

BEFORE THE TRIAL CHAMBER
SPECIAL TRIBUNAL FOR LEBANON

Case No: **STL-11-01/T/TC**

Before: **Judge David Re, Presiding**
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: **Mr. Daryl Mundis**

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THE PROSECUTOR
v.
SALIM JAMIL AYYASH,
MUSTAFA AMINE BADREDDINE,
HASSAN HABIB MERHI,
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA

Prosecution Request to Amend its Witness and Exhibit Lists

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I. INTRODUCTION

1. The Prosecution respectfully requests leave to add 12 witnesses to its list of witnesses (Witness List) and 147 exhibits to its lists of exhibits (Exhibit List) filed pursuant to Rule 91(G). These additions are proposed to be entered in the final stage of the trial, when evidence will be tendered identifying the accused as the users of relevant phones. The Prosecution submits that the amendments are in the interests of justice for the reasons detailed below and in the confidential annexes attached to the present motion.
2. The proposed evidence is *prima facie* relevant to and probative of allegations pleaded in the Indictment. Seven of the 12 proposed witnesses will testify on matters related to the attribution of phones the Prosecution alleges were used by the accused. One witness will testify on matters related to the interactions between a member of the general circle of the family and acquaintances of the Prime Minister Hariri and ‘Sami Issa,’ which the Prosecution alleges was an alias used by the accused Badreddine. The evidence of the four remaining witnesses relates to the reliability of evidentiary documents that are on the Exhibit List or that the Prosecution seeks to add to the List in the present motion.
3. All of the exhibits are relevant to the attribution of phones to the accused as further detailed in this motion and in Annexes B and C.¹ The majority of the proposed exhibits are intended to replace items currently on the Exhibit List as further detailed in Annex C. Therefore, to the extent the motion is granted, the Prosecution also requests leave to replace the superseded items in the Exhibit List. The other proposed exhibits that do not replace items on the Exhibit List are listed in Annex B.
4. During the ongoing process of evidentiary re-evaluation conducted by the Prosecution with the aim of ensuring that the best quality of the evidence is available for presentation to the Trial Chamber, the Prosecution has concluded that the witnesses and exhibits it seeks leave to add are of sufficient relevance and probative value to

¹ To assist the Trial Chamber, parties and participants, the Prosecution has collected the material listed in Annex A (statements of the proposed witnesses) and Annexes B and C (proposed exhibits) to this Motion, and placed them in a confidential disclosure folder in the Tribunal’s Legal Workflow system. This folder has been disclosed to the Tribunal’s Court Management Services Section, who will re-disclose the folder to the Trial Chamber, parties and participants.

justify a request for their addition to the witness and exhibit list. It is the position of the Prosecution that the proposed evidence is capable of assisting the Trial Chamber, should it later be admitted at the appropriate time.

5. The proposed evidence does not, in itself, raise any new matters as the vast majority of it is corroborative of information previously disclosed to the Defence. The proposed evidence has been disclosed to the Defence, and the latter has been notified of the Prosecution's intention to amend the Witness and Exhibits list in advance of this motion. Therefore, the amendments should neither impact Defence preparation nor delay the proceedings.

II. SUBMISSIONS

A. Granting the Request is in the Interests of Justice

6. The Prosecution respectfully submits that the requested amendments serve the interests of justice, in light of the factors identified by the Trial Chamber.² The proposed evidence is *prima facie* relevant and probative of issues raised in the Indictment, particularly with respect to the attribution of phones to the accused. The amendments will not delay the proceedings because (i) the proposed evidence has been disclosed in advance of this motion, and (ii) it is corroborative in nature of information that was already known and has been previously disclosed to the Defence.
 1. The evidence from the proposed witnesses is *prima facie* relevant and probative of issues in the Indictment
7. The Prosecution requests leave to add 12 witnesses, listed in confidential Annex A, to its Witness List. The anticipated evidence of these witnesses is described below and further detailed in Annex A.

² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists Re Witnesses PRH685 and PRH609, 4 March 2015, para. 10. In particular, the Trial Chamber determined that in assessing whether amendments to the Rule 91 Witness and Exhibit Lists are in the interests of justice, "it must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time to prepare for trial."

See also Decision Authorising the Prosecution to Amend its Exhibit List, 20 February 2014 ("20 February 2014 Decision"), para. 7; and Decision on Prosecution Motion on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014, para. 15.

(a) Eight witnesses will provide evidence on factual matters that are relevant to the charges against the accused

8. Seven witnesses are expected to testify on factual matters related to the attribution of phones that are alleged to have been used by the accused. One witness' evidence pertains to the interactions between Witness PRH089 and 'Sami Issa' that the Prosecution alleges was the accused Badreddine, and, by inference, the purposes of Badreddine behind these interactions.

i) Witnesses' evidence related to the attribution of phones

9. Witness PRH699's evidence relates to the geographical location of a property that the accused Merhi owned in the region of Ain Qana, relevant to the attribution of phones to Mr. Merhi and his family.³
10. The evidence of Witness PRH691, employed by 'Sami Issa' for a period of time between 2003 and 2004, relates to the attribution of a phone to 'Sami Issa' whom the Prosecution alleges was the accused Badreddine, and to other information related to 'Sami Issa' including his physical appearance, habits and entourage.⁴
11. Witness PRH679's evidence is that she did not purchase a phone that the Prosecution alleges was used by the accused Badreddine, despite information provided to a Lebanese communications service provider at the time of the purchase in late 2005 identifying the witness as the purchaser of this phone.⁵
12. The evidence of witness PRH682,⁶ witness PRH695⁷ and witness PRH697⁸ relates to the attribution of third party phones that are, in turn, relevant to the attribution of phones to the accused Ayyash.

³ ERN 60294324-60294335.

⁴ ERN 60297132-60297162.

⁵ ERN 60267368-60267371.

⁶ ERN 60178582-60178599.

⁷ ERN 60140633-60140642.

⁸ ERN 60190488-60190505.

13. Witness PRH696's evidence relates to one Short Message Service (SMS) sent from his phone to the Red Network phone 3123741 (Red 741) that the Prosecution attributes to the accused Ayyash.⁹ The witness states that he may have entered a wrong phone number by inadvertence when he sent the SMS from his phone, which the Prosecution will submit explains why this SMS was received by Red 741 despite the latter operating in a closed network.¹⁰

ii) Witness' evidence related to 'Sami Issa'

14. Witness PRH700's evidence relates to his interactions with (i) Witness PRH089, a member of the general circle of the family and acquaintances of the Prime Minister Hariri, (ii) a friend of the latter named 'Sam' (whom the Prosecution will submit refers to 'Sami Issa', i.e, the accused Badreddine); and the interactions between Witness PRH089 and 'Sam'.¹¹ By inference, the evidence of Witness PRH700 relates to methods used by the accused Badreddine to acquire relevant information.

(b) Four witnesses will provide evidence on the reliability and provenance of documentary evidence

15. The evidence of four proposed witnesses relates to the reliability of documentary evidence already on the Exhibit List or that the Prosecution seeks to add in this List in the present motion. The proposed evidence is relevant to the attribution of phones to the five accused.
16. Witness PRH698, a Prosecution analyst, has reviewed the SMS content of a phone used by witness PRH089, a member of the general circle of the family and acquaintances of the Prime Minister.¹² Witness PRH089 was in phone contact with two phones alleged to have been used by 'Sami Issa,' an alias of the accused Badreddine. Witness PRH698 conducted searches to identify SMS messages providing illustrative examples relevant to the attribution of the phone to witness

⁹ ERN 60103188-60103204.

¹⁰ Red Network phones communicated almost exclusively with each other. *See* STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, Redacted Version of the Indictment, 7 March 2014, para. 15(a).

¹¹ ERN 60297105-60297131.

¹² ERN 60305819-60305824.

PRH089 and his relationship with members of the security apparatus of Rafik Hariri, which resulted in the production of a SMS Call Sequence Table (CST).¹³ Witness PRH698 has also reviewed the SMS content of a phone in contact with a phone allegedly used by the accused Badreddine.¹⁴ Witness PRH698 conducted searches to identify SMS content providing information about the user of the phone whom the Prosecution alleges was a driver and bodyguard of 'Sami Issa'.

17. Witness PRH693,¹⁵ a Prosecution analyst, has reviewed extracts produced from several databases received from Lebanese communications service providers, various universities, one professional order and one tow truck service. Witness PRH694,¹⁶ a Prosecution analyst, has reviewed open sources document, extracts produced from specific email accounts, and customer databases of three private companies. The process followed by the two witnesses involved the comparison of the extracts with their original sources to verify the accuracy of each extract.
18. Witness PRH701¹⁷ a former Prosecution analyst, addresses the reliability of open sources documents referring to the death of Youssef Habib Merhi, a brother of the accused Merhi. Events related to the death of Youssef Habib Merhi are relevant to the attribution of phone numbers to the accused Merhi.

2. The proposed exhibits are *prima facie* relevant and probative of issues in the Indictment

19. The Prosecution seeks leave to add to its Exhibit List the items described in the eight categories set out below. The materials are relevant and probative of issues in the

¹³ A CST is a collection of call data records produced to organize and present the relevant information in an intelligible and readable format (*See STL, Prosecutor v. Ayyash et al., Case No. STL-11-01/T/TC, Prosecution Motion for the Admission of Red Network-Related Call Sequence Tables and Related Statement.*). A SMS CST presents the content of text messages sent by MTC phones (*See STL, Prosecutor v. Ayyash et al., Case No. STL-11-01/T/TC, Prosecution Motion for the Admission of Purple Phone related Call Sequence Tables, 30 January 2015, para. 4.*).

¹⁴ ERN60311070-60311074.

¹⁵ ERN60298310-60298347, ERN60295225-60295233, ERN60295234-60395238, and ERN60295279-60295297.

¹⁶ ERN60307389-60307394, ERN60307299-60307302, ERN60304976-60304980, and ERN60295418-60295421.

¹⁷ ERN60309858-60309867.

Indictment for the reasons described and as further detailed in Annexes B and C. Annex C lists the items that replace items already on the Exhibit List, while Annex B lists the items that do not replace any items currently on this List.

i) *Extract from phone contact list of a former Prosecution staff member and memorandum from the Registry*

20. An extract from the professional phone contact list of a former Prosecution staff member, provided to the Prosecution by the Registry, records a phone number for a senior Hezbollah official.¹⁸ The Registry produced a memorandum explaining the methodology used to extract the phone number from the professional phone contact list.¹⁹ The attribution of this phone number to the senior Hezbollah official is relevant to (i) the attribution of phones to the accused Ayyash and Badreddine, and (ii) the association of the two accused with the senior Hezbollah official.

ii) *Extracts from databases created and provided by external sources*

21. An extract from a database gathering applications and information about applications for the Hajj is relevant to the attribution of a phone number to a senior Hezbollah official.²⁰ The extract provides the date of birth of the senior Hezbollah official, which is relevant to the attribution of a phone number to him as he received SMS wishing him ‘happy birthday’ in 2004 and 2007 on that date.²¹ The attribution of this particular phone to the senior Hezbollah office is in turn relevant to (i) the attribution of phone numbers to the accused Ayyash and Badreddine, and (ii) the association of the two accused with the senior Hezbollah official.²²

22. An extract from a customer database from a private company identifies ‘Sami Issa’, whom the Prosecution will submit is an alias of the accused Badreddine, as the user of

¹⁸ ERN 60310856(RED)-60310856(RED). *See* Annex B, row 2.

¹⁹ ERN 60310836-60310838. *See* Annex B, row 1.

²⁰ ERN D0444019-D0444019. *See* Annex B, row 14.

²¹ *See* the SMS CST for the phone number attributed to the senior Hezbollah official (ERN D0326164-D0326168).

²² The Indictment pleads that all five accused are supporters of Hezbollah. *See* STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, Redacted Version of the Indictment, 7 March 2014, para. 49.

a specific phone number.²³ This information, previously disclosed to the Defence in a statement of witness PRH643,²⁴ is relevant to the attribution of the phone to the accused Badreddine.

23. Thirty extracts²⁵ from various customer databases²⁶ of private companies registering information about their clients, including their phone numbers, are intended to replace 30 extracts already on the Exhibit List. The Prosecution noticed minor discrepancies in the original extracts. The original extracts have been relied upon in witness PRH230's reports.²⁷ The Prosecution also notifies the Trial Chamber that it will not rely on the original extracts, and, therefore, it requests leave to replace each of them in the Exhibit List with the new extract under the same Rule 91 number.
24. Four items containing records of entry to and exit from Lebanon for the period between 1 January 2000 and 31 December 2005 for family members of the accused Oneissi,²⁸ are relevant to the attribution of 3598095 ("Purple 095") to the accused Oneissi. Witness PRH431 relies upon these documents as part of his analysis of the entry and/or exit from the territory of Lebanon of siblings of Mr. Oneissi, which are relevant to the attribution of Purple 095 to the accused Oneissi.²⁹

²³ ERN D0430210-D0430210. *See* Annex B, row 7. It is the Prosecution position that 'Sami Issa' was an alias used by the accused Badreddine.

²⁴ R91-804395 at ERN 60281111 at para. 15.

²⁵ ERN D0455720-D0455721, ERN D0455719-D0455719, ERN D0437251-D0737251, ERN D0437252-D0437252, ERN D0437253-D0437253, ERN D0437254-D0437254, ERN D0437255-D0437255, ERN D0437256-D0437256, ERN D0437257-D0437257, ERN D0437258-D0437258, ERN D0437259-D0437259, ERN D0437260-D0437260, ERN D0437261-D0437261, ERN D0437262-D0437262, ERN D0437263-D0437263, ERN D0437264-D0437264, ERN D0437265-D0437265, ERN D0437266-D0437266, ERN D0437267-D0437267, ERN D0437268-D0437268, ERN D0437269-D0437269, ERN D0437270-D0437270, ERN D0437271-D0437271, ERN D0437272-D0437272, ERN D0437273-D0437273, ERN D0437274-D0437274, ERN D0437275-D0437275, ERN D0437276-D0437276, ERND0438632-D0438632 and ERN D0438633-D0438633. *See* Annex B, rows 8-35, 62-63.

²⁶ The databases can be found at: ERN 60185448, part of ERN 60185440-60185450; R91-300449; and ERN 60185375, part of ERN 60185372-60185376.

²⁷ R91-801738, R91-801194, R91-801452, R91-801568, R91-805131.

²⁸ ERN 60305048-60305060, ERN 60305061-60305083, ERN 60305084-60305099 and ERN 60304827-60304845. *See* Annex B, rows 65-68.

²⁹ ERN60307275-60307291.

25. The Prosecution requests the addition of family status records of the accused Oneissi.³⁰ Witness PRH431 relies upon these documents as part of his analysis of the entries and exits to and from Lebanon of Mr. Oneissi's siblings, which is relevant to the attribution of Purple 095 to the accused Oneissi.³¹
26. Sixty documents³² provided by the Lebanese Traffic, Truck and Vehicle Management Authority or extracted by the Prosecution from a database provided by the same authority ("Vehicle Registration Database")³³ are intended to replace extracts already on the Exhibit list as the available information on the provenance and chain of custody of the original extracts was incomplete. One additional extract is a new document.³⁴ These documents contain information relevant to the attribution of phones to each of the accused. The Prosecution also notifies the Trial Chamber that it will not rely on the original extracts, and, therefore, it requests leave to replace each of them in the Exhibit List with the new extract under the same Rule 91 number.
27. An application form for a Lebanese identify card from a distant family relative of the accused Merhi is relevant to the attribution of a phone to this relative of Mr. Merhi.³⁵ The attribution of the latter phone is relevant to the attribution of a phone to Mr. Merhi's family.

³⁰ ERN 60221858-60221868. *See* Annex B, row 26.

³¹ ERN 60307275-60307291.

³² ERN 60297215-60297229, ERN 60297231-60297239, ERN 60297240-60297249, ERN 60297255-60297261, ERN 60297262-60297268, ERN 60297269-60297274, ERN 60297275-60297285, ERN 60297286-60297293, ERN 60297294-60297299, ERN 60297300-60297307, ERN 60297308-60297317, ERN 60297321-60297334, ERN 60297336-60297340, ERN 60297341-60297352, ERN 60297364-60297379, ERN 60297380-60297384, ERN 60297385-60297393, ERN 60297400-60297412, ERN 60297413-60297419, ERN 60297420-60297426, ERN 60297427-60297431, ERN 60297432-60297437, ERN 60297438-60297443, ERN 60297444-60297450, ERN 60297451-60297455, ERN 60297457-60297461, ERN 60297462-60297468, ERN 60297476-60297480, ERN 60297481-60297487, ERN 60297502-60297509, ERN 60297510-60297517, ERN 60297518-60297524, ERN 60297532-60297546, ERN 60297548-60297556, ERN 60297557-60297563, ERN 60297564-60297572, ERN 60297573-60297579, ERN 60297580-60297586, ERN 60297587-60297601, ERN 60297602-60297607, ERN 60297608-60297614, ERN 60297615-60297623, ERN 60297624-60297629, ERN 60297630-60297637, ERN 60297638-60297644, ERN 60297645-60297654, ERN 60297655-60297663 and ERN 60297664-60297669. *See* Annex C, rows 48-94.

³³ ERN D0455736-D0455736, ERN D0455737-D0455737, ERN D0455738-D0455738, ERN D0455739-D0455739, ERN D0455740-D0455740, ERN D0455741-D0455741, ERN D0455742-D0455742, ERN D0455743-D0455743, ERN D0455764-D0455764, ERN D0455765-D0455765, ERN D0455766-D0455766 and ERN D0470457-D0470457. *See* Annex C, rows 95-107.

³⁴ ERN 60308770-60308890. *See* Annex B, row 23.

³⁵ ERN D0187742-D0187743. *See* Annex B, row 25.

28. The Prosecution requests the addition to the Exhibit List of 29 extracts from subscribers databases obtained from Lebanese communications service providers.³⁶ The databases have already been made available in their entirety to the Defence.³⁷ The information contained in these extracts has been previously disclosed to the Defence through witness PRH011's statements.³⁸ Eighteen extracts were created to replace extracts that are on the Exhibit List in order to correct minor discrepancies that are mainly typographical in nature. The Prosecution will not rely on the 18 original extracts, and, therefore, requests corresponding leave to replace each of them in the Exhibit List with the new extract under the same Rule 91 number. Six extracts were created to provide an additional source to the evidence of Witness PRH011. Five additional extracts were recently created as they pertain to the attribution of phones to third parties, which in turn are relevant to the attribution of phone numbers to the five accused.

iii) Items provided by witnesses or related to their testimony

29. A letter from witness PRH095 is relevant to the location and phone number of a clinic attended by the accused Ayyash and members of his family for medical appointments.³⁹ The document was recently provided in response to a Request for Assistance sent by the Prosecution in order to obtain relevant corroborative evidence.
30. A response from the Lebanese authorities to a Request for Assistance from the Prosecution relates to unsuccessful attempts to locate and interview the alleged

³⁶ ERN D0375502-D0375502, ERN D0375503-D0375503, ERN D0375504-D0375504, ERN D0375500-D0375500, ERN D0370261-D0370261, ERN D0370265-D0370265, ERN D0370262-D0370262, ERN D0370263-D0370263, ERN D0334628-D0334628, ERN D0352967-D0352967, ERN D0368056-D0368056, ERN D0370264-D0370264, ERN D0370266-D0370266, ERN D0370271-D0370271, ERN D0370267-D0370267, ERN D0441241-D0441241, ERN D0454557-D0454557, ERN D0456605-D0456605, ERN D0456604-D0456604; ERN D0370273-D0370273, ERN D0370276-D0370276, ERN D0370274-D0370274, ERN D0370275-D0370275, ERN D0370277-D0370277, ERN D0381124-D0381124; ERN D0370283-D0370283, ERN D0370284-D0370284, ERN D0370286-D0370286 and ERN D0370313-D0370313. *See* Annex B, rows 3-6, 9-12, 14-17 and Annex C, rows 28-45.

³⁷ The Ogero Subscriber Database at R91-801085 ERN 60137064-60137075 at 60137074 is available to the Defence in the inspection room as well as on the Z drive. The MTC Subscriber Database at R91-100297 ERN 60048147-60048147A at ERN 60048147A is available to the Defence in the inspection room as well as on the Z drive. The Alfa Subscriber Database at ERN 60082662-60082662A at ERN 60082662A is available to the Defence in the inspection room.

³⁸ R91-800185 ERN 60133669-60133767 and R91-800965 ERN 60146679-60146737.

³⁹ ERN 60305536-60305542. *See* Annex B, row 69.

subscriber of a phone⁴⁰ that the Prosecution attributes to the accused Badreddine.⁴¹ This item shows that (i) the alleged subscriber of the phone could not be found, and (ii) the address provided when the phone was subscribed does not exist. By inference, the item supports the Prosecution allegation that the subscriber details provided when the phone was subscribed were false.

iv) *Items provided by Lebanese Communication Service Providers in relation to the subscribers of five specific phones and a general explanation*

31. Two responses from Lebanese Communication Services Providers, Mobile Interim Company 2 SAL (MIC2), previously trading as 'Mobile Telecommunication Company' ("MTC") and currently trading as Touch ("Touch"), and Mobile Interim Company 1 SAL (MIC1) trading as Alfa ("Alfa"), to a Prosecution's Request for Assistance⁴² provide information about the subscribers of five phones in contact with phones attributed by the Prosecution to the accused Badreddine.⁴³ A third response (from Touch)⁴⁴ provides a technical explanation about the presentation of Call Data Records provided by MTC.⁴⁵

v) *Items related to passengers of a flight from Beirut to Jeddah*

32. Two items show that, although a passport application form exists in the name "Samer Fathi Abboud" in relation to a flight manifest from Beirut to Jeddah on 15 January 2005, no personal status extracts exist for that individual. The passport application form for "Samer Fathi Abboud," with civil registration number El-Bachoura 641, does not mirror the personal status records of any citizen of Lebanon, as shown by a

⁴⁰ The subscriber details have been previously provided to the Defence in the witness PRH230's report related to the attribution of phones to Badreddine (R91-801452).

⁴¹ ERN 60264061-60264067. *See* Annex B, row 22.

⁴² ERN 60301150-60301164 and D0418448-D0418448, and ERN 60295394-60295405, D0374715-D0374715. *See* Annex B, rows 27 and 28.

⁴³ These contacts have been previously disclosed to the Defence and they are referred to in the report of witness PRH230 related to the attribution of phones to Badreddine (R91-8041452).

⁴⁴ ERN D0351202-D0351202 and 60292159-60292168. *See* Annex B, row 29.

⁴⁵ It explains that when the second party to a call is left blank or represented by an underscore in call data records (and therefore in call sequence tables), it usually means that the incoming call came from international route. The latter information is already known to the Defence as this information is relied upon by witness PRH230 (R91-805131).

record obtained from the Ministry of Interior and Municipalities.⁴⁶ The name “Salim Ayyash” appears on the same manifest in relation to the same flight from Beirut to Jeddah. The Prosecution will submit that these documents illustrate the possibility that travelers to the Hajj may abuse identity documents belonging to others, which is relevant to the attribution of phones to the accused Ayyash on and after 15 January 2005.

vi) *Financial documents from two banks*

33. Seven financial documents from Banque Franco-Libanaise and Bank Al-Madina containing the phone numbers of Burhan Ghazaleh and Mohamed Ghazaleh, brothers of Rustom Ghazaleh, are relevant to the attribution of these two phone numbers.⁴⁷ The financial documents also contain credit cards records on large purchases Burhan Ghazaleh and Mohamed Ghazaleh made at Samino Jewelry businesses, which the Prosecution alleges were owned and operated by ‘Sami Issa’, an alias used by the accused Badreddine.

vii) *School records of the daughter of the accused Badreddine*

34. A response from the Lebanese authorities to a Request for Assistance from the Prosecution contains the school records for the daughter of the accused Badreddine.⁴⁸ It includes her address and phone contacts in case of emergencies. The Prosecution alleges that one of the phones listed in the document was used by an associate of ‘Sami Issa’, an alias of the accused Badreddine, and it was in frequent contact with phones attributed to Mr. Badreddine. The document is therefore relevant to establishing the link between the accused Badreddine and his alias, ‘Sami Issa’.

⁴⁶ ERN 60292863-60292871, ERN 60292872-60292881. See Annex B, rows 30 and 31.

⁴⁷ ERN 60095070-600095125, ERN 600096176-600096182, ERN 60096246-600096246, ERN 600096248-600096249, ERN 600096286-600096286, ERN 600096492-600096495, ERN 600096503-600096514. See Annex B, rows 34-40.

⁴⁸ ERN 60309045-60309059.

viii) *Updated Expert Report of witness PRH435*

35. An expert report of witness PRH435⁴⁹ updates a limited number of his findings presented in a report already on the Exhibit List.⁵⁰ The original report of witness PRH435 examined seven mobile phones operating on the Alfa and Touch networks to determine whether their use is consistent with a single user.⁵¹ Witness PRH435 amended the original report after having examined end cell data⁵² for the phones operating on the Alfa network that was provided after the completion of the original report. Witness PRH435 amended a limited number of his findings on the basis of this end cell data.⁵³
36. The Prosecution requests the addition on the Exhibit List of another expert report of witness PRH435 as it summarizes the effects of end cell data on the analysis conducted in previous reports authored by witness PRH435.⁵⁴ This report also disclosed is capable of assisting the Trial Chamber in giving context for the amendments to the report on the single user of seven phones addressed above. The report also provides the expert's opinion concerning the overall effect of end cell data on previous data that he had analyzed.

3. The Prosecution has good cause for adding the witnesses and items to its Rule 91 Lists at this time

37. The proposed witnesses and items are added at this stage of the trial proceedings because the Prosecution, in accordance with its ongoing duty to re-evaluate its evidentiary holdings, has determined that this evidence is of sufficient relevance and probative value that it should be capable of being considered by the Trial Chamber, if ultimately admitted. The vast majority of the proposed evidence sought to be added to

⁴⁹ ERN D0429236-D0429520. *See* Annex B, row 33.

⁵⁰ D0216976-D0217258 (R91-802651).

⁵¹ The Prosecution alleges that the single user is the accused Ayyash.

⁵² 'End cell data' indicates the cell id and cell sector used by the target number at the end of a call. 'Cell id' is a unique number contained within the call data records to identify the cell sector used for each phone call, as well as "Cell name" information: a short-form alphanumeric convention used by the Communication Services Provider providing the data and which corresponds to a particular Cell id.

⁵³ *See* notations at pages 18, 47 and 280-281 of the report, ERN D0429236-D0429520.

⁵⁴ ERN D0429521-D0429667. *See* Annex C, row 108.

the Exhibit List derives from the Prosecution's efforts to provide the best available evidence for the benefit of the Trial Chamber, particularly in respect of the attribution of phones to the accused which will be addressed in the latter portions of the Prosecution case. The remaining evidence has recently been received.

38. In particular, the proposed evidence should be available to the Trial Chamber to assist in portraying a complete picture of the attribution of some of the phones the Prosecution alleges were used by the accused in the context of the preparations and carrying out of the attack against Prime Minister Hariri.

4. Adding the witnesses and items will not cause undue delay

39. The Prosecution respectfully submits that the addition of these witnesses and exhibits and witnesses should not unduly impact Defence preparation and therefore will not require any delay in the proceedings. All materials have been disclosed in advance of this motion, at which point Defence Counsel were notified of the Prosecution's intent to seek their addition in the Witness or Exhibit Lists.
40. The vast majority of the proposed evidence of the witnesses listed in Annex A as well as the exhibits from Annex B are corroborative in nature of information that has been previously disclosed to the Defence. Although relatively large in volume, the proposed evidence does not raise any new matters.

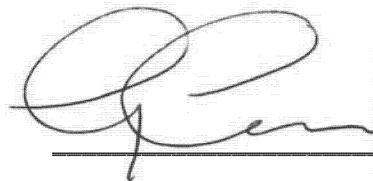
B. Confidential Annexes

41. The Annexes to this submission contain information concerning confidential witness information and exhibits. The Prosecution respectfully requests the Trial Chamber to maintain the confidential status of the attached Annexes until the Trial Chamber decides otherwise, either upon motion of the Prosecution or after having given the Prosecution the opportunity to be heard on the issue of lifting its confidential status.

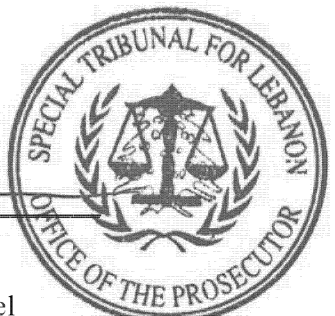
III. RELIEF REQUESTED

42. For the above reasons, the Prosecution respectfully requests the Trial Chamber to:
- a. **GRANT** leave to amend the Witness List by adding the witnesses listed in confidential Annex A;
 - b. **GRANT** leave to amend the Exhibit List by adding the exhibits listed in confidential Annexes B and C;
 - c. **AUTHORIZE** the Prosecution to file updated Rule 91 Lists, if the Motion is granted; and
 - d. **ORDER** that the Annexes to this submission remain confidential until the Trial Chamber decides otherwise, either upon motion of the Prosecution or after having given the Prosecution the opportunity to be heard on the issue of lifting the confidential status.

Respectfully Submitted,



Graeme Cameron
Senior Trial Counsel
Office of the Prosecutor



Dated this 21th day of August 2015
Leidschendam, The Netherlands

Word Count: 4686

