

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:** 9 October 2015

**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**

**DECISION ON PROSECUTION MOTION FOR THE ADMISSION OF  
EVIDENCE RELATED TO THE LOCATIONS OF RESIDENCES  
ASSOCIATED WITH THE ACCUSED**

**Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Milne

**Victims' Legal Representatives:**

Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**

Mr Eugene O'Sullivan, Mr Emile Aoun &  
Mr Thomas Hannis

**Counsel for Mr Mustafa Amine Badreddine:**

Mr Antoine Korkmaz, Mr Iain Edwards &  
Ms Mylène Dimitri

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothee Le Fraper  
du Hellen & Mr Khalil Jad

**Counsel for Mr Hussein Hassan Oneissi:**

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

Mr David Young, Mr Guénaël Mettrauk &  
Mr Geoffrey Roberts



## INTRODUCTION

1. In its consolidated indictment, the Prosecution alleges that five interconnected groups of mobile telephones were involved in the assassination of the former Lebanese Prime Minister Mr Rafik Hariri, in Beirut on 14 February 2005.<sup>1</sup> To assist it in attributing certain of these telephones numbers to the Accused, the Prosecution seeks to tender, under Rules 154 and 155 of the Special Tribunal's Rules of Procedure and Evidence, evidence on the locations of residences owned or rented by four of the Accused or their relatives.<sup>2</sup> The Prosecution states that it will enter the geographical coordinates of these residences into the 'Electronic Presentation of Evidence' software it intends to use at trial to visually represent relevant places and events, such as the movements of the mobile telephones allegedly used to plan Mr Hariri's assassination.<sup>3</sup>

2. The evidence proposed for admission consists of 22 exhibits and seven statements by four witnesses: Mr Andrew Fahey (PRH263) and Witnesses PRH550, PRH687, and PRH688.<sup>4</sup> The Prosecution also requests leave to add 21 of those exhibits to its Rule 91 exhibit list, and two of the witnesses to its Rule 91 witness list.<sup>5</sup>

3. Counsel for the Accused, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra responded to the motion.<sup>6</sup> The Prosecution subsequently filed a reply.<sup>7</sup> On 1 September 2015, the Prosecution filed a supplementary submission following the Trial Chamber's request for

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, para. 14.

<sup>2</sup> F2032, Prosecution Motion for the Admission of Evidence Related to the Locations of the Residences Associated with the Accused, 29 June 2015; F2032, Redacted Version of Prosecution Motion for the Admission of Evidence Related to the Locations of the Residences Associated with the Accused, dated 29 June 2015, 1 July 2015.

<sup>3</sup> Prosecution motion, para. 2. *See* F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence', 9 July 2015, para. 1. On 17 September 2015, Prosecution analyst Mr Andrew Fahey (PRH263) testified in court and demonstrated the functionalities of the Electronic Presentation of Evidence software. The software was marked for identification as Exhibit P-592, pending a decision from the Trial Chamber on its admission into evidence. *See* Transcript no. 196 of 17 September 2015, p. 112.

<sup>4</sup> Prosecution motion, para. 1; Annexes A and B.

<sup>5</sup> Prosecution motion, para. 7; Annexes C and D.

<sup>6</sup> F2074, Merhi Defence Response to "Prosecution Motion for the Admission of Evidence Related to the Locations of the Residences Associated with the Accused", 13 July 2015; F2078, Oneissi Defence Response to 'Prosecution Motion for the Admission of Evidence Related to the Locations of the Residences' dated 29 June 2015, 13 July 2015; F2077, Sabra Defence Response to Prosecution Motion for the Admission of Evidence Related to the Residences Associated with the Accused, 13 July 2015.

<sup>7</sup> F2084, Prosecution Reply to "Oneissi Defence Response to 'Prosecution Motion for the Admission of Evidence Related to the Locations of the Residences' dated 29 June 2015", 20 July 2015.

clarification regarding some of the documents tendered.<sup>8</sup> The Prosecution notably withdrew one of the exhibits it had sought to tender, as it was an exact copy of another document tendered in the same motion.<sup>9</sup>

## DISCUSSION

### **A. Amendment of the witness and exhibit lists**

#### *i) Submissions*

4. The Prosecution requests leave to add to its exhibit list 21 exhibits and witness statements it seeks to tender into evidence by way of this motion. It explains that nine of these exhibits are extracts of larger exhibits already on its exhibit list. One is a new statement by Witness 550 that incorporates investigator's notes that are already on the exhibit list.<sup>10</sup> Another exhibit is a map extracted from a witness statement by Witness 647 that was taken to make an older version that is on the exhibit list, compliant with Rule 155 requirements.<sup>11</sup> An additional four exhibits are what the Prosecution characterises as 'newly received evidence'.<sup>12</sup> And finally, six are items the Prosecution only recently identified as assisting in establishing the locations of residences associated with the Accused, but largely duplicate evidence already on its exhibit list.<sup>13</sup>

5. Further, the Prosecution seeks to add Witnesses 687 and 688 to its witness list so it may tender their statements into evidence under Rule 155 by way of the same motion. The Prosecution argues that Witness 687's statement was 'recently taken' in December 2014,<sup>14</sup> and it only recently determined Witness 688's statement as being relevant.<sup>15</sup>

6. Counsel for Mr Merhi object to the Prosecution adding Witness 688 to the witness list, and his statement to the exhibit list.<sup>16</sup> They argue that the Prosecution has not shown good cause for

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<sup>8</sup> F2156, Supplementary Submission to Prosecution Motion for the Admission of Evidence Related to the Locations of the Residences Associated with the Accused of 29 June 2015, 1 September 2015.

<sup>9</sup> Prosecution supplementary submission, paras 3 and 6.

<sup>10</sup> Prosecution motion, para. 48; Annex D, item 19.

<sup>11</sup> Prosecution motion, para. 48; Annex D, item 17.

<sup>12</sup> Prosecution motion, para. 49.

<sup>13</sup> Prosecution motion, para. 50.

<sup>14</sup> The Prosecution motion incorrectly dates it as December 2015 at paragraph 52 of its motion.

<sup>15</sup> Prosecution motion, para. 52.

<sup>16</sup> Merhi response, paras 2-4.

seeking the addition now, despite the statement being in its possession since February 2014. Moreover, the witness's evidence is not confined to the location of Mr Merhi's residence; it also details other matters related to Mr Merhi and his family.<sup>17</sup>

7. Counsel for Mr Sabra state that they take no position on the Prosecution's request to amend its exhibit list.<sup>18</sup> They nevertheless go on to argue that the Prosecution has not shown good cause for adding the ten exhibits that are not extracts of exhibits already on the list.<sup>19</sup>

### *ii) Decision*

8. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit and witness lists, but must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider general factors that include: (i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.<sup>20</sup>

9. The Trial Chamber has reviewed the material proposed for addition. It has also reviewed the material that is already on the Prosecution's exhibit list and that the Prosecution submits is duplicative of the new items to be added.<sup>21</sup> The Trial Chamber considers there to be some legitimacy to counsel for the Defence's argument that the Prosecution has not shown good cause for not seeking some of the amendments earlier. A statement cannot be described as being 'recent' when it was taken seven months earlier, and the fact that a document was only recently identified as being relevant is not, of itself, good cause for not having sought the amendment earlier. Despite the scant justification put forth by the Prosecution on the timing of some of the additions, the Trial Chamber considers all of the 21 items to be *prima facie* relevant and probative of the Prosecution's case, notably to the attribution of telephones to the Accused and the movements of the mobile telephones used. The Trial Chamber considers that the amendments will not result in undue delay as most of the

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<sup>17</sup> Merhi response, paras 2-3.

<sup>18</sup> Sabra response, para. 2.

<sup>19</sup> Sabra response, para. 35.

<sup>20</sup> F1820, Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony relating to 'Red Network' Mobile Telephone Subscriptions, 19 January 2015, para. 5.

<sup>21</sup> Prosecution motion, Annex D.

information was already on the Prosecution's exhibit list in some form. It accordingly grants the Prosecution leave to amend its exhibit and witness lists.

### **B. Admission of exhibits into evidence under Rule 154**

10. The Trial Chamber has previously acknowledged that admitting evidence 'from the bar table', under Rule 154, without requiring a witness to produce or to identify it, is a well-established practice before international courts and tribunals.<sup>22</sup> Material tendered in this manner—like any other evidentiary material—must meet the basic requirements for the admission of evidence in Rule 149 (C) and (D), in that it must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect.<sup>23</sup> Only *prima facie*—rather than definite—reliability and probative value is required at this stage.<sup>24</sup> Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>25</sup>

11. The exhibits the Prosecution seeks to tender into evidence under Rule 154 relate to the locations of eight residences associated with four of the five Accused, which it describes in its motion as:<sup>26</sup>

- a) A Beirut address registered in Mr Salim Jamil Ayyash's name, located at District Baabda, Real Estate Zone Al-Hadath, No. 2, Real Estate Number 177, Block B, Section 15;<sup>27</sup>
- b) A residence in Zebdeen/Harouf, South Lebanon, registered in Mr Ayyash's father's name;<sup>28</sup>

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<sup>22</sup> F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 5-7; STL-11-01/PT/TC, F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps and 3-D Models, 13 January 2014, para. 4.

<sup>23</sup> F1781, Corrected version of 'Decision on Prosecution Motion to Admit into Evidence Geographic Documents' of 8 December 2014, 10 December 2014, para. 4.

<sup>24</sup> Decision of 28 January 2014, para. 7; Decision of 13 January 2014, para. 8.

<sup>25</sup> Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4-6.

<sup>26</sup> Prosecution motion, para. 3.

<sup>27</sup> At para. 2 (b) of its consolidated indictment, the Prosecution describes Mr Ayyash as having resided at Al-Jamous Street, Tabajah building, Hadath, in South Beirut.

- c) A Beirut address registered in Mr Merhi's name, located at District Baabda, Real Estate Zone Bourj El-Barajneh, Real Estate Number 2501;<sup>29</sup>
- d) A Beirut residence rented by Mr Merhi's father;
- e) A Beirut address in Mr Oneissi's name, located at District Baabda, Real Estate Zone Al-Hadath, Real Estate number 233, Section G/24;<sup>30</sup>
- f) A residence in Mr Sabra's name, located at El Hadath, El Hadath Highway, Sfeir, Tabaja Building, Real Estate Number 177;<sup>31</sup>
- g) The Beirut residence rented by Mr Sabra's father; and
- h) The Beirut residence rented by Mr Sabra's father-in-law.

12. The exhibits proposed for admission fall into five categories: land registry records; electricity subscription records; compensation claims for damages sustained by properties during the July 2006 war; banking documents; and a map.<sup>32</sup> The Prosecution will rely on this evidence to establish where the Accused and their families resided during the period of time it attributes mobile telephone numbers to the Accused. The residences are therefore relevant to establishing the movements of the Accused, and the usage patterns of the mobile telephones attributed to them and others.<sup>33</sup>

*i) Land registry records*

13. The Prosecution obtained 10 sets of land registry documents from the Lebanese General Director of Real Estate Affairs in response to requests for assistance.<sup>34</sup>

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<sup>28</sup> At para. 2 (b) of its consolidated indictment, the Prosecution alleges that Mr Ayyash also resided at the Ayyash family compound in Harouf, Nabatiyeh in South Lebanon.

<sup>29</sup> At para. 2 (e) of the consolidated indictment, Mr Merhi's residence is described as section 27, eastern façade, real estate number 2501, in Bourj El-Barajneh, Baabda.

<sup>30</sup> At para. 2 (c) of the consolidated indictment, Mr Oneissi is described as having resided in the Ahmad Abbas Building, on Al-Jamous street, near the Lycée des Arts, in Hadath, South Beirut.

<sup>31</sup> At paragraph 2 (d) of the consolidated indictment, Mr Sabra is described as having resided at apartment 2, 4th floor, building 28, rue 58, in Hadath 3, South Beirut, also described as St. Thérèse Street, in Hadath, South Beirut.

<sup>32</sup> Prosecution motion, para. 8.

<sup>33</sup> Prosecution motion, para. 9.

<sup>34</sup> Prosecution motion, paras 10 and 18.

14. A real estate certificate and a page from the Real Estate Register allegedly prove that Mr Ayyash bought his residence in Beirut on 14 March 2002.<sup>35</sup> A page from the Real Estate Register lists Mr Ayyash's now deceased father as the alleged owner of the property in Zebdeen, South Lebanon.<sup>36</sup> A set of real estate certificates establish the address at which Mr Sabra allegedly resided in Beirut.<sup>37</sup> To prove Mr Merhi's address in the Bourj Al-Barajneh neighbourhood of Beirut, the Prosecution relies on a real estate information sheet listing him as the owner of an apartment and a contract of sale dated 3 July 2001 for that same property.<sup>38</sup> It also seeks to tender a contract of sale and a real estate certificate establishing the address of a building in which Mr Merhi's father allegedly rented an apartment.<sup>39</sup> With respect to Mr Oneissi's residence, the Prosecution seeks to tender a mortgage deed dated 18 May 2006 in the name of Mr Oneissi's wife.<sup>40</sup> Finally, land register maps identify the locations of plots of land matching the relevant addresses: some of these illustrate the plots relevant to Mr Ayyash, Mr Oneissi, Mr Merhi and Mr Sabra; and one map illustrates the plot relevant to Mr Ayyash in Zebdeen, South Lebanon.<sup>41</sup>

15. The Prosecution argues that these documents are reliable as they are official land records maintained by the Director General of Real Estate Affairs in Lebanon, and were 'created in the ordinary course of business'.<sup>42</sup>

16. Counsel for Mr Merhi take no position on the admission of these documents.<sup>43</sup>

17. Counsel for Mr Sabra adopt an ambivalent position. They first state that they take no position on the admission of any of the documents under Rule 154, but then question the reliability of those documents and argue that they should not be admitted.<sup>44</sup> Counsel for Mr Sabra appear to suggest that the Prosecution's motion is misleading, given that in an introductory paragraph to the section on land registry documents, the Prosecution states that these documents relate to residences associated with Mr Ayyash, Mr Oneissi and Mr Merhi. However, a few paragraphs further in the motion, the

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<sup>35</sup> Prosecution motion, para. 11; Annex A, items 11 and 16.

<sup>36</sup> Prosecution motion, para. 13; Annex A, item 9.

<sup>37</sup> Prosecution motion, para. 12; Annex A, item 12.

<sup>38</sup> Prosecution motion, para. 14; Annex A, items 13 and 15.

<sup>39</sup> Prosecution motion, para. 15; Annex A, items 14.

<sup>40</sup> Prosecution motion, para. 16; Annex A, item 18.

<sup>41</sup> Prosecution motion, para. 17; Annex A, items 10 and 17.

<sup>42</sup> Prosecution motion, para. 18.

<sup>43</sup> Merhi response, para. 10.

<sup>44</sup> Sabra response, paras 2 and 7-9.

Prosecution requests the admission of land registry documents in relation to Mr Sabra.<sup>45</sup> In addition, counsel are not satisfied that the land registry documents can be considered reliable simply because they are official.<sup>46</sup>

18. Counsel for Mr Sabra are correct in pointing out that the Prosecution omits, in one paragraph of its motion, to mention Mr Sabra's name when it identifies the Accused in relation to whom it seeks the admission of the land registry documents.<sup>47</sup> The Trial Chamber, however, takes what appears to be an inadvertent omission simply for what it is: a drafting error. This can be plainly seen since the remainder of the motion and its annexes explicitly address the land registry documents linked to Mr Sabra.<sup>48</sup> The Trial Chamber accordingly rejects the argument that the Prosecution is attempting to camouflage the admission of evidence in relation to one of the Accused.

19. The Trial Chamber similarly dismisses counsel for Mr Sabra's argument that the documents are not reliable. Counsel have not explained why the documents are unreliable, nor what 'further independent specific evidence'<sup>49</sup> would be appropriate to establish their reliability. The documents are issued and maintained by the General Directorate for Real Estate Affairs, a public office within the Ministry of Finance responsible for all real estate transactions, cadastral services and state properties.<sup>50</sup> With the exception of four documents further discussed below, all are signed and stamped by the General Directorate, making them 'official acts' according to the Lebanese Code of Civil Procedure.<sup>51</sup> In addition, some are notarized, such as the mortgage deed for Mr Oneissi's wife and the contract of sale for Mr Merhi's apartment in Bourj Al-Barajneh. This means that, in a Lebanese civil court, the facts contained in these documents would be presumed proven unless the documents themselves are proven to be false, which the Defence has not done in this case.<sup>52</sup> The Trial Chamber accordingly considers that the source and legal nature of these documents confers upon them sufficient indicia of reliability for their admission into evidence.

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<sup>45</sup> Sabra response, para. 7.

<sup>46</sup> Sabra response, para. 8.

<sup>47</sup> Prosecution motion, para. 10.

<sup>48</sup> Prosecution motion, para. 12.

<sup>49</sup> Sabra response, para. 8.

<sup>50</sup> Articles 1 and 34 of Lebanese Decree no. 2868 of 6 December 1959. Article 1 defines the main role of the Ministry of Finance as: to manage and keep public funds and to be responsible for the budget, treasury, customs, real estate and cadastral affairs and national lottery, as well as any other matters that might be entrusted to it by existing laws and regulations. Article 34 establishes the General Directorate for Real Estate Affairs.

<sup>51</sup> Article 143, Lebanese Code of Civil Procedure.

<sup>52</sup> Article 145, Lebanese Code of Civil Procedure.



20. The four land register documents unsigned and unstamped by the General Directorate consist of the Real Estate Register for Mr Ayyash's father's residence in Zebdeen, South Lebanon, the real estate certificate regarding the residence of Mr Merhi's father and the two sets of land registry maps. Although these would not be considered official acts under Lebanese law, the Prosecution nevertheless obtained them from the General Directorate as it did the other land register documents. The Zebdeen address in the first document is consistent with that listed in the electricity subscription records the Prosecution seeks to tender for that residence.<sup>53</sup> Similarly, the address of Mr Merhi's father in the second document is corroborated by the contract of sale for that same property.<sup>54</sup> As for the maps, they were prepared and issued by the General Directorate. The Trial Chamber considers these elements combined to be sufficient to establish these four documents' *prima facie* reliability.

21. Lastly, the Trial Chamber considers the land registry documents relevant to the Prosecution's case on the attribution of telephones, which the Prosecution defines as evidence that supports the assertion that a telephone number was used by a specific person during a particular time period.<sup>55</sup> This is despite some variations in the way the same addresses are described in the Prosecution's consolidated indictment,<sup>56</sup> the motion, and the land registry documents—the most notable incidence being Mr Ayyash's Beirut and Zebdeen addresses.<sup>57</sup> The Trial Chamber has assessed these discrepancies in the context of all the proposed evidence tendered through the motion, and is satisfied, particularly in light of the statements of Mr Fahey and Witness 550,<sup>58</sup> that the addresses, despite being described differently or not coinciding in each and every particular, relate to the same residences.

22. The Trial Chamber accordingly finds the land registry documents to be sufficiently relevant, probative and reliable, for admission into evidence under Rule 154. Their probative value is not outweighed by their prejudicial value.

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<sup>53</sup> See paras 24 and 25 below.

<sup>54</sup> Prosecution motion, Annex A, item 14.

<sup>55</sup> Consolidated indictment, para. 14 (b).

<sup>56</sup> More specifically, para. 2 of the consolidated indictment.

<sup>57</sup> Witness 263, for instance, explains that the Zebdeen address is sometimes referred to as being the 'Harouf' residence (this is notably the case in the Prosecution's own consolidated indictment, at its para. 2(b)), because it is in between the villages of Harouf and Zebdeen. See Prosecution motion, Annex B, item 6.

<sup>58</sup> Prosecution motion, Annex B, items 6 and 7.

*ii) Electricity subscription records*

23. The Prosecution seeks to tender electricity subscription records it obtained from Électricité du Liban, the main electricity provider in Lebanon.<sup>59</sup>

24. With respect to Mr Ayyash, the electricity documents include a letter dated 18 January 2012 from the Chairman of the Board of Directors and Director General of Électricité du Liban, listing three subscriptions held by Mr Ayyash, including one for a residence in the Hadath area of Beirut, and one for the residence in Zebdeen, South Lebanon, the Prosecution alleges is registered in his father's name.<sup>60</sup> The Prosecution does not explain whether the third subscription mentioned in the letter is of any relevance.

25. The Chairman's letter also attaches a number of documents in relation to Mr Ayyash. First, an electricity subscription receipt for his Hadath residence lists 8 April 2003 as the start date of his subscription. Second, an untitled document referred to in the Chairman's letter as a 'consumption page' details Mr Ayyash's account history from 2003 to 2010 for the Hadath address.<sup>61</sup> In addition, a map produced by Électricité du Liban shows the building and street numbers for the municipality of Hadath.<sup>62</sup> Finally, an electricity subscription receipt dated 29 November 1993 concerns Mr Ayyash's alleged Zebdeen address.<sup>63</sup>

26. To prove Mr Merhi's address, the Prosecution seeks the admission of two electricity documents: a subscription receipt in Mr Merhi's name it describes as being 'from 30 July 2001' and listing his address in Bourj Al-Barajneh; and an electricity execution order from 2009 containing a similar description as his address. Both list the same subscription number.<sup>64</sup>

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<sup>59</sup> Prosecution motion, para. 19.

<sup>60</sup> Prosecution motion, paras 20 and 21; Annex A, item 4.

<sup>61</sup> Prosecution motion, para. 20; Annex A, item 6.

<sup>62</sup> Prosecution motion, para. 20; Annex A, item 5.

<sup>63</sup> Prosecution motion, para. 20; Annex A, item 4. The date stamped on the electricity receipt for the Zebdeen subscription is difficult to read in the Arabic original, but could be either 1992 or 1993. This has been translated in the English version as 1992, though in all likelihood, it ought to have been 1993. This is apparent to the Trial Chamber first because the date the subscription began, as noted on this very same receipt, is 29 November 1993, which would make it illogical for any payments to have been collected in 1992. Second, the 'consumption history' for the Zebdeen subscription—which the Prosecution is not tendering into evidence in this motion, but which is at Electronic Registration Number 60248545, and is one of the documents originally attached to the Chairman's letter of 18 January 2012—lists 29 November 1993 as the start date of Mr Ayyash's electrical subscription for the Zebdeen address.

<sup>64</sup> Prosecution motion, para. 22; Annex A, item 8.

27. The date of 30 July 2001 on the first document is in reality the ‘date of subscription’, in other words, the date on which Mr Merhi’s electrical subscription was activated. It is not clear if the receipt itself was issued on that date or later. There is, in any event, no other legible date on the original Arabic receipt.<sup>65</sup> The English translation contains a date of 11 September 2003 that is not visible anywhere on the original Arabic document and appears to have been added by error during translation.

28. Although the motion only refers to two electrical records in relation to Mr Merhi, there appears to also be a third one the Prosecution seeks to tender, titled ‘customers inquiries’.<sup>66</sup> This lists the amounts from unpaid invoices and the associated penalties for the same subscription number ascribed to Mr Merhi in the preceding two documents, although his name or address do not appear anywhere on the document.

29. Lastly, a series of electricity records are relevant to Mr Sabra.<sup>67</sup> These include a letter from the Chairman of the Board of Directors and Director General of Électricité du Liban dated 30 September 2013, in response to a request for assistance from the Prosecutor, providing details of a subscription in Mr Sabra’s name for an apartment in the Hadath area. The Chairman also attaches a number of documents relating to Mr Sabra, namely: an electricity subscription receipt dated 11 September 2003 for the address registered to his name;<sup>68</sup> a record of his annual electricity consumption by month from 2004 to 2013; a list of electricity subscribers for the building in which Mr Sabra is alleged to have resided; a list of unpaid invoices for 2009 and 2010; and finally, a map of Hadath produced by Électricité du Liban illustrating the building and street numbers of that municipality.<sup>69</sup> Although the Prosecution obtained and now produces it as part of a different group of documents relating only to Mr Sabra, it appears that this map of Hadath is in fact identical to the one the Prosecution seeks to tender in relation to Mr Ayyash’s electricity subscriptions.<sup>70</sup>

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<sup>65</sup> The receipt contains one other date, but this is in the fine print and relates to the subscriber acknowledging receipt of the subscription policy adopted by the Ministry of Public Works. This date is also incorrectly translated. In the Arabic original, it is ‘19/07/58’, whereas in the English translation the date is ‘5 March 1957’.

<sup>66</sup> Prosecution motion, Annex A, item 8.

<sup>67</sup> Prosecution motion, para. 23; Annex A, item 3.

<sup>68</sup> Prosecution motion, Annex A, item 3.

<sup>69</sup> Prosecution motion, para. 23; Annex A, item 3.

<sup>70</sup> See para. 25 above.

30. According to the Prosecution, the electricity records proposed for admission are reliable, as they are official subscription and billing records maintained by Électricité du Liban, and were created in the ordinary course of its business. The two letters from the Chairman of the Board and Director General are similarly reliable as they reproduce information derived from the company's official records.<sup>71</sup>

31. Counsel for Mr Merhi take no position on the admission of the electricity records.<sup>72</sup>

32. Counsel for Mr Sabra, despite stating that they take no position on the admission of the records, argue that those related to Mr Sabra are not reliable. They submit that the Trial Chamber must be satisfied of how the information contained in the records has been created. For instance, the Prosecution should establish when, how and by whom Mr Sabra's address was provided to Électricité du Liban, and whether the company attempted to verify the address or that Mr Sabra was the actual electricity user.<sup>73</sup> The numbering system used in the map of Hadath should similarly be explained.<sup>74</sup> Counsel also point out discrepancies in the way Mr Sabra's address is listed in the various documents, and submit that the address, as described on some of the documents, is too vague to be reliable.<sup>75</sup>

33. The Trial Chamber disagrees with counsel for Mr Sabra's argument that Mr Sabra's address is either too vague or is described differently in the various documents. It is clear from the letter dated 30 September 2013 by Électricité du Liban's Chairman of the Board of Directors and Director General, that the subscription number assigned by the company to a client in fact represents the detailed description of that client's address. The letter explains that each component of an address—municipality, area, building, street, floor and apartment number—is represented numerically. All of these numbers are then joined together in that order to form a subscription number. The section on an electricity subscription receipt labelled 'address' is filled out with what essentially appears to be a second description of the client's address, one ostensibly more easily understood by the layperson, and may include the name of the building, or references to identifiable landmarks nearby. The Trial

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<sup>71</sup> Prosecution motion, para. 24.

<sup>72</sup> Merhi response, para. 10.

<sup>73</sup> Sabra response, paras 10-12.

<sup>74</sup> Sabra response, paras 15-16.

<sup>75</sup> Sabra response, paras 13-14.

Chamber accordingly does not consider slight variations in an address to be fatal so long as the subscription number is consistent.<sup>76</sup> Électricité du Liban clearly relies on the address numbering system used for its customers' subscription numbers, rather than the more informal description written under an electricity receipt's 'address' box that counsel for Mr Sabra criticize as being too imprecise.

34. Moreover, the electricity subscription documents are either stamped and signed by a public official, or standard commercial documents produced by Électricité du Liban in the ordinary course of its business. The two letters from the company's Chairman and Director General are simply cover letters attaching records, and explain information contained in the attachments. For these reasons, the Trial Chamber considers the electricity subscription documents to be *prima facie* reliable.

35. The documents are also relevant to establishing the Accused's addresses and therefore probative of the Prosecution's case on attribution of mobile telephones. Although the subscription receipt for Mr Ayyash's Zebdeen residence considerably predates the period of the consolidated indictment, the Trial Chamber accepts that it may nevertheless be relevant, as it can reasonably be inferred that a residence may be owned or occupied by the same person for a continuous and uninterrupted period of time, unless proven otherwise. The Trial Chamber will assess the evidentiary weight of that receipt in conjunction with any other evidence proving Mr Ayyash's continued association with that address. The Trial Chamber accordingly finds the electricity subscription records admissible under Rule 154.

### ***iii) Property reconstruction claim documents***

36. The third category of documents the Prosecution proposes to admit into evidence consists of compensation claims submitted by the Accused and their family members following damages to their houses during the July 2006 conflict with Israel.<sup>77</sup>

37. The four sets of documents relate to Mr Merhi's residence in Bourj Al-Barajneh, his father's Beirut residence, the residence of Mr Sabra's father, and that of Mr Sabra's father-in-law. Each set

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<sup>76</sup> And so long as any errors are explained or rectified by Électricité du Liban, as was the case with Mr Sabra's subscription. See the letter dated 30 September 2013 from the Chairman and Director General of Électricité du Liban, at Prosecution motion, Annex A, item 3.

<sup>77</sup> Prosecution motion, paras 25 and 30.

includes identity documents such as family and personal status extracts for each claimant, title deeds or letters from mayors confirming either ownership or lease of the property for which compensation is claimed, forms assessing the value of the damages sustained, and receipts for payments received for the damages.<sup>78</sup>

38. The Secretary General of the Lebanese Cabinet (or Council of Ministers) provided these documents to the Special Tribunal's Prosecutor in response to requests for assistance.<sup>79</sup> The Secretary General appears to have obtained the documents, in turn, from the Central Fund for the Displaced, and the Ministry of Displaced.<sup>80</sup>

39. The Prosecution submits that these documents are relevant, because they identify the occupants of the residences during the period relevant to the Prosecution's case, even though the compensation claims were submitted at a later date. As with other documents subject of its motion, Prosecution witnesses will rely on the information contained in the documents to locate and plot the various residences into the Electronic Presentation of Evidence software.<sup>81</sup>

40. Counsel for Mr Merhi take no position on the admission of the property reconstruction claims.<sup>82</sup>

41. Similarly to the previous two categories of documents, counsel for Mr Sabra do not take position on their admission, but contest their reliability and probative value. Their argument here, is that despite potentially establishing ownership or tenancy, the documents do not prove that those persons actually resided there.<sup>83</sup>

42. The Trial Chamber considers that counsel for Mr Sabra's arguments go to the weight, not the reliability, of the documents. Counsel do not contest the accuracy or authenticity of the information contained in the property reconstruction documents, merely that the owners or tenants of those properties might not have physically been present there at the relevant times, an eventuality which is

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<sup>78</sup> Prosecution motion, paras 26 to 29; Annex A, items 20-22.

<sup>79</sup> Prosecution motion, para. 30.

<sup>80</sup> See the cover letter from the Secretary General of the Lebanese Cabinet to the Lebanese Prosecutor General, dated 8 May 2015, at Prosecution motion, Annex A, item 22. See also the documents at Prosecution motion, Annex A, items 20 and 21.

<sup>81</sup> Prosecution motion, para. 25.

<sup>82</sup> Merhi response, para. 10.

<sup>83</sup> Sabra response, paras 17-21.

entirely possible, but does not diminish the purpose or apparent authenticity of the documents themselves. If the Defence wishes to counter the Prosecution's case regarding this factual issue, it may present its own evidence to that effect at the appropriate time.

43. The property reconstruction claim documents are official documents submitted to a public body for the purposes of obtaining monetary compensation from the government. The claim forms are government forms, and are stamped and certified by the relevant government official, such as the Director General of the Ministry of the Displaced, the mayor of the relevant municipality, or the Presidency of the Central Fund of the Displaced. The documents produced in support of the compensation claims, such as title deeds and other documents proving residence, are notarised documents. They were provided to the Prosecution, through the Lebanese Prosecutor General, by the General Secretariat of the Lebanese Council of Ministers.<sup>84</sup> The Trial Chamber considers that these factors render them *prima facie* reliable.

44. In addition, the addresses of the residences of Mr Merhi and his father are consistent with those found in other documents tendered by the Prosecution in its motion for these persons.<sup>85</sup> As for the compensation claims by Mr Sabra's father and his father-in-law, they show that the residences in question were occupied by the same persons during the consolidated indictment period. The relevance and probative value of the four compensation claims to the Prosecution case is for this reason clear. The Trial Chamber accordingly finds the documents admissible under Rule 154.

#### *iv) Banking records*

45. The penultimate category of documents the Prosecution seeks to tender under Rule 154 consists of banking records allegedly proving Mr Oneissi's residential address. The Prosecution obtained the banking records from the Special Investigation Commission Fighting Money Laundering of the Banque du Liban (the Lebanese central bank), through the Lebanese Prosecutor General, following requests for assistance.<sup>86</sup>

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<sup>84</sup> Prosecution motion, Annex A, items 20-22.

<sup>85</sup> For instance: Prosecution motion, Annex A, items 8,13-14.

<sup>86</sup> Prosecution motion, para. 34; Annex A, items 1-2.

46. The first set of documents relate to a loan application by Mr Oneissi from Bank Saderat Iran to buy an apartment in a building in Hadath.<sup>87</sup> Bank Saderat Iran informed the Secretary of the Special Investigation Commission that the loan was ‘operated’ on 27 July 2003. The loan application form, however, carries no clear date. Moreover, confusingly, some of it appears to have been sent by facsimile in October 1999, despite containing a document dated in 2002.

47. The second set of records consists of documents showing that Mr Oneissi opened an account at Blom Bank SAL in September 2004.<sup>88</sup> At paragraph 33 of its motion, the Prosecution incorrectly dates the request to open a bank account as taking place on 12 February 2002. That date is actually the date Mr Oneissi’s passport was issued, a copy of which had been included in the account opening documents. Mr Oneissi and a bank representative signed the forms for opening a bank account on 15 September 2004, with the account being active seemingly retroactively as of 13 September 2004. On one of the Blom Bank forms, Mr Oneissi lists a residential address that is similar to the one for which he had requested a loan from Bank Saderat Iran, although the space for the ‘city’ indicates Tyre rather than Beirut. The forms also include two personal telephone numbers and two work numbers.<sup>89</sup>

48. Both sets of banking records are in the name of a Hussein Hassan Issa. The Prosecution alleges ‘Issa’ was Mr Oneissi’s surname before he legally changed it in 2004.<sup>90</sup>

49. Counsel for Mr Oneissi oppose the admission of the banking records on the basis that they are not reliable, because they merely speculate as to the telephone numbers used by Mr Oneissi and where he resided between December 2004 and February 2005.<sup>91</sup> Moreover, the documents were provided to the Prosecution in breach of his privacy rights.<sup>92</sup> Counsel refer to the Lebanese Law of 3 September 1956 on Banking Secrecy, and the Lebanese legislation governing the mandate and authority of the Special Investigation Commission on Fighting Money Laundering, to submit that a client’s right to privacy regarding personal information held by his or her bank is protected by a law-imposed banking/professional secrecy obligation on the bank. This obligation can only be lifted if the client waives it in writing, or the Commission lifts it if it suspects a bank account is being used

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<sup>87</sup> Prosecution motion, para. 32; Annex A, item 2.

<sup>88</sup> Prosecution motion, para. 33; Annex A, item 1.

<sup>89</sup> Prosecution motion, para. 33; Annex A, item 1.

<sup>90</sup> Prosecution motion, para. 32.

<sup>91</sup> Oneissi response, paras 2-3.

<sup>92</sup> Oneissi response, para. 2.



for money-laundering or where such a measure would be in accordance with applicable anti-corruption agreements and laws.<sup>93</sup> Counsel argue that the Commission did not have the jurisdiction to provide Mr Oneissi's banking records to the Prosecution and that such a transfer should have been subject to an independent judicial mechanism's oversight.<sup>94</sup>

50. In its reply to the Oneissi Defence response, the Prosecution argues that the right to privacy is not absolute, and may be restricted by law where it is necessary and proportionate.<sup>95</sup> It explains that it requested the documents from the Lebanese authorities pursuant to the established legal framework for cooperation between the Special Tribunal and Lebanon, and is not required to involve itself in the domestic legal mechanisms used by the Lebanese authorities to comply with their cooperation duties.<sup>96</sup> The Prosecution also argues that while the Oneissi Defence pointed to legislation dealing with banking secrecy in Lebanon, it did not positively establish that the information was disclosed in violation of Lebanese law.<sup>97</sup>

51. In a recent decision, the Special Tribunal's Appeals Chamber held that none of the legal instruments establishing the United Nations International Independent Commission and the Special Tribunal, or governing their relations with Lebanon, demonstrate any intention on the part of the United Nations Security Council to submit the UNIIC or the Special Tribunal's Prosecutor to the jurisdiction of any other authority in their investigative endeavours. It found that it is clear from the language of the relevant Security Council Resolutions and the Special Tribunal's Statute, that the Security Council sought to exempt both the UNIIC and the Prosecutor from the procedures that would normally apply to the collection of evidence in Lebanon or other jurisdictions.<sup>98</sup> It further held that neither the UNIIC nor the Prosecutor was bound by any Lebanese law regulating the transfer of the material which was the subject of that appeal (namely, call data records).<sup>99</sup>

52. Here, although they identify legislation that restricts the disclosure of banking information to third parties, counsel for Mr Oneissi have not demonstrated that the Prosecutor is subject to that

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<sup>93</sup> Oneissi response, para. 4.

<sup>94</sup> Oneissi response, paras 5 and 9-11.

<sup>95</sup> Prosecution reply, paras 3 and 8.

<sup>96</sup> Prosecution reply, paras 9-12.

<sup>97</sup> Prosecution reply, para. 14.

<sup>98</sup> STL-11-01/T/AC/AR126.9, F0007, Decision on Appeal by Counsel for Mr Oneissi against the Trial Chamber's Decision on the Legality of the Transfer of Call Data Records, 28 July 2015, para. 31.

<sup>99</sup> Appeals Chamber Decision on the Legality of the Transfer of Call Data records, para. 34.

legislation and bound by the procedures it prescribes. The reasoning of the Appeals Chamber on the exemption of the Prosecutor from domestic procedures governing the collection of evidence, and his independence from any governmental or domestic judicial authority, applies here. The Trial Chamber considers the Prosecutor to have obtained Mr Oneissi's banking records in accordance with the legal framework governing his requests for assistance to Lebanon. Counsel's arguments that the records were obtained in violation of Mr Oneissi's right to privacy are accordingly dismissed. The Trial Chamber must still, however, assess the admissibility of the records under Rules 149 (C) and (D) and Rule 154.

53. The banking documents appear to contain two discrepancies on their face. First, although the loan application to Bank Saderat Iran contains a notarized title deed dated 7 October 2002 over the property for which Mr Issa/Oneissi requested a bank loan, and where the Prosecution alleges that Mr Oneissi lived, curiously, it also has a facsimile header of October 1999. Second, the Blom Bank client information form lists the city of Mr Issa/Oneissi's apartment and his place of employment as Tyre, a city some 90-100 km from Beirut. But it otherwise correctly describes its address (in the southern suburbs of Beirut) naming the street, building, municipality, and its proximity to the Lycée des Arts in Hadath. These details are consistent with the description of the apartment's address in the Bank Saderat loan application, a mortgage deed in Mr Oneissi's wife's name,<sup>100</sup> and Witness 687's statement.<sup>101</sup> Absent any evidence that the notarized title deed is not authentic, the Trial Chamber considers that it proves its contents, in accordance with Article 145 of the Lebanese Code of Civil Procedure, and outweighs any discrepancy between the date on the deed and that appearing in the facsimile header.

54. The Trial Chamber therefore considers these documents—when read together and with the other corroborative evidence described above—as *prima facie* reliable and relevant to proving Mr Oneissi's address and, hence, the possible attribution of mobile telephones to him. The Trial Chamber will consider their evidential weight together with any evidence proving that Mr Oneissi legally changed his surname from 'Issa' to 'Oneissi'.

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<sup>100</sup> See paras 14 and 19 above.

<sup>101</sup> See paras 59.a) below.

**v) Map marked by Witness PRH647**

55. The final document the Prosecution seeks to tender under Rule 154 is a map extracted from Witness 647's statement, which it submits is relevant to proving the location of Mr Merhi's Bourj Al-Barajneh residence. The Prosecution states that it will tender additional evidence from Witness 647 'at a later date'.<sup>102</sup>

56. Counsel for Mr Merhi object to the admission of the map. They argue that it should be discussed during the witness's testimony. The witness addresses numerous points linked to Mr Merhi in his statement, and admitting the map on its own, separate from the statement, risks misrepresenting and distorting his evidence.<sup>103</sup>

57. The Trial Chamber considers the map to be relevant to establishing the location of Mr Merhi's residence. In his statement, the witness describes the location and name of the building in which Mr Merhi is alleged to have resided. This description is similar to the one found in other documents the Prosecution seeks to tender in its motion (for instance the property reconstruction claim Mr Merhi submitted following the 2006 conflict with Israel). The Trial Chamber considers the map, as an illustration of the written description in Witness 647's statement, *prima facie* reliable and duplicative of other evidence. In addition, the map is relevant to proving Mr Merhi's residence and probative of the Prosecution's case. Its probative value is not outweighed by any prejudice to the Defence. The Trial Chamber accordingly finds it admissible under Rule 154.

**C. Admission of witness statements into evidence under Rule 155**

**i) Prosecution submissions**

58. In addition to the documents tendered under Rule 154, the Prosecution requests the admission into evidence of seven witness statements under Rule 155.

59. Two of the witness statements are by persons familiar with the locations they describe, and five are by Prosecution staff who rely upon other evidence to identify those locations and plot them into mapping software:

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<sup>102</sup> Prosecution motion, para. 35.

<sup>103</sup> Merhi response, para. 8.

- a) Witness 687 is personally familiar with the building in which Mr Oneissi's residence is located in Hadath. In his statement, he describes in detail the location of the building and marks it on a map annexed to his statement.<sup>104</sup>
- b) Witness 688's statement relates to premises occupied by Mr Merhi's father. The witness personally knew Mr Merhi's father and where he lived. He also identifies a photo of Mr Merhi and one of his brothers.<sup>105</sup>
- c) Witness 550 is a Prosecution investigator. The Prosecution requests the admission of four of his statements, each relating to a particular residence. More specifically, in one statement, the witness relies on the property reconstruction claim submitted by Mr Merhi's father to identify the location of his residence.<sup>106</sup> In two other statements,<sup>107</sup> the witness uses, notably, the map marked by Witness 647, electricity subscription records, and property reconstruction claim documents, to locate Mr Merhi's Bourj Al-Barajneh residence. Finally, in a fourth statement,<sup>108</sup> Witness 550 uses electricity subscription documents and land registry records for Mr Sabra, Mr Ayyash and others, to identify the location of Mr Sabra's residence in Hadath.<sup>109</sup>
- d) Mr Fahey is a Prosecution analyst who reviewed the evidence tendered in the Prosecution's motion in relation to all eight residences, in addition to evidence he states the Prosecution 'intends to tender at a later date'. In his statement, he explains the process he followed in using that evidence to establish the location of each residence, and how he plotted each location into a mapping software known as ArcMap.<sup>110</sup>

60. The Prosecution argues that the statements do not go to the acts and conduct of the Accused, and with the exception of Witness 688's statement, only provide information about the locations of

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<sup>104</sup> Prosecution motion, para. 37; Annex B, item 1.

<sup>105</sup> Prosecution motion, para. 38; Annex B, item 5.

<sup>106</sup> Statement dated 17 September 2013.

<sup>107</sup> Dated 3 October 2013 and 20 February 2014.

<sup>108</sup> Dated 22 June 2015.

<sup>109</sup> Prosecution motion, para. 39; Annex B, items 2, 3, 4 and 7.

<sup>110</sup> Prosecution motion, para. 40; Annex B, item 6.

residences associated with the Accused.<sup>111</sup> In addition, there is no overriding public interest for the evidence to be presented orally. In any event, the Prosecution will call Mr Fahey to testify at a later date about other aspects of his evidence.<sup>112</sup> As a result, according to the Prosecution, the Defence will have the opportunity to cross-examine him at that point should the Trial Chamber so order under Rule 155 (C).<sup>113</sup>

*ii) Defence submissions*

61. Counsel for Mr Merhi argue that Witness 688's statement is not confined to details of Mr Merhi's residence, but also provides details concerning him and his family.<sup>114</sup> In addition, the location of Mr Merhi and his father's residences is an essential element in the Prosecution's case concerning the attribution of telephones and the acts and conduct of the Accused. For these reasons, counsel for Mr Merhi object to the admission of the statements of Mr Fahey and Witnesses 688 and 550 without cross-examination.<sup>115</sup>

62. Counsel for Mr Sabra argue that in a case such as this, revolving primarily around the attribution of particular telephone numbers to each Accused at a given time, the interpretation of the phrase 'acts and conduct' is more complicated than when the evidence directly relates to the physical acts of the Accused. Counsel refer to the phrase 'which goes to proof of a matter other than the acts and conduct of the accused' within Rule 155 (A) to argue that a statement need not directly allege the acts and conduct of an accused to be excluded from admission under that Rule, but simply be intended to support in whatever fashion necessary an allegation of personal conduct by the accused.<sup>116</sup> For this reason, written statements may not be tendered under Rule 155 if the purpose is to positively prove the attribution of a particular telephone to an accused at a given time, rather than 'de-attributing' a telephone number from a subscribed user as the Prosecution has been doing so

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<sup>111</sup> Prosecution motion, para. 41.

<sup>112</sup> Mr Fahey has already testified once regarding the development of the Electronic Presentation of Evidence software. See Transcripts no. 196 of 17 September 2015 and no. 197 of 18 September 2015.

<sup>113</sup> Prosecution motion, paras 43 and 45.

<sup>114</sup> Merhi response, para. 3.

<sup>115</sup> Merhi response, paras 5-7.

<sup>116</sup> Sabra response, para. 28.

far.<sup>117</sup> On this basis, counsel for Mr Sabra object to the admission of Witnesses 687 and 688's statements, and require Mr Fahey's appearance and that of Witness 550 for cross-examination.<sup>118</sup>

*iii) Decision*

63. 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 the courtroom. In particular, a statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to proof of the acts or conduct of the Accused, may not be admitted without cross-examination.<sup>119</sup> These principles are applicable here.

64. Moreover, to determine whether a statement goes 'to the acts and conduct of the accused as charged in the indictment', each separate piece of evidence must be assessed on its own merits, and according to the circumstances. To illustrate, the same two pieces of evidence, in one case, could go to the acts and conduct of an accused, but not in another. For example, in a case of arson and insurance fraud, the proof of an accused person's ownership and residence of a particular property, and their insurance policy on that residence, would go directly to proof of the charges against the accused. In another case, however, the residence and insurance details may not go to the acts and conduct as charged in an indictment.

65. The Trial Chamber has carefully considered the Defence's arguments on the interpretation of Rule 155 (A). It is not of the view, in light of the circumstances of this case, that the identification of a building's location or that premises were commercially occupied by the Accused's relative, go to proof of the acts and conduct of the Accused.

66. The statements by Witnesses 687 and 688 are otherwise relevant to proving the residences associated with Mr Merhi and Mr Oneissi. They comply with the formal requirements for witness

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<sup>117</sup> Sabra response, para. 29.

<sup>118</sup> Sabra response, paras 30 and 32.

<sup>119</sup> STL-11-01/PT/TC, F937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; STL-11-01/T/TC, F1785, 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, 11 December 2014, para. 3.

statements under Rule 155 and the relevant Practice Direction,<sup>120</sup> and their contents are *prima facie* reliable. The Trial Chamber accordingly finds the statements to be admissible.

67. Nevertheless, in the exercise of its discretion, the Trial Chamber decides that, as he identifies a photograph as allegedly representing Mr Merhi, Witness 688 must appear for cross-examination in accordance with Rules 155 (C) and 156, as requested by counsel for Mr Merhi.

68. The statements of Mr Fahey and Witness 550 are equally relevant to identifying and representing on a map the locations relevant to the Accused. In a recent decision, the Trial Chamber has already found statements from both these witnesses to be admissible.<sup>121</sup> The nature of the evidence in those statements and those under consideration here is the same, namely, locations relevant to the Prosecution's case. As stated above, the Trial Chamber is not persuaded that proof of where a building or landmark is located, in this instance, can be qualified as going to 'proof of the acts and conduct of the accused'.

69. In addition, the Trial Chamber considers the statements of Mr Fahey and Witness 550 *prima facie* reliable. As a result and in light of their relevance, the statements are admissible. However, as the Defence have justified their request to cross-examine the witnesses, the Trial Chamber orders the Prosecution to make them available for cross-examination under Rules 155 (C) and 156. In addition, the Prosecution should tender any material or statements relied upon by Mr Fahey in his statement to plot the relevant locations.

70. With regard to counsel for Mr Sabra's request to cross-examine Mr Fahey 'at this stage' rather than when the Prosecution intended for him to testify regarding other matters, the Trial Chamber invites the Parties to come to an agreement on scheduling as they have already done for other witnesses.<sup>122</sup>

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<sup>120</sup> STL, 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, STL-PD-2010-02, 15 January 2010.

<sup>121</sup> F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence', 9 July 2015, paras 8-10 and 31-33.

<sup>122</sup> Transcript no. 178 of 23 July 2015, pp. 61-67. On 17 September 2015, during Mr Fahey's first testimony, the Parties agreed that he would return to testify about this and other statements he gave the Prosecution regarding the plotting of locations into the Electronic Presentation of Evidence software. See Transcript no. 196 of 17 September 2015, p. 3.

## CONFIDENTIALITY

71. Because they contain confidential witness information, the Prosecution seeks to maintain the confidential status of the annexes to its motion.<sup>123</sup> The Trial Chamber reiterates the public nature of these proceedings and orders the Prosecution either to file a public redacted version of the annexes or have them reclassified as public. Counsel for Mr Sabra must similarly file a public redacted version of their submission.

## DISPOSITION

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

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

**GRANTS** the Prosecution leave to amend its witness list by adding Witnesses PRH687 and PRH688;

**DECLARES** admissible under Rule 154 the exhibits listed at Annex A to its motion;

**DECLARES** admissible under Rule 155 the statement of Witness PRH687;

**DECLARES** admissible under Rule 155 (C) the statements of Mr Andrew Fahey (PRH263) and Witnesses PRH550 and PRH688, and requires the Prosecution to make them available for cross-examination under Rule 156;

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

**ORDERS** counsel for Mr Sabra to file a public redacted version of their response and the Prosecution to file a public redacted version of the annexes to its motion or have them reclassified as public; and

**REQUESTS** the Registry to reclassify counsel for Mr Merhi's response as public.

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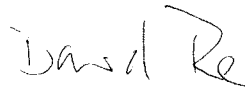
<sup>123</sup> Prosecution motion, para. 53.



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

Leidschendam, the Netherlands

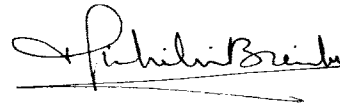
9 October 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

