in the interests of maintaining the public nature of these proceedings, the Prosecution must file public redacted versions of the motion and annexes.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES admissible, under Rule 154, the 18 exhibits listed in annex A to the Prosecution's motion;

DECLARES admissible, under Rule 155, the witness statements of Witnesses PRH049, PRH447 and PRH273, listed in annex B to the Prosecution's motion;

DECIDES that it will, at a suitable stage in the proceedings, admit these documents into evidence and allocate exhibit numbers to them; and

ORDERS the Prosecution to file public redacted versions of the motion and annexes.

⁶⁸ Prosecution motion, para. 27.

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

Leidschendam,
The Netherlands
14 July 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

