



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:** 4 December 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION ADMITTING DOCUMENTARY EVIDENCE ON THE LEGAL  
REPRESENTATIVES OF VICTIMS' APPLICATION**

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**Office of the Prosecutor:**Mr Norman Farrell & Mr Alexander Hugh  
Milne**Legal Representatives of  
Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Salim Jamil Ayyash:**Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Youssef Khalil**Counsel for Mr Hussein Hassan Oneissi:**Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Ms Natalie von Wistinghausen**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Geoffrey Roberts &  
Ms Sarah Bafadhel

## INTRODUCTION

1. On 11 April 2017, the Trial Chamber's Presiding Judge, as Judge Rapporteur for reaching agreement between the Parties on matters in dispute, ordered the Legal Representatives of Victims to submit to the Parties, by 3 May 2017, proposals for agreements as to the content of any documents they intended to seek to be admitted into evidence.<sup>1</sup> The Legal Representatives then filed a schedule of 195 'proposed agreed facts' for the Parties to consider.<sup>2</sup>

2. The Prosecution and the Ayyash and Sabra Defence did not contest the 'proposed agreed facts'.<sup>3</sup> The Merhi and Oneissi Defence submitted they could not agree to any of them.<sup>4</sup> In a decision of 31 July 2017, the Trial Chamber held that it would record relevant 'agreed facts' as being proved in the cases against Mr Salim Jamil Ayyash and Mr Assad Hassan Sabra, while a presentation of those facts was required in relation to Mr Hassan Habib Merhi and Mr Hussein Hassan Oneissi, due to the lack of 'agreement' on their part.<sup>5</sup>

3. The Trial Chamber authorised the Legal Representatives to submit documents for admission into evidence under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence and, in particular, directed them to file those supporting the 'proposed agreed facts'

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3077, Order to Legal Representative of Participating Victims on Updated Witness and Exhibit List and Agreements as to Evidence, 11 April 2017, para. 4.

<sup>2</sup> F3116, Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C, 3 May 2017 (public with confidential annexes A-C) ('Legal Representatives' Motion of 3 May 2017'), para. 33 (iii); confidential annex C 'Schedule of Proposed Agreed Facts by the Legal Representative of Victims'.

<sup>3</sup> F3137, Prosecution Response to 'Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C', 12 May 2017, paras 2-3; transcript of 17 May 2017, pp 6-8; F3147, Sabra Response to "Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order", 17 May 2017, paras 2-3; F3148, Ayyash Defence Submissions on 'Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C', 17 May 2017, paras 2-3.

<sup>4</sup> F3145, Defence for Hussein Hassan Oneissi Response to the "Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C", 17 May 2017 (public with confidential annex A), paras 9-11; F3146, Merhi Defence Response to the Request from the Legal Representative of Victims relating to 195 Agreed Facts, 17 May 2017, para. 2.

<sup>5</sup> F3260, Decision on the Legal Representatives of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017 ('Decision of 31 July 2017'), paras 100-101.

as a single document. Counsel for Mr Merhi and Mr Oneissi were instructed to raise any objections as to those documents' *prima facie* reliability, or any other requirement for admission, by 30 August 2017.<sup>6</sup> Under Rule 154, the Trial Chamber can admit into evidence documentary material tendered 'from the bar table'.

4. On 21 August 2017, the Legal Representatives sought the admission into evidence, under Rule 154, of a large number of documents supporting their 'proposed agreed facts'—that they compiled into a single document—and three additional documents.<sup>7</sup>

5. The Prosecution and the Ayyash, Sabra and Oneissi Defence raised no objection and or did not respond to the application.<sup>8</sup> The Merhi Defence opposed the admission into evidence of 13 documents supporting the 'proposed agreed facts'.<sup>9</sup> The Legal Representatives did not reply, despite the Presiding Judge stating in court that the Trial Chamber may require a reply and inviting them to inform the Trial Chamber as to whether they would do so. No information in this regard was provided to the Trial Chamber on the date when the Legal Representatives offered to provide it.<sup>10</sup>

6. Several documents among those supporting the 'proposed agreed facts' were admitted into evidence before the filing of the motion,<sup>11</sup> and others were admitted during the live testimony of witnesses for the participating victims.<sup>12</sup> This decision, therefore, concerns the

<sup>6</sup> Decision of 31 July 2017, paras 103-104, disposition.

<sup>7</sup> F3286, The Legal Representative of Victims Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with Confidential Annexes A and B, 21 August 2017 (public with confidential annexes A-B) ('Application'), paras 2, 23 (iii) and (iv). Annex A lists and contains the documents supporting the 'proposed agreed facts', while annex B lists and describes the three additional documents. *See also* F3321, The Legal Representative of Victims Notice to Reclassify Annex A to "The Legal Representative of Victims Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with Confidential Annexes A and B" Dated 21 August 2017, 13 September 2017 (confidential) (with this notice, the Legal Representatives requested the reclassification of annex A from 'confidential' to 'confidential and *ex parte*'); F3286, Amended Version of Annex A to "Legal Representative of Victims Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with Confidential Annexes A and B" (F3286), Including Additional Translations, 15 September 2017 (confidential). The evidence reference number (ERN) of the amended version of annex A is V000-E013.

<sup>8</sup> F3293, Prosecution Response to 'The Legal Representative of Victims' Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with Confidential Annexes A and B', 24 August 2017 ('Prosecution response'), para. 2; transcript of 24 August 2017, pp 78-79.

<sup>9</sup> F3296, Merhi Defence Submissions relating to the Admissibility of the Documents Supporting the "Agreed Facts" Proposed by the Legal Representatives of Victims and Response to the Motion of 21 August 2017 Filed by the Legal Representatives of Victims, 25 August 2017 (confidential) ('Merhi Defence response'), paras 6, 10, p. 6.

<sup>10</sup> *See* transcript of 25 August 2017, pp 106-107.

<sup>11</sup> Exhibits P190, P191, P192, P259.3, P263, P275, P276, 1V1, 1V2, 1V3, 1V5. *See* Application, para. 13 (the Legal Representatives note that the documents already in evidence are not subject of their application); Prosecution response, para. 3 (the Prosecution notes that the documents admitted as exhibits P192, P259.3, P263, and P276 have different translations and different ERN numbers from those in the 'single document').

<sup>12</sup> Exhibits 1V8, 1V9, 1V10, 1V16, 1V17, 1V18, 1V19 and 1V20.

admission of the remaining 181 documents supporting the ‘proposed agreed facts’<sup>13</sup> and of the three documents submitted separately. A separate decision will record, under Rule 122, facts that the Prosecution, Ayyash and Sabra Defence have agreed are not contested.

### **THE EVIDENCE**

7. The documents consist of medical records, identity documents, family or individual personal status extracts, death certificates of persons related to participating victims, documents relating to financial expenses and employment, photographs and press clippings.

8. The Legal Representatives submit that the documents are relevant and probative. They confirm the identity of the participating victims; the relationship between them and the individuals deceased due to the attack on 14 February 2005 in Beirut; and the physical, mental and material harm the participating victims suffered. According to the Legal Representatives, the proposed evidence is not controversial or prejudicial to any of the Parties’ interests, and assists the Trial Chamber in understanding the participating victims’ accounts and the types of harm they suffered.<sup>14</sup>

#### *a) Documents supporting the ‘proposed agreed facts’*

9. The documents supporting the ‘proposed agreed facts’ include 65 identification documents (passports and identity cards); four death certificates; 27 family or individual personal status extracts; 42 medical documents, including invoices; three press clippings; three Lebanese court decisions appointing legal guardians; correspondence, reports and statements on those injured or killed in the explosion; employment-related documents and other documents concerning expenses or losses resulting from the attack.

10. The Merhi Defence objects to the admission of 13 of those documents, concerning nine participating victims, as described below. Further, while it is not formally objecting to the admission of invoices, this does not amount to agreeing with possible claims for financial compensation for damages or the amounts paid by certain victims.<sup>15</sup>

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<sup>13</sup> The number of documents supporting the ‘proposed agreed facts’, according to an index in annex A to the application, is 449. This number (449) includes those already admitted into evidence—*see* para. 6 above—and the documents’ translations, which are separately listed. Some documents had not yet been translated when the application was filed (*see* Application, para. 13), but all are now translated. The document, including these additional translations, is 1047 pages long.

<sup>14</sup> Application, paras 7-10.

<sup>15</sup> Merhi Defence response, para. 7.

(i) *A family personal status extract*

11. The family personal status extract was issued by the Directorate General of Personal Status in the Lebanese Ministry of the Interior and Municipalities. It lists the name and surname, father's and mother's names, place and date of birth, religion, marital status and sex of several individuals, including V026.<sup>16</sup>

12. The Merhi Defence submits that this document does not mention the family relationship of V026 with her relative who died in the explosion. That V026 is the mother of the deceased is stated in the 'proposed agreed fact' supported by the document. While the Defence concedes that this relationship is established in the deceased's death certificate, it questions the relevance of the family personal status extract and the utility of admitting it into evidence.<sup>17</sup>

(ii) *A press clipping – 'A sit-in at the crime scene urging officials to remove the rubble off of Ghalayini'*

13. The press clipping concerns an article of 2 March 2005 from the Lebanese newspaper *Al-Liwaa*. The main heading of the article is 'A sit-in at the crime scene urging the officials to remove the rubble off of Ghalayini'. It contains four photographs. Two of them show, among others, two participating victims, Ms Rana Ghalayini (V003) and Ms Lama Ghalayini (V004).<sup>18</sup>

14. According to the Merhi Defence, the Legal Representatives fail to explain why the photograph of the participating victims is relevant and probative in the context of the case. The Defence also questions the relevance of the 'proposed agreed fact' which the press clipping would support. This 'proposed agreed fact' reads that the document 'is a press clipping titled "A sit-in at the Crime Scene Urging Officials to Remove the rubble off of Ghalayini". V003 and V004 are depicted in the press-clipping.' According to the Merhi Defence, this appears to merely state that V003 and V004 can be seen in that photograph.<sup>19</sup>

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<sup>16</sup> V026-E002, at p. 429 of V000-E013. Any participating victim identified only by the relevant V number has received protective measures (for those issued by the Trial Chamber to participating victims authorised to provide evidence *see* F3297, Decision Granting the Legal Representatives of Victims' Request for Protective Measures for 11 Witnesses, 28 August 2017).

<sup>17</sup> Merhi Defence response, para. 6 (iv); Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed fact no. 90.

<sup>18</sup> V002-E008, at pp 83-86 of V000-E013.

<sup>19</sup> Merhi Defence response, para. 6 (i); Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed fact no. 8.

(iii) *A medical note and a cash receipt*

15. The medical note, issued by a doctor in the psychiatry department of the American University of Beirut Medical Center contains a diagnosis for ‘depression’ and ‘post-traumatic stress disorder (PTSD)’. It is submitted to relate to Ms Lama Ghalayini, but does not state the name of the patient or the date of the diagnosis.<sup>20</sup>

16. The cash receipt is issued by the American University of Beirut Hospital. It bears the date of 11 November 2005 and the name of Lama Ghalayini as the receiver of the cash receipt. In the description, it contains the same last name as that of the doctor who issued the medical note described above.<sup>21</sup>

17. The Merhi Defence submits that, even if taken together with the cash receipt, the medical note does not establish a causal link with the 14 February 2005 explosion nor does it demonstrate the ‘proposed agreed fact’ allegedly supported by the two documents; this states that ‘V004 [Ms Ghalayini] was diagnosed with and treated for depression and Post-Traumatic Stress Disorder’.<sup>22</sup>

18. The Merhi Defence submits that the cash receipt does not mention the treatment for which Ms Ghalayini was billed and does not complement the medical note. It argues that it is not relevant and probative.<sup>23</sup>

(iv) *‘List of medications’ concerning V012*

19. The ‘list of medications’ consists of two documents containing medical prescriptions for V012. One is dated 1 September 2014, bears the stamp and signature of a physician, and lists the prescribed medications. The other, under a doctor’s letterhead, has a similar date and lists certain medications (most are the same as in the first document) for continuous treatment of certain medical conditions: diabetes, high blood pressure and stress.<sup>24</sup>

20. According to the Merhi Defence, the medical prescriptions—dated September 2014—do not establish that V012’s medical conditions were caused by the explosion on 14 February 2005. They do not seem to be linked to the conditions that V012 suffered

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<sup>20</sup> V004-E003, at p. 151 of V000-E013.

<sup>21</sup> V004-E004, at p. 152 of V000-E013.

<sup>22</sup> Merhi Defence response, para. 6 (ii); Legal Representatives’ Motion of 3 May 2017, annex C, proposed agreed fact no. 12.

<sup>23</sup> Merhi Defence response, para. 6 (ii).

<sup>24</sup> V012-E017, at pp 221-222 of V000-E013. The related ‘proposed agreed fact’ describes the first document as containing a list of medications prescribed to V012 on 1 September 2014, and lists them. It states, with regard to the second document, that a doctor prescribed V012 medication for treatment of diabetes, high blood pressure and stress. See Legal Representatives’ Motion of 3 May 2017, annex C, proposed agreed fact no. 37.

immediately after the explosion, as recorded in other medical reports (head trauma, headaches, loss of consciousness, vertigo, dystychiphobia).<sup>25</sup>

(v) *Six medical documents related to V030, V058 and V073*

21. Two medical documents of a hospital cardiology division, from 2010, describe V030's medical conditions.<sup>26</sup> A medical note from 2011, by a cardiologist, describes a medical condition of V058.<sup>27</sup> Three medical documents, dating from 2007 and 2009, of a hospital and two medical centers describe V073's medical conditions.<sup>28</sup>

22. According to the Merhi Defence, these documents do not establish that V030's, V058's and V073's medical conditions were the consequences of the 14 February 2005 explosion. In particular, with regard to V030, the Merhi Defence points out that one document establishes a family history for a certain medical condition. With regard to V073, two documents concern a fracture risk assessment performed in view of V073's age and the risk of osteoporosis, which, as such, has no causal link with the 14 February 2005 explosion. As to V058, the Merhi Defence argues that the agreed fact supported by the medical document at issue is not relevant.<sup>29</sup>

(vi) *Confirmation of the status of a rental contract*

23. The document is a letter, from the company owing the STARCO complex in Beirut—addressed to 'whom it may concern'—'certifying' that the company Poly Service was the tenant of the shop number 115, located on the 'first ground floor' of the North Block of the complex, according to a registered lease agreement. The letter states that Poly Service had to leave the premises 'on 16 April 2005, prior to the expiry of the agreement, because of the damage caused to the premises as a result of the Saint-Georges area explosion that killed [former] Prime Minister Rafic Hariri, as per a waiver letter by the tenant, indicating vacation of the premises'. The letter is dated 28 September 2012. Along with another document, 'statement of vacancy',<sup>30</sup> it is submitted in support of the 'proposed agreed fact' that 'V029 had to vacate the premises due to the damage caused as a result of the 14 February 2005

<sup>25</sup> Merhi Defence response, para. 6 (iii).

<sup>26</sup> V030-E021, V030-E022, at pp 521, and 522-523, respectively, of V000-E013.

<sup>27</sup> V058-E002, at p. 615 of V000-E013.

<sup>28</sup> V073-E009, V073-E010 and V073-E011, at pp 862, 864, 866, respectively, of V000-E013.

<sup>29</sup> Merhi Defence response, para. 6 (vi, vii, ix); Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed facts nos. 105, 188-191.

<sup>30</sup> V029-E010, at p. 468 of V000-E013.

explosion'.<sup>31</sup> Other documents are proposed in support of the fact that Mr Mahmoud Wazzan (V029) is the owner of the company Poly Service.

24. According to the Merhi Defence, the document—dated September 2012—does not establish that the damage to the building in which V029 'resided' was caused by the explosion on 14 February 2005, as alleged in the relevant 'proposed agreed fact'. They submit that there is no evidence from 2005 establishing this causal link. Further, the fact that V029 left the premises two months after the explosion suggests that the building's condition permitted its use in the weeks following the explosion.<sup>32</sup>

(vii) *'Commercial establishment registration certificate'*

25. The document, issued by the Lebanese Ministry of Finance, certifies the registration of a certain commercial activity several years before the explosion. The 'proposed agreed fact' supported by this document is that V073 is the owner of this commercial activity.<sup>33</sup>

26. According to the Merhi Defence, the document only proves that the registration of the company owned by V073 occurred several years before the explosion. It does not specify whether the company still exists and whether V073 still works there. In its view, the agreed fact allegedly supported by this document would be unproven and this document is neither relevant nor probative.<sup>34</sup>

b) *Three additional documents*

27. The Legal Representatives seek the admission of three additional documents which they did not include in support of the 'proposed agreed facts'. The documents pertain to three participating victims, V027, V030 and V035, and were disclosed to the Parties in May 2017.<sup>35</sup>

28. They consist of (i) the photograph of a destroyed car. It is submitted that the car was owned by the deceased relative of V027 and that it was destroyed in the explosion. (ii) A certificate of employment relating to V030. The certificate, from 2003, is signed by a company chairman and confirms that V030 was employed by that company until 2003. According to the Legal Representatives, the document shows that V030 was contracted for certain works and, in this connection, his office was located in the area affected by the

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<sup>31</sup> V029-E009, at p. 466 of V000-E013; Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed fact no. 96.

<sup>32</sup> Merhi Defence response, para. 6 (v).

<sup>33</sup> V073-E005, at p. 861 of V000-E013; Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed fact no. 188.

<sup>34</sup> Merhi Defence response, para. 6 (viii).

<sup>35</sup> Application, para. 15.



explosion. (iii) A report of the diagnostic radiology department of a hospital, relating to V035. The report concerns a computed tomography (CT) scan performed on V035 in 2005.<sup>36</sup>

29. No Party objected to the admission of these documents.

### DISCUSSION

30. In its decision of 31 July 2017, the Trial Chamber considered that submitting evidence at trial may be a means for the participating victims to express their ‘views and concerns’, which they have a qualified statutory right to do, under Article 17 of the Special Tribunal’s Statute. It also found that giving recognition to, and adequately recording, the victims’ harm may make their participation meaningful, given that Article 25 of the Statute explicitly envisages the identification, in the judgement, of the victims and the harm they suffered.

31. The procedural safeguards for the admission of documents under Rule 154—which the Trial Chamber has consistently acknowledged—apply here. For admission into evidence, material tendered ‘from the bar table’ must be relevant and probative, and its probative value must not be outweighed by the need to ensure a fair trial. Only *prima facie*—rather than definite—reliability and probative value is required at this stage. 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>37</sup>

32. Further, the Trial Chamber has agreed with the case law of the International Criminal Court (ICC) that evidentiary material is relevant—for the purpose of admission into evidence—if it relates to matters that are properly to be considered by the Trial Chamber in its investigation of the charges against the Accused *or in its evaluation of the views and concerns of participating victims*.<sup>38</sup>

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<sup>36</sup> Application, annex B.

<sup>37</sup> F3104, Decision Admitting 12 Documents and a Witness’ Statement related to Hezbollah, Its Officials and Telephone Numbers, 26 April 2017, para. 6; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015 (‘Decision of 6 March 2015’), para. 33; F1781, Corrected Version of “Decision on Prosecution Motion to Admit into Evidence Geographic Documents” of 8 December 2014, 10 December 2014, para. 4; Decision of 28 January 2014, para. 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, paras 4-6, 8.

<sup>38</sup> F3309, Decision Admitting into Evidence 18 Witness Statements under Rules 155 and 158, and Reasons for Admitting Two Witness Statements of Participating Victims, 5 September 2017 (‘Decision of 5 September 2017’), para. 16, referring to ICC, *The Prosecutor v. Lubanga*, ICC-01/04-01/06-2588-Red,

33. As the Trial Chamber noted regarding the evidence heard or received upon the Legal Representatives' application, it will seek further submissions on the documents' probative value to the case at a later stage.<sup>39</sup>

*(a) Documents supporting the 'proposed agreed facts'*

34. The Prosecution and the Ayyash and the Sabra Defence did not contest the 'proposed agreed facts' as supported—according to the Legal Representatives—by these documents. The Trial Chamber found that a presentation of those facts was therefore required only in relation to the Merhi and the Oneissi Defence. Accordingly, the Trial Chamber instructed counsel for Mr Merhi and Mr Oneissi to raise any objections to those documents' *prima facie* reliability, or any other requirement for admission.<sup>40</sup> The Oneissi Defence raised no objection. The Merhi Defence objected to the admission of 13 documents, as described at paragraphs 11-26 above.

35. As to these 13 documents, counsel for Mr Merhi challenge their relevance and probative value. The documents' *prima facie* reliability, as such, is uncontested by the Merhi Defence or any other Party. The Legal Representatives submit that the documents proposed for admission were obtained from the participating victims. The Trial Chamber has carefully reviewed the 181 documents and finds that they bear sufficient indicia of reliability, as illustrated in more detail below, for their admission into evidence.

36. Several of the Merhi Defence's challenges rely on the argument that a certain document does not establish that a medical condition was caused by, or linked to, the 14 February 2005 explosion. The Trial Chamber considers that documents describing any medical condition may be relevant for admission if they relate to and are probative of the harm the participating victims suffered as a result of the explosion. In any instance where the Trial Chamber finds that this has not been established—and decides, accordingly, not to admit into evidence the relevant document in this decision—the Legal Representatives may still provide additional submissions or material in support of any application for reconsideration of the Trial Chamber's decision.

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Redacted Decision on the "Prosecution's Application for Admission of Documents related to Witness 297 pursuant to Article 64(9)", 12 November 2010, para. 10 (emphasis added).

<sup>39</sup> Decision of 5 September 2017, para. 16; Decision of 31 July 2017, para. 77.

<sup>40</sup> Decision of 31 July 2017, paras 100-101, 103-104, disposition.

37. The Merhi Defence also argues that the contents of certain documents do not establish the related ‘proposed agreed facts’. Whether any ‘proposed agreed fact’—uncontested by the Prosecution, the Ayyash and Sabra Defence—remains contested by the Merhi Defence is not essential for the determination of this decision. If a document proposed for admission is relevant and probative, and or corroborative of other evidence before the Trial Chamber, the requirements for admission are satisfied. Through cross-referencing the ‘proposed agreed facts’—as required by the Trial Chamber—the Legal Representatives substantially provide information on the relevance and probative value of the documents, which they also generally describe, as noted in paragraph 8 above. The Legal Representatives also argued that the documents are intended to corroborate witness testimonies and statements.<sup>41</sup> This is a decision on admission of evidence, different therefore from the issue of the weight, if any, to be given to the evidence.

38. The consideration of whether evidentiary material is necessary or sufficient to establish any ‘proposed agreed fact’ may rather be relevant to the Trial Chamber’s determination, under Rule 122, of whether it may consider any such fact as being proven, or whether a more complete presentation of it is required in the interests of justice.

39. As to the Merhi Defence’s challenges to the relevance of some of the ‘proposed agreed facts’ themselves, the Trial Chamber notes that Rule 122 does not contain any provision on the Trial Chamber’s assessment, if any, of the Parties’ agreements as to evidence. International criminal case law is divided as to whether recording points of agreement at trial results in the acceptance of those agreed points as evidence and, therefore, as to whether it involves assessing their relevance and probative value.<sup>42</sup> The Trial Chamber holds that an agreed fact under Rule 122 has to be relevant and probative.

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<sup>41</sup> Legal Representatives’ Motion of 3 May 2017, para. 18.

<sup>42</sup> With regard to case law of the International Criminal Tribunal for the former Yugoslavia (ICTY) holding that recording points of agreement results in the acceptance of them as evidence *see* ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, para. 13; *Prosecutor v. Dragomir Milošević*, IT-98-29/1-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts with Dissenting Opinion of Judge Harhoff, 10 April 2007, para. 37; *Prosecutor v. Perišić*, IT-04-81-T, Decision in respect of Joint Submission of Agreed Facts Proposed by the Defence, 29 June 2010, p. 2. For the opposite position, at the ICTY, according to which agreements between the Parties are primarily a matter for the Parties themselves, recording them does not render the uncontested facts evidence and does not require a Trial Chamber to make findings on their relevance and probative value, *see Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on “Prosecution Response to Karadžić’s Submission of Agreed Facts and Motion for Reconsideration”, 26 August 2010, para. 9, fn. 15, where the Trial Chamber acknowledged that other ICTY trial chambers differently found that the effect of recording points of agreements between the Parties was to accept them as evidence and noted that none of these decisions ‘explained why the recording of points of agreements converts those points into admitted evidence rather than into facts in relation to which no further evidence need be brought’. *See also Prosecutor v. Perišić*, IT-04-81-T, Judgement, 6 September 2011, para. 62, noting that the

40. Under Rule 122, the ‘alleged facts’ the Parties may agree not to contest can be ‘contained in the [...] contents of a document’. The Trial Chamber would not normally assess the relevance or probative value of any underlying material when considering, under Rule 122, agreements as to evidence. However, in these circumstances, only some Parties have reached an agreement under Rule 122; the underlying documents are proposed for admission into evidence with regard to those Parties who did not reach such an agreement—the Merhi and Oneissi Defence; and the Merhi Defence has contested the relevance of certain ‘proposed agreed facts’ and/or related underlying documents.

41. The Trial Chamber has examined the documents underlying the ‘proposed agreed facts’. It will deny the admission into evidence of those documents whose relevance and probative value has not been established. Hence, it will not record any facts based upon them as uncontested, under Rule 122, by the Prosecution, Ayyash and Sabra Defence.

42. Finally, the Trial Chamber notes that, upon the request of the Prosecution, it had already decided to admit into evidence three of the documents now proposed for admissions by the Legal Representatives (a death certificate, a report by the police on the wounded and injured victims, and an emergency unit admission note).<sup>43</sup> The Prosecution, however, did not produce them for formal admission into evidence in consideration of the agreement as to evidence which the Parties reached in the meantime and the Trial Chamber’s decision recording it. It found that the material was duplicative of what was already deemed to be proven.<sup>44</sup>

43. Regardless of whether the Prosecution’s stance can be regarded as a withdrawal of their request for admission into evidence, these three documents now proposed again for admission into evidence are relevant because they relate to matters that are properly to be considered by the Trial Chamber in its evaluation of the views and concerns of participating

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Trial Chamber ‘is not bound by any agreements reached by Parties and is not obliged to make explicit findings on such agreed facts’.

<sup>43</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014 (‘Decision of 28 January 2014’), disposition; F1307, Corrected Version of “Prosecution Rule 154 Motion for the Admission of Photos, Questionnaires and Records related to Victims”, filed 10 January 2014, 16 January 2014 (public with confidential annexes), confidential annex A, items 114, 120, 129 (the emergency unit admission note can be found in item 129. However, the version now proposed for admissions is legible in its entirety, while the last part of the documents, containing stamps and signatures, was not included in the version of the document in item 129). Two other emergency unit admission notes proposed now for admission (V019-E005 and V010-E002) can be found in item 129 and were declared admissible. However, the versions now proposed for admission include a report, describing physical examination, diagnosis and treatment.

<sup>44</sup> Transcript of 26 June 2014, p. 31.

victims, assist in detailing the participating victims' harm, or corroborate other evidence. Therefore, they will be admitted into evidence.

44. All the Parties previously agreed not to contest that the explosion on 14 February 2005 killed Mr Rafik Hariri and 21 others, and that it injured 226, all identified, respectively, in Schedules A and B of the amended consolidated indictment.<sup>45</sup> The Trial Chamber recorded that agreement in a decision on 11 April 2014.<sup>46</sup> Therefore, the Trial Chamber does not need to receive in evidence documents establishing those facts, as it may consider them as being proved.<sup>47</sup> However, under Rule 122 the Trial Chamber may decide that, although an alleged fact is not contested, a more complete presentation of it is required in the interests of justice, in particular in the interests of the victims.<sup>48</sup>

*Identification documents, family or individual personal status extracts*

45. Sixty-five documents are copies of passports, identity cards—including two Interior Security Forces (ISF) identity cards<sup>49</sup>—and driving licences.<sup>50</sup> The Trial Chamber has previously admitted into evidence the identity cards of participating victims as part of questionnaires and interview records of victims.<sup>51</sup> The authenticity of these documents has not been questioned. The Trial Chamber is satisfied as to their *prima facie* reliability.

<sup>45</sup> F2720, Amended Consolidated Indictment, 12 July 2016.

<sup>46</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1492, Second Decision on Agreed Facts under Rule 122, 11 April 2014 ('Decision on agreed facts of 11 April 2014'), para. 1. The Trial Chamber notes three discrepancies between the information in the schedules of the amended consolidated indictment and those resulting from documents supporting the 'proposed agreed facts' and the related 'proposed agreed facts' themselves. They concern the dates of birth of three individuals who died as a result of the explosion: Mr Zahi Halim Abu Rjeily, Mr Yahya El-Arab and a third one (either the month or the year differ). Whether the date of birth in Schedule A may be incorrect has no impact on, and is inconsequential to, the identification of those individuals as victims of the attack as already agreed among the Parties. In the cases of Mr Rjeily and Mr El-Arab, the 'proposed agreed facts' correctly reflect the dates of birth as contained in the underlying documents (death certificates and family personal status extracts—respectively, P191, at p. 24, and V023-E002, related to Mr Rjeily; and P191, at pp 7-9, and V043-E002, related to Mr El-Arab). See Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed facts nos. 78, 139. In the third instance, relating to another individual, the documents proposed in support of the 'proposed agreed fact' contain inconsistent information concerning the precise year of birth. While the year of birth contained in the 'proposed agreed fact' reflects the year stated in the investigation report, medical report and family personal status extract, the year of birth in Schedule A of the amended consolidated indictment reflects the year of birth stated in the death certificate.

<sup>47</sup> See similarly ICC, *Prosecutor v. Banda and Jerbo*, ICC-02/05-03/09-227, Decision on the Joint Submission regarding the Contested Issues and the Agreed Facts, 28 September 2011, para. 46.

<sup>48</sup> Decision of 31 July 2017, para. 78.

<sup>49</sup> See V000-E013, pp 178-180, 551-553. The ISF identity cards provide information on the individuals' rank, mother's first and last name, date of birth, register number, blood type, date of issuance, and ID number. They are signed by the ISF Director General.

<sup>50</sup> The two driving licenses are proposed for admission in addition to at least one other identification document for each of the two individuals.

<sup>51</sup> Exhibit P190; Decision of 28 January 2014, para. 10;

46. Twenty-seven documents are copies of family or individual personal status extracts. They were issued by the Lebanese Ministry of the Interior and Municipalities. They are official Lebanese Government records. The Trial Chamber has already admitted into evidence ‘official personal family status extracts’ provided to the Prosecution by the Lebanese Directorate General of Personal Status in response to requests for assistance.<sup>52</sup> The Trial Chamber has previously noted that civil records are defined by the Lebanese Code of Civil Procedure as official acts, the contents of which are presumed proven in Lebanese civil courts unless the documents themselves are proven to be false.<sup>53</sup> Their status as official documents—in the absence of any reason to doubt the authenticity and the reliability of the information in the documents—is sufficient to meet the *prima facie* reliability threshold.<sup>54</sup>

47. The identity documents and family personal status extracts assist in identifying the participating victims and establishing the relationship between them and the individuals deceased due to the attack on 14 February 2005. The Trial Chamber therefore finds that they are relevant and probative. Article 25 of the Special Tribunal’s Statute envisages the identification, in the judgement, of the victims who have suffered harm as a result of the commission of crimes by an Accused, in case of a conviction.

(i) *Family personal status extract related to V026*

48. The information that V026 is the mother of one of the deceased is not contained in the family personal status extract related to V026, but is in the deceased’s death certificate, which is already in evidence. Further, the family personal status extract does not appear to list the deceased.

49. However, in V026’s witness statement, which the Trial Chamber admitted into evidence under Rule 155, V026 refers to biographical information concerning her husband—the fact that he was one year younger than her—which is contained in the family personal status extract.<sup>55</sup> This information relates to the description of the harm that V026 and her

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<sup>52</sup> See, for example, exhibits P1066 and P1078; F3202, Decision on the Admission of 27 Documents and One Witness Statements relating to the Attribution of Mobile Numbers to Hassan Habib Merhi, 29 June 2017 (‘Decision of 29 June 2017’), para. 10; F2636, Corrected Version of ‘Decision on Prosecution Motion for the Admission of Civil Records’ Dated 12 July 2016, 12 July 2016 (‘Decision of 12 July 2016’), paras 11-12, disposition.

<sup>53</sup> Decision of 12 July 2016, para. 11, referring to Articles 143 and 145 of the Lebanese Code of Civil Procedure; F2258, Decision on Prosecution Motion for the Admission of Evidence related to the Locations of Residences Associated with the Accused, 9 October 2015, para. 19.

<sup>54</sup> Decision of 29 June 2017, para. 34

<sup>55</sup> Exhibit 1V27.

husband suffered due to their child's death, such as the fact that 'he grew old very quickly' after that. The Trial Chamber therefore finds that this document is relevant to, and probative of, information provided in V026's witness statement, although it is not the subject of the 'proposed agreed fact'. The document can therefore be admitted into evidence.

*Three press clippings and one photograph*

50. Three press clippings and a photograph of Mr Rachid Hammoud (V018) on the day of the explosion are proposed for admission into evidence.

51. Each extract contains an article from a daily Lebanese newspaper. Two articles, of 15 February 2005 and 2 March 2005, are from *Al-Liwaa*, and one, of 3 March 2005, is from *An-Nahar*. The articles from March 2005 relate to the search for and finding of the body of Mr Abdel Hamid Ghalayini. One of them has already been described;<sup>56</sup> its admission into evidence is opposed by the Merhi Defence. The other, titled 'Abdel-Hamid Ghalayini's Body Found at the Crime Scene', is presented in support of the 'proposed agreed fact' that 'the body of Abdul Hamid Ghalayini was found on 2 March 2005.'<sup>57</sup> Ms Lama Ghalayini testified to this effect.<sup>58</sup>

52. The third article is proposed in relation to Mr Wissam Naji (V014). It is titled 'A black day in Lebanon: 400 kg of TNT kill Hariri in a vehicle blast. 14 Martyrs and 137 wounded; Basel Fuleihan is flown to France with serious injuries amid an earthquake-like destruction'. It lists the people wounded and treated at three different hospitals, including Mr Naji.<sup>59</sup>

53. The photograph shows Mr Rachid Hammoud, the paramedic who was travelling with Mr Hariri's convoy on 14 February 2005, after the explosion. It is an 'AP' (Associated Press) photograph, but with poor quality definition. However, it shows Mr Hammoud's face and hands covered by blood and two men assisting him walking. A column of smoke can be seen in the background.<sup>60</sup>

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<sup>56</sup> See para. 13 above.

<sup>57</sup> V002-E012, at pp 88-97 of V000-E013. Legal Representatives' Motion of 3 May 2017, annex C, proposed agreed fact no. 9.

<sup>58</sup> Transcript of 28 August 2017, pp 37, 70, 73-74, 78, 83-89.

<sup>59</sup> V014-E003, at p. 314 of V000-E013.

<sup>60</sup> V018-E011, at p. 345 of V000-E013. On 7 September 2017, Mr Hammoud attended the proceedings in the courtroom. Upon the Legal Representatives' request, the Trial Chamber had authorized him and several other public participating victims to be present in the courtroom during the presentation of the Legal Representatives' evidence most relevant to each of them. See F3292, Decision Allowing Participating Victims to Attend Proceedings in the Courtroom, 24 August 2017; transcript of 7 September 2017, pp 86-87. Asked by the Trial Chamber, Mr Hammoud expressed his views and concerns before the Court. On 4 December 2014, Mr Hammoud had testified as a Prosecution witness (PRH383).

54. The Trial Chamber finds the press clippings and the photograph relevant to and probative of the harm suffered by the participating victims. The articles on the search for and finding of the body of Abdel Hamid Ghalayini corroborate the evidence of Ms Ghalayini.

(ii) *A press clipping – ‘A sit-in at the crime scene urging officials to remove the rubble off of Ghalayini’*

55. For the same reason, the Trial Chamber does not agree with the Merhi Defence’s claim that the Legal Representatives failed to explain the relevance and probative value of the document. Ms Lama Ghalayini gave evidence live, via video-conference link, on 28 August 2017. She testified about the sit-in—which is the subject of the article.<sup>61</sup> This and the photographs of Ms Ghalayini and her sister at the sit-in corroborate her evidence. Therefore, the document can be admitted into evidence. For the same reason, the Trial Chamber finds that the ‘proposed agreed fact’ supported by this document is also relevant.

#### *Medical documents*

56. The Trial Chamber has already decided to admit into evidence hospital and other records as providing information relevant to the measures taken with respect to certain victims after the explosion.<sup>62</sup> The documents proposed here consist of sick leave notes, records of admissions to emergency units, hospital discharge summaries, medical reports containing diagnoses, prescriptions of medications, a pharmacy invoice and hospitals receipts. One document<sup>63</sup> includes both a medical report related to V030 and two photographs of him, injured. The content, appearance and form of the documents provide sufficient indicia of reliability for admission into evidence.

57. On 28 January 2014, the Trial Chamber decided to admit one of these documents into evidence: the emergency unit admission note to the American University of Beirut Medical Center concerning Mr Wissam Naji (V014).<sup>64</sup> As stated earlier,<sup>65</sup> the Prosecution found it unnecessary to produce it formally for admission into evidence in consideration of the Parties’ ‘agreement as to evidence’ reached afterwards.

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<sup>61</sup> Transcript of 28 August 2017, pp 64, 69-71.

<sup>62</sup> Exhibit P192; Decision of 28 January 2014, para. 12,

<sup>63</sup> V030-E020, at pp 488-489 of V000-E013.

<sup>64</sup> As part of a larger document consisting, mainly, of numerous emergency unit admission notes to the same Medical Center. See Decision of 28 January 2014, para. 12, disposition; V014-E002, at pp 308-309 of V000-E013.

<sup>65</sup> See para. 42 above.



58. These documents, with six exceptions,<sup>66</sup> are relevant and probative, including the emergency unit admission note, as they relate to the effects of the explosion on victims and assist in detailing the physical, mental and material harm the participating victims suffered as a result.<sup>67</sup> In four instances, they provide information on the expenses incurred for medical treatment or medical examination.<sup>68</sup> As to the photograph of V030—contained in the same document with a medical report—the Legal Representatives do not explain where it was taken, or when; however, it was evidently after the explosion. The Trial Chamber finds this photograph relevant and probative of the harm suffered by V030.<sup>69</sup>

(iii) *A medical note and a cash receipt relating to Mr Lama Ghalayini*

59. Ms Lama Ghalayini, in her testimony, recounted how her father's death and the experience of searching for his body after the explosion led her to suffer from depression and post-traumatic stress disorder (PTSD) for a long time after the explosion.<sup>70</sup> The medical note from a doctor in the psychiatry department of the American University of Beirut, Medical Center, contains a diagnosis for 'depression' and 'post-traumatic stress disorder (PTSD)'.

60. Although the medical note does not state the name of the patient or the date of the diagnosis, the cash receipt of the American University of Beirut Hospital, dated 11 November 2005, is issued to Lama Ghalayini and contains the name of the same doctor who issued the medical note. The documents corroborate Ms Ghalayini's testimony. The Trial Chamber is satisfied, in the specific circumstances, that the documents are *prima facie* reliable. The causal link between the documents and the explosion on 14 February 2005 is not apparent in the documents but is in the live evidence of the witness. While it would have been preferable for the Legal Representatives to have used the documents in court, with the witness, they are relevant and probative for admission into evidence.

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<sup>66</sup> V012-E017, V030-E021, V030-E022, V030-E024, V073-E010, V073-E011.

<sup>67</sup> Cf F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 31 (where the Trial Chamber was satisfied of the relevance of 23 witness statements as the evidence concerned the effects of the explosion on victims); Decision of 28 January 2014, para. 12 (where the Trial Chamber found that hospital and other records provided relevant information as to the measures taken with respect to certain victims after the explosion).

<sup>68</sup> See V004-E004, V031-E005, V031-E006 and V031-E008.

<sup>69</sup> V030's name appears in Schedule B of the amended consolidated indictment, which lists 226 people injured as a direct consequence of the explosion; the Parties have already agreed not to contest this. See Decision on agreed facts of 11 April 2014.

<sup>70</sup> Transcript of 28 August 2017, p. 92.

(iv) *'List of medications' concerning V012*

61. The 'List of medications'<sup>71</sup> is relevant to and probative of V012's medical conditions on 1 September 2014 and a similar date. However, it does not suggest, of itself, a link between these conditions and the explosion or with any medical conditions V012 suffered immediately after that. The Legal Representatives did not reply to the Merhi Defence submissions.

62. The Trial Chamber cannot assess, on the basis of the available information and without specialised medical knowledge, whether the conditions requiring treatment on 1 September 2014 and a similar date were caused by the explosion or linked to V012's pre-existing conditions. The tendering party must demonstrate, with clarity and specificity, where and how each document or record fits into its case. The Legal Representatives have not done so, as they failed to provide submissions in the motion, or in reply to the Merhi Defence response, to establish that these medical conditions are linked to, and therefore detail, the harm the participating victim suffered as a result of the explosion. The admission into evidence is therefore denied.

(v) *Six medical documents related to V030, V058 and V073*

63. The Merhi Defence argues that the medical documents relating to V030, V058 and V073 do not establish that the medical conditions suffered by the participating victims, as described, were consequences of the explosion.

64. As to the two medical documents from the cardiology division of a hospital describing V30's medical conditions in 2010,<sup>72</sup> the Legal Representatives failed to provide any submissions or information to establish that these conditions were related to the explosion. In addition, one of the documents, as submitted by the Merhi Defence, refers to a 'positive family history' in relation to a certain medical condition. Therefore, the two documents are neither relevant to nor probative of the harm suffered by the participating victim as a result of the explosion. This reasoning also applies to another document, V030-E024, an authorisation for V030 to leave a hospital in 2010.<sup>73</sup> The Trial Chamber will deny the admission into evidence of these three documents.

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<sup>71</sup> V012-E017, at pp 221-222 of V000-E013.

<sup>72</sup> V030-E021, V030-E022, at pp 521, and 522-523, respectively, of V000-E013.

<sup>73</sup> V030-E024, at p. 524 of V000-E013.

65. As to the document concerning V058,<sup>74</sup> the Trial Chamber admitted her statement into evidence under Rule 155.<sup>75</sup> In this statement, V058 described the physical harm she suffered as a result of her relative's death. The documents are therefore—contrary to the Merhi Defence's claim—relevant and probative. For the same reason, the related 'proposed agreed fact' is also relevant. The decision on admission is different from the issue of the weight, if any, the Trial Chamber may give to the documents when it evaluates them in light of the totality of the evidence.

66. The three remaining medical documents relate to V073, whose statement the Trial Chamber also admitted into evidence under Rule 155. V073 stated that he fell on the ground due to the explosion and was hurt by shattered glass. He was bleeding profusely and drove his damaged car to the American University Hospital rather than waiting for an ambulance. To this day, he suffers from hearing and eyesight problems and has memory loss at times. After the explosion, he 'had a heart condition, vein and artery issues and high cholesterol'.<sup>76</sup> As noted previously, V073 is not listed in Schedule B of the amended consolidated indictment among the persons injured as a result of the explosion.<sup>77</sup>

67. Although it is from 2007, the medical examination describing V073's heart condition—and the related 'proposed agreed fact'—are relevant and probative. The document may corroborate V073's witness statement. The Trial Chamber appreciates that there may be no independent source linking this medical condition to the explosion (and there is no independent evidentiary information on V073's admission to the hospital after the explosion), but this relates to the weight, if any, to be given to the document, rather than to the assessment of its relevance and probative value. Document V073-E009, relating to V073's heart condition, can therefore be admitted into evidence.

68. The witness statement does not mention that V073 suffered any medical condition related to the cervical spine or to high fracture risk relating to his spine as a result of the explosion—these are the health conditions described in the two other medical records relating to V073.<sup>78</sup> The Trial Chamber does not disbelieve that any such connection may exist, but the Legal Representatives have not established that these documents are relevant to and probative

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<sup>74</sup> V058-E002, at p. 615 of V000-E013.

<sup>75</sup> Exhibit 1V24.

<sup>76</sup> Exhibit 1V22; transcript of 30 August 2017, p. 78

<sup>77</sup> F3309, Decision Admitting into Evidence 18 Witness Statements under Rules 155 and 158, and Reasons for Admitting Two Witness Statements of Participating Victims, 5 September 2017 ('Decision of 5 September 2017'), para. 17, fn. 24.

<sup>78</sup> V073-E010 and V073-E011, at pp 864, 866, respectively, of V000-E013.

of the harm suffered by V073 in the explosion. The Trial Chamber therefore denies their admission into evidence.

69. With regard to V012-E017, V030-E021, V030-E022, V030-E024, V073-E010, V073-E011—whose admission into evidence has been denied—the Trial Chamber will not record under Rule 122, for the reasons explained in paragraphs 39 to 41, the agreement of the Prosecutor and counsel for Mr Ayyash and Mr Sabra not to contest the ‘proposed agreed facts’ these documents support.<sup>79</sup>

*Documents relating to losses and financial expenses incurred by participating victims and documents relating to employment*

70. Thirty other documents relate to losses or financial expenses for material damages the participating victims incurred due to the explosion—including photographs of damaged items,<sup>80</sup> invoices and requests for quotation—and documents relating to compensation received, employment, diplomas, licenses, registration of commercial activities or cars and contracts. They concern four participating victims, Mr Mahmoud Wazzan (V029), V016,<sup>81</sup> V030 and V073. Some documents are copies of registration records from the Traffic, Truck and Vehicle Management Authority of the Ministry of Interior and Municipalities, or from the Ministry of Finance—which are official government records—and others are university diplomas or documents from private companies. The Trial Chamber is satisfied as to their *prima facie* reliability, which has not been questioned.

71. The Trial Chamber finds these documents relevant to and probative of the effects of the explosion in relation to the participating victims and the material harm they may have suffered. As these documents relate to matters that are properly to be considered by the Trial Chamber in its evaluation of the participating victims’ views and concerns and may corroborate other evidence, the Trial Chamber will admit them into evidence. The Trial Chamber will, at a later stage, seek further submissions on the documents’ probative value, including from the Legal Representatives.

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<sup>79</sup> Legal Representatives’ Motion of 3 May 2017, annex C, proposed agreed facts nos. 37, 105, 190-191.

<sup>80</sup> The Legal Representatives have not provided specific information as to the dates when the photographs were taken.

<sup>81</sup> Two documents relate to the car V016 used on 14 February 2005. V016 testified that the car was damaged in the explosion and the documents corroborate his testimony. It appears from the testimony that compensation regarding the car, which was in the name of the company, was paid. *See* transcript of 30 August 2017, pp 69-70.

(vi) *Confirmation of the status of a rental contract*

72. The letter of the STARCO complex's owner—stating that the tenant of one shop, Poly Service, had to leave the premises before the expiry of the lease agreement due to the damage caused by the explosion—is relevant and probative of the effects of the explosion and the harm Mr Wazzan, the owner of Poly Service, may have suffered as a result. That the date of the premises' vacation was about two months after the explosion does not affect this assessment. The document can be admitted into evidence. As to the Merhi Defence's challenges to the related 'proposed agreed fact', this fact appears to faithfully reflect what is acknowledged by the STARCO complex's owner.

(vii) *'Commercial establishment registration certificate'*

73. V073's statement was received under Rule 155, as mentioned in paragraph 66 above. Apart from his physical harm, V073 described the material harm he suffered, of damages to the shop and the items on display and the decrease in business after the explosion. He stated that the 'scene' was closed for almost three years because of the investigation, which greatly affected his business.

74. The 'commercial establishment registration certificate' related to V073's commercial activity, issued by the Lebanese Ministry of Finance, provides relevant information that a commercial activity was registered under the relevant name, in Ain-El-Mreisseh, before the explosion. This corroborates V073's statement and is therefore relevant to and probative of the harm he suffered.

75. The Trial Chamber agrees that the document does not establish, of itself, that this business still exists today and that V073 still works there. However, in consideration of the material harm V073 described, whether the shop exists now is not essential. The document, of itself, also does not establish that the shop existed at the time of the explosion; this fact, however, does not appear to be contested by the Merhi Defence. In any event, this does not affect the Trial Chamber's assessment that the requirements for admission into evidence are met.

76. The Trial Chamber, however, invites the Legal Representatives to revise the 'proposed agreed fact' by reflecting more accurately the document (that V073 registered the identified commercial activity a number of years before the explosion) and verify whether the Merhi Defence, and the other Parties, agree not to contest such a revised 'proposed agreed fact'.

*Death certificates*

77. The Trial Chamber has already admitted into evidence death certificates of victims of the explosion.<sup>82</sup> The copies of the four death certificates now proposed for admission relate to: the former Prime Minister Mr Hariri (two certificates); the Lebanese Member of Parliament Basil Fuleihan, who died in France on 18 April 2005; and Ms Bakiza Nasser (formerly participating victim V048), who died on 17 February 2017.<sup>83</sup> The two documents concerning Mr Hariri, titled ‘certification of death’, were issued by the Division of Cardiology of the American University of Beirut Hospital on 2 and 3 March 2005.<sup>84</sup> The document issued on 3 March 2005 describes the cause of death of Mr Hariri as being ‘immediate brain injury causing cardiac standstill’. All death certificates include, as those previously admitted into evidence, relevant stamps and signatures, and are *prima facie* reliable for admission into evidence.

78. On 28 January 2014, the Trial Chamber decided to admit into evidence Mr Fuleihan’s death certificate, but the Prosecution found it unnecessary to have it admitted into evidence, after the Parties had reached ‘agreement as to evidence’ in relation to the fact that the explosion killed Mr Rafik Hariri and 21 others, and injured 226 other people. Mr Fuleihan’s and Mr Hariri’s death certificates are not necessary to identify them among those who died in the explosion—this is uncontested by all the Parties—and a death certificate of Mr Hariri issued by the Lebanese Ministry of Interior is already in evidence.<sup>85</sup> However, the Trial Chamber may admit material into evidence if it is relevant to and probative of the effects of the explosion and offers a more complete picture of the impact of the charged crimes upon their individual victims.

79. Mr Hariri’s ‘certifications of death’ provide information on the cause of his death, that he was brought dead to the American University Hospital and the manner of his identification. The Trial Chamber finds that they are relevant and probative and provide additional relevant information. They can be admitted into evidence.

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<sup>82</sup> Exhibit P191; Decision of 28 January 2014, para. 11, disposition.

<sup>83</sup> V048-E005, at pp 697-698 of V000-E013. Ms Bakiza Nasser is no longer a participating victim as the Trial Chamber granted the Legal Representatives’ request for her withdrawal from the proceedings as a result of her death. The Trial Chamber admitted her statement into evidence under Rule 158. This Rule provides for the admission into evidence of written statements of a witness who is ‘unavailable’. See Decision of 5 September 2017, para. 21, disposition.

<sup>84</sup> ERN 50010915-50010915 and 50011153-50011153, at pp 739-742 of V000-E013.

<sup>85</sup> As part of exhibit P191.

80. Mr Fuleihan's death certificate—which was sent by the Embassy of France in the Netherlands to the Special Tribunal's Prosecutor in response to a request for assistance to the Government of France—contains information on the date, time and place of Mr Fuleihan's death.

81. Although information on the date and time of his death, in different form, is also contained in the hospitalization report of the Percy Military Training Hospital in Clamart, France, where Mr Fuleihan was admitted after being transferred from the American University Hospital in Beirut,<sup>86</sup> the Trial Chamber finds that the death certificate is relevant, probative and corroborative of other evidence.<sup>87</sup> It can therefore be admitted into evidence.

82. As to the death certificate of Ms Nasser, former participating victim V048, the Trial Chamber has already acknowledged and considered it for the purpose of deciding on the Legal Representatives' request for withdrawal of her status of participating victim from the proceedings, and on their application for admission into evidence of Ms Nasser's written statement under Rule 158.<sup>88</sup> The Trial Chamber finds it relevant and will admit it into evidence.

#### *Investigation reports and other documents*

83. Six documents consist of an investigation report of the Directorate General of the Lebanese Internal Security Forces – Beirut Police, and correspondence from the Lebanese Civil Defence Director General, both concerning finding a body at the site of the explosion; a report of the wounded and injured victims of the explosion by the Beirut Police Unit; two statements of the Directorate General of the Internal Security Forces on injuries suffered by Internal Security Forces employees as a result of the explosion; a letter from the Office of Saad Rafic Hariri containing two lists of people who were accompanying Mr Hariri on 14 February 2005, one of the individuals who died and the other of those who were injured in the explosion.<sup>89</sup> The Trial Chamber is satisfied as to their *prima facie* reliability, which has not been contested.

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<sup>86</sup> This document is already in evidence as exhibit P192. The time of death contained in the hospitalization report is 11.15, whereas the time of death recorded in the death certificate is 11.35. *Cf.* V000-E013, pp 746, 764.

<sup>87</sup> Exhibit P192. In their opening statement, the Legal Representatives introduced Mrs Yasma Fuleihan, Mr Fuleihan's widow and participating victim V062, who sat in court. They explained that Mr Fuleihan's 'body was burnt to the third degree over 95 per cent of it' and that, he was flown to France and died after 64 days. *See* transcript of 18 June 2014, pp 12-14.

<sup>88</sup> Transcript of 24 April 2017, pp 2-3; Decision of 5 September 2017, paras 11, 21.

<sup>89</sup> V000-E013, pp 104-109, 118-125, 182, 211-212, 555, 573-589.

84. The Trial Chamber, on 28 January 2014, decided to admit into evidence the report of the wounded and injured victims of the explosion by the Beirut Police Unit.<sup>90</sup> The Prosecution, however, found it unnecessary to tender it into evidence after the Parties reached ‘agreement as to evidence’ in relation to those killed or injured in the explosion.<sup>91</sup>

85. The Trial Chamber finds these documents, including the report of the wounded and injured victims, relevant to and probative of either the circumstances of certain participating victims’ presence in the area of the explosion, their role in accompanying Mr Hariri on that day and or the harm the participating victims suffered. The investigation report and correspondence on the finding of a body are relevant to and probative of the circumstances related to the finding of Mr Abdul Hamid Ghalayini, which were also the subject of the live testimony of his daughter, Ms Lama Ghalayini.<sup>92</sup>

86. As these documents relate to matters the Trial Chamber should consider in evaluating the participating victims’ views and concerns, assist in detailing the harm they suffered as a result of the explosion and corroborate other evidence, they can be admitted into evidence.

*Court decisions appointing legal guardians*

87. The remaining documents are court decisions appointing legal guardians for participating victims who are, or were earlier in the proceedings, minors. The decisions were issued by Lebanese Sunni Sharia Courts or Jaafari Courts. The Trial Chamber is satisfied as to their *prima facie* reliability, which is not questioned. They identify the individuals entitled to act on behalf of the minors and are relevant and probative for this reason.

*b) The three additional documents*

88. The Trial Chamber has carefully examined the photograph of a destroyed car, the ‘certificate of employment’, and the medical report concerning, respectively, V027, V030 and V035. Their admission has not been opposed by any Party. It is satisfied that they are *prima facie* reliable—the employment certificate and the medical report appear, respectively, on the relevant company’s and medical center’s headed paper and are stamped.<sup>93</sup> They are relevant to, and probative of, the effect of the explosion on participating victims, and can be admitted into evidence.

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<sup>90</sup> Decision of 28 January 2014, disposition.

<sup>91</sup> Transcript of 26 June 2014, p. 31.

<sup>92</sup> Transcript of 28 August 2017, pp 37, 80-89.

<sup>93</sup> The employment certificate refers to V030’s employment until 2003.



89. At a later stage, the Trial Chamber will consider any submissions with regard to the weight to be given to these documents.

### **CONFIDENTIALITY**

90. The Trial Chamber reiterates the public nature of the proceedings. It has already ordered counsel for Mr Hassan Habib Merhi to file a public redacted version of their submission F3296, ‘Merhi Defence Submissions relating to the Admissibility of the Documents Supporting the “Agreed Facts” Proposed by the Legal Representatives of Victims and Response to the Motion of 21 August 2017 Filed by the Legal Representatives of Victims’, filed on 25 August 2017.<sup>94</sup> It also orders the Legal Representatives to file a public redacted version of ‘Amended Version of Annex A to “Legal Representative of Victims Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with Confidential Annexes A and B” (F3286), Including Additional Translations’.

### **DISPOSITION**

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

**DECLARES** admissible, under Rule 154 of the Special Tribunal’s Rules of Procedure and Evidence, the single document contained in the amended version of annex A to filing F3286, ‘Documents Supporting the Legal Representative of Victims’ Proposed Agreed Facts’, with the exception of those portions which have already been admitted into evidence as separate exhibits, and the documents V012-E017, V030-E021, V030-E022, V030-E024, V073-E010, V073-E011, for the reasons explained in paragraphs 62, 64 and 68;

**DECLARES** admissible, under Rule 154, the documents listed in annex B to filing F3286, ‘Additional Rule 154 Documents on the LRV’s Exhibit List’, as items 1 to 3;

**DECIDES** that it will formally admit the documents into evidence before the end of the Prosecution case; and

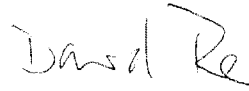
**ORDERS** the Legal Representatives to file a public redacted version of the amended version of annex A to filing F3286, ‘Documents Supporting the Legal Representative of Victims’ Proposed Agreed Facts’.

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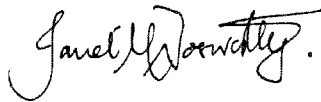
<sup>94</sup> Decision of 5 September 2017, para. 22, disposition.

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

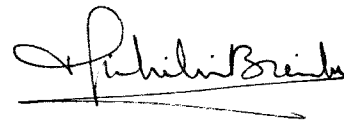
Leidschendam,  
The Netherlands  
4 December 2017



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



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Judge Janet Nosworthy



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Judge Micheline Braidy

