



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, Registrar

**Date:** 8 December 2014

**Original language:** English

**Type of document:** Public

**THE PROSECUTOR**

v.

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

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**DECISION AUTHORISING THE PROSECUTION TO AMEND  
ITS WITNESS AND EXHIBIT LISTS**

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**Office of the Prosecutor:**

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& Mr Alexander Milne

**Legal Representatives of  
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Mr Antoine Korkmaz, Mr John Jones &  
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**Counsel for Mr Hussein Hassan Oneissi:**

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**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaël Mettraux &  
Mr Geoffrey Roberts



## INTRODUCTION

1. The Prosecution seeks leave to amend its witness and exhibit lists filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence.<sup>1</sup> The Prosecution also requests, under Rules 130 (A) and 137, the Trial Chamber to authorise limited redactions to one of the documents that it wishes to add to its exhibit list.<sup>2</sup>

2. Counsel for the five Accused, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra subsequently responded to the motion, and the Prosecution filed a reply to the response filed by counsel for Mr Sabra.<sup>3</sup> The Trial Chamber also heard further oral submissions.<sup>4</sup>

## SUBMISSIONS

### **A. Amendments to the witness list**

3. The Prosecution seeks to add one and to withdraw eight names from its witness list. The name it seeks to add is that of the late Mr Wissam Al-Hassan, who headed the Hariri family's security detail, and, as an officer in the Lebanese Internal Security Forces, was subsequently involved in investigating the assassination of the former Lebanese Prime Minister Mr Rafiq Hariri on 14 February 2005. However, on 19 October 2012, he was himself assassinated in a car bomb in Beirut.<sup>5</sup>

4. Counsel for Mr Ayyash take no position on adding Mr Al-Hassan to the witness list.<sup>6</sup> Counsel for Mr Badreddine object because the Prosecution has failed either to show good cause for the late addition or to demonstrate the probative value of his testimony or the documents related to it.

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<sup>1</sup>STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, Prosecution Request to Amend its Witness and Exhibit Lists, 24 October 2014 ('Prosecution motion').

<sup>2</sup>*Id.*, paras 13-17.

<sup>3</sup> Response by the Ayyash Defence to the Prosecution Request to Amend its Witness and Exhibit Lists, 10 November 2014; Réponse consolidée de la défense de Merhi aux requêtes des 21, 24 et 30 octobre 2014 en modification des listes de pièces et de témoins et en admission d'éléments de preuve relatifs aux déplacements de Rafic Hariri et au contexte politique, 10 November 2014; Sabra Response to Prosecution Request to Amend its Witness and Exhibit Lists, 10 November 2014; Réponse de la Défense de M. Oneissi au « Prosecution Request to Amend its Witness and Exhibit List » en date du 24 octobre 2014, 10 November 2014; Baddredine Defence Response to the "Prosecution Request to Amend its Witness and Exhibit List" of 24 October 2014, 10 November 2014.; Prosecution Reply to Sabra Defence Response to "Prosecution Request to Amend its Witness and Exhibit List", 17 November 2014.

<sup>4</sup> Transcripts of 13 and 14 November 2014.

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

<sup>6</sup> Ayyash Defence response, para. 4.

Further, adding Mr Al-Hassan's name now would delay Defence preparations for trial.<sup>7</sup> Counsel for Mr Merhi, Mr Sabra and Mr Oneissi also object to this addition on the basis of a lack of relevance and good cause.<sup>8</sup>

5. Counsel for Mr Ayyash, Mr Baddredine and Mr Merhi do not object to withdrawing the eight witnesses from the Prosecution's witness list. Counsel for Mr Sabra and Mr Oneissi object to the withdrawal of two of the eight, namely Witnesses PRH621 and PRH623, as this would reduce the amount of the expected evidence in relation to the telephone networks allegedly used in planning Mr Hariri's assassination.<sup>9</sup>

#### **B. Amendments to the exhibit list**

6. The Prosecution seeks to add the following items to its exhibit list:<sup>10</sup>

- a) The audio recording and transcript of Mr Al-Hassan's interview with the Special Tribunal's Prosecution in June 2012, a document he produced during the interview, and a certificate from the Lebanese authorities confirming the origin and authenticity of that document;
- b) The audio recordings and transcripts of three meetings involving Mr Hariri in the summer of 2004 and the winter of 2005;
- c) Three expert reports prepared by Witness PRH435;
- d) A video which includes footage of Mr Hariri in Barcelona, Spain, on 13 September 2004 receiving an award from the United Nations for the reconstruction of Beirut;
- e) An official document from the Lebanese Ministry of Interior and Municipalities detailing the entry and exit records from Lebanon of a subscriber to a telephone belonging to the so-called 'blue network' of telephones (one of the networks allegedly used to prepare the attack of 14 February 2005, as pleaded in the consolidated indictment);<sup>11</sup>

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<sup>7</sup> Badreddine Defence response, paras 6-13.

<sup>8</sup> Merhi Defence response, paras 33-37 ; Sabra Defence response, paras 6-13; Oneissi Defence response, paras 15-19.

<sup>9</sup> Oneissi Defence response, paras 13-20; Sabra Defence response, paras 10-13.

<sup>10</sup> Prosecution motion, paras 12-28.

<sup>11</sup> Redacted Version of the Consolidated Indictment, 7 March 2014, p. 8.

- f) Cell site and other communication-related information received from Lebanese communication service providers;
- g) An extract from the telephone directory of Mr Jamil El-Sayyed—the former head of the Lebanese General Security Directorate—containing the telephone number of the Syrian President, Mr Bashar El-Assad;
- h) A document from the Special Syrian Judicial Commission providing details about Syrian military intelligence locations in Lebanon between June 2004 and December 2005; and
- i) Documents related to Mr Marwan Hamade (Witness PRH038)—namely, three witness statements, his 2004 agenda, and an agreement signed in December 2003 regarding the sale of shares in An-Nahar newspaper.

7. The Prosecution argues that good cause exists for adding these materials to its exhibit list as they are relevant and probative, and as they have already been disclosed to the Defence their addition will not delay the proceedings.<sup>12</sup>

8. Counsel for Mr Ayyash object to adding the excerpt of Mr El-Sayyed's telephone directory, and the documentation detailing Syria's military intelligence locations in Lebanon, arguing that the Prosecution has failed to demonstrate their relevance and good cause for the late application. They take no position on the request to add the remaining 22 documents.<sup>13</sup>

9. Counsel for Mr Badreddine object to the documents related to Mr Al-Hassan's June 2012 interview because the Prosecution has failed to show good cause for their late application. They also submit that Mr Al-Hassan's statement and related documents have very low probative value and that their addition to the exhibit list would delay their preparations for trial.<sup>14</sup> They object to adding documents relating to Syria's role in Lebanon—namely, the transcripts and audio recordings of the three meetings involving Mr Hariri, the extract from Mr El-Sayyed's telephone directory, the document from the Special Syrian Judicial Commission, and the documents related to Mr Hamade. This, they argue, is because the Prosecution has failed to demonstrate the relevance of these

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<sup>12</sup> Prosecution motion, paras 6-10 and 29-33.

<sup>13</sup> Ayyash Defence response, paras 6-7.

<sup>14</sup> Badreddine Defence response, paras 6-13.

materials or good cause for their late addition, and that their addition to the exhibit list would delay Defence preparations for trial.<sup>15</sup>

10. Counsel for Mr Merhi object to adding the documents related to Mr Al-Hassan's interview, the extract from Mr El-Sayyed's telephone directory, the document received from the Special Syrian Judicial Commission, and the documents related to Mr Hamade, on the basis of lack of relevance and good cause. They oppose adding the video footage of Mr Hariri in Barcelona to prove anything related to political context, but submit that these videos can be used to establish Mr Hariri's movements.<sup>16</sup>

11. Counsel for Mr Oneissi, alone, object to any amendment to the list of exhibits. They argue that, the Prosecutor should, before requesting leave to add witnesses and exhibits linked to the political circumstances occurring before the crimes charged, seek leave to amend the consolidated indictment.<sup>17</sup>

12. As the Prosecution has failed to demonstrate relevance, counsel for Mr Sabra object to the addition to the exhibit list of the extract from Mr El-Sayyed's telephone directory, the document from the Special Syrian Judicial Commission, and the documents related to Mr Hamade.<sup>18</sup>

13. The Prosecution also seeks to amend its exhibit list to remove 22 exhibits that it no longer relies upon.<sup>19</sup> Counsel for Mr Oneissi object on the basis that the Prosecution has not provided sufficient information to justify these removals.<sup>20</sup> Counsel for the other Accused do not object to this proposed amendment.

### **C. Request to redact transcripts and recordings of meetings**

14. The Prosecution also requests the Trial Chamber to order limited redactions to the transcripts and recordings of the three meetings involving Mr Hariri, to safeguard the 'dignity and decorum of the proceedings'.<sup>21</sup> If the Trial Chamber refuses to allow the redactions, the Prosecution requests in the

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<sup>15</sup> Baddredine Defence response, paras 14-22.

<sup>16</sup> Merhi Defence response, paras. 24-32.

<sup>17</sup> Oneissi Defence response, para. 34.

<sup>18</sup> Sabra Defence response, para. 10-12.

<sup>19</sup> Prosecution motion, para. 34.

<sup>20</sup> Oneissi Defence response, para. 13.

<sup>21</sup> Prosecution motion, para. 16.

alternative that the recordings or transcripts of the meetings be tendered in a hearing in closed session. All Defence counsel object to this.

### **DISCUSSION**

15. The Trial Chamber may, in the interests of justice, allow a party to amend its witness and exhibit lists. In doing so it 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. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider, among other factors, i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; ii) the stage of the proceedings; and, iii) whether granting the amendment would result in undue delay.<sup>22</sup>

#### **A. Adding Mr Al-Hassan's name to the witness list**

16. Following Mr Al-Hassan's assassination on 19 October 2012, the Prosecution filed several confidential and *ex parte* motions regarding Mr Al-Hassan's evidence. As a result of security concerns expressed by the Lebanese authorities, and on the application of the Prosecution, the Pre-Trial Judge, in November 2012, ordered the Prosecution to temporarily suspend disclosing Mr Al-Hassan's statement to Defence counsel.<sup>23</sup> On 27 January 2014, the Prosecution sought the Trial Chamber's leave to redact certain information from the witness statement that the Prosecution now seeks to add to its exhibit list.<sup>24</sup> In its motion, the Prosecution submitted that Mr Al-Hassan's statement and the other documents related to it were part of a larger collection of documents that the Prosecution would seek to add to its exhibit list upon determination of its request for protective measures.<sup>25</sup> On 20 February 2014, the Trial Chamber partially granted the Prosecution's request for

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<sup>22</sup> STL-11-01-T/TC, Decision on Prosecution request on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014, para. 15; STL-11-01/PT/TC, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; First Decision on the Prosecution request for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

<sup>23</sup> STL-11-01/PT/PTJ, Confidential Version of the Decision of 30 November 2012 Regarding the Prosecution's Application Relating to the Temporary Suspension of the Disclosure of Certain Information and Documents, 14 December 2012.

<sup>24</sup> STL-11-01/T/TC, Decision on Prosecution Request for Protective Measures (Redaction of Four Documents) of 27 January 2014, 20 February 2014.

<sup>25</sup> Decision on Prosecution Request for Protective Measures (Redaction of Four Documents) of 27 January 2014, 20 February 2014, at para. 5.

protective measures in respect of Mr Al-Hassan's statement. Notwithstanding this, however, it took the Prosecution another eight months to seek to add Mr Al-Hassan to its witness list.

17. The Prosecution should have made the request in a more timely fashion. However, despite this delay, and indeed the absence of any real explanation for it, adding Mr Al-Hassan's name to the witness list now will neither delay the proceedings nor cause any prejudice to the Defence. The relevant material was disclosed to the Defence—the last portion in October 2014—and the Prosecution will not seek to tender any material relating to the witness until sometime in 2015.

18. The Trial Chamber is satisfied that Mr Al-Hassan's proposed evidence is *prima facie* relevant and probative to the case, as it relates to the ownership and management of mobile telephones belonging to what the consolidated indictment labels as the 'green network' of telephones, allegedly used to monitor and coordinate the preparations for the attack on Mr Hariri. Mr Al-Hassan's name can therefore be added to the witness list. The Trial Chamber will decide whether his statement and the associated documents may be admitted into evidence only after further hearing submissions from the Parties on this issue.

#### **B. Adding exhibits to the exhibit list**

##### ***a) Documents related to Mr Al-Hassan***

19. The documents related to Mr Al-Hassan are *prima facie* relevant and probative. As he is deceased, his witness statement and any related documents will—if the Trial Chamber decides to admit them, either in whole or in part—comprise the totality of his evidence. They are therefore intrinsically linked to his testimony, because without the statement there is no evidence from Mr Al-Hassan. The documents are relevant and probative, Defence counsel has had all of them for at least six weeks, and adding them to the exhibit list now will not delay the trial or prejudice Defence preparations for trial. They may be added to the Prosecution's exhibit list. This does not mean that they will be admitted into evidence, rather, it merely signifies that they can be added to the exhibit list now.

##### ***b) Audio recordings and transcripts of three meetings involving Mr Hariri***

20. In August 2005, Mr Al-Hassan provided the UNIIC with audio recordings of three meetings involving Mr Hariri. Although the Prosecution has had these documents for some years, it has only recently decided that they could provide relevant and probative evidence of the political

circumstances before Mr Hariri's assassination. The Trial Chamber is satisfied that the recordings may provide direct evidence of conversations that Prosecution witnesses may address during their testimony. The recordings are thus *prima facie* relevant and probative; adding them to the exhibit list now will not delay the trial nor prejudice Defence preparations for trial. They can therefore be added to the exhibit list; their admissibility will be decided at a later appropriate point.

***c) Expert reports***

21. The three expert reports that the Prosecution wishes to add to its exhibit list were prepared by the Prosecution's expert Witness PRH435 in May, July and September 2014. The reports relate to cell site and telecommunications analysis and are *prima facie* relevant and probative to the Prosecution's case. The Prosecution disclosed each report to the Defence shortly after its completion, accompanied by a letter stating that the disclosure was in anticipation of 'an application' by the Prosecution in respect of each report.<sup>26</sup>

22. The Trial Chamber accordingly considers that the Prosecution had good cause for not seeking to add the reports to the exhibit list earlier, and that the Defence has had adequate notice that the Prosecution would be making the request. As the reports will not be used in evidence until the second and third phases of the Prosecution case, the Defence will not be prejudiced in its trial preparation. The trial will not be delayed; the reports can be added to the exhibit list.

***d) Video of Mr Rafiq Hariri***

23. The Trial Chamber has already admitted into evidence—as part of a witness statement admitted under Rule 155—a video of Mr Hariri receiving a United Nations prize in Barcelona.<sup>27</sup> The Prosecution's request is limited to assigning a separate number for the video for ease of reference.<sup>28</sup> This is thus purely administrative, and the request is granted.

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<sup>26</sup> Email from the Prosecution to the Trial Chamber's Legal Officer, 26 November 2014, copied to Defence counsel and the Legal Representative of the Victims. In its email, the Prosecution said that in two of its three letters to the Defence, it expressly referred to an application being made pursuant to Rule 161, whereas one of the letters referred only generally to 'an application'.

<sup>27</sup> STL-11/01/T/TC, First Decision on the Prosecution request for Admission of Written Statements under Rule 155, 20 December 2013, at p. 17.

<sup>28</sup> Prosecution motion, para. 22.



***e) Official Lebanese border entry/exit records for a named subscriber of a ‘blue network’ telephone***

24. In analysing the telephone networks referred to in the consolidated indictment, a Prosecution witness used official Lebanese border entry and exit records relating to a named subscriber of a ‘blue network’ telephone. The Prosecution now seeks to add this document to correct its earlier inadvertent omission from its exhibit list. As it is intrinsically linked to other evidence, the document is probative and relevant. Its addition to the exhibit list now will neither prejudice the Defence preparation for trial nor delay the trial; it may therefore be added to the Prosecution’s exhibit list.

***f) Cell site and other communication-related information***

25. Between November 2013 and September 2014, the Prosecution received various communications related documents, including responses from Lebanese telecommunications service providers to requests for assistance, and disclosed all of them to the Defence.<sup>29</sup> As part of their telecommunications analysis, some Prosecution witnesses will rely upon these documents.<sup>30</sup> The Trial Chamber considers that they are *prima facie* probative and relevant, and that their addition to the exhibit list now will not prejudice Defence preparation for trial. They can accordingly be added to the exhibit list.

***g) An extract from Mr El-Sayyed’s telephone directory***

26. As with the recordings of the meetings involving Mr Hariri, the Prosecution states that it only recently decided that this document was relevant.<sup>31</sup> The Trial Chamber believes that the document can assist in analysing some telecommunications evidence, and provide some information relevant to the political circumstances in Lebanon before 14 February 2005.

27. The Prosecution provided no explanation as to why it could not have determined the relevance of this document earlier. However, despite this omission, and because the Trial Chamber has already received some evidence of the political situation before Mr Hariri’s assassination—including Syria’s role in Lebanon—the extract from Mr Al-Sayyed’s telephone directory is *prima facie* relevant and probative. Its addition to the exhibit list will not delay the trial nor prejudice Defence preparations for trial. It may thus be added to the exhibit list.

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<sup>29</sup> Prosecution motion, Annex B, items 10 to 18.

<sup>30</sup> *Id.*, para. 25.

<sup>31</sup> *Id.*, para. 26.

***h) A document received from the Special Syrian Judicial Commission***

28. The Prosecution has not given any explanation as to why it could not have determined the relevance of this document, dating from 2006, at an earlier point. However, witness testimony has already touched upon the subject of the information contained in the document.<sup>32</sup> The Trial Chamber considers therefore that the document is *prima facie* relevant and probative, and that adding it to the exhibit list now will not prejudice Defence preparations for trial nor delay the trial. It may therefore be added to the exhibit list.

***i) Documents related to Mr Marwan Hamade (Witness PRH038)***

29. The final category of documents that the Prosecution seeks to add to its exhibit list relates to Mr Hamade, who testified between 17 and 21 November 2014, and will testify again from 8 December 2014. The Prosecution initially included these documents in its exhibit list but subsequently removed them. During the first part of Mr Hamade's testimony, the Trial Chamber admitted some of these documents, namely, the agreement for the sale of shares in An-Nahar newspaper,<sup>33</sup> and some articles published in An-Nahar.<sup>34</sup> The remaining documents are Mr Hamade's three witness statements dated 22 December 2005, 8 September 2006 and 5 October 2011, and his 2004 agenda. The Trial Chamber has already (effectively) ruled that Mr Hamade can testify to the content of these documents.<sup>35</sup> Defence counsel have the documents and are well aware of their content, and, indeed may potentially use them in cross-examining Mr Hamade. In these circumstances, there can be no prejudice to Defence preparations for trial in adding them to the exhibit list. Nor will it delay the trial. These documents may therefore be added to the Prosecution's exhibit list.

**C. Removal of exhibits and witnesses**

30. The Trial Chamber is satisfied that removing eight witnesses and 22 exhibits from the Prosecution's witness and exhibit lists will not prejudice Defence preparations for trial or result in any delay.

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<sup>32</sup> See e.g. Transcript of 11 November 2014, p. 47, lines 23-24 (Mr Mohammad Mneimneh); Transcript of 17 November 2014, p. 59, lines 1-14 (Mr Marwan Hamade); Transcript of 18 November 2014, p. 41, lines 11-14 (Mr Marwan Hamade).

<sup>33</sup> Admitted into evidence as P00308.

<sup>34</sup> Admitted into evidence as P00309 and P00313.

<sup>35</sup> Transcript of 14 November 2014, p. 47, lines 23-24 (reasons in Transcript of 17 November, pp. 9 ff.).

31. Counsel for Mr Sabra and Mr Oneissi argue that removing two of the eight witnesses will reduce the source of evidence regarding the discovery and attribution of the telephone networks alleged in the consolidated indictment.<sup>36</sup> However, as counsel for Mr Ayyash correctly note, the documents have already been disclosed and, even if withdrawn from the Prosecution's witness or exhibit lists, Defence counsel may still use the documents or interview the witnesses.<sup>37</sup>

32. The Trial Chamber may also consider—at a later stage in the trial, if it considers their testimony necessary—whether it should ask the Prosecution to call these two witnesses to testify.

#### **D. Conclusion on requested amendments**

33. The requested amendments are not burdensome to the Defence. Adding the proposed evidence to the Prosecution's exhibit and witness lists will neither prejudice the preparation of the Defence for trial nor delay the proceedings. Having balanced the right of the Prosecution to present evidence supporting its case with the rights of counsel for the Accused to adequately prepare for trial, the Trial Chamber is satisfied that the interests of justice allow the requested amendments to the Prosecution's witness and exhibit lists. The Trial Chamber, at the appropriate time in the trial, will determine the admissibility of each document and whether it will be received into evidence.

#### **E. Prosecution request to redact recordings and transcripts**

34. To safeguard the 'dignity and decorum' of the proceedings, the Prosecution also seeks some minor redactions to the recordings and transcripts of three meetings attended by Mr Hariri in the summer of 2004 and winter of 2005. As its request for redactions cannot fall within the Trial Chamber's authority to order measures for the protection of victims and witnesses under Rule 133, the Prosecution sought the order under Rule 130 (A)—the Trial Chamber's general power to give directions on the conduct of proceedings. The Trial Chamber, however, is not prepared to resort to its general authority under Rule 130 (A) to allow the requested redactions.

35. That Mr Hariri said something in a private meeting that some may consider 'derogatory' or 'coarse' does not, of itself, justify redacting those words from court documents. Nor does it justify, under Rule 137, hearing the evidence in closed session for reasons of 'public order or morality'. The Prosecution's arguments supporting redactions or using a closed session do not outweigh the general

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<sup>36</sup> Sabra Defence response, paras 16-17; Oneissi Defence response, paras 11-13.

<sup>37</sup> Ayyash Defence response, para. 9.

principle—set out in Article 16 (2) of the Special Tribunal’s Statute and Rule 136—favouring the public nature of the proceedings. Both the request for redactions and the alternative request for a closed session during the tendering of the material are rejected.

**DISPOSITION**

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

**ALLOWS** the Prosecution’s motion for leave to amend its witness and exhibit lists; and

**DENIES** the Prosecution’s request for redactions or a closed session hearing.

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

Leidschendam,  
The Netherlands

8 December 2014

*David Re*

\_\_\_\_\_  
Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

\_\_\_\_\_  
Judge Micheline Braidy

