



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-13-04/I/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braïdy
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Daryl Mundis

Date: 20 December 2013

Original language: English

Classification: Public

PROSECUTOR

v.

HASSAN HABIB MERHI

DECISION TO HOLD TRIAL *IN ABSENTIA*

Office of the Prosecutor:
Mr. Norman Farrell

The Accused:
Mr. Hassan Habib Merhi

Defence Office:
Mr. François Roux



INTRODUCTION

1. Hassan Habib Merhi, on 31 July 2013, was indicted for his alleged role in the explosion in Beirut on 14 February 2005 that killed the former Lebanese Prime Minister, Rafik Hariri and 21 others, and injured over 200. On 28 June 2011, the Pre-Trial Judge confirmed an amended indictment in the case of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra* in respect of those events,¹ and the trial of the four *in absentia* will commence on 16 January 2014.²
2. The Trial Chamber is now seised with an order of the Pre-Trial Judge under Rule 105 *bis* (A) of the Tribunal's Rules of Procedure and Evidence to determine whether to try Mr. Merhi *in absentia*,³ as permitted by Article 22 of the Statute of the Special Tribunal.
3. The Trial Chamber has analysed – within the context of the prevailing security situation in Lebanon – each of the measures taken by the Lebanese authorities and the Special Tribunal to personally notify Mr. Merhi of the charges against him and to secure his appearance at the Special Tribunal. It has also considered whether the widespread publicity in the Lebanese media of his alleged role, both before and after the indictment was confirmed, has informed him of the charges and the different ways that he could participate in a trial. The extensive coverage in the Lebanese media of the indictment of the four Accused in the *Ayyash* case has also been considered.
4. The Trial Chamber has concluded that Mr. Merhi has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Special Tribunal and to inform him of the charges by the Pre-Trial Judge. The combination of these measures has satisfied the legal requirements necessary to try him *in absentia* and the Trial Chamber has decided, for the reasons that follow, to proceed to try Mr. Merhi *in absentia*.

¹ STL, *The Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra*, STL-11-01/PTJ, Decision relating to the Examination of the Indictment of 10 June 2011 issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi, & Mr Assad Hassan Sabra, 28 June 2011; STL-11-01/PTJ, Public Redacted Version, Indictment, 10 June 2011. The Prosecutor had submitted an indictment and supporting materials to the Pre-Trial Judge on 17 January 2011.

² STL-11-01/PT/TC, Scheduling Order, 10 December 2013.

³ STL, *Prosecutor v. Hassan Habib Merhi*, STL-13-04/I/PTJ, *Ordonnance de Saisine de la Chambre de Première Instance conformément à l'Article 105 bis, paragraphe A) du Règlement de Procédure et de Preuve aux fins de Statuer sur l'Engagement d'une Procédure par Défaut*, 25 novembre 2013.

PROCEDURAL BACKGROUND

5. On 14 February 2005, a large explosion occurred near the St George Hotel in downtown Beirut in Lebanon. A number of people, including the former Lebanese Prime Minister, Rafik Hariri, were killed and many others were injured. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra were indicted on 30 June 2011 for nine counts connected with these events, including conspiracy to commit a terrorist act, committing a terrorist act by using explosives, and the murder of Rafik Hariri and 21 others.⁴
6. On 5 June 2013, the Prosecutor submitted an indictment to the Pre-Trial Judge alleging Mr. Merhi's participation in these events.⁵ The indictment charges Mr. Merhi with five counts, namely, conspiracy to commit a terrorist act, and as an accomplice with respect to: committing a terrorist act by using explosive materials; the premeditated intentional homicide of Rafik Hariri; the premeditated intentional homicide of 21 others; and, the premeditated intentional attempted homicide of 226 people, by using explosives.⁶
7. On 31 July 2013, the Pre-Trial Judge confirmed the indictment,⁷ and issued national and international arrest warrants for Mr. Merhi's apprehension.⁸ On 6 August 2013, the indictment and arrest warrant were transmitted to the Government of Lebanon for service and execution. On 6 September 2013, the Acting Public Prosecutor of the Lebanese Court of Cassation⁹ submitted a report to the President of the Tribunal under Rule 76 (C) of the Tribunal's Rules, outlining the attempts by the Lebanese authorities to execute the arrest warrant. He informed the President that it had not been possible to find Mr. Merhi or a suitable person pursuant to Article 147 (7), on whom they could serve the documents at the known places of residence or domicile of Mr. Merhi.¹⁰ On 16

⁴ Having initially submitted an indictment and supporting materials to the Pre-Trial Judge on 17 January 2011.

⁵ Prosecution's Submission of an Indictment for Confirmation and Order to Keep this Filing and its Annexes, Confidential and *Ex Parte*; and Motion for an Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure, Confidential and *Ex Parte*, 5 June 2013.

⁶ Indictment, Confidential and *Ex Parte*, 5 June 2013. A confidential redacted version was filed on 31 July 2013 and a public redacted version was filed on 11 October 2013 pursuant to an order of the Pre-Trial Judge of 10 October 2013. Public Redacted Version of the 'Decision Relating to the Examination of the Indictment of 5 June 2013 Issued Against Mr Hassan Habib Merhi' Dated 31 July 2013, 11 October 2013.

⁷ Decision relating to the Examination of the Indictment of 5 June 2013 Issued against Mr. Hassan Habib Merhi, Confidential, 31 July 2013; Public Redacted Version dated 11 October 2013.

⁸ Warrant to Arrest Mr. Hassan Habib Merhi and Order for Transfer and Detention, Confidential, 31 July 2013; International Warrant to Arrest Mr. Hassan Habib Merhi and Request for Transfer and Detention, Confidential, 31 July 2013.

⁹ The 'Acting Prosecutor-General'.

¹⁰ Report of Prosecutor-General, 6 September 2013.

September 2013, the President requested clarifications from the Acting Prosecutor-General,¹¹ who obliged in four further reports to the President, on 24 and 26 September and 3 and 4 October 2013.¹²

8. On 10 October 2013, the President of the Tribunal issued an order under Rule 76 stating that he was satisfied that ‘reasonable attempts have been made by the Tribunal and the Lebanese authorities to serve the indictment and arrest warrant on the Accused.’¹³ Accordingly, he ordered that the indictment be served by alternative methods through public advertisement, and requested the Registrar to transmit an advertisement to the Lebanese authorities. He ordered that they take all reasonable steps to publicly notify Mr. Merhi of the existence of the indictment and to call upon him to surrender to the Tribunal.¹⁴ On the same day, the Pre-Trial Judge lifted the confidentiality of the indictment, allowing a redacted version to be published.¹⁵
9. Following the President’s order, the Registrar wrote to the Acting Prosecutor-General in Lebanon, requesting the publication of an advertisement in five newspapers: three Arabic, one English, and one French Lebanese – in accordance with Rule 76 *bis*.¹⁶ The Tribunal also issued a media release on its website publicising the indictment of Mr. Merhi.¹⁷ At the President’s request, the Registrar informed the Trial Chamber of the efforts made to serve the indictment on Mr. Merhi.¹⁸
10. On 25 November 2013, under Rule 105 *bis* (A) of the Rules, the Pre-Trial Judge issued an order seising the Trial Chamber with determining whether to initiate proceedings *in absentia* against

¹¹ Letter from the President to the Acting Public Prosecutor at the Lebanese Court of Cassation Judge Samir Hammoud, 16 September 2013.

¹² Report of the Acting Prosecutor-General of 24 September 2013 (Confidential and *Ex Parte* Annex C to the ‘Order Pursuant to Rule 76(E)’); Report of the Acting Prosecutor-General of 26 September 2013 (Confidential and *Ex Parte* Annex D to the ‘Order Pursuant to Rule 76(E)’); Report of the Acting Prosecutor-General of 3 October 2013 (Confidential and *Ex Parte* Annex E to the ‘Order Pursuant to Rule 76(E)’ and Report of the Acting Prosecutor-General of 4 October 2013 (Confidential and *Ex Parte* Annex F to the ‘Order Pursuant to Rule 76(E)’).

¹³ Order pursuant to Rule 76 (E), 10 October 2013, paragraph 30.

¹⁴ Order pursuant to Rule 76 (E), 10 October 2013, Disposition.

¹⁵ STL-13-04/I/PTJ, Order on Partially Lifting the Confidentiality of the Indictment against Hassan Habib Merhi, 10 October 2013.

¹⁶ Correspondence from the Registrar to the Prosecutor-General, ref. EXT\SUP\LB\MJ\20131010_REG2404_ss, 10 October 2013.

¹⁷ ‘STL Indicts Hassan Habib Merhi in 14 February 2005 Beirut Attack’, 10 October 2013.

¹⁸ Internal Memorandum, ref.: JUD/CAS/HM/20131111_REG2469_um, Report on the steps undertaken by the Registry to advertise the indictment against Mr. Hassan Habib Merhi, 11 November 2013.

Mr. Merhi, reporting that he had not been arrested, voluntarily appeared before the Tribunal, or otherwise submitted himself to its jurisdiction.¹⁹

Service of an indictment upon an Accused person under the Tribunal's Rules and Lebanese law

11. The procedures for serving an indictment on an accused person are in Rule 76 'Service of Indictment'. Rule 76 (A) specifies that a certified copy of the indictment 'shall be formally provided to the authorities of the State in whose territory the accused resides or was last known to reside, or in whose territory or under whose jurisdiction he is believed likely to be found'. According to Rule 76 (B), 'Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment, together with the summons to appear or the arrest warrant'.
12. The information available to the Pre-Trial Judge as of August 2013 was that Mr. Merhi is a Lebanese citizen whose last known place of residence and the location of his family, were in Lebanon. Acting on this information, the Pre-Trial Judge instructed the Registrar to send the indictment and warrant of arrest to the Government of Lebanon for notification and execution. The Acting Prosecutor-General then attempted personal service of the indictment on Mr. Merhi according to the procedures specified in Chapter V of the Lebanese Code of Criminal Procedures, 'Rules governing the service of legal documents and decisions'.²⁰
13. Like Rule 76 (B), these rules also require a form of personal service, and Article 147 (6) of the Lebanese Code details the procedure for ordinary notification under Lebanese Law. The person 'serving the document shall [...] do his utmost to notify the addressee himself'. Under Article 147 (7),

If the person to be served with a document is not present at his elected place of residence or domicile, the document shall be served through a member of his family, a domestic employee or any other person living in the same dwelling provided that it may be inferred from his appearance that he is an adult. A further condition is that his interest does not conflict with that of the addressee of the document. If he refuses to state his name and relationship with the addressee or to acknowledge receipt of a copy of the document, the process server shall record his refusal and shall leave a copy of the document with him.

¹⁹ He also requested in the Order that the Registrar provide the Trial Chamber with relevant documentation. Order to Seize the Trial Chamber Pursuant to Rule 105 *bis* (A) of the Rules of Procedure and Evidence in Order to Determine Whether to Initiate Proceedings *in Absentia*, 25 November 2013, Disposition.

²⁰ Articles 147, 148 and 149.

14. Both the Tribunal's Rules and the Lebanese Code of Criminal Procedure provide for alternative means of serving indictments and warrants of arrest. Rule 76 (E) of the Tribunal's Rules provides that,

where the President establishes that reasonable attempts have been made to serve the indictment, the summons to appear or the warrant of arrest to the accused, but that they have failed, he may, after consulting the Pre-Trial Judge, order the service of process to be effected in an alternative manner, including procedures of public advertisement.

15. 'Alternative manner' is not further defined by the Tribunal's Rules. Under Lebanese law, where the personal service of an indictment is not possible in the manner specified in Article 147 of the Lebanese Code, Article 148 provides allows for notification by other means,

If the person to be served with a document has no known place of residence or domicile, or if the, process server does not find anyone who can be served with the document at his place of residence or domicile, he shall be notified through the posting of a copy of the document at the entrance to his last known place of residence; a second copy thereof shall be communicated to the local mayor [the *mukhtar*], and a third copy shall be posted at the entrance to the judicial authority that ordered the notification. These measures shall be recorded by the process server on the original copy of the document, which shall be returned to the relevant authority. If the person to be served with a document has no known last place of residence, it shall suffice for the process server to post a copy of the document at the entrance to the judicial authority that ordered the notification.

Steps taken to secure Mr. Merhi's appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge

16. Personal service of the indictment on Mr. Merhi, as required by Rule 76 (B), has thus far been unsuccessful. The measures taken to effect personal service on him are detailed below, and are documented in the Acting Prosecutor-General's reports to the Tribunal's President and Registrar. The Acting Prosecutor-General worked with the Lebanese Central Criminal Investigation Section (CCIS) in attempting to effect the personal service referred to in Rule 76.

17. The Acting Prosecutor-General first attempted notification according to the procedures of Article 147 of the Lebanese Code of Criminal Procedure. According to the information available to the

Special Tribunal's Prosecutor,²¹ Mr. Merhi's last known place of residence or domicile was in an apartment in Bourj-El-Barajneh in Dahyieh in South Beirut.²²

18. In attempting to locate Mr. Merhi for execution of the warrant of arrest and service of the indictment, the Acting Prosecutor-General obtained the following information about him from the competent Lebanese authorities:

- the Directorate General of Personal Status of the Ministry of the Interior and Municipalities has no registered death certificate relating to Mr. Merhi, meaning that he is registered as living,²³
- an 'individual personal status extract' issued by the Directorate General of Personal Status records the name of Mr. Merhi, his family name, his father's name, his mother's given and family names, his place and date of birth, his religion, his sex, his marital status, his date of birth and his registration date,²⁴
- a 'family personal status extract' issued by the Directorate General of Personal Status records the names of Mr. Merhi and his immediate family, their father's name, their mother's maiden name, their places and dates of birth, their religion, their marital status, their sex and their registration date,²⁵
- the 'electoral list (males)' of Zqaq-El-Blat municipality in Beirut, records the name of Mr Merhi for the electoral period 2013-2014,²⁶
- Vehicle Registration Service records reveal that no vehicle is registered in Mr. Merhi's name,²⁷
- the Acting General Director for Real Estate Affairs confirmed that Mr. Merhi owns real estate with real estate registry numbers:
 - 352 in Ain Qana, Nabatiyeh, and

²¹ Request for assistance from the Prosecutor of the Special Tribunal for Lebanon to the Government of Lebanon, 5 June 2012.

²² On the 7th floor of the Gardenia building in El-Abiyad road in El-Roueiss.

²³ Report of the Acting Prosecutor-General, 26 September 2013 and the attached response of the Directorate General of Personal Status, 23 September 2013.

²⁴ Report of the Acting Prosecutor-General, 26 September 2013 and the attached Individual Personal Status Extract of Mr. Merhi issued by the Directorate General of Personal Status, 23 September 2013.

²⁵ Report of the Acting Prosecutor-General, 26 September 2013 and the attached Family Personal Status Extract of Mr. Merhi issued by the Directorate General of Personal Status, 23 September 2013.

²⁶ Report of the Acting Prosecutor-General, 26 September 2013 and the attached copy of the Electoral List (Males) of Zqaq-El-Blat for the electoral period 2013-2014 issued by the Directorate General of Personal Status, 23 September 2013.

²⁷ Report of the Acting Prosecutor-General, 24 September 2013 and the attached response of the Vehicle Registration Service (Traffic, Truck and Vehicle Management Authority at the Ministry of the Interior and Municipalities), 18 September 2013.

- 2501 (section 27) in Baabda, Bourj-El-Barajneh, Beirut,²⁸
 - the Archives and Documents Bureau of the Directorate General of Internal Security Forces has no record relating to Mr. Merhi,²⁹
 - Mr. Merhi is not registered with the National Social Security Fund,³⁰
 - the Ministry of Labour has no record of Mr. Merhi applying to hire a housemaid,³¹
 - Mr. Merhi has obtained two passports: issued on 22 September 1993 and 19 October 2007,³² and
 - Mr. Merhi's official exit and entry into Lebanon records reveal that he has not officially left the country since he returned to Lebanon on 18 October 2002 from a visit to Syria.³³
19. On 12 August 2013, the Acting Prosecutor-General sent the warrant for Mr. Merhi's arrest to the head of the CCIS. The following day the CCIS circulated a wanted notice against Mr. Merhi.³⁴ In the normal course of events CCIS officers would have attempted to apprehend Mr. Merhi at his last known residence. On 15 August 2013, however, a car bomb containing around 100 kilograms of explosives was detonated in Dahyieh, Beirut. According to a CCIS report, Hezbollah then implemented a large-scale deployment of its security forces there and installed fixed barricades on all the street entrances to Dahyieh.³⁵
20. The Acting Prosecutor-General reported that CCIS officers tried to go into Dahyieh several times to look for Mr. Merhi, but that these security measures prevented them from doing so. The barricades, reported the CCIS officers, prevented them from going directly to the apartment in Dahyieh where Mr. Merhi was registered as living. CCIS officers contacted the Security Committee of Hezbollah

²⁸ Report of the Acting Prosecutor-General, 24 September 2013; the attached response of the Acting General Director for Real Estate Affairs, 18 September 2013; and the attached Information Card on Real Estate Ownership issued by the General Directorate for Real Estate Affairs, 18 September 2013.

²⁹ Report of the Acting Prosecutor-General, 24 September 2013 and the attached response of the Head of the Archives and Documents Bureau, 18 September 2013.

³⁰ Report of the Acting Prosecutor-General, 24 September 2013 and the attached response of the Directorate of statistics and Work Methods of the National Social Security Fund, 19 September 2013.

³¹ CCIS record, No. 1455/302, 18 September 2013, attached to the report of the Acting Prosecutor-General of 24 September 2013.

³² Report of the Acting Prosecutor-General, 4 October 2013; the attached response of the Director-General of General Security, 4 October 2013; and the attached copy of the passport application.

³³ Report of the Acting Prosecutor-General, 4 October 2013; the attached response of the Director-General of General Security, 4 October 2013; and the Entry/Exit Record issued by the Directorate-General of General Security.

³⁴ CCIS record, No. 1249/302, 13 August 2013, attached to the report of the Acting Prosecutor-General of 6 September 2013.

³⁵ CCIS record, No. 1249/302, 13 August 2013, attached to the report of the Acting Prosecutor-General of 6 September 2013.

to negotiate access but after several calls were told that because of these security measures they could not carry out any tasks related to Mr. Merhi in Dahyieh or in Ain Qana, South Lebanon.³⁶

21. The information available to the Trial Chamber, from the reports of the Acting Prosecutor-General, is that these security measures in Dahyieh, prevented the CCIS from entering the suburb to attempt to find Mr. Merhi at his last known residence in Dahyieh, until 6 December 2013.³⁷ When they entered the area on 6 December 2013 their information was that Mr. Merhi was not in the apartment.³⁸ They returned and continued the searches and inquiries on 10 December 2013, but these operations proved unsuccessful.³⁹ CCIS officers also travelled to Ain Qana, South Lebanon, on 7 December 2013 and 15 December 2015, but were informed that Mr. Merhi was not in his home village and was not living there.⁴⁰

Service by alternative methods – under Lebanese law

22. Reacting to the Acting Prosecutor-General's report of 6 September 2013,⁴¹ the President of the Tribunal found, on 10 October 2013, that he was satisfied that 'reasonable attempts have been made by the Tribunal and the Lebanese authorities to serve the indictment and arrest warrant on the Accused.' The President ordered service of the indictment by alternative methods.

23. After the failure of the personal notification required under Rule 76, and Article 147 of the Lebanese Code of Criminal Procedure, as evidenced by the unsuccessful efforts to go directly to Mr. Merhi's last known residence at the apartment in Dahyieh, the Acting Prosecutor-General moved to Article 148 of the Lebanese Code. This allows service of an indictment on a person with no known place of domicile to be effected by (i) posting of a copy of the document at the entrance to the person's last known place of residence; (ii) communicating a copy to the *mukhtar*; and, (iii) posting a copy at the entrance of the issuing judicial authority.

³⁶ CCIS record, No. 1249/302, 13 August 2013, attached to the report of the Lebanese Acting Prosecutor-General of 6 September 2013.

³⁷ CCIS record, No. 1249/302, 13 August 2013 (reviewed on 6 September 2013), attached to the report of the Lebanese Acting Prosecutor-General of 6 September 2013; CCIS Record, No. 1663/302, 28 October 2013 (reviewed on 6 November 2013), attached to the report of the Acting Prosecutor-General of 6 November 2013; and CCIS Record No. 1800/302, 10 December 2013, attached to the PG report of 16 December 2013.

³⁸ Report of the Acting Prosecutor-General of 18 December 2013.

³⁹ Report of the Acting Prosecutor-General of 18 December 2013.

⁴⁰ Report of the Acting Prosecutor-General of 18 December 2013.

⁴¹ Report dated 6 September 2013 from Judge Samir Hammoud, Acting Public Prosecutor at the Court of Cassation, addressed to Daryl Mundis, Registrar of the Special Tribunal for Lebanon (reference No.:100/I.T./2013), Confidential and *Ex Parte* Annex A to the Order Pursuant to Rule 76(E).

24. The Acting Prosecutor-General instructed the CCIS to summon the *mukhtars* of his four possible residential addresses, in Bourj-El-Barajneh, Haret-Hreik, Zqaq-El-Blat in Beirut and of the village of Ain Qana in South Lebanon. The CCIS summoned the four *mukhtars*. None, however, attended on the day scheduled for the interview.⁴²
25. Copies of the indictment and the warrant for Mr. Merhi's arrest were also affixed to the entrance of the Special Tribunal's Beirut office in Monteverde, Beirut. The Acting Prosecutor-General also instructed the CCIS to monitor a 24 hour call number 70/243110 to receive any information about Mr. Merhi.
26. The Acting Prosecutor-General also instructed the CCIS to affix copies of the indictment and warrant of arrest at Mr. Merhi's last known place of residence, to record their actions, and to photograph each act of service. Further to the Acting Prosecutor-General's request and to execute their task, CCIS officers had several meetings with the Central Security Committee of Hezbollah.
27. On 5 November 2013, the CCIS met again with a Hezbollah official, in his office at the Hezbollah Central Security Committee in Beirut. According to the CCIS report, the official checked with the Head of the Committee, and then prevented the CCIS officers from going to Mr. Merhi's addresses to execute the request for serving the documents by affixing them to his apartment and photographing the process. The CCIS officers reported that the Hezbollah official told them that they could not go there because Mr. Merhi's family was very upset that his name had been circulated in the media as an accused in the case of the assassination of Prime Minister Rafik Hariri and his companions.⁴³ The CCIS officers reported that they regarded this as a 'pretext' to prevent their entry to Dahyieh.
28. Noting the failure of the Acting Prosecutor-General to provide the *mukhtars* with the indictment and the warrant of arrest against Mr. Merhi, on 17 December 2013, the Registrar sent these documents by registered mail via Liban Post to the *mukhtars* of Bourj-El-Barajneh, Haret-Hreik, Zqaq-El-Blat and the village of Ain Qana in South Lebanon. On 20 December 2013 the Registrar informed the Trial Chamber that: i) the *mukhtars* of Haret-Hreik and Ain Qana had received the registered mail on 18 December 2013, ii) the delivery of the letter to the *mukhtar* of Zqaq El Blat was attempted twice, without success, following which a notice was left at his address, and iii) as of

⁴² CCIS record, No. 1455/302, 18 September 2013, attached to the report of the Acting Prosecutor-General of 24 September 2013.

⁴³ CCIS record, No. 1602/302, 18 October 2013, attached to the report of the Acting Prosecutor-General of 6 November 2013.

20 December 2013 delivery of the letter to the *mukhtar* of Bourj-El-Barajneh had been unsuccessful.⁴⁴

Alternative methods of service – Rule 76

29. On 10 October 2013, the President of the Tribunal, for the purpose of Rule 76 (E), comprehensively reviewed the attempts by the Lebanese authorities to serve the indictment and associated material on Mr. Merhi and to execute the arrest warrant. He concluded that they had been reasonable.⁴⁵ Noting the unsuccessful attempts to personally serve Mr. Merhi, he ordered that the service of process be effected in an alternative manner, including by public advertisement. He requested the Registrar to take all reasonable steps to transmit a form of advertisement to the authorities of Lebanon, in particular to the Acting Prosecutor-General, to take all reasonable steps to notify the public of the existence of the indictment and to call upon Mr. Merhi to surrender to the Tribunal, or in any case to submit to its jurisdiction in accordance, among other things, with the relevant Lebanese procedures.

30. Rule 76 *bis* provides that the advertisement shall be ‘for publication in newspapers and/or for broadcast via radio, television and/or other media, including the internet’. The President also requested the Registrar to consider other means of disseminating the indictment in Lebanon, if appropriate, and in other countries, and of calling upon Mr. Merhi to submit to the Tribunal’s jurisdiction.⁴⁶ The Special Tribunal has a Twitter account – which as of 20 December 2013 has 12,011 followers – a Facebook account and a Scribd feed.⁴⁷

31. On the same date, at the Prosecution’s request,⁴⁸ the Pre-Trial Judge partially lifted the confidentiality of the indictment.⁴⁹ As a result, the Special Tribunal’s media office also published two media releases, one on the Rule 76 order and a second on the lifting of confidentiality of the indictment.⁵⁰

⁴⁴ Email from the Registrar to the Trial Chamber Legal Officers, 20 December 2013.

⁴⁵ Order Pursuant to Rule 76(E), 10 October 2013.

⁴⁶ STL-13-04/I/PRES, Order pursuant to Rule 76(E), 10 October 2013, Disposition.

⁴⁷ www.scribd.com/STLebanon.

⁴⁸ STL-13-04/PT/PTJ (*sic*), Prosecution Request for Partially Lifting the Confidentiality of the Indictment, Confidential and *Ex Parte* with Confidential and *Ex Parte* Annex A, 4 October 2013.

⁴⁹ STL-13-04/I/PTJ, Order on Partially Lifting the Confidentiality of the Indictment against Mr. Hassan Habib Merhi, 10 October 2013.

⁵⁰ ‘STL Indicts Hassan Habib Merhi in 14 February 2005 Beirut attack’, <http://www.stl-tsl.org/en/media/press-releases/10-10-2013-stl-indicts-hassan-habib-merhi-in-14-february-2005-beirut-attack> and ‘Prosecutor Farrell welcomes the Pre-Trial Judge’s Decisions Confirming the Indictment against Hassan Habib Merhi and Lifting confidentiality’, <http://www.stl->

32. On 11 October 2013, the Tribunal issued an advertisement of the indictment in the form of a poster (see below) in a media release. This was also affixed to the judicial notice board at the entrance to the Criminal Court of Cassation in Beirut.⁵¹ The Tribunal's press office posted these announcements on Facebook and sent three tweets in English that included links to the Arabic version of the poster. The Acting Prosecutor-General advertised the notice in five newspapers: *L'Orient Le Jour*,⁵² *As-Safir*,⁵³ *Al-Mustaqbal*,⁵⁴ The Daily Star,⁵⁵ and *An Nahar*.⁵⁶
33. This was on the same day that the Registrar sent the warrant of arrest poster to the Acting Prosecutor-General for further dissemination. This poster advertisement was headed,

WARRANT OF ARREST ISSUED BY THE SPECIAL TRIBUNAL FOR LEBANON

It contained two photographs of Mr. Merhi, and included the name, picture, biographical information and charges against Mr. Merhi. At the bottom was written,

IF YOU HAVE ANY INFORMATION CONCERNING THIS INDIVIDUAL, PLEASE CONTACT.

Underneath were three boxes containing a dedicated telephone number for the Tribunal in the Netherlands and its Field Office in Beirut.⁵⁷

tsl.org/en/media/press-releases/10-10-2013-prosecutor-farrell-welcomes-the-pre-trial-judges-decisions-confirming-the-indictment-against-hassan-habib-merhi-and-lifting-confidentiality.

⁵¹ CCIS record, No. 1602/302, 18 October 2013, attached to the report of the Acting Prosecutor-General of 6 November 2013.

⁵² 'Le Liban sollicité par le TSL pour la publication de l'affiche publique de Hassan Merhi', 12 October 2013 and 'Le TSL demande aux autorités libanaises de publier des affiches sur lesquelles figure Hassan Merhi', 14 October 2013.

⁵³ 'The International tribunal confirms the indictment of Merhi' (Unofficial translation), 11 October 2013.

⁵⁴ 'Fifth Hezbollah member accused of Hariri's assassination' (Unofficial translation), 11 October 2013.

⁵⁵ 'STL publishes posters of fifth Hezbollah suspect', 11 October 2013.

⁵⁶ *An Nahar*, 12 October 2013.

⁵⁷ 'Media advisory - STL requests that the Lebanese authorities take further steps to advertise new accused', <http://www.stl-tsl.org/en/media/press-releases/11-10-2013-stl-requests-that-the-lebanese-authorities-take-further-steps-to-advertise-new-accused>.

 <p>WARRANT OF ARREST ISSUED BY THE SPECIAL TRIBUNAL FOR LEBANON</p>  <p>HASSAN HABIB MERHI</p> <p>FATHER'S / MOTHER'S NAME: Habib MERHI / Latifa ABBAS DATE AND PLACE OF BIRTH: 12 December 1965, Beirut, Lebanon</p> <p>CHARGES Conspiracy aimed at committing a terrorist act, as a co-perpetrator; and being an accomplice to the felony of committing a terrorist act by means of an explosive device; being an accomplice to the felony of intentional homicide (of Rafik HARIRI) with premeditation by using explosive materials; being an accomplice to the felony of intentional homicide (of 21 persons in addition to the intentional homicide of Rafik HARIRI) with premeditation by using explosive materials; and being an accomplice to the felony of attempted intentional homicide (of 226 persons in addition to the intentional homicide of Rafik HARIRI) with premeditation by using explosive materials.</p> <p>IF YOU HAVE ANY INFORMATION CONCERNING THIS INDIVIDUAL, PLEASE CONTACT:</p> <table border="1"> <tr> <td>Lebanese Authorities</td> <td>Special Tribunal for Lebanon (in Lebanon)</td> <td>Special Tribunal for Lebanon (in The Netherlands)</td> </tr> <tr> <td></td> <td>+963 71 896176 (24hrs)</td> <td>+31 (0) 70 800 3410 (24hrs)</td> </tr> </table> <p>UPDATED AS OF: 10 October 2013</p>	Lebanese Authorities	Special Tribunal for Lebanon (in Lebanon)	Special Tribunal for Lebanon (in The Netherlands)		+963 71 896176 (24hrs)	+31 (0) 70 800 3410 (24hrs)	 <p>مذكرة توقيف صادرة عن المحكمة الخاصة بلبنان</p>  <p>حسن حبيب مرعي</p> <p>اسم الأب وشهرته / اسم الأم وشهرتها: حبيب مرعي / لطيفة عباس تاريخ ومحل الولادة: 12 كانون الأول/ديسمبر 1965، بيروت، لبنان</p> <p>التهم الإشتراك في مؤامرة هدفها ارتكاب عمل إرهابي؛ والتدخل في جريمة ارتكاب عمل إرهابي بواسطة أداة متفجرة؛ والتدخل في جريمة قتل (رفيق الحريري) عمداً بواسطة مواد متفجرة؛ والتدخل في جريمة قتل (21 شخصاً) عمداً (إضافة إلى رفيق الحريري) بواسطة مواد متفجرة؛ والتدخل في جريمة محاولة قتل (226 شخصاً) عمداً (إضافة إلى رفيق الحريري) بواسطة مواد متفجرة.</p> <p>إذا كنتم تملكون أي معلومات عن هذا الشخص، يرجى مكنم الاتصال بـ:</p> <table border="1"> <tr> <td>المحكمة الخاصة بلبنان (في لبنان)</td> <td>المحكمة الخاصة بلبنان (في هولندا)</td> <td>سلطات محلية</td> </tr> <tr> <td>رقم الهاتف: +963 71 896176 (24 ساعة)</td> <td>رقم الهاتف: +31 (0) 70 800 3410 (24 ساعة)</td> <td></td> </tr> </table> <p>تم تحديث المعلومات في 10 تشرين الأول 2013</p>	المحكمة الخاصة بلبنان (في لبنان)	المحكمة الخاصة بلبنان (في هولندا)	سلطات محلية	رقم الهاتف: +963 71 896176 (24 ساعة)	رقم الهاتف: +31 (0) 70 800 3410 (24 ساعة)		 <p>MANDAT D'ARRÊT DÉLIVRÉ PAR LE TRIBUNAL SPÉCIAL POUR LE LIBAN</p>  <p>HASSAN HABIB MERHI</p> <p>NOM DU PÈRE / DE LA MÈRE : Habib MERHI / Latifa ABBAS DATE ET LIEU DE NAISSANCE : 12 décembre 1965, Beyrouth, Liban</p> <p>ACCUSATIONS Complot en vue de commettre un acte de terrorisme, en qualité de coauteur ; Complicité de perpétration d'un acte de terrorisme au moyen d'un engin explosif ; Complicité d'homicide intentionnel (de Rafik HARIRI) avec préméditation au moyen de matières explosives ; Complicité d'homicide intentionnel (de 21 personnes, en sus de l'homicide intentionnel de Rafik HARIRI) avec préméditation au moyen de matières explosives ; et Complicité de tentative d'homicide intentionnel (de 226 personnes, en sus de l'homicide intentionnel de Rafik HARIRI) avec préméditation au moyen de matières explosives.</p> <p>SI VOUS AVEZ DES INFORMATIONS SUR CET INDIVIDU, VEUILLEZ CONTACTER :</p> <table border="1"> <tr> <td>Les autorités libanaises</td> <td>Le Tribunal spécial pour le Liban (au Liban)</td> <td>Le Tribunal spécial pour le Liban (aux Pays-Bas)</td> </tr> <tr> <td></td> <td>+963 71 896176 (24h/24)</td> <td>+31 (0) 70 800 3410 (24h/24)</td> </tr> </table> <p>MET A JOUR : 10 octobre 2013</p>	Les autorités libanaises	Le Tribunal spécial pour le Liban (au Liban)	Le Tribunal spécial pour le Liban (aux Pays-Bas)		+963 71 896176 (24h/24)	+31 (0) 70 800 3410 (24h/24)
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34. This media release was covered by several media sources. The poster was published in full in Lebanese newspapers, including *L'Orient Le Jour*⁵⁸ and *An Nahar*.⁵⁹ NOW Lebanon Media,⁶⁰ Naharnet,⁶¹ The Daily Star,⁶² *Aliwaa*,⁶³ *Al-Mustaqbal*,⁶⁴ *As-Safir*⁶⁵ and *Al-Wasat*⁶⁶ (a Bahraini newspaper) published either those parts of the poster that included Mr. Merhi's photograph, or his photograph.

Publicising and publishing Mr. Merhi's identity in connection with the indictment

35. The Special Tribunal's media office issued two media releases on 10 October 2013 headed 'STL Indicts Hassan Habib Merhi in 14 February 2005 Beirut attack'⁶⁷ and 'Prosecutor Farrell welcomes the Pre-Trial Judge's Decisions Confirming the Indictment against Hassan Habib Merhi and Lifting

⁵⁸ 'Le Liban sollicité par le TSL pour la publication de l'affiche publique de Hassan Merhi', 12 October 2013 and 'Le TSL demande aux autorités libanaises de publier des affiches sur lesquelles figure Hassan Merhi', 14 October 2013.

⁵⁹ *An Nahar*, 12 October 2013.

⁶⁰ 'STL publicizes arrest warrant against Merhi' (Unofficial translation), 14 October 2013.

⁶¹ 'STL Indicts Fifth 'Hizbullah Supporter' in Hariri Assassination', 10 October 2013 and 'STL Asks Lebanese Authorities to Publish Merhi's Posters in the Media', 11 October 2013.

⁶² 'STL publishes posters of fifth Hezbollah suspect', 11 October 2013.

⁶³ 'The Tribunal indicts a fifth accused in the assassination of Hariri' (Unofficial translation), 11 October 2013.

⁶⁴ 'Fifth Hezbollah member accused of Hariri's assassination' (Unofficial translation), 11 October 2013.

⁶⁵ 'The International tribunal confirms the indictment of Merhi' (Unofficial translation), 11 October 2013.

⁶⁶ 'The Special Tribunal for Lebanon asks the Lebanese authorities to take further measures to announce a new accused in the case of the assassination of Hariri' (Unofficial translation), 14 October 2013.

⁶⁷ 'STL Indicts Hassan Habib Merhi in 14 February 2005 Beirut attack', <http://www.stl-tsl.org/en/media/press-releases/10-10-2013-stl-indicts-hassan-habib-merhi-in-14-february-2005-beirut-attack>.

confidentiality’,⁶⁸ announcing that ‘The Pre-Trial Judge of the Special Tribunal for Lebanon has confirmed an indictment against Hassan Habib Merhi who is accused of being involved in the 14 February 2005 Beirut attack’. The Tribunal’s press office posted these announcements on Facebook and sent eight tweets including links to the two announcements in English.

36. All of the main Lebanese media reported this including *Al-Akhbar*,⁶⁹ *As-Safir*,⁷⁰ *An Nahar*,⁷¹ *Al-Mustaqbal*,⁷² *Al Liwa*,⁷³ The Daily Star,⁷⁴ *L’Orient Le Jour*,⁷⁵ *Al-Hayat*,⁷⁶ *Ad-Diyar*,⁷⁷ National News Agency (NNA),⁷⁸ *Al-Joumhouria*,⁷⁹ NOW Lebanon Media,⁸⁰ and *Naharnet*.⁸¹ The content of the press release was also broadcast the same day on LBC TV,⁸² MTV,⁸³ *Télé Liban*,⁸⁴ OTV,⁸⁵ Future TV,⁸⁶ and *Al Jadeed*.⁸⁷ The information was also disseminated on 10 October 2013 by pan-

⁶⁸ ‘Prosecutor Farrell welcomes the Pre-Trial Judge’s Decisions Confirming the Indictment against Hassan Habib Merhi and Lifting confidentiality’, <http://www.stl-tsl.org/en/media/press-releases/10-10-2013-prosecutor-farrell-welcomes-the-pre-trial-judges-decisions-confirming-the-indictment-against-hassan-habib-merhi-and-lifting-confidentiality>.

⁶⁹ ‘The tribunal lifts confidentiality of a ‘public’ indictment: a fifth accused in the assassination of Hariri’ (Unofficial translation), 11 October 2013.

⁷⁰ ‘The international tribunal confirms the indictment against Merhi’ (Unofficial translation), 11 October 2013, and ‘A new warrant of arrest from the International tribunal against Merhi’ (Unofficial translation), 15 October 2013.

⁷¹ ‘The international tribunal uncovers the accused of forging ‘Abu Adas’’ (Unofficial translation), 11 October 2013; ‘The tribunal adds a new accused to the four others Farrell: Prosecution is working to present reliable and credible evidence’ (Unofficial translation), 11 October 2013 and ‘International warrant of arrest against Merhi’ (Unofficial translation), 15 October 2013.

⁷² ‘Fifth Hezbollah member accused of Hariri’s assassination’ (Unofficial translation), 11 October 2013.

⁷³ ‘The Tribunal indicts a fifth accused in the assassination of Hariri’ (Unofficial translation), in other two pages it published the complete Arabic version of the redacted public indictment under the title of ‘The indictment against the fifth accused Hassan Habib Merhi in assassination Hariri’ (Unofficial translation), 11 October 2013 and ‘A new Arrest Warrant against Hassan Merhi in the case of assassination of Hariri’ (Unofficial translation), 15 October 2013.

⁷⁴ ‘STL names Hezbollah ‘supporter’ as fifth suspect’, 11 October 2013 and ‘Lawyers for latest STL suspect ask for trial suspension’, 14 October 2013.

⁷⁵ ‘TSL: un cinquième suspect inculqué dans le procès Hariri’, 11 October 2013 and ‘Malvoyance’ (editorial), 13 October 2013.

⁷⁶ ‘A fifth accused in the assassination of Hariri’ (Unofficial translation), 11 October 2013.

⁷⁷ ‘The International Tribunal issues a warrant of arrest against Hassan Merhi and accuses him of (forging) Abu Adas ‘tape’ (Unofficial translation), 11 October 2013, and ‘The International Tribunal: A new warrant of arrest against Merhi who was involved in 14 February attack’ (Unofficial translation), 15 October 2015.

⁷⁸ ‘STL requests Lebanese authorities take further steps to advertise new accused’, 11 October 2013, and ‘TSL: Mandat d’arrêt émis à l’encontre de Hassan Habib Merhi’, 14 October 2013.

⁷⁹ ‘The International Tribunal adds a fifth accused’ (Unofficial translation), 11 October 2013; ‘STL issues arrest warrant against Hassan Habib Mehri’ (Unofficial translation), 14 October 2013, and ‘International warrant of arrest against the fifth accused’ (Unofficial translation), 15 October 2015.

⁸⁰ ‘Who is Hassan Merhi?’, 10 October 2013; ‘STL indicts new suspect in Hariri slaying’, 10 October 2013, and ‘STL publicizes arrest warrant against Merhi’, 14 October 2013.

⁸¹ ‘STL Indicts Fifth ‘Hizbullah Supporter’ in Hariri Assassination’, 10 October 2013.

⁸² ‘REPORT: Lebanon tribunal publishes arrest warrant for new suspect in 2005 Hariri killing’, 10 October 2013.

⁸³ ‘Hassan Habib Merhi, the fifth indicted in Hariri’s assassination’, 10 October 2013, and ‘What Role Did the Fifth Indicted Suspect Play in Hariri Assassination?’, 11 October 2013.

⁸⁴ *Télé Liban*, 10 October 2013.

⁸⁵ OTV, 10 October 2013.

⁸⁶ Future TV, 10 October 2013.

⁸⁷ *Al Jadeed*, 10 October 2013.

Arabic media including *Al-Hayat*,⁸⁸ *Al-Arabiya*,⁸⁹ Kuwait News Agency (KUNA),⁹⁰ and *Al-Rai*,⁹¹ and on 11 October 2013 by *Al-Jazeera*,⁹² and *Asharq Al-Awsat*.⁹³ International media also covered the media releases.⁹⁴

37. Between 10 and 30 October 2013, the Special Tribunal's spokesperson conducted interviews in Arabic and English with print, electronic and broadcast media including the Daily Star in Lebanon,⁹⁵ the pan-Arabic media outlet *Al Hayat*,⁹⁶ and international media including The New York Times.⁹⁷ Mr. Merhi's name and his alleged connection with the attack of 14 February 2005 were specified in each interview. The interviews were also covered by the media agencies AFP,⁹⁸ Associated Press,⁹⁹ and Reuters¹⁰⁰ the content of which is published worldwide by many different news outlets. The spokesperson was also interviewed on 13 October 2013 on *Ousbou Bi Saa*, a popular current affairs program on Lebanese *Al Jadeed* TV, during which Mr. Merhi's full name and the indictment alleging his participation in the 14 February 2005 attack were outlined.
38. On 28 October 2013, the Tribunal issued a 'Judicial Brief' summarising judicial developments at the Tribunal. This brief was distributed in Arabic, French and English to the media, diplomatic community and the general public, and included a large section about the indictment against

⁸⁸ 'A fifth accused in the assassination of Hariri' (Unofficial translation), 10 October 2013.

⁸⁹ 'U.N.-backed Hariri tribunal indicts fifth suspect' (Unofficial translation), 10 October 2013.

⁹⁰ 'Lebanon Tribunal indicts Hassan Habib Merhi over 2005 Beirut attack', 10 October 2013.

⁹¹ 'The Special Tribunal for Lebanon announces an indictment against a fifth member of Hezbollah involved in the killing of Hariri' (Unofficial translation), 10 October 2013.

⁹² 'Tribunal indicts new suspect in Hariri murder', 11 October 2013 (Al-Jazeera English).

⁹³ 'The International tribunal issues a warrant of arrest against a fifth accused from Hezbollah in the assassination of Hariri' (Unofficial translation), 10 October 2013.

⁹⁴ The New York Times ('Fifth Suspect Is Indicted in 2005 Killing of Ex-Lebanese Premier', 10 October 2013); AP (Tribunal Indicts 5th Suspect in Hariri Slaying', 10 October 2013); Reuters ('Lebanon tribunal names new suspect in 2005 Hariri killing', 10 October 2013, and 'Nouveau suspect dans le procès du meurtre de Rafic Hariri', 10 October 2013); AFP ('UN-backed Hariri tribunal indicts fifth suspect', 10 October 2013); BBC ('Lebanon Hariri: Fifth suspect indicted for murder', 10 October 2013); UPI ('Fifth suspect named in Hariri assassination', 10 October 2013); RTT ('Arrest Warrant Issued For Fifth Suspect In Lebanese PM Hariri's Assassination', 10 October 2013); Washington Post ('UN-backed court indicts 5th suspect in 2005 slaying of former Lebanese prime minister Hariri', 10 October 2013); *Le Monde* ('Un cinquième suspect inculpé pour l'assassinat de Rafic Hariri', 10 October 2013); *Deutsche Welle* ('Special Lebanon tribunal indicts fifth suspect in Hariri assassination', 10 October 2013); *Le Nouvel Observateur* ('Nouveau suspect dans le procès du meurtre de Rafic Hariri', 10 October 2013); *France 24* ('Un cinquième membre du Hezbollah suspecté du meurtre de Rafic Hariri', 10 October 2013); and *La Presse* ('Liban: un cinquième suspect inculpé dans le procès Hariri', 10 October 2013).

⁹⁵ 'STL names Hezbollah 'supporter' as fifth suspect', 10 October 2013.

⁹⁶ 'The Special Tribunal for Lebanon issues a warrant of arrest against a fifth accused in the assassination of Hariri' (Unofficial translation), 10 October 2013.

⁹⁷ 'Fifth Suspect Is Indicted in 2005 Killing of Ex-Lebanese Premier', 10 October 2013.

⁹⁸ 'UN-backed Hariri tribunal indicts fifth suspect', 13 October 2013.

⁹⁹ 'Tribunal Indicts 5th Suspect in Hariri Slaying', 10 October 2013.

¹⁰⁰ 'Lebanon tribunal names new suspect in 2005 Hariri killing', 10 October 2013.

Mr. Merhi including his photograph, biographical information and charges against him. It is also on the Special Tribunal's website.¹⁰¹

Broadcasting of an audio recording of the charges

39. On the 14 October 2013, the Special Tribunal issued a media release entitled 'A public service announcement by the Special Tribunal for Lebanon', which included a link to an audio recording of the charges against Mr. Merhi in Arabic, French and English.¹⁰² This public service announcement, which was intended for radio broadcast, further specified that it was 'part of a public advertisement campaign to inform the accused of his rights and to also invite the public to submit any information on the whereabouts of the accused to the Lebanese authorities.' The recording also invited Mr. Merhi to participate in the proceedings, as, 'by participating, the accused can fully defend themselves against the charges and evidence presented against them.' The Tribunal's press office posted this on Facebook and sent three tweets in English linked to the radio announcement in Arabic and English.

40. This radio message was covered by media including: NNA,¹⁰³ *Naharnet*,¹⁰⁴ Lebanese Broadcasting Corporation International (LBCI),¹⁰⁵ *An Nahar*,¹⁰⁶ *Al Jadeed*,¹⁰⁷ *Al-Mustaqbal*,¹⁰⁸ *Al Kalima* online,¹⁰⁹ *Sada el Balad*,¹¹⁰ and The Tower¹¹¹ on 14 October 2013, and, on 15 October 2015, by the Daily Star,¹¹² *L'Orient Le Jour*,¹¹³ and *As-Safir*.¹¹⁴

¹⁰¹ <https://www.stl-tsl.org/en/media/judicial-brief>.

¹⁰² 'A public service announcement by the Special Tribunal for Lebanon', <http://www.stl-tsl.org/en/media/press-releases/14-10-2013-a-public-service-announcement-by-the-special-tribunal-for-lebanon>.

¹⁰³ 'STL makes public service announcement concerning accused Hassan Merhi', 14 October 2013.

¹⁰⁴ 'STL Issues Public Arrest Warrant against Fifth Suspect in Hariri Assassination', 14 October 2013.

¹⁰⁵ 'STL issues new arrest warrant against Hassan Habib Merhi', 14 October 2013.

¹⁰⁶ 'The International Tribunal reveals the accused of 'Abu Adas fabrication'' (Unofficial translation), 14 October 2013.

¹⁰⁷ *Al Jadeed*, 14 October 2013.

¹⁰⁸ 'The International Tribunal issues a new warrant of arrest against Hassan Habib Merhi' (Unofficial translation), 14 October 2013.

¹⁰⁹ 'The International Tribunal issues a warrant of arrest against Hassan Habib Merhi in the case of the assassination of Hariri' (Unofficial translation), 14 October 2013.

¹¹⁰ 'The International Tribunal issues a warrant of arrest against a potential member of Hezbollah in the assassination of Hariri' (Unofficial translation), 14 October 2013.

¹¹¹ 'Amid Growing Criticism of Hezbollah-Driven Destabilization, Prosecutors Issue Fifth Assassination Indictment', 14 October 2013.

¹¹² 'STL urges Hezbollah suspect to participate in trial proceedings', 15 October 2013.

¹¹³ 'Annonce publique du TSL pour informer l'accusé Merhi de ses droits', 15 October 2013.

¹¹⁴ 'A new warrant of arrest by the International tribunal against Merhi' (Unofficial translation), 15 October 2013.

Publicising the President of the Tribunal's public statement of 21 October 2013

41. On 21 October 2013, the Tribunal published a statement by its President calling on Mr. Merhi to surrender himself to the custody of the Special Tribunal.¹¹⁵ The Tribunal's press office also posted the statement on Facebook and sent 14 tweets in Arabic and English linking to the statement in both Arabic and English. The statement read in part,

The Special Tribunal for Lebanon has announced the confirmation of an indictment accusing Hassan Habib Merhi of involvement in the 14 February 2005 Beirut attack for which four other accused are to be tried *in absentia*; that trial has a tentative start date (13 January 2014).

The Lebanese authorities have so far been unable to locate Mr Merhi. I have therefore ordered the service of the indictment in alternative modes, which include public advertisement. If, following such procedures, Mr Merhi has not been brought under the Tribunal's authority, the Trial Chamber will be asked to decide whether to initiate proceedings against him in absentia.

I address both Mr Merhi and also the people of Lebanon. As to Mr Merhi, I invite you to consider whether you are prepared to face the Special Tribunal with the help both of the Defence Office headed by Maître François Roux and of the counsel he would assist you to obtain if that is your wish.

42. This statement was covered in the Lebanese media on 21 October 2013 by: *An Nahar*,¹¹⁶ NNA,¹¹⁷ Naharnet,¹¹⁸ KUNA,¹¹⁹ Now Lebanon Media,¹²⁰ Lebanon Files,¹²¹ *Al-Watan Al-Arabi*,¹²² and United Press International (UPI).¹²³ The next day it was reported by The Daily Star,¹²⁴ *L'Orient Le Jour*,¹²⁵ *As-Safir*,¹²⁶ *Al-Mustaqbal*,¹²⁷ *Al-Joumhouria*,¹²⁸ *Al-khabar*,¹²⁹ and *Al-wafed*.¹³⁰

¹¹⁵ 'Statement of Judge Baragwanath, President of the Special Tribunal of Lebanon', <http://www.stl-tsl.org/en/media/press-releases/21-10-2013-statement-of-judge-baragwanath-president-of-the-special-tribunal-of-lebanon>.

¹¹⁶ 'The Special Tribunal for Lebanon confirms the indictment against Merhi' (Unofficial translation), 21 October 2013.

¹¹⁷ 'Le TSL annonce la confirmation d'un acte d'accusation à l'encontre de Hassan Merhi', 21 October 2013.

¹¹⁸ 'STL: Fifth Suspect in Hariri Assassination May Be Tried in Absentia if He is Not Found', 21 October 2013.

¹¹⁹ 'Lebanon Tribunal invites new accused in Hariri case to appear before court', 21 October 2013.

¹²⁰ 'The Special Tribunal for Lebanon confirms the indictment against Hassan Merhi', 21 October 2013.

¹²¹ 'The President of the Special Tribunal for Lebanon: We do not intervene in Lebanon's politics and I ask the Lebanese to assist us' (Unofficial translation), 21 October 2013.

¹²² '“Hariri Tribunal” indicts a fifth (member) of “Hezbollah”' (Unofficial translation), 21 October 2013.

¹²³ 'Tribunal needs help with 5th Hariri suspect', 21 October 2013.

¹²⁴ 'STL president calls on fifth suspect to face justice', 22 October 2013.

¹²⁵ 'Baragwanath envisage le procès par défaut pour le cinquième accusé dans l'affaire Hariri', 22 October 2013.

¹²⁶ 'The International tribunal invites Merhi to appear before it' (Unofficial translation), 22 October 2013.

¹²⁷ 'The Tribunal confirms the accusation of Merhi's involvement in the assassination of Hariri' (Unofficial translation), 22 October 2013.

¹²⁸ 'STL: Baragwanath's statement is not considered to be a new indictment' (Unofficial translation), 22 October 2013.

¹²⁹ 'The case of Hariri is to be considered on 13 January' (Unofficial translation), 22 October 2013.

¹³⁰ 'The International tribunal considers the case of Hariri on 13 January' (Unofficial translation), 22 October 2013.

43. On 13 December 2013, the Tribunal's web-site published a further appeal to Mr. Merhi from the President of the Special Tribunal. It read,

Seven weeks ago, on 21 October 2013, I invited you to consider whether you are prepared to face the Special Tribunal for Lebanon to answer the charges in the indictment. These are very serious charges, including acts of terrorism and murder. I urge you to get legal advice and appoint a lawyer to represent you before the Tribunal. As an alternative to appearing in person in the Netherlands, you may have the right to participate in hearings by video-conference.

44. This further appeal was covered by media including: *Naharnet*,¹³¹ *El-Nashra*,¹³² *Al-Mustaqbal*,¹³³ *Al-Dostoor*,¹³⁴ MTV,¹³⁵ *Al Yawm Al-Sabeh*,¹³⁶ *Al Jareeda*,¹³⁷ Tayyar.org,¹³⁸ KUNA,¹³⁹ NNA,¹⁴⁰ and *L'Orient Le Jour*.¹⁴¹

Publicity and media coverage of the indictment in the *Ayyash* case

45. The *Ayyash* indictment is in substance the same as that against Mr. Merhi, containing charges arising out the same factual allegations relating to the same events of 14 February 2005. Mr. Merhi is a co-accused of the four Accused in the *Ayyash* case and the Merhi indictment makes it evident that he is the person referred to as 'S3/S15' in the amended *Ayyash* indictment. The main procedural difference is that Mr. Merhi was indicted two years after the four co-Accused.

46. The Trial Chamber issued its decision to proceed to trial *in absentia* against Mr. Ayyash, Mr. Badreddine, Mr. Oneissi and Mr. Sabra on 1 February 2012. But before deciding to proceed to trial *in absentia*, the Trial Chamber studied the extensive media publicity given to the possible

¹³¹ 'STL President Again Urges Merhi to Appear before Court, Appoint Lawyer', 14 December 2013.

¹³² 'Baragwanath by a letter to Merhi: to get a legal advice and appoint a lawyer to represent you' (Unofficial translation), 13 December 2013.

¹³³ 'Baragwanath invites the accused Merhi to appoint a lawyer' (Unofficial translation), 14 December 2013.

¹³⁴ 'The International Tribunal invites an accused of the assassination of Hariri to appear via video conference' (Unofficial translation), 13 December 2013.

¹³⁵ 'Baragwanath calls on Hassan Habib Merhi to get legal advice, appoint lawyer', 13 December 2013.

¹³⁶ 'The International Tribunal invites an accused in the assassination of Hariri to appear via conference' (Unofficial translation), 13 December 2013.

¹³⁷ 'The International Tribunal invites the accused in the assassination of Hariri to appear via conference' (Unofficial translation), 13 December 2013.

¹³⁸ 'What was the letter of the President of the Special Tribunal to the accused in the assassination of Hariri?' (Unofficial translation), 13 December 2013.

¹³⁹ In both of its English and Arabic websites: 'Special Tribunal for Lebanon calls on accused Habib Merhi to get a lawyer', 13 December 2013.

¹⁴⁰ 'Baragwanath to Hassan Merhi: I urge you to get legal advice and appoint lawyer', 13 December 2013.

¹⁴¹ 'TSL: 2e appel du juge Baragwanath à Hassan Habib Merhi l'invitant à se livrer à la justice', 14 December 2013.

indictment of the four accused *before* they were indicted, concluding, at paragraph 63 of the decision,

The Lebanese public has thus known since at least 17 January 2011 of the existence of an indictment related to the events of 14 February 2005, and, unofficially (but nonetheless accurately) since 30 June 2011 of the names of those suspected to be accused. And officially, since 29 July 2011, of the precise identities of those actually indicted. Each step in this process has been extensively covered by the Lebanese media. Each of the four Accused must have known, from the extent of the media coverage - at least unofficially from 30 June 2011 - that he was a possible accused.

47. And further at paragraph 60,

From the Trial Chamber's examination of this media coverage it can be safely concluded that, in a country of Lebanon's size and scale of urbanization, almost every adult by now would have some knowledge of (a) the events of 14 February 2005 (b), the fact of the indictment of 30 June 2011, and (c) the connection of the identities of the four Accused with the indictment.

48. After the publication of the indictment and the subsequent publicity, the Trial Chamber concluded, at paragraph 71, 'Between 17 and 19 August 2011, virtually all Lebanese Arabic language media published the indictment in print, in television and radio broadcasts and on news web sites'. The decision analysed the media penetration in Lebanon, concluding, at paragraph 59,

The Trial Chamber has reviewed a wealth of material, published in the Lebanese and international print, broadcast and electronic media, connecting the indictment with the names and faces of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra. In assessing whether this information would have independently informed the four Accused that they had been indicted, the Trial Chamber has taken into account the media concentration and hence the likely penetration of such information in a geographically compact country of the size and population of Lebanon. The 'Lebanese media' includes approximately thirty-two magazines and fourteen daily newspapers, eight widely watched domestic television stations, and sixteen domestic radio stations. Many have their own web sites, also carrying news. Lebanese households, moreover, have access to numerous satellite and cable news stations.

49. This statistical information remains unchanged. In relation to the amount of media publicity that was given to the *Ayyash* indictment, the Trial Chamber concluded, at paragraph 106,

The evidence establishes that massive if not blanket coverage was given in the Lebanese media both to the indictment itself and to connecting Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the

indictment. In the totality of these circumstances it is inconceivable that they could be unaware that they have been indicted.

50. The Trial Chamber's decision to proceed to trial *in absentia* for the four accused, and the subsequent appointment of counsel to represent them, was also widely covered by the Lebanese media. Lebanese outlets including *Naharnet*,¹⁴² *L'Orient Le Jour*,¹⁴³ *An Nahar*, *El Balad*, *Al Liwa*,¹⁴⁴ *Al Joumhouria*, *As-Safir*, *Al-Akhbar*,¹⁴⁵ NNA, NOW Lebanon,¹⁴⁶ and The Daily Star,¹⁴⁷ reported the decision. It was also reported by pan-Arabic¹⁴⁸ and international media.¹⁴⁹

51. Within days of this decision, the then Prosecutor, Mr. Daniel Bellemare, announced that he would soon file a new indictment, which would include a fifth accused. The Prosecutor's statement on this new fifth accused was also substantially reported by the Lebanese major newspapers and media, such as *L'Orient Le Jour*,¹⁵⁰ *Al Liwa*,¹⁵¹ *Al Akhbar* (English),¹⁵² *An Nahar*,¹⁵³ *Naharnet*,¹⁵⁴ and Central News Agency.¹⁵⁵

52. On 8 February 2012 the Prosecutor confidentially filed an application to amend that indictment to add Mr. Merhi. In March 2012, a month after this decision was issued, at least eight Lebanese media outlets reported that Mr. Merhi was the fifth accused in the *Ayyash* case who had also been involved in the Hariri attack. These included a report on 8 March 2012 on *Al Jadeed* TV introduced as '*Al Jadeed* discovers the fifth accused' that was then covered by at least six other Lebanese media outlets, and an article on the same topic,

¹⁴² 'STL Trial Chamber Decides to Try Accused in Absentia', 1 February 2012.

¹⁴³ 'Le TSL décide de juger par défaut les accusés du Hezbollah', 2 February 2013 and 'TSL : les avocats des accusés commis d'office', 8 February 2012.

¹⁴⁴ 'Trial Chamber of the International Tribunal decides to try the four accused in the assassination of Hariri in absentia' (Unofficial translation), 2 February 2012.

¹⁴⁵ 'International Tribunal decides to run trials in absentia' (Unofficial translation), 2 February 2012.

¹⁴⁶ 'STL decides to move ahead with in absentia trials', 2 February 2012 and 'STL assigns defence attorneys for Hezbollah men', 3 February 2012.

¹⁴⁷ '2012 trial a 'goal' for STL', 2 February 2012.

¹⁴⁸ Al Jazeera ('A trial in absentia for Hariri suspects' (Unofficial translation), 1 February 2012) and KUNA ('Special Tribunal for Lebanon will try suspects in the assassination of Hariri in absentia' (Unofficial translation), 1 February 2012).

¹⁴⁹ AFP ('Lebanon court to try Hariri murder suspects in absentia', 1 February 2012 and 'Lebanon court selects lawyers for Hariri accused', 2 February 2012); CNN ('Hariri assassination suspects to be tried in absentia', 2 February 2012); AP ('STL to move ahead with absentia trial', 2 February 2012); Jerusalem Post ('Lebanon tribunal to try Hariri suspects in absentia', 1 February 2012); Reuters; Policy Point) 'Hezbollah vs. The World: The STL Announces it Will Conduct In Absentia Trial', 8 February 2012).

¹⁵⁰ 'TSL : bientôt un cinquième accusé ?', 7 February 2012.

¹⁵¹ 'A fifth accused in the Hariri crime?' (Unofficial translation), 2 February 2012.

¹⁵² 'Bellemare to Siniora: Fifth STL Suspect to be Named', 6 February 2012.

¹⁵³ 'Bellemare informed Mikati that he is committed to submitting second indictment by end of February' (Unofficial translation), 6 February 2012 and 'Youssef to An Nahar: Rules allow confidential indictment in terms of content and timing from Bellemare' (Unofficial translation), 9 February 2012.

¹⁵⁴ 'Bellemare Informed Siniora that 2nd Indictment in Hariri Case to Be Complete in February', 5 February 2012.

¹⁵⁵ 'Bellemare prepares a report with the results of his investigation for his successor... a fifth accused soon and the Tribunal is convinced of the inability to apprehend the four accused' (Unofficial translation), 7 February 2012.

on 28 March 2012, in *Al-Akhbar* newspaper. His photograph was not shown. The reporting is detailed at paragraphs 54-57 below.

Media speculation that Mr. Merhi was involved in the February 2005 attack before the indictment was made public

53. In making its decision to proceed to trial *in absentia* against Mr. Merhi, the Trial Chamber has also examined the media publicity given to his alleged role in the events of 14 February 2005 *before* the indictment was made public on 10 October 2013.

54. In March 2012, some 17 months before the confirmation of the indictment, at least eight Lebanese media outlets reported that Mr. Merhi was a fifth but unindicted accused who had been involved in the Hariri attack in the case of *Prosecutor v. Ayyash, Badreddine, Sabra and Oneissi*. On 8 March 2012, *Al Jadeed*, a Lebanese TV channel report entitled ‘Al Jadeed discovers the fifth accused’ was broadcast during its evening news bulletin. The reporter announced that,

insider sources from the Tribunal informed Al Jadeed that ‘H.M.’ are the initials of the fifth accused used by the Special Tribunal for the crime of assassination of the Prime Minister Hariri, he is Lebanese, his father is H.M. as well, and his mother is Latifa. A. He was born in December 1965, he is from Zekak El Blat, and his civil register number consists of four digits.

55. The reporter then stated that ‘the mission is easy now’ and by searching the electoral list he concluded, ‘it appears clearly that H.M. is Hassan Merhi, his father is Habeeb Merhi, and his mother is Latifa Abbas and his civil register number is 1126’. He also added that, ‘it appears that Hassan belongs to Hezbollah, but that he does not hold a leadership or highly ranked position’.¹⁵⁶

56. Recent ratings surveys have revealed that *Al Jadeed* is watched by 45% of the Lebanese television viewers and that its morning and evening news and political programs are the top rating in their category in Lebanon.¹⁵⁷ The *Al Jadeed* report was also covered by other media outlets including: *An Nahar*, *Al Liwa*, *Al-Seyassah*, *l’Orient Le Jour*,¹⁵⁸ *El-Nashra*, *Only Lebanon*, and *14 March*.¹⁵⁹

¹⁵⁶ *Al Jadeed* TV, ‘Al Jadeed discovers the fifth accused’, 8 March 2012.

¹⁵⁷ Survey of Beirut Centre for research and information, reported in ‘Who watches what in Lebanon? A TV outside the trench is wanted’ (Unofficial translation), *Al-Akhbar*, 13 October 2013, and ‘*Al Jadeed* is the first and the most viewed’, (Unofficial translation), 13 October 2013. According to the survey, 81% of Lebanon’s TV viewing Shia population watched that channel.

¹⁵⁸ *An Nahar*, 9 March 2012; *Al Liwa*, 9 March 2012, and *Al-Seyassah*, 9 March 2012.

57. On 28 March 2012, *Al-Akhbar* newspaper published a short report entitled ‘Hassan Merhi at the STL: Head of the ‘Purple Network’’.¹⁶⁰ *Al-Akhbar* reported that the ‘information available indicates that the name which former Prosecutor Daniel Bellemare asked to be added to the list of those accused of involvement in the Hariri assassination is that of Hassan Merhi’ and ‘Merhi headed the group that used the ‘purple’ cell phone network and whose job was confined to tasks involving Abu Adas’. It further detailed the role of Mr. Merhi and his relationship with the other accused. The *Al-Akhbar* article was published verbatim by some other news websites including *Al Bawaba*,¹⁶¹ and was reported and analysed by others, including *Al-Akhbar* Secrets which speculated that the Special Tribunal must have been infiltrated by *Al-Akhbar* newspaper.¹⁶²
58. The indictment against Mr. Merhi, made public only on 10 October 2013, does indeed allege that Mr. Merhi was involved in the ‘purple network’, as did the amended indictment filed on 8 February 2012 by the former Prosecutor, Mr. Daniel Bellemare, attempting to amend the *Ayyash* indictment to add Mr. Merhi as a fifth Accused. That attempt to amend the *Ayyash* indictment remains a confidential and *ex parte* filing, but was the subject of an Appeals Chamber decision in March 2012 in which it dismissed as inadmissible the Pre-Trial Judge’s referral of questions under Rule 68 (G).¹⁶³ The fact that the Prosecution had sought leave to amend the *Ayyash* indictment by adding a fifth accused was public, but the identity of the fifth potential accused was not *officially* public.
59. On 13 August 2013, thirteen days after the confirmation of the then confidential indictment against Mr. Merhi, *Al Jadeed* TV broadcast that the Special Tribunal for Lebanon was about to indict a fifth accused, naming Mr. Merhi as this person.¹⁶⁴ The *Al Jadeed* broadcast was picked up and reported by *Al Liwaa*,¹⁶⁵ *L'Orient Le Jour*,¹⁶⁶ *El Nashra*,¹⁶⁷ and *Janoubia*.¹⁶⁸

¹⁵⁹ *El-Nashra*, ‘Al Jadeed: the fifth accused in the case of the assassination of Hariri is Hassan Merhi’, 8 March 2012; 14 March (news website), ‘The Tribunal sources: The fifth accused in Hariri case is Hassan Merhi and he belongs to Hezbollah’, 8 March 2012; Only Lebanon, 8 March 2012.

¹⁶⁰ *Al-Akhbar*, ‘Hariri Investigation: A Star Witness is Born’, 28 March 2012.

¹⁶¹ ‘Hariri Tribunal Has A New Key Witness’, 5 April 2012.

¹⁶² ‘STL has been infiltrated: Al-Akhbar newspaper and Ahmad Libdeh’, 29 March 2012.

¹⁶³ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/AC, Decision on the Pre-Trial Judge’s request pursuant to Rule 68 (G), 29 March 2012.

¹⁶⁴ *Al Jadeed* TV, News bulletin, 13 August 2013.

¹⁶⁵ ‘The International Tribunal: An amended indictment adds a fifth accused to Hariri assassination’, 14 August 2013.

¹⁶⁶ ‘TSL: ‘Des révélations sensationnelles’ l’an prochain, promet Youssef’, 14 August 2013.

¹⁶⁷ ‘Al Jadeed: The International Tribunal heads to add Hussein Merhi as an accused in the assassination of Hariri’, 13 August 2013.

¹⁶⁸ ‘The International tribunal: A fifth accused in the assassination of Hariri from Hezbollah’, 13 August 2013.

Prosecutor's attempts in June 2012 to interview Mr. Merhi as a suspect

60. In June 2012 – after failing to have the *Ayyash* indictment amended by adding Mr. Merhi to it as a fifth accused – and several months after the accurate media speculation that Mr. Merhi was the fifth accused, the Prosecutor sought the assistance of the Lebanese authorities to interview him as a suspect.¹⁶⁹

61. Acting under the Lebanese Prosecutor-General's instructions, members of the CCIS sought to find Mr. Merhi in his last known residence in Dahyieh, Bourj-El-Barajneh, Beirut on 20, 22 and 27 June 2012. However, they did not find him there. The Acting Prosecutor-General reported:

- On 20 June 2012, following their coordination with the Central Security Committee of Hezbollah, CCIS officers went to the above-mentioned address. Upon their arrival they entered the building and went up to the seventh floor to the residence of Mr. Merhi. They knocked on the door of his residence and rang the doorbell several times and remained in front of the door for about ten minutes, but no one answered the door. They then left the building to carry out investigations and inquiries in order to determine his whereabouts.¹⁷⁰
- On 22 June 2012, CCIS officers went again to the residential address of Mr. Merhi in Bourj-El-Barajneh. They knocked on the door of his residence several times but no one answered. They ascertained that the residence had no occupants.¹⁷¹
- On 27 June 2012, CCIS officers went again to the above-mentioned residence address of Mr. Merhi and went to the seventh floor of the Gardenia building. They knocked on the door several times, but no one answered. Their investigations in the area have shown that no one currently lives in the house.¹⁷²
- CCIS officers went afterwards on the same day to the Office of the *mukhtar* of Bourj-El-Barajneh, and took his statement. According to the *mukhtar* Mr. Merhi was a resident in El-Roueiss, Gardenia building behind the Sayyed Al Shuhada Association. The *mukhtar* stated that he had no personal knowledge of Mr. Merhi. According to his information acquired through his frequent visits to the area and his personal knowledge of many of its residents

¹⁶⁹ Request for assistance from the Prosecutor of the Special Tribunal for Lebanon to the Government of Lebanon, 5 June 2012.

¹⁷⁰ CCIS record, No. 1005/302, 21 June 2012, attached to the report of the Acting Prosecutor-General of 3 October 2013.

¹⁷¹ CCIS record, No. 1005/302, 21 June 2012, attached to the report of the Acting Prosecutor-General of 3 October 2013.

¹⁷² CCIS record, No. 1005/302, 21 June 2012, attached to the report of the Acting Prosecutor-General of 3 October 2013.

because it is administratively part of Bourj-El-Barajneh, Hassan Habib Merhi is currently not in the Gardenia building. The *mukhtar* does not know his place of residence or his whereabouts. The *mukhtar* told CCIS officers that Mr. Merhi does not vote in Bourj-El-Barajneh.¹⁷³

62. The Trial Chamber is thus satisfied that as of 27 June 2012, some three months after extensive reporting in the Lebanese media that he was the fifth accused in the *Ayyash* case, Mr. Merhi could not be located at his last known place of residence in Dahyieh.

APPLICABLE LAW FOR PROCEEDING TO TRIAL

63. Article 22 of the Statute of the Special Tribunal authorises a Trial Chamber to conduct trials *in absentia*,

1. The Special Tribunal shall conduct trial proceedings in the absence of the accused, if he or she:

(a) Has expressly and in writing waived his or her right to be present;

(b) Has not been handed over to the Tribunal by the State authorities concerned;

(c) Has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.

64. Before initiating proceedings *in absentia*, the Trial Chamber must determine whether the requirements of Rule 106 have been met, namely,¹⁷⁴

(A) Where the accused:

¹⁷³ CCIS record, No. 1005/302, 21 June 2012, attached to the report of the Acting Prosecutor-General of 3 October 2013.

¹⁷⁴ STL-11-01/I/TC, Decision to hold trial *in absentia*, 1 February 2012, footnote 38: 'A difference exists between the English and French versions of Rule 106. The English version uses the words *'shall conduct proceedings in absentia'* whereas the French provides *'peut décider d'engager une procédure par défaut'*. The English version of Rule 106 follows the wording of Article 22 of the Statute in English, French (*'le Tribunal conduit le procès en l'absence de l'accusé'*) and in Arabic. The English and Arabic versions of Rule 106 are thus more consistent with Article 22, as written in the Tribunal's three official languages. Applying the rules of statutory interpretation relating to texts in different languages 'the meaning which best reconciles the texts, having regard to object and purpose [of the treaty]' in Article 33 (4) of the 1969 Vienna Convention on the Law of Treaties, the Trial Chamber accordingly defers to the English and Arabic versions in preference to the French version of Rule 106 (see also the discussion in the decision of the Appeals Chamber, STL-11-01/I/AC/R 176bis, Interlocutory decision on the applicable law: terrorism, conspiracy, homicide, perpetration, cumulative charging, 16 February 2011, para. 26, footnotes 40-41, referring to the ICTY and ICTR's use of the Convention in interpreting the Statutes and Rules of those Tribunals).'

- (i) has expressly and in writing waived his right to be present at proceedings before the Tribunal;
- (ii) has not been handed over to the Tribunal by the State authorities concerned within a reasonable time; or
- (iii) has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge;

the Trial Chamber shall conduct proceedings *in absentia*.

- (B) Where the accused is not present on account of the failure or refusal of the relevant State to hand him over, before deciding to conduct proceedings *in absentia*, the Trial Chamber shall: (i) consult with the President and ensure that all necessary steps have been taken with a view to ensuring that the accused may, in the most appropriate way, participate in the proceedings; and (ii) ensure that the requirements of Article 22 (2) of the Statute have been met.

65. Rule 106 (A) (iii) contains several overlapping considerations. The first is that the Trial Chamber must be satisfied that an accused has absconded or cannot be found. The second is that all reasonable steps have been taken to secure the appearance of the accused before the Tribunal. The third, concurrent with the second, is that all reasonable steps have been taken to inform the accused of the charges in the indictment.¹⁷⁵

66. With respect to an accused person's knowledge of the charges against them, the Appeals Chamber interpreted these provisions in conformity with the applicable standards of international human rights law, concluding that *in absentia* trials are possible only where:

- i) reasonable efforts have been taken to notify the accused personally;
- ii) the evidence as to notification satisfies the Trial Chamber that the accused actually knew of the proceedings against them; and that,

¹⁷⁵ STL-11-01/I/TC, Decision to hold trial *in absentia*, 1 February 2012, footnote 41: 'The Trial Chamber resolves the ambiguity in the wording of the English version of the Rules which may appear to require *the Pre-Trial Judge* to take all reasonable steps to secure an appearance and to inform the accused of the charges, by giving the Rule its natural meaning, namely, that the charges have been confirmed by the Pre-Trial Judge, as is clear from the French and Arabic version of the Rules'.

- iii) it does so with such degree of specificity that the accused's absence means they must have elected not to attend the hearing and therefore have waived their right to be present.¹⁷⁶

67. The Appeals Chamber also expressly noted, 'there is no requirement under the Tribunal's Statute or Rules, or under human rights law that the Trial Chamber must receive positive evidence of the accused's knowledge, or that *notification* must be carried out officially and in person. Rather, the Trial Chamber must be satisfied that the three elements set out above are met on the basis of the available evidence before it. That may be done by inference from the circumstances.'¹⁷⁷

SUBMISSIONS

68. To assist its determination of whether to initiate proceedings *in absentia*, the Trial Chamber, on 3 December 2013, sought written submissions from the Office of the Prosecutor, Mr. Merhi, and the Defence Office, by 9 December 2013.¹⁷⁸

Prosecution's submissions regarding Rule 106

69. The Prosecution filed written submissions, indicating that efforts to try to locate Mr. Merhi have been on-going since June 2012 but that the Lebanese authorities had been unable to find him.¹⁷⁹ The Prosecution submitted that, given the present security situation in Lebanon, the Lebanese authorities have taken all reasonable steps available to secure Mr. Merhi's appearance, and that these are consistent with those undertaken with respect to the four accused in the *Ayyash* case.¹⁸⁰

70. In addition, public advertisements have been published in major national, regional and international newspapers and public announcements made via broadcast and social media.¹⁸¹ According to the Prosecution, there is no information to suggest that Mr. Merhi has waived in writing his right to be

¹⁷⁶ STL-11-01/PT/AC/AR126.1, *Corrected Version of Decision on Defence Appeals against Trial Chamber's Decision on Reconsideration of the Trial in absentia Decision*, 1 November 2012, para. 31.

¹⁷⁷ *Corrected Version of Decision on Defence Appeals against Trial Chamber's Decision on Reconsideration of the Trial in absentia Decision*, 1 November 2012, para. 32.

¹⁷⁸ STL, *The Prosecutor v. Hassan Habib Merhi*, STL-13-04/I/TC, Scheduling order in respect of Rule 106 of the Rules of Procedure and Evidence, 3 December 2013.

¹⁷⁹ Prosecution submissions pursuant to Rule 106, Confidential, 9 December 2013, paras 2, 12 and 13. Public Redacted Version dated 18 December 2013 ('Prosecution submissions').

¹⁸⁰ Prosecution submissions, para. 3.

¹⁸¹ Prosecution submissions, para. 4.

present and regardless of whether he has absconded, he has not been found and his whereabouts are presently unknown.¹⁸²

71. The Prosecution acknowledged that the security situation in Lebanon had deteriorated since February 2012 when the Trial Chamber decided to proceed to a trial *in absentia* in the *Ayyash* case. This should be considered in assessing the steps taken by the Lebanese authorities in trying to secure Mr. Merhi's appearance before the Tribunal.¹⁸³

72. With respect to Mr. Merhi's knowledge of the charges against him, the Prosecution submits that sufficient efforts have been made by the Lebanese authorities to inform him of the charges. While accepting that the Lebanese authorities have been unable to affix the indictment at any of the addresses associated with Mr. Merhi, the Prosecution submits that the Lebanese authorities have undertaken reasonable steps to serve the indictment on him personally by visiting or investigating the relevant addresses.¹⁸⁴ Significant efforts have also been made to inform Mr. Merhi of the charges against him by public advertisement,¹⁸⁵ and by the Tribunal itself through press releases and media advisories, interviews, the use of social media and a direct statement by the President of the Tribunal.¹⁸⁶

73. The Prosecution concluded that the present security situation in Lebanon prevented the Lebanese authorities from taking steps in certain areas where the conditions of security are precarious. The Trial Chamber should therefore determine, in the prevailing circumstances, that all reasonable steps have been taken to inform Mr. Merhi of the charges against him. The Trial Chamber should thus proceed to trial *in absentia* against Mr. Merhi.¹⁸⁷

Defence Office submissions regarding Rule 106

74. By contrast, the Defence Office made no substantive submissions, claiming that before any could be made, it needed to see four additional documents, those being three internal Tribunal memoranda and an unredacted copy of the Pre-Trial Judge's confidential decision confirming the indictment against Mr. Merhi. The Defence Office, however, otherwise had copies of the same documents relied upon by the Prosecution making its substantial submissions. On 9 December 2013, by

¹⁸² Prosecution submissions, paras 7, 8, 11 and 13.

¹⁸³ Prosecution submissions, paras 20 – 23.

¹⁸⁴ Prosecution submissions, paras 28 and 33.

¹⁸⁵ Prosecution submissions, paras 26 – 29.

¹⁸⁶ Prosecution submissions, paras 30 – 31.

¹⁸⁷ Prosecution submissions, paras 34 – 37.

motion, the Defence Office requested these four documents. The Trial Chamber then emailed the three internal memoranda to both the Defence Office and the Prosecution, but saying that they were of minor significance and that submissions on those documents were not required.

75. The three documents are merely internal memoranda between the Registry and the President's Office, or Trial Chamber, seeking and forwarding documents within the Tribunal. The Trial Chamber, however, had already provided the Defence Office with the documents attached to the memoranda (namely the media information referred to above) for the express purpose of making the submissions. These internal memoranda are inconsequential and irrelevant. The unredacted decision of the Pre-Trial Judge confirming the indictment is likewise immaterial to a decision under Rule 106. The redactions are of the names of victims and of an investigative procedure. The Defence Office has a public redacted version of the decision in which paragraphs 79–82 specifies the need to preserve its confidentiality.¹⁸⁸ On 9 December 2013, the Defence Office filed some observations but expressed them to be 'without prejudice' to receiving the documents requested.¹⁸⁹ The submissions, however, were not substantive and have not assisted the Trial Chamber's determination of the issue. No further submissions were filed by the Defence Office and the Trial Chamber expresses its disappointment about this unnecessary course of events.

Submissions for Mr. Merhi regarding Rule 106

76. The Trial Chamber instructed the Registrar to take the necessary steps to notify Mr. Merhi of the scheduling order requesting submissions.¹⁹⁰ The Registry informed the Trial Chamber on 5 December 2013 that the Acting Prosecutor-General had received the Registrar's letter requesting him to serve the scheduling order on Mr. Merhi.¹⁹¹

77. On 16 December 2013, the Acting Prosecutor-General reported that CCIS officers had attempted to serve the scheduling order on Mr. Merhi in Dahyieh. Before attempting to visit his apartment, the report states that they consulted a representative from the Hezbollah's Central Security Committee, Abou-Ali Diab, who told them that they could not serve the documents on Mr. Merhi 'for the time being by affixing them on the door of the Gardenia building because the parents of the accused

¹⁸⁸ STL-13-04/I/PTJ, Public redacted version of the 'Decision relating to the examination of the indictment of 5 June 2013 issued against Mr. Hassan Habib Merhi' dated 31 July 2013, 11 October 2013.

¹⁸⁹ STL-13-04/I/TC, Observations du Bureau de la Défense relatives à l'application de l'article 106 A) du Règlement de Procédure et de Preuve, 9 décembre 2013.

¹⁹⁰ Scheduling order in respect of Rule 106 of the Rules of Procedure and Evidence, 3 December 2013, para. 3 (iii).

¹⁹¹ Email from Registry to the Legal Officer of the Trial Chamber, 9 December 2013.

Hassan Merhi were very upset after his name was associated with the case of assassination of the Prime Minister Rafik Hariri'.¹⁹²

78. On 14 December 2013, they visited the *mukhtar* of Bourj-El-Barajneh and presented to him the documents to be served on Mr. Merhi. However, according to the CCIS report, the *mukhtar* 'said that he was unable to accept them because of the sensitivity of the current situation, and that he could not give a written statement related to the matter'. The *mukhtar*, however, signed the record of this encounter.¹⁹³

79. The Trial Chamber has received no submissions from Mr. Merhi.

DISCUSSION

80. Article 22 of the Statute of the Tribunal states that the Trial Chamber shall proceed to trial *in absentia* in specified circumstances. The Trial Chamber has received no material suggesting that Mr. Merhi has 'expressly and in writing waived his or her right to be present', under Rule 106 (A) (i), nor that he 'has not been handed over to the Tribunal by the State authorities concerned', under Rule 106 (A) (ii). The Trial Chamber likewise has no information to the effect that the 'accused is not present on account of the failure or refusal of the relevant State to hand him over', according to Rule 106 (B).

81. For the Trial Chamber to be satisfied that Mr. Merhi 'has not been handed over to the Tribunal by the State authorities concerned', it would have to be satisfied that the relevant State authorities at least knew where he could be located. The evidence before the Trial Chamber, as detailed in the reports of the Acting Prosecutor-General, suggests the opposite. The Trial Chamber can therefore make a positive finding that Mr. Merhi 'has not been handed over to the Tribunal by the State authorities concerned' under Rule 106 (A) (ii). From this it follows that Rule 106 (B) is inapplicable.

82. The totality of the evidence before the Trial Chamber also establishes that Mr. Merhi has not 'expressly and in writing waived his or her right to be present' pursuant to Rule 106 (A) (i). There is simply no evidence of this.

¹⁹² CCIS record, No. 1800/302, 10 December 2013 (revised on 16 December 2013), attached to the report of the Acting Prosecutor-General of 16 December 2013.

¹⁹³ CCIS record, No. 1800/302, 10 December 2013, attached to the PG report of 16 December 2013.

83. The remaining basis upon which the Trial Chamber could order the proceedings to be conducted *in absentia* is under Rule 106 (A) (iii) – which mirrors Article 22 (1) (c), namely that he ‘has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge’.
84. The Trial Chamber has no positive information as to the whereabouts of Mr. Merhi, but the available evidence neither suggests nor establishes that he has left Lebanon since the indictment was transmitted to the representatives of the Government of Lebanon on 6 August 2013. The Trial Chamber is therefore proceeding on the basis that it should confine its analysis under Rule 106 to sub-rule (A) (iii), namely that an accused ‘has absconded or otherwise cannot be found’ and hence examine whether ‘all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge’. As the information available to the Trial Chamber does not suggest that Mr. Merhi is not in Lebanon, the analysis is confined to the measures taken in Lebanon.
85. These measures, detailed at paragraphs 16-44, include attempted visits to Mr. Merhi’s last known places of residence, extensive inquiries of public registers, the circulation of a wanted notice against Mr. Merhi, and the publication in the Lebanese media of a poster containing biographical information and photographs of him, and describing the charges. Additionally, in determining whether Mr. Merhi is aware of the indictment, the Trial Chamber has examined the Lebanese media’s coverage connecting him with the indictment, both before and after its official publication by the Special Tribunal in October 2013. The Trial Chamber has also considered the extensive media coverage in Lebanon in 2011 and 2012 of the indictment of Mr. Ayyash, Mr. Badreddine, Mr. Oneissi and Mr. Sabra, in which the charges against the four accused in that case received near blanket coverage in the media.
86. The Trial Chamber has scrutinized the efforts made by the Lebanese authorities to apprehend Mr. Merhi and to notify him of the charges against him by using the personal and exceptional procedures for notification specified under the Lebanese Code of Criminal Procedure. The Trial Chamber notes with great concern that the CCIS was prevented from completing its task of attempting to notify Mr. Merhi in person by visiting his last known place of residence in South Beirut.
87. The Trial Chamber has considered all of the steps taken to inform Mr. Merhi of the charges as confirmed by the Pre-Trial Judge in the indictment, including the formal requirements for notifying

an accused person of the charges specified in Rule 76 and requiring personal service, or where this cannot be effected, a form of alternative service that may be ordered under Rule 76 (E).

88. The Trial Chamber has also applied the standards identified at paragraph 31 of the Appeals Chamber's decision of 1 November 2012, namely, that:

- i) reasonable efforts have been taken to notify the accused personally;
- ii) the evidence as to notification satisfies the Trial Chamber that the accused actually knew of the proceedings against them; and that,
- iii) it does so with such degree of specificity that the accused's absence means they must have elected not to attend the hearing and therefore have waived their right to be present.¹⁹⁴

'reasonable efforts have been taken to notify the accused personally'

89. 'Reasonable efforts' must be evaluated according to the totality of the circumstances. They may include a combination of the measures taken according to Lebanese criminal procedural mechanisms, those specified in the Statute and Rules of the Special Tribunal, and other measures which, although not set out in the Lebanese or Tribunal's statutory instruments, may nonetheless be contextually considered. These could include publicity, advertisements, wanted posters and social and media reporting. The *efforts* must be reasonable; actual personal service is not required.

90. The following steps have been taken according to Article 147 of the Lebanese Code of Criminal Procedure in attempting the personal service required under Rule 76 (B):

- The Lebanese CCIS, acting on the instructions of Lebanon's Acting Prosecutor-General has attempted to visit the last known address of Mr. Merhi in Dahyieh, Bourj-El-Barajneh, Beirut,
- The CCIS first went to this address in June 2012, but were informed by the local *mukhtar* that he no longer lived there,

¹⁹⁴ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/AC/AR126.1, Decision on Defence Appeals against Trial Chamber's Decision on Reconsideration of the Trial *in absentia* Decision, 1 November 2012, para. 31.

- The CCIS attempted to return there in September and November 2013, but were denied access to the suburb due to security measures implemented by Hezbollah. They were also informed that Mr. Merhi's family did not want the CCIS to go to the apartment because they were upset that his name had been connected with the assassination of Rafik Hariri,
- The CCIS returned to Dahyieh on 6 December 2013 searching for Mr. Merhi. They were, however, unable to locate him at his last known place of residence and were informed that he was not there,¹⁹⁵
- The CCIS made another visit to the Dahyieh area on 10 December 2013 searching for Mr. Merhi, but were unsuccessful in locating him there,¹⁹⁶ and,
- On 7 December, 2013, CCIS officers travelled to Ain Qana, South Lebanon, attempting to locate Mr. Merhi. Following searches and inquiries, they were informed that Mr. Merhi was not in his home village and does not live there. They returned to the village on 15 December 2013 with the same result.¹⁹⁷

91. The subsequent additional steps were taken, pursuant to Article 148 of the Lebanese Code of Criminal Procedure, after the Tribunal's President issued an order for alternative service under Rule 76 (E):

- The indictment was posted on a notice board at the Court of Cassation in Beirut and at the entrance to the Special Tribunal's Beirut Office,
- The Acting Prosecutor-General unsuccessfully attempted to notify the *mukhtars* of addresses where Mr. Merhi may have been living – in South Beirut and in South Lebanon. The *mukhtars*, however, failed to attend scheduled interviews, and
- The Registrar of the Special Tribunal had the indictment and warrant of arrest sent by registered mail to the four *mukhtars*, on 17 December, 2013.

92. Additionally, the Trial Chamber holds that the following measures could be considered as part of 'reasonable efforts' to notify the Accused personally:

- the indictment has been widely publicised in the Lebanese media,

¹⁹⁵ Report of the Acting Prosecutor-General of 18 December 2013.

¹⁹⁶ Report of the Acting Prosecutor-General of 18 December 2013.

¹⁹⁷ Report of the Acting Prosecutor-General of 18 December 2013.

- an audio-recording of the charges against Mr. Merhi – issued by the Tribunal – was extensively circulated by the Lebanese media,
- an advertisement in the form of a ‘wanted’ poster was issued by the Tribunal and widely published in the Lebanese media and posted at the Court of Cassation, and
- two messages from the President of the Special Tribunal, on 21 October 2013 and 13 December 2013 – calling on Mr. Merhi to ‘face the Tribunal’ and ‘to get a lawyer and legal advice’ were extensively broadcast in the Lebanese media.

93. The Trial Chamber must view the steps taken by the Acting Prosecutor-General as a whole and within the prevailing circumstances. The Lebanese authorities were unable to complete some notification formalities normally employed under the Lebanese Code of Criminal Procedure law to inform an accused person of charges against them. This failure under Articles 147 and 148 does not of itself mean that the Trial Chamber could not be satisfied that ‘*reasonable efforts have been taken to notify the accused personally*’. ‘Reasonable efforts’ must be interpreted in the light of what is possible in the prevailing circumstances, but combined with whether Mr. Merhi actually knew of the charges against him.

94. The Trial Chamber reiterates the former Lebanese Public Prosecutor’s assessment to the President of the Tribunal in respect of his attempts to notify the four accused in the *Ayyash* case of the indictment against them.¹⁹⁸ He described what he termed the ‘delicate and sensitive political and security situation in Lebanon’, and ‘the difficulties faced by the Lebanese authorities in executing thousands of arrest warrants *in absentia* decades ago against persons who have committed different crimes and who have been secretly moving from one region to another. It is most likely that they are receiving help from their relatives and others who share common political views or religious or regional affiliations’.

95. The Trial Chamber is thus satisfied that the combination of these measures under the Tribunal’s Rules and Lebanese law constitutes ‘reasonable efforts’ to notify Mr. Merhi personally of the charges against him.

¹⁹⁸ STL-11-01/I/TC, Decision to hold trial in absentia, 1 February 2012, para. 116.

'the evidence as to notification satisfies the Trial Chamber that the accused actually knew of the proceedings against them'

96. The Trial Chamber held in its decision of 1 February 2012 in the *Ayyash* case that the enormous publicity given to the indictment in that case had notified 'almost every adult' in Lebanon that four men were accused of acts of terrorism under Lebanese law in the explosion that killed Rafik Hariri and 21 others, and injured over 200. The widespread media publicity given to the *Ayyash* indictment from the second half of 2011 onwards, including after the decision of 1 February 2012, also served to notify Mr. Merhi, at least in a general sense, that an indictment had been issued against four men who were alleged in that indictment to be Hezbollah supporters.
97. Mr. Merhi was indicted on 31 July 2013. In February 2012, Prosecutor Bellemare had publicly announced that he wished to amend the indictment to add a fifth accused. In March 2012 – a month after Prosecutor Bellemare had filed an amended indictment in the *Ayyash* case, attempting among other things to add Mr. Merhi as an accused to that indictment – publicity started appearing in the Lebanese media stating that Mr. Merhi was the fifth Accused on the indictment – and linking him to the crimes charged in relation to 14 February 2005. The publicity included a detailed report on one of Lebanon's most popular television stations naming Mr. Merhi as the fifth accused in the case. Three weeks later, a Lebanese newspaper published a report naming Mr. Merhi as the 'head of the purple network', as alleged in the *Ayyash* indictment.
98. Seventeen months later, on 13 August 2013, and just thirteen days after the Pre-Trial Judge had confirmed the then confidential and *ex parte* indictment against Mr. Merhi, he was again named in the Lebanese media as the fifth accused. The Acting Prosecutor-General reported to the President of the Tribunal that CCIS officers had been prevented by Hezbollah's Central Committee from entering the suburb in Beirut where Mr. Merhi had his last known address. Officers of Hezbollah's Central Security Committee also reportedly told the CCIS that Mr. Merhi's family were upset that his name had been circulated in the media as an accused in the case of the assassination of Prime Minister Rafik Hariri.
99. Since 11 October 2013, the Lebanese media has extensively covered both that Mr. Merhi has officially been indicted in relation to the crimes charged in the *Ayyash* case and what the charges against him are. These reports include – from 10 October, information about the indictment after it was made public; from 11 October, wanted posters published widely in the media; from

14 October, the audio broadcast; and, from 21 October and then 13 December 2013, the President's statement in relation to the charges against Mr. Merhi.

100. The Trial Chamber is satisfied from the enormous publicity in Lebanon connecting Mr. Merhi to the *Ayyash* case that Mr. Merhi must have been aware that he had been indicted as a co-accused in the *Ayyash* case. This is derived from the combination of (a) the massive publicity surrounding the indictment in the *Ayyash* case from February 2011 onwards (b) that publicity connecting Mr. Merhi with the case as the fifth accused in March and June 2012, and then again in August 2013, and (c) the media publicity from 10 October 2013 naming him as an accused person and publicising the charges against him.

101. Moreover, the *mukhtar* of Bourj-El-Barajneh knew that the CCIS had attempted to find Mr. Merhi at his last known residence in Bourj-El-Barajneh in Dahyieh in June 2012, just three months after it was widely broadcast in the Lebanese media that he was a possible fifth accused in the *Ayyash* case. The Trial Chamber is entitled to draw a reasonable inference that the *mukhtar* associated the CCIS's visits to the apartment in Dahyieh with this publicity and that the visits were connected with the events of 14 February 2005. The CCIS were effectively prevented by Hezbollah officials from attempting personal service on Mr. Merhi between August 2013 and 6 December 2013 in Dahyieh, and until 7 December 2013 in Ain Qana, South Lebanon. When the CCIS officers were finally able to visit the possible last known addresses of Mr. Merhi in these two locations where he is registered as owning property – in December 2013 – they were informed that he lives in neither place. Return visits within days produced the same answers. The Trial Chamber is entitled, from this sequence of events, to draw the inferences necessary to conclude that Mr. Merhi 'has absconded or otherwise cannot be found'.

'it does so with such degree of specificity that the accused's absence means they must have elected not to attend the hearing and therefore have waived their right to be present'

102. This condition does not require the express waiver specified Rule 106 (A) (i). Rather, it refers to a waiver derived from analysing the available evidence and concluding from the totality of the circumstances that an accused person must have positively decided not to attend the hearing, and thus waived their right to be present.

103. The Trial Chamber has reached that conclusion. The publicity in Lebanon of the charges against Mr. Merhi has been so great that he must have known of them. The fact that he has failed to appear

to respond to the charges either in person or through a lawyer leads the conclusion that he has elected not to attend the hearing and has therefore waived his right to be present.

104. CCIS officers were able to go to Mr. Merhi's apartment in Dahyieh, Beirut in June 2012 before he was indicted and to communicate with the relevant *mukhtars*, who informed them that he no longer lived there. At that time, however, his alleged connection with the *Ayyash* indictment as the fifth accused had been well-publicised in the Lebanese media, and he was not to be found there. The *mukhtar* must have known from the publicity in the Lebanese media that Mr. Merhi was alleged to have be the fifth accused.

105. Fourteen months later, and after Mr. Merhi was indicted, these same *mukhtars* failed to appear when summoned by the CCIS for an interview. This was before the indictment was made public in October 2013 but after the CCIS had attempted to go back to the same apartment in August 2013. The CCIS officers, who were able to go to the apartment in Dahyieh in June 2012 were prevented entry into the suburb between August 2013 and 6 December 2013.

106. The Trial Chamber is satisfied that Hassan Habib Merhi must be aware that he has been indicted as a co-accused in the case arising out of the attack on 14 February 2005. Mr. Merhi must know that he has been charged with conspiracy to commit a terrorist act relating to the deaths of Rafik Hariri and the others killed and those injured in the blast on that day. According to the CCIS, his family were upset that he had been indicted and did not want CCIS officers to approach their apartment in Dahyieh. Whether that was actually a 'pretext' for preventing their entry to Dahyieh, as the CCIS believed, is unimportant. The CCIS had been informed in June 2012 by the *mukhtar* that Mr. Merhi no longer lived in Dahyieh and they were thereafter prevented – until December 2013 – from ascertaining this fact for themselves.

107. Further, enormous publicity was given in Lebanon to the fact that a trial of those charged with committing the attack was occurring in Leidschendam, the Netherlands and that the trial was being held in the absence of the four accused. The publicity was such that Mr. Merhi must have known that if he did not come forward to defend the charges, the case against him too could be held *in absentia*. In these circumstances, the only reasonable conclusion available to the Trial Chamber is that Mr. Merhi has exercised a voluntary choice not to attend the trial. The size of Lebanon and the concentration of its media is such that the publicity given to Mr. Merhi's alleged role as a fifth accused in the *Ayyash* case before his indictment was so extensive and comprehensive that he must

have known that he was suspected of having participated in the attack of 14 February 2005, and that he could be indicted.

CONCLUSION

108. Mr. Merhi is a Lebanese citizen. He is listed in the civil register of Zqaq-El-Blat, as living in an apartment in Bourj-El-Barajneh in Dahyieh, South Beirut. Lebanese entry and exit records reveal that he has not been recorded as leaving Lebanon since returning from a visit to Syria in October 2002. There is no information available to the Trial Chamber to suggest that he has left Lebanon. All attempts to personally serve him with the indictment and arrest warrant have failed. Alternative methods of service have been employed, including providing the relevant *mukhtars* with the indictment and arrest warrant, and posting and circulating wanted posters of Mr. Merhi. Lebanon is geographically compact with a vibrant and independent media that reports events connected with the Special Tribunal. An enormous amount of publicity has been given in Lebanon to Mr. Merhi's indictment and the charges against him. Much media coverage has connected him with the *Ayyash* indictment and the attack of 14 February 2005.
109. The Trial Chamber therefore satisfied, according to the Appeals Chamber's interpretation of Article 22 and Rule 106, that reasonable efforts have been taken to notify Mr. Merhi personally, the evidence of notification is such that he actually knew of the proceedings against them, and it does so with such specificity that Mr. Merhi's absence means that he must have elected not to attend the trial and has therefore waived his right to be present.
110. The *mukhtars* of Bourj-El-Barajneh, Haret-Hreik, Zqaq-El-Blat and the village of Ain Qana in South Lebanon have refused to cooperate with the Acting Prosecutor-General's attempts to serve the indictment and arrest warrants on them as required under Article 148 of the Lebanese Code of Criminal Procedure. Mr. Merhi could not be found in Dahyieh in June 2012 several months after his name had been publicised as the fifth accused in the *Ayyash* case. The CCIS reported that, between August 2013 and December 2013, Hezbollah prevented the CCIS to access to the apartment in Bourj-El-Barajneh in Dahyieh and the village of Ain Qana, but that when they went twice to these locations in December 2013 they were informed that Mr. Merhi lived in neither. The combination of these events permits the Trial Chamber to conclude that Mr. Merhi 'has absconded or otherwise cannot be found'.

111. The Trial Chamber is satisfied that under Article 22 (1) (c) Mr. Merhi has ‘absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.’ The Trial Chamber will therefore order under Rule 106 (A) that the proceedings be conducted *in absentia*.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECIDES, pursuant to Article 22 of the Statute of the Special Tribunal and rule 106 (A) of the Rules of Procedure and Evidence, to proceed to try Hassan Assad Merhi *in absentia*.

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

Leidschendam

The Netherlands

20 December 2013

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

