



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER**

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

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

**Registrar:** Mr. Daryl Mundis

**Date:** 7 July 2014

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION ON EXPERT WITNESS PRH120, PROFESSOR FOUAD HUSSEIN  
AYOUB, AND EXPERT WITNESS PRH508, DR. ISSAM MANSOUR**

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**Office of the Prosecutor:**

Mr. Norman Farrell, Mr. Graeme Cameron  
& Mr. Alexander Milne

**Victims' Legal Representatives:**

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& Mr. Thomas Hannis

**Counsel for Mr. Mustafa Amine Badreddine:**

Mr. Antoine Korkmaz, Mr. John Jones  
& Mr. Iain Edwards

**Counsel for Mr. Hassan Habib Merhi:**

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

**Counsel for Mr. Hussein Hassan Oneissi:**

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**Counsel for Mr. Assad Hassan Sabra:**

Mr. David Young, Mr. Guénaél Mettraux  
& Mr. Geoffrey Roberts



## **BACKGROUND**

1. This decision provides reasons for the Trial Chamber's oral decisions of 1 and 2 July 2014 on the qualifications of Prosecution witness PRH120, Professor Fouad Hussein Ayoub and the admissibility of his reports and witness statements.<sup>1</sup> The decision also provides reasons for the Trial Chamber's oral decision of 3 July 2014 on the qualifications of Prosecution witness PRH508, Dr. Issam J. Mansour and the admissibility of his reports. Further, the decision provides written reasons for the Trial Chamber's oral decision of 3 July 2014 to allow the Prosecution to amend its exhibit list by adding three reports.<sup>2</sup>

2. The brief procedural background to this is that on 4 March 2014, the Prosecution filed its updated notice of expert witnesses and their statements.<sup>3</sup> Counsel for the five Accused, Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hassan Habib Merhi, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra then submitted their notices pursuant to Rule 161 (B) of the Special Tribunal's Rules of Procedure and Evidence.<sup>4</sup> The Prosecution thereafter requested the Trial Chamber to declare 17 witnesses as expert witnesses and to admit five reports of expert witnesses into evidence,<sup>5</sup> and Defence counsel responded to the Prosecution's motion.<sup>6</sup>

## **APPLICABLE LAW**

3. Rule 161, 'Testimony of Expert Witnesses', reads as follows,

- (A) The full statement of any expert witness to be called by a Party shall be disclosed to the opposing Party and to the victims participating in the proceedings within the time-limit prescribed by the Pre-Trial Judge or Trial Chamber.

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<sup>1</sup> STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, STL-11-01/T/TC, Unofficial transcripts of 1 and 2 July 2014.

<sup>2</sup> STL-11-01/T/TC, Unofficial transcript of 3 July 2014.

<sup>3</sup> STL-11-01/T/TC, Updated Prosecution Notice of Expert Witnesses and their Statements, 4 March 2014 ('Prosecution notice').

<sup>4</sup> STL-11-01/T/TC, Notice by the Ayyash Defence Pursuant to Rule 161(B) in Response to the Prosecution filing of 4 March 2014, with Confidential Annex A, 4 April 2014 ('Ayyash Rule 161 notice'); Badreddine Defence Response to "Updated Prosecution Notice of Expert Witnesses and their Statements" dated 4 March 2014, 4 April 2014 ('Badreddine Rule 161 notice'); The Defence for Hussein Hassan Oneissi Rule 161 (B) Updated Notice of Expert Witnesses and their Statements, 4 April 2014 ('Oneissi Rule 161 notice'); Updated Sabra Defence Notice Pursuant to Rule 161(B), 4 April 2014 ('Sabra Rule 161 notice'); Merhi Defence Notice Relating to Expert Witnesses PRH287, PRH386, PRH462, PRH406 and PRH315 Pursuant to Rule 161 (B) of the Rules, 24 April 2014 ('Merhi Rule 161 notice').

<sup>5</sup> STL-11-01/T/TC, Prosecution Motion regarding Upcoming Expert Witnesses, 26 May 2014 ('Prosecution motion').

<sup>6</sup> STL-11-01/T/TC, Response by the Ayyash Defence to the "Prosecution Motion Regarding Upcoming Expert Witnesses" dated 26 May 2014, 10 June 2014 ('Ayyash response'); Corrected Version of Badreddine Defence Response to the "Prosecution Motion Regarding Upcoming Expert Witnesses" of 26 May 2014, 12 June 2014 ('Badreddine response'); Réponse de la défense de Merhi à la "Prosecution Motion Regarding Upcoming Expert Witnesses", 10 June 2014 ('Merhi response'); The Defence for Hussein Hassan Oneissi Response to the Prosecution Motion Regarding Upcoming Expert Witnesses, 10 June 2014 ('Oneissi response').

- (B) Within thirty days of disclosure of the statement of the expert witness, or such other time prescribed by the Pre-Trial Judge or the Trial Chamber, the opposing Party shall file a notice indicating whether:
- (i) it accepts the expert witness statement;
  - (ii) it wishes to cross-examine the expert witness; or
  - (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the report and, if so, which parts.
- (C) If the opposing Party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

4. Rule 161 has two functions: one is to fix timetables for parties to disclose expert reports, and for the opposing parties to respond as to whether they accept the statement, wish to cross-examine the expert or challenge his or her qualifications or the relevance of any of the report. The second permits the Trial Chamber, if the opposing party accepts the statement, to receive it into evidence without cross-examination.<sup>7</sup> It does not otherwise regulate the admission into evidence of expert reports or statements, nor the manner in which expert witnesses should testify. The case-law of other international criminal courts and tribunals provides precedent and guidance as to how a witness is to be qualified as an expert, how expert reports and statements should be admitted into evidence, and how experts should testify in court. For example, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) stipulates that the following criteria are met before an expert report is admitted in evidence: i) the author of the report must be classified as an expert; ii) the report must meet the minimum standard of reliability, be relevant and of probative value; and iii) the content of the report must fall within the witness' area of expertise.<sup>8</sup>

5. These requirements guarantee that the report will only be treated as expert evidence insofar as it is based on the expert's specialised knowledge, skills or training. Statements falling outside the expert's area of expertise should be treated as personal opinions and weighted accordingly.<sup>9</sup> In

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<sup>7</sup> STL-11-01/T/TC, Decision Refusing Leave to Reconsider Decision to Admit Medical Proof of Deaths (Merhi Defence), 24 June 2014, para. 16 (Presiding Judge).

<sup>8</sup> ICTY, *Prosecutor v. Ratko Mladić*, IT-09-92-T, Decision on Defence Request to Disqualify Richard Butler as an Expert and bar the Prosecution from presenting his reports, 19 October 2012, para. 7; *Prosecutor v. Đorđević*, IT-05-87/1-T, Decision on Prosecution's Notice Re Defence Expert Witness Radomir Milašinović, Aleksandar Pavić and Zoran Stanković, 24 March 2010, para. 7; *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution's Motion for admission of evidence of Eight Experts pursuant to Rules 92 *bis* and 94 *bis*, 9 November 2009, para. 16; *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Report by Richard Phillips, 10 March 2009, para. 6. *See also*, ICTR, *Prosecutor v. Karemera, Ngirumpatse, and Nzirodera*, ICTR-98-44-T, Decision on Edouard Karemera's Motion for the Admission of an Expert Witness, 22 May 2009, para. 5.

<sup>9</sup> ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-T, Decision on Prosecution's Notice Re Defence Expert Witness Radomir Milašinović, Aleksandar Pavić and Zoran Stanković, 24 March 2010, para. 7; *Prosecutor v. Perišić*, IT-04-81-T,

principle, an expert should not offer an opinion on the criminal liability of an accused person as this falls within the competence of the judges.<sup>10</sup>

6. The term ‘expert’ means ‘a person whom by virtue of some specialized knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute’.<sup>11</sup> Accordingly, to determine whether a person is an expert, the Trial Chamber should consider past and current professional experience and training, publications and other relevant information, as described in a *curriculum vitae* or other pertinent documents accompanying the report.<sup>12</sup> The Trial Chamber agrees with these established principles.

## DISCUSSION

### **Professor Fouad Hussein Ayoub**

7. Professor Ayoub’s reports were admitted into evidence in the course of his testimony on 1 and 2 July 2014.<sup>13</sup> This decision provides written reasons for the Trial Chamber’s oral decisions of 1 and 2 July 2014 declaring Professor Ayoub as expert and admitting into evidence his reports and witness statements.

8. The Prosecution called Professor Ayoub to provide live testimony as a forensics expert on 1 and 2 July 2014. He has written seven reports for the United Nations International Independent Investigation Commission (UNIIC),<sup>14</sup> of which two are co-authored.<sup>15</sup> They concern the crime scene

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Decision on Expert Report by Richard Phillips, 10 March 2009, para. 8; *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Report of Helge Brunborg, 17 November 2008, para. 8.

<sup>10</sup> ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-PT, Decision on Prosecution’s Submission of the Expert Report of Nena Tromp and Christian Nielsen pursuant Rule 94 bis, 18 March 2008, para. 12; *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Report by Richard Phillips, 10 March 2009, para. 8.

<sup>11</sup> ICTY, *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Report by Richard Phillips, 10 March 2009, para. 7; *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, and Pandurević*, IT-05-88-T, Second Decision regarding the evidence of General Rupert Smith, 11 October 2007, p. 3; *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 2; *Prosecutor v. Brđanin*, IT-99-36-T, Decision on Prosecution’s Submission of Statement of Expert Witness Ewan Brown, 3 June 2003, p. 4. *See also*, SCSL, *Prosecutor v. Brima, Kamura, and Kanu*, SCSL2004-16-T, Decision on Prosecution Request for Leave to call an additional witness (Zainab Hawa Bangura) pursuant to Rule 73 bis (E), and on Joint Defence Notice to Inform the Trial Chamber of its position vis-à-vis the proposed expert witness (Mrs. Bangura) pursuant to Rule 94bis, 5 August 2005, para. 31.

<sup>12</sup> ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Decision on admission of Expert Report of Ratko Skrbčić with Separate Opinion of Judge Mindua and dissenting opinion of Judge Nyambe, 22 March 2012, para. 14; *Prosecutor v. Đorđević*, IT-05-87/1-T, Decision on Prosecution’s Notice Re Defence Expert Witness Radomir Milašinović, Aleksandar Pavić and Zoran Stanković, 24 March 2010, para. 6; *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Report of Richard Higgs, 26 January 2009, para. 6.

<sup>13</sup> STL-11-01/T/TC, Unofficial transcripts of 1 and 2 July 2014.

<sup>14</sup> ‘DNA results of samples taken from the crime scene, indicated on the map and taken five days after the explosion’, 23/2/2005, R91-606429; ‘Forensic report on human parts of unidentified male’, 12/10/2006, R91-606447; Witness statement, 19 – 29/8/2005, R91-606419; Witness statement, 21 and 26 January 2013, R91-607619; ‘Buccal swabbing of [relatives of] Abu Adass’, 18/3/2006, R91-606948; ‘The disclosing of the poison discovered at the crime scene where

of the explosion in Beirut on 14 February 2005. They include a chronology and describe the collection of human remains from the scene and information about the DNA profiling of those remains, and the DNA profiling of individuals related to alleged suspects. By virtue of their subject matter, these reports appear to be relevant to the consolidated indictment.

*Professor Ayoub's qualifications*

9. These are written reasons for the oral decision of 1 July 2014.<sup>16</sup> Professor Ayoub's *curriculum vitae* demonstrates that he is an experienced and well-qualified forensic odontologist, who has been working in the field of dentistry since 1985.<sup>17</sup> Since 2000, in addition to his work for UNIIC, he has been engaged five times, internationally, to assist in identifying victims of accidents and other incidents.<sup>18</sup> Counsel for Mr. Badreddine and Mr. Merhi cross-examined Professor Ayoub on 2 July 2014.<sup>19</sup>

10. Counsel for Mr. Sabra challenge Professor Ayoub's qualifications<sup>20</sup> in relation to his report of 12 October 2006 entitled, 'Forensic report on human parts of unidentified male' (R91-606447).<sup>21</sup> Counsel for the other four Accused do not challenge his qualifications.<sup>22</sup> However, counsel for Mr. Oneissi and Mr. Badreddine challenge his expert reports and his status as an expert and wish to reserve their right to cross-examine him and other proposed expert witnesses.<sup>23</sup> Counsel for Mr. Merhi took no position 'at this time'.<sup>24</sup>

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Prime Minister HARIRI, Rafik was assassinated', 10/03/2006, R91-607159; and, 'Report containing DNA data of individuals recovered from the crime scene', 18/7/2009, R91-606417. In addition, the Prosecution seeks to add the following reports to its' Rule 91 list, which are authored by Professor Ayoub: R91-607725; R91-607163.

The original, Arabic versions of R91-607159 (ERN L0008609-L0008610) and R91-606727 (ERN 50004947-50004956) have overlapping content. However, their English translations do not overlap. The English translation of R91-607159 contains the 'Report: DNA profile analysis for human identity testing Identification of crime scene evidences' (ERN L0008614-L0008619). The English translation of R91-606727 contains the 'Report submitted by Professor Fouad Ayoub to The Investigating Magistrate Judge Michel Abou Arraj' (ERN 50004947-50004951). R91-607159 was admitted into evidence as exhibit P199. R91-606727 was admitted into evidence as exhibit P197. *See*, STL-11-01/T/TC, Unofficial transcript of 2 July 2014, pp 5-6.

<sup>15</sup> Professor Ayoub co-authored R91-606727 with Dr. Issam Mansour (PRH508), Dr. Rosa Assadrian (PRH428) and Mr. Amer Fouad Sakr (PRH134). Professor Ayoub co-authored R91-606429, with Professor André Megarbane (PRH135).

<sup>16</sup> Unofficial transcript of 1 July 2014, p. 5.

<sup>17</sup> *Curriculum vitae* of Ayoub, Fouad Hussein, ERN 60277178-60277184. Professor Ayoub holds degrees in medicine, forensic dentistry, medical sciences (specialising in forensic medicine) and oral pathology. He is a dental surgeon and has held a number of academic positions relating to forensic medicine and forensic dentistry. Professor Ayoub has also been a medical examiner for the Beirut district since 2001.

<sup>18</sup> *Curriculum vitae* of Ayoub, Fouad Hussein, ERN 60277178-60277184.

<sup>19</sup> Unofficial transcript of 2 July 2014, pp 33-94 and 96-105.

<sup>20</sup> Sabra Rule 161 notice, confidential Annex A, p. 2.

<sup>21</sup> R91-606447, ERN 60045703-60045777.

<sup>22</sup> Ayyash Rule 161 notice, confidential Annex A, p. 2; Badreddine response, paras 1-2; Oneissi response, paras 1-2; Merhi response, para. 17.

<sup>23</sup> Badreddine response, paras 2-3, 6; Oneissi response, paras 8-10, 18.

<sup>24</sup> Merhi response, para. 17.

11. The Trial Chamber reiterates that it will not accept ‘global’ unsubstantiated objections to a witness’s qualifications and, for this reason, the challenges of counsel for Mr. Badreddine, Mr. Oneissi, and Mr. Sabra are dismissed.<sup>25</sup> On the basis of the information contained in his *curriculum vitae*, the Trial Chamber is satisfied that Professor Ayoub is qualified as an expert under Rule 161, and in accordance with established principles of international criminal law.<sup>26</sup>

*Professor Ayoub’s portion of report ‘DNA results of samples taken from the crime scene, indicated on the map and taken five days after the explosion’, 23 February 2005, R91-606429*

12. This report is comprised of several sub-reports produced by Professor Ayoub and another proposed Prosecution expert, Professor André Megarbane.<sup>27</sup> The report contains an extensive DNA analysis of four samples collected, including details of the methodology, results and their interpretation, with photographs. Professor Ayoub’s contribution to the report generally details his inspection of the vicinity of the explosion site outside the narrow scope of the blast.<sup>28</sup> It includes sketch maps showing where the various samples were collected and provides a chronology and description of the collection of organic materials, including human remains.<sup>29</sup> The Prosecution submits that this portion of the report is relevant to the case and has probative value as it contains a description of what was recovered and picked up off the ground.<sup>30</sup>

13. Counsel for Mr. Ayyash, Mr. Badreddine, Mr. Oneissi, and Mr. Sabra do not object to the admission of the report as Professor Ayoub was scheduled to testify.<sup>31</sup> Counsel for Mr. Merhi took no position.<sup>32</sup>

14. Professor Ayoub’s portion of the report is relevant to the case and has probative value concerning the mapping the site of the explosion and collecting remains of victims of the explosion for future identification. The information provided in the pertinent portion of the report is relevant and probative, and is within Professor Ayoub’s expertise. The report is admitted into evidence under Rule 161.<sup>33</sup>

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<sup>25</sup> STL-11-01/PT/TC, Order on Rule 161 Notices re Expert Witnesses, 19 March 2013, para. 4.

<sup>26</sup> STL-11-01/T/TC, Unofficial transcript of 1 July 2014, p. 5.

<sup>27</sup> R91-606429, ERN L0008367-L0008566.

<sup>28</sup> R91-606429, ERN L0008367-0008566 at L0008369-L0008376.

<sup>29</sup> R91-606429, ERN L0008367-0008566 at L0008369-L0008376.

<sup>30</sup> STL-11-01/T/TC, Unofficial transcript of 1 July 2014, pp 23-24.

<sup>31</sup> Ayyash response, para. 22; Badreddine response, para. 13; Oneissi response, para. 18; Sabra Rule 161 notice, confidential Annex A, p. 3.

<sup>32</sup> Merhi response, para. 28.

<sup>33</sup> Unofficial transcript of 2 July 2014, pp 4-5. Report R91-606429 was admitted as exhibit P196.

*'Forensic report on human parts of unidentified male', 12 October 2006, R91-606447*

15. This report relates to the human remains of an unidentified male collected at the crime scene in February and March 2005, and May and June 2006.<sup>34</sup> It details a summary of the investigations conducted by the Lebanese Internal Security Forces, a Spanish Forensic Police Team, and Professor Ayoub in relation to human parts collected at the crime scene.<sup>35</sup> It describes these human parts, including their DNA profiles and a table summarising the inventory of the biological exhibits belonging to the unidentified male.<sup>36</sup> It also includes extensive photographic documentation of the exhibits and specific human remains collected.<sup>37</sup> The report's table provides a concise summary of the inventory of human remains collected and analysed belonging to the unidentified male.<sup>38</sup>

16. Counsel for Mr. Baddredine, Mr. Oneissi, and Mr. Sabra do not accept the report.<sup>39</sup> Counsel for Mr. Ayyash accept the report.<sup>40</sup> Counsel for Mr. Oneissi challenge the relevance of the report.<sup>41</sup> They fail, however, to specify why the statement lacks relevance and have merely provided a 'blanket' objection. In the absence of specific reasons for their objection, it is dismissed. Counsel for Mr. Merhi took no position on the report.<sup>42</sup>

17. The report clearly details the origin, transfer, and identification system that Professor Ayoub and other experts employed to conduct the genetic DNA analysis of the biological exhibits.<sup>43</sup> This report is relevant and probative as it concerns the identification of missing persons and attempts to locate human remains collected near the explosion. It falls within Professor Ayoub's expertise. The Trial Chamber will admit the report into evidence under Rule 161.<sup>44</sup>

*Witness statement of Professor Ayoub, taken from 19 – 29 August 2005, R91-606419*

18. UNHCR investigators took a detailed statement from Professor Ayoub from 19 to 29 August 2005. The statement describes his professional background, his specialisation in human

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<sup>34</sup> R91-606447, ERN 60045703-60045777.

<sup>35</sup> R91-606447, at ERN 60045712-60045713.

<sup>36</sup> R91-606447, at ERN 60045714-60045776.

<sup>37</sup> R91-606447, at ERN 60045714-60045772.

<sup>38</sup> R91-606447, at ERN 60045773-60045776.

<sup>39</sup> Sabra Rule 161 notice, confidential Annex A, p. 2; Badreddine Rule 161 notice, confidential Annex A, p. 2; Oneissi Rule 161 notice, confidential Annex A, p. 2.

<sup>40</sup> Ayyash Rule 161 notice, confidential Annex A, p. 2.

<sup>41</sup> Oneissi Rule 161 notice, confidential Annex A, p. 2.

<sup>42</sup> Merhi Rule 161 notice, para. 11.

<sup>43</sup> R91-606447, ERN 60045703-60045777 at 60045714-60045772.

<sup>44</sup> Unofficial transcript of 1 July 2014, p. 5; Unofficial transcript of 2 July 2014, p. 13. Report R91-606447 was admitted as P200.

identification, and the mandate of his investigation following the explosion in Beirut.<sup>45</sup> Professor Ayoub's main task was to identify unidentified bodies, analyse eight bodies at the American University Hospital, and prepare identification reports for the victims recovered from the crime scene. The statement also describes incorrectly identified bodies buried under the wrong names, the number of victims recovered from the crime scene, and the restrictions which were placed on him in carrying out his mandate.<sup>46</sup> Professor Ayoub identified from whom he received the victims' dental records,<sup>47</sup> and his communications with the victims' family members.<sup>48</sup>

19. Professor Ayoub noted that the injuries sustained by the victims were 'typical injuries sustained by burn victims' with the exception of Rafik Hariri, whose chest injuries were consistent with wearing a shield.<sup>49</sup> The witness compiled a map illustrating the dispersion of the body parts at the crime scene.<sup>50</sup> Annexed to the statement is a collection of photographic material depicting Professor Ayoub and the individuals and body fragments he sought to identify.<sup>51</sup>

20. Counsel for Mr. Oneissi object to this witness statement but do not wish to cross-examine Professor Ayoub in relation to this report.<sup>52</sup> They failed, however, to specify why the statement lacks relevance and have merely provided a 'blanket' objection. In the absence of specific reasons for their objection, it is dismissed. Counsel for Mr. Sabra, Mr. Ayyash, and Mr. Badreddine accept the statement and do not wish to cross-examine Professor Ayoub.<sup>53</sup> Counsel for Mr. Merhi reserve the right to challenge the qualifications of witnesses at a later stage of the proceedings.<sup>54</sup>

21. The Trial Chamber is satisfied that the statement clearly sets out Professor Ayoub's mandate in identifying, from DNA analysis and dental records, the individuals and body parts recovered from the crime scene, as well as his subsequent communication with the victims. This statement is relevant to the indictment, but as it blends expert opinion and factual observations, the Trial Chamber will admit it into evidence under Rule 155.<sup>55</sup>

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<sup>45</sup> R91-606419, ERN 202016-202081 at 202017-202018.

<sup>46</sup> R91-606419, at ERN 202018-202023.

<sup>47</sup> R91-606419, at ERN 202020-202021.

<sup>48</sup> R91-606419, at ERN 202018-202019, 202021-202023.

<sup>49</sup> R91-606419, at ERN 202023.

<sup>50</sup> R91-606419, at ERN 202024, 202079-202081.

<sup>51</sup> R91-606419, at ERN 202027-202078.

<sup>52</sup> Oneissi Rule 161 notice, confidential Annex A, p. 2.

<sup>53</sup> Sabra Rule 161 notice, confidential Annex, p. 2; Ayyash Rule 161 notice, confidential Annex, p. 2, Badreddine Rule 161 notice, Annex p. 3.

<sup>54</sup> Merhi Rule 161 notice.

<sup>55</sup> Unofficial transcript of 1 July 2014, pp. 5-6; Unofficial transcript of 2 July 2014, p. 22. Report R91-606419 was admitted as exhibit P194.



*Witness statement of Professor Ayoub, taken on 21 and 26 January 2013, R91-607619*

22. In this witness statement, taken by investigators on 21 and 26 January 2013, Professor Ayoub recounted his role at both the mortuary and the crime scene in identifying the unidentified bodies recovered from the crime scene. Professor Ayoub confirmed that he contributed to R91-606429 ‘DNA results of samples taken from the crime scene, indicated on the map and taken five days after the explosion’.<sup>56</sup> Professor Ayoub also confirmed that he contributed to R91-606415<sup>57</sup>, ‘A report documenting the Medical Forensic Investigations conducted after the bombing that killed the Former Prime Minister Rafik HARIRI and 22 other persons on 14<sup>th</sup> February 2005’ dated 25 April 2008, while he was engaged as a forensic consultant for UNIIIC.

23. Professor Ayoub provides information about items recovered from the crime scene, including where he found the item, or if it was given to him by the Lebanese Internal Security Forces, how the item was stored, and the movement of exhibits.<sup>58</sup> This includes maps he drew of the crime scene and his efforts to obtain biological information belonging to Abu Adass, and the exhumations of two graves.<sup>59</sup> He describes the extract of mitochondrial DNA and why the analysis was stopped.<sup>60</sup>

24. Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Oneissi objected to the witness statement and its relevance.<sup>61</sup> They failed, however, to specify why the statement lacks relevance and have merely provided a ‘blanket’ objection. In the absence of specific reasons, the objections are dismissed. Counsel for Mr. Sabra accept the statement and do not wish to cross-examine Professor Ayoub.<sup>62</sup> Counsel for Mr. Merhi reserve the right to challenge the qualifications of witnesses at a later stage of the proceedings.<sup>63</sup>

25. The statement clearly sets out Professor Ayoub’s mandate at the crime scene in identifying individuals from DNA analysis carried out on items recovered from the crime scene and from the exhumations. However, the witness statement merely provides a cursory explanation of Professor Ayoub’s reports R91-606415 and R91-606429, and of the two exhumations he carried out without discussing in sufficient depth the methodology used in the reports or the results found. While the

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<sup>56</sup> ERN L0008367-L0008566.

<sup>57</sup> ERN 60109059-60109364.

<sup>58</sup> R91-607619, paras 14-22, 37-44.

<sup>59</sup> R91-607619, paras 24-36.

<sup>60</sup> R91-607619, para. 35.

<sup>61</sup> Ayyash Rule 161 notice, confidential Annex A, p. 2; Badreddine Rule 161 notice, confidential Annex A, p. 3; Oneissi Rule 161 notice, confidential Annex A, p. 2.

<sup>62</sup> Sabra Rule 161 notice, confidential Annex A, p. 2.

<sup>63</sup> Merhi Rule 161 notice.

DNA analysis of items recovered from the crime scene is relevant to the indictment, the report blends expert opinion and fact. For this reason, the Trial Chamber admits it under Rule 155.<sup>64</sup>

*Report 'Buccal DNA swabbing of [relatives of] Abu Adass', 18 March 2006, R91-606948*

26. This report is based on a report by Mr. Xavier Laroche and is concerned with the investigative work undertaken by Professor Ayoub.

27. The report details the process of buccal DNA swabbing carried out by Professor Ayoub.<sup>65</sup> More specifically, it describes the buccal swabs taken from family members of Abu Adass.<sup>66</sup> Counsel for Mr. Oneissi do not accept the report and challenge its relevance.<sup>67</sup> Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Sabra accept the expert report, pursuant to Rule 161 (B) (i), and do not raise any further challenges.<sup>68</sup> Counsel for Mr. Merhi do not take a position with regard to this report in their filings.<sup>69</sup>

28. Professor Ayoub's investigative work is relevant and probative as it relates to the identification of missing persons by comparing DNA samples for analysis. The report describes the methodology employed to collect the buccal DNA swab samples.<sup>70</sup> It includes extensive photographic documentation of the women and their identification cards as well as video proof of the buccal DNA swabbing.<sup>71</sup> The report falls within the author's expertise. The report will be admitted into evidence under Rule 161.<sup>72</sup>

*'The disclosing of the poison discovered at the crime scene where Prime Minister HARIRI, Rafik was assassinated', 10 March 2006, R91-607159*

29. This report is co-authored by Professor Ayoub, Dr. Rosa Assadrian, Dr. Issam Mansour, and Mr. Amer Fouad Sakr. It concerns the DNA analysis of a burnt tooth collected from the crime scene.<sup>73</sup> The report is in two parts. The first is authored by Professor Ayoub.<sup>74</sup> The second includes a

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<sup>64</sup> Unofficial transcript of 1 July 2014, p. 6; Unofficial transcript of 2 July 2014, p. 102. Report R91-607619 was admitted as exhibit P205.

<sup>65</sup> R91-606948, at ERN 60222056-60222061.

<sup>66</sup> R91-606948, at ERN 60222056-60222061.

<sup>67</sup> Oneissi Rule 161 notice, confidential Annex A, p. 2.

<sup>68</sup> Sabra Rule 161 notice, confidential Annex A, p. 2; Badreddine response, confidential Annex A, p. 3; Ayyash Rule 161 notice, confidential Annex A, p. 2.

<sup>69</sup> Merhi Rule 161 notice.

<sup>70</sup> See e.g., R91-606948, at ERN 60222056.

<sup>71</sup> See e.g., R91-606948, at ERN 60222057.

<sup>72</sup> Unofficial transcript of 1 July 2014, p. 6; Unofficial transcript of 2 July 2014, pp 22-23. Report R91-606948 was admitted as exhibit P201.

<sup>73</sup> R91-607159, ERN L0008609-L0008618.

<sup>74</sup> R91-607159, at ERN L0008609-L0008613.

report from the Analytical Testing Laboratories (ATL) of Lebanon, written and signed by Dr. Mansour, Mr. Sakr, and Dr. Assadrian from 10 March 2005.<sup>75</sup> This ATL report describes the receipt and testing of a burnt tooth collected from the crime scene.

30. Counsel for Mr. Oneissi do not accept the report, challenge its relevance, and wish to cross-examine the witness.<sup>76</sup> Counsel for Mr. Ayyash,<sup>77</sup> Mr. Badreddine,<sup>78</sup> and Mr. Merhi<sup>79</sup> took no position with regard to this report. Counsel for Mr. Sabra accept the report, do not challenge its relevance, and do not wish to cross-examine the witness.<sup>80</sup>

31. This report is relevant and probative and concerns the identification of missing persons and potential suspects. It clearly details the origin, transfer, and identification system employed by Professor Ayoub, Dr. Assadrian, Dr. Mansour, and Mr. Sakr to conduct the genetic DNA analysis of the burnt tooth.<sup>81</sup> It also includes photographic documentation of the burnt tooth and concludes that it belonged to a male.<sup>82</sup> The information provided by the Prosecution in this expert report is sufficient, despite the deficiencies in mislabelling the report. It meets the minimum indicia of reliability to be admitted as evidence. The Trial Chamber admits the report into evidence under Rule 161.<sup>83</sup>

*'Report containing DNA data of individuals recovered from the crime scene', 18 July 2009, R91-606417*

32. This report concerns all the genetic profiles, nuclear and mitochondrial, of individuals and traces recovered related to the crime scene and the attacks on Mr. Marwan Hamadeh, Mr. Samir Kassir, Mr. May Chidiac, Mr. Gebran Tueni, Mr. Ain Alaq, Mr. Walid Eido, Mr. Antoine Ghanem, Mr. Francois Al-Hajj, Mr. Wissam Eid, Mr. Fatah Al-Islam, and other unidentified victims in Lebanon.<sup>84</sup> The report also details the genetic DNA footprints of individuals and traces recovered from various crime scenes for comparison, set out in tables.<sup>85</sup>

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<sup>75</sup> R91-607159, at ERN L0008614-L0008618.

<sup>76</sup> Oneissi Rule 161 notice, confidential Annex A, p. 2.

<sup>77</sup> Ayyash Rule 161 notice, confidential Annex A, p. 2.

<sup>78</sup> Badreddine response, confidential Annex A, p. 4.

<sup>79</sup> Merhi Rule 161 notice.

<sup>80</sup> Sabra Rule 161 notice, confidential Annex A, p. 2.

<sup>81</sup> See R91-607159, at ERN L0008609-L0008618.

<sup>82</sup> See R91-607159, at ERN L0008609-L0008618.

<sup>83</sup> Unofficial transcript of 1 July 2014, p. 6; Unofficial transcript of 2 July 2014, p. 6. Report R91-607159 was admitted as exhibit P199.

<sup>84</sup> R91-606417, at ERN 60112884-60113120.

<sup>85</sup> R91-606417.

33. Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Oneissi do not accept the report.<sup>86</sup> Counsel for Mr. Ayyash and Mr. Badreddine challenge the relevance of the parts of the report not related to the crime scene.<sup>87</sup> Counsel for Mr. Oneissi and Mr. Sabra do not challenge the relevance of the report.<sup>88</sup> Counsel for Mr. Merhi do not take a position regarding the report.<sup>89</sup> Professor Ayoub's compilation of the DNA genetic footprints into tables for comparison in this report is relevant and probative as it concerns the identification of missing persons and potential suspects. It falls within Professor Ayoub's expertise. The Trial Chamber admits the report into evidence under Rule 161.<sup>90</sup>

**Dr. Issam J. Mansour**

34. Dr. Mansour's reports were admitted into evidence in the course of his testimony on 3 July 2014.<sup>91</sup> These are written reasons for the Trial Chamber's oral decision of 3 July 2014, declaring Dr. Mansour as being qualified as an expert in forensic science and admitting into evidence his reports.

35. The Prosecution called Dr. Mansour<sup>92</sup> to testify as a forensic science expert.<sup>93</sup> His first – R91-606409<sup>94</sup> and second – R91-606410<sup>95</sup> reports – are co-authored by Dr. Rosa Assadrian and Mr. Amer Fouad Sakr.<sup>96</sup> Both reports record the extraction of DNA from biological samples and corpses retrieved from the crime scene. DNA profile studies were then undertaken, with the results of each analysis listed in the reports. The Prosecution argues that both reports<sup>97</sup> are relevant and probative as they concern the investigative steps undertaken concerning biological samples recovered from the crime scene.

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<sup>86</sup> Ayyash Rule 161 notice, confidential Annex A, p. 1; Badreddine Rule 161 notice, confidential Annex A, p. 2; Oneissi Rule 161 notice, confidential Annex A, p. 1.

<sup>87</sup> Ayyash Rule 161 notice, Annex A, confidential p. 1; Baddredine Rule 161 notice, Annex A, confidential p. 2.

<sup>88</sup> Oneissi Rule 161 notice, Annex A, confidential p. 1; Sabra Rule 161 notice, Annex A, confidential p. 1.

<sup>89</sup> Merhi Rule 161 notice.

<sup>90</sup> Unofficial transcript of 1 July 2014, pp. 6-7; Unofficial transcript of 2 July 2014, pp 28-30. Report R91-606417 was admitted as exhibit P204. The Prosecution stated that they only intend to rely on this document in relation to the explosion of 14 February 2005.

<sup>91</sup> Unofficial transcripts of 3 July 2014.

<sup>92</sup> Issam J. Mansour, PRH508.

<sup>93</sup> STL-11-01/T/TC, Notice of Proposed Witness Order for Trial Hearings in June 2014, 6 June 2014, Annex A.

<sup>94</sup> R91-606409, ERN 50002694-50002711 ('Report re: DNA profile analysis for human identity testing of crime scene evidence').

<sup>95</sup> R91-606410, ERN 50002175-50002727 ('Report re: DNA profile analysis for human identity testing in the case of the assassination of PM Rafik Hariri').

<sup>96</sup> Rosa Assadrian, PRH428; Amer Fouad Sakr, PRH134.

<sup>97</sup> R91-606409, ERN 50002694-50002711; R91-606410, ERN 50002715-50002727.

*Dr. Mansour's qualifications*

36. These are written reasons for the Trial Chamber's oral decision delivered on 3 July 2014 declaring Dr. Mansour to be expert.<sup>98</sup> As demonstrated in his *curriculum vitae*,<sup>99</sup> Dr. Mansour's work experience includes human identification, paternity, and forensic testing as well as software development for crime scene management, paternity and forensic calculations and samples archiving.<sup>100</sup> According to Dr. Rosa Assadrian's *curriculum vitae*,<sup>101</sup> she is a qualified medical doctor specialising in laboratory medicine, specifically clinical pathology.<sup>102</sup> Mr. Amer Fouad Sakr's *curriculum vitae* shows that he is a qualified laboratory scientist, specialising in toxicology.<sup>103</sup>

37. Counsel for the five Accused do not challenge Dr. Mansour's qualifications.<sup>104</sup> However, counsel for Mr. Oneissi challenge the admission of Dr. Mansour's report R91-606409 and reserve their right to cross-examine him.<sup>105</sup> Counsel for Mr. Badreddine and Mr. Oneissi do not challenge the qualifications of Dr. Assadrian or Mr. Sakr but object to the Prosecution's request as a matter of principle.<sup>106</sup> In addition, counsel for Mr. Oneissi seek to cross-examine all three co-authors on report R91-606409. Counsel for Mr. Merhi takes no position on their qualifications or reports at this point, and counsel for Mr. Ayyash do not challenge the co-authors' qualifications and accept both reports.<sup>107</sup> Counsel for Mr. Sabra accept both reports and the qualifications of Mr. Sakr but challenge the relevance of report R91-606410 and Dr. Assadrian's qualifications in relation to this report.<sup>108</sup>

<sup>98</sup> Unofficial transcript of 3 July 2014, pp 2-3.

<sup>99</sup> *Curriculum vitae* of Mansour, Issam J., ERN 6027975-60279684.

<sup>100</sup> *Curriculum vitae* of Mansour, Issam J., ERN 6027975-60279684. In addition Dr. Mansour holds several high level degrees, including a B.S. in Medical Laboratory Technology from American University of Beirut, Lebanon (1985) and a PhD in Immunogenetics, Immunobiotechnology, and Immunohematology from Pierre and Marie Curie University in Paris, France (1993). He has also published extensively on these areas of expertise as detailed in his CV.

<sup>101</sup> Rosa Assadrian, PRH428. *Curriculum vitae* of Rosa Assadrian, ERN 60279818.

<sup>102</sup> Although her *curriculum vitae* is scant in detail, it demonstrates that Dr. Assadrian's work experience includes being a clinical pathologist of laboratory medicine at Haddad Hospital (1987-1991), St. Marc Medical & Diagnostic Center (1991-2004), and Analytical Testing Laboratories (2005-2013). Dr. Assadrian graduated with a M.D. from Yerevan State Medical University in Armenia in 1974. She later specialised in clinical pathology and laboratory medicine and received her PhD in 1983.

<sup>103</sup> *Curriculum vitae* of Sakr, Amer Fouad., ERN 60279685-60279687. Mr. Sakr's work experience includes being the current Clinical Director at the Analytical Testing Laboratories (ATL) in Beirut, Lebanon and working for the Special Chemistry Department at the American University of Beirut Medical Center. Mr. Sakr received his B.S. in chemistry and his M.S. in radiation medicine from the University of Pittsburgh. He has also published extensively on his specialised knowledge.

<sup>104</sup> Ayyash Rule 161 notice, confidential Annex A, p. 8; Badreddine Rule 161 notice, confidential Annex A, p. 13; Merhi Response, para. 17; Oneissi Rule 161 notice, confidential Annex A, p. 9; Sabra Rule 161 notice, confidential Annex A, p. 10.

<sup>105</sup> Oneissi Rule 161 notice, confidential Annex A, p. 9.

<sup>106</sup> Badreddine Rule 161 notice, confidential Annex A, pp. 1, 16; Badreddine response, para. 2; Oneissi Rule 161 notice, confidential Annex A, pp. 1, 11; Oneissi response, paras 8-10.

<sup>107</sup> Merhi response, para. 17; Ayyash Rule 161 notice, confidential Annex A, pp 1, 11.

<sup>108</sup> Sabra Rule 161 notice, confidential Annex A, pp 1, 14.

38. The Prosecution called Dr. Mansour to give evidence in court and he was therefore available for cross-examination. Counsel for Mr. Badreddine and Mr. Merhi cross-examined Dr. Mansour on 3 July 2014.<sup>109</sup> On the basis of the information contained in their *curricula vitae*, the Trial Chamber is satisfied that Dr. Mansour, Mr. Sakr, and Dr. Assadrian have specialised knowledge within the meaning of Rule 161 in the field of forensic science and that this knowledge may assist the Trial Chamber in understanding the evidence to be presented by the Prosecution. It will not require Dr. Assadrian or Mr. Sakr to appear for cross-examination, either in Leidschendam, or by video-link.

*Report on DNA Profile Analysis for Human Identity testing of crime scene evidence, 8 March 2005, R91-606409*

39. ‘Report on DNA Profile Analysis for Human Identity testing of crime scene evidence’, R91-606409, dated 8 March 2005 describes the receipt of multiple evidence samples from corpses recovered from the crime scene and the subsequent DNA extractions, analysis, and profile studies conducted for each sample. The report clearly details the methodology employed, namely Polymorphic Short Tandem Repeat loci analysis, for human identification.<sup>110</sup> It includes tables showing the DNA profiles obtained from the different samples and interprets the results through DNA analysis and comparison.<sup>111</sup> Overall, the information provided in this expert report is relevant to the proceedings, meets the minimum standards of reliability to be admitted as evidence, and is within the experts’ fields of expertise. The Trial Chamber will admit the report into evidence under Rule 161.<sup>112</sup>

*Report on DNA profile analysis for human identity testing in the case of the assassination of PM Rafik Hariri, 15 March 2005, R91-606410*

40. This report describes the receipt of multiple evidence samples from corpses recovered from the crime scene and the subsequent DNA extractions, analysis, and profile studies conducted for each sample.<sup>113</sup> Report R91-606410 clearly details the methodology employed for human identification;<sup>114</sup> it includes tables showing the DNA profiles obtained from the different samples and draws conclusions about the relationships between the different DNA samples.<sup>115</sup> The information in this expert report is sufficient, meets the minimum standards of reliability to be admitted as evidence, and

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<sup>109</sup> Unofficial transcript of 3 July 2014, pp 57-64 and 65-72.

<sup>110</sup> R91-606409, ERN 50002694-50002711 at 50002702-50002703.

<sup>111</sup> R91-606409, at ERN 50002704-50002711.

<sup>112</sup> Unofficial transcript of 3 July 2014, pp 29-30. Report R91-606409 was admitted as exhibit P206.

<sup>113</sup> R91-606410, ERN 50002715-50002727.

<sup>114</sup> R91-606410, ERN 50002715-50002727 at 50002721-50002722.

<sup>115</sup> R91-606410, at ERN 50002723-50002727.

is within the experts' fields of expertise. The Trial Chamber will admit the report into evidence under Rule 161.<sup>116</sup>

### **Prosecution's request to amend its Rule 91 exhibit list**

41. These are written reasons for the Trial Chamber's oral decision of 3 July 2014 allowing the Prosecution to amend its exhibit list.<sup>117</sup> In its motion of 26 May 2014, the Prosecution requested to amend its exhibit list by re-adding Professor Ayoub's report, 'Report submitted by Professor Ayoub on 4 April 2006 analysing DNA samples taken from suspect's relative', R91-607163, to the exhibit list.<sup>118</sup> The Prosecution also seeks to add two new reports, one signed by Professor Ayoub, 'Obtaining a DNA profile from [relatives of] Abou Adass', dated 12 April 2006, R91-607725,<sup>119</sup> and a second 'Report on the D.N.A. test result: NEGATIVE Procedure documents and DNA profile analysis', R91-607726,<sup>120</sup> co-authored by Dr. Mansour, Mr. Amer Fouad Sakr, and Dr. Rosa Assadrian. The three reports have been previously disclosed to the Defence of all the five Accused.<sup>121</sup> The Prosecution submitted that the reports are expected to be used during the respective witness's testimony.<sup>122</sup>

42. In the first and second reports, Professor Ayoub analysed the oral swabs of victims and individuals associated with the case.<sup>123</sup> The third report also contains an analysis of DNA profiles of victims and individuals associated with the case.<sup>124</sup>

43. The Prosecution explained that, in preparing for the upcoming testimony of Professor Ayoub and Dr. Mansour, it decided that the three reports could support its case and assist the Trial Chamber by having relevant evidence for its consideration. The Prosecution gave no notice of the three reports to the Defence as they are not new or updated expert evidence.<sup>125</sup> The Defence also had notice of both expert witnesses, who are on its witness list. For these reasons, there is good cause to grant this amendment, on the basis that it will cause no undue delay.

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<sup>116</sup> Unofficial transcript of 3 July 2014, pp. 48-49. Report R91-606410 was admitted as exhibit P207.

<sup>117</sup> Unofficial transcript of 3 July 2014, pp. 4-6.

<sup>118</sup> R91-607163, at ERN L0008796-L0008804.

<sup>119</sup> R91-607725, at ERN 60002900-60002903.

<sup>120</sup> R91-607726, at ERN 50003966-50003977.

<sup>121</sup> Prosecution motion, para. 49.

<sup>122</sup> Prosecution motion, para. 48.

<sup>123</sup> R91-607725, at ERN 60002900-60002903 and R91-607163, at ERN L0008796-L0008804.

<sup>124</sup> R91-607726, at ERN 50003966-50003977.

<sup>125</sup> Prosecution motion, para. 50.

44. Counsel for Mr. Ayyash and Mr. Badreddine opposed the Prosecution motion arguing that no good cause was shown.<sup>126</sup> Counsel for Mr. Merhi took no position.<sup>127</sup> Counsel for Mr. Oneissi did not oppose the amendment of the exhibit list.<sup>128</sup> Counsel for Mr. Sabra did not respond to the motion.

45. The Trial Chamber, in considering whether to allow the Prosecution to amend its exhibit list must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. General factors for consideration include: (1) whether the proposed evidence is *prima facie* relevant and probative; (2) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (3) the stage of the proceedings; and, (4) whether granting the amendment would result in undue delay.<sup>129</sup>

46. The Trial Chamber, having reviewed the proposed expert reports, is satisfied that the evidence is *prima facie* relevant and probative. The amendments sought by the Prosecution result from its effort to develop the evidence of existing expert witnesses. A clear understanding of an expert's opinion will assist the Parties and facilitate the conduct of these proceedings. The Trial Chamber is therefore satisfied that good cause exists to amend the exhibit list.

47. The Trial Chamber observes that the Prosecution did not notify Defence counsel of any new or updated expert evidence in advance of the application to amend its exhibit list because the three proposed expert reports (of 4, 5 and 8 pages, respectively) do not constitute new or updated expert evidence. Further, the first report was previously on the Prosecution's exhibit list, but removed on 18 December 2013;<sup>130</sup> the Prosecution sought to add only an extract of 3 pages<sup>131</sup> from the original of the second report.<sup>132</sup> The Defence also had notice of both expert witnesses, who are on the Prosecution's witness list.<sup>133</sup> The Trial Chamber, noting all of this, and the early stage of the trial, does not consider that the requested amendments are burdensome or that they will cause any undue delay.

48. The Trial Chamber, having balanced the right of the Prosecution to present evidence to support its case with the rights of counsel for the five Accused to adequately prepare for trial, is

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<sup>126</sup> Ayyash response, para. 23; Badreddine response, para. 15.

<sup>127</sup> Merhi response, para. 30.

<sup>128</sup> Oneissi response, para. 17.

<sup>129</sup> STL-11-01/PT/TC, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

<sup>130</sup> Prosecution motion, para. 47.

<sup>131</sup> R91-607725, at ERN of 60002900-60002903.

<sup>132</sup> Prosecution motion, para. 51.

<sup>133</sup> Prosecution motion, para. 50.



satisfied that it is in the interests of justice to allow the amendment of the exhibit list. Moreover, the Prosecution notified the Defence of its proposal to add the reports on 26 May 2014, which allowed counsel for the five Accused additional time to deal with the matter before the resumption of the trial on 18 June 2014. Accordingly, there is no prejudice to the Defence due to this amendment of the Prosecution's exhibit list.

### **DISPOSITION**

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

#### **PROVIDES WRITTEN REASONS FOR ITS DECISIONS TO**

**ALLOW** the Prosecution to amend its exhibit list to add reports, 'Obtaining a DNA profile from [relatives of] Abou Adass', R91-607725; 'Report on the D.N.A. test result : NEGATIVE Procedure documents and DNA profile analysis', R91-607726; and 'Report submitted by Professor Ayoub on 4 April 2006 analysing DNA samples taken from suspect's relative', R91-607163;

**DECLARE** that Professor Ayoub is qualified as an expert in forensic odontology, and that his proposed reports fall within that expertise;

#### **ADMIT INTO EVIDENCE**

- (1) Professor Ayoub's witness statement dated 19 – 29 August 2005, R91-606419, and his witness statement dated 21 and 26 January 2006, R91-607619, under Rule 155; and
- (2) Professor Ayoub's expert reports, including 'DNA results of samples taken from the crime scene, indicated on the map and taken five days after the explosion', 23 February 2005, R91-606429, 'Forensic report on human parts of unidentified male', 12 October 2006, R91-606447; 'Buccal swabbing of [relatives of] Abu Adass', 18 March 2006, R91-606948; 'The disclosing of the poison discovered at the crime scene where Prime Minister HARIRI, Rafik was assassinated', 10 March 2006, R91-607159; and 'Report containing DNA data of individuals recovered from the crime scene', 18 July 2009, R91-606417, under Rule 161;

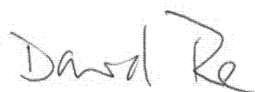
**NOTES THAT IT DECIDED** that Dr. Mansour is qualified as an expert in forensic science and that his proposed reports fall within that expertise; and

**PROVIDES WRITTEN REASONS FOR ITS DECISIONS TO**

**ADMIT** Dr. Mansour's expert reports, 'Report on DNA Profile Analysis for Human Identity testing of crime scene evidence', 8 March 2005, R91-606409, and 'Report on DNA profile analysis for human identity testing in the case of the assassination of PM Rafik Hariri', 15 March 2005, R91-606410, under Rule 161.


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

Leidschendam,  
The Netherlands  
7 July 2014



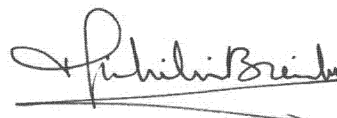
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

