



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER**

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

The Trial Chamber: **Judge Robert Roth, Presiding  
Judge Micheline Braidy  
Judge David Re  
Judge Janet Nosworthy, Alternate Judge  
Judge Walid Akoum, Alternate Judge**

The Registrar: **Mr. Daryl Mundis, Acting Registrar**

Date: **30 May 2013**

Original language: **English**

Classification: **Public**

**THE PROSECUTOR**

v.

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

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**DECISION ON COMPLIANCE WITH THE PRACTICE DIRECTION FOR THE  
ADMISSIBILITY OF WITNESS STATEMENTS UNDER RULE 155**

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Mr. Norman Farrell

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Mr. Eugene O'Sullivan  
Mr. Emile Aoun

**Head of Defence Office:**  
Mr. François Roux

**Counsel for Mr. Mustafa Amine Badreddine:**  
Mr. Antoine Korkmaz  
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**Victims' Legal Representative:**  
Mr. Peter Haynes

**Counsel for Mr. Hussein Hassan Oneissi:**  
Mr. Vincent Courcelle-Labrousse  
Mr. Yasser Hassan

**Counsel for Mr. Assad Hassan Sabra:**  
Mr. David Young  
Mr. Guénaël Mettraux



## Introduction

1. The Prosecution requested the Trial Chamber to rule on whether it may admit into evidence, without cross-examination, certain witness statements that do not comply with all of the requirements for admission into evidence specified in the relevant Practice Direction. The Defence submissions agree, that in certain circumstances, non-complying statements can be admitted into evidence. The Trial Chamber must decide whether and in what circumstances such statements may be received into evidence.

## Procedural history

2. On 20 February 2013, the Prosecution requested the Pre-Trial Judge to refer to the Trial Chamber the issue of the admission into evidence – under Rule 155 of the Rules of Procedure and Evidence – of ten witness statements, without cross-examination.<sup>1</sup> The Prosecution also expressly moved the Trial Chamber to admit the statements into evidence. The Defence of the Accused Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi, and Mr. Assad Hassan Sabra opposed the motion, and in particular, the Prosecution's request to admit the statements into evidence at this stage of the proceedings.<sup>2</sup>
3. Ruling on this motion under Rule 89 (E) on 15 April 2013,<sup>3</sup> the Pre-Trial Judge decided to submit to the Trial Chamber only the narrower issue of the general status of statements that do not comply with the formal requirements for admitting written statements into evidence under Rule 155 as specified in the 'Practice Direction on the

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<sup>1</sup> STL-11-01/PT/PTJ, *The Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, Prosecution's Motion Requesting the Pre-Trial Judge to Refer its Rule 155 Application to the Trial Chamber Pursuant to Rule 89 (E), Confidential, 20 February 2013.

<sup>2</sup> Response on behalf of Mr. Ayyash to "Prosecution's Motion Requesting the Pre-Trial Judge to Refer its Rule 155 Application to the Trial Chamber Pursuant to Rule 89(E), Confidential, 4 March 2013; Response to Prosecution Motion Requesting the Pre-trial Judge to Refer its Rule 155 Application to the Trial Chamber Pursuant to Rule 89 (E), Confidential, 4 March 2013 (Badreddine); *Réponse à la "Prosecution's Motion Requesting the Pre-trial Judge to Refer its Rule 155 Application to the Trial Chamber Pursuant to Rule 89 (E)"*, Confidential, 4 March 2013 (Oneissi); Sabra Defence Response to Prosecution Motion Requesting the Pre-trial Judge to Refer its Rule 155 Application to the Trial Chamber Pursuant to Rule 89 (E), Confidential, 27 February 2013.

<sup>3</sup> STL-11-01/PT/PTJ, Decision on the Prosecution's Motion to Refer to the Trial Chamber the Requests to Admit the Written Statements of Witnesses pursuant to Rules 89 (E) and 155 of the Rules of Procedure and Evidence, 15 April 2013.

Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155'.<sup>4</sup>

4. On 29 April 2013,<sup>5</sup> the Trial Chamber invited the parties to file submissions on how any non-compliance with the Practice Direction would affect the admissibility of the statements under Rule 155.<sup>6</sup> The Prosecutor and counsel for the four Accused consequently filed their submissions.<sup>7</sup>

### Submissions of the Parties

5. Rule 155 'Admission of Written Statements and Transcripts in lieu of oral testimony' allows the receipt into evidence of witness statements but without cross-examination. Rule 155 (A) provides that 'the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment'. The Practice Direction prescribes the pre-conditions for admitting statements into evidence under the Rule.
6. The Prosecution and Defence submissions agree that under certain circumstances statements that do not comply with the Practice Direction may be admitted into evidence. They disagree on the status of the Practice Direction and the precise circumstances in which the Trial Chamber may admit non-complying statements into evidence.

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<sup>4</sup> STL-PD-2010-02, Issued 15 January 2010.

<sup>5</sup> The submissions filed on 4 March 2013 by the Defence of Mr. Badreddine and Mr. Oneissi in response to the Prosecution's motion of 20 February 2013 did not specifically address the issues the subject of the Trial Chamber's decision of 20 April 2013.

<sup>6</sup> STL-11-01/PT/TC, Scheduling Order Relating to the Impact of the Non-Compliance with the Formal Requirements for the Written Statements of Witnesses on their Admissibility, 29 April 2013.

<sup>7</sup> STL-11-01/PT/TC, Prosecution's Submissions Regarding the Admission of Statements under Rule 155 which do not Comply with the Practice Direction, 10 May 2013; Response on Behalf of Mr. Ayyash to Prosecution's Submissions Regarding the Admission of Statements under Rule 155 which do not Comply with the Practice Direction, 21 May 2013; Defence for Mr Badreddine's Submissions Regarding the Admissibility of Statements under Rule 155 which do not Comply with the Applicable Practice Direction, 21 May 2013; *Jonction à la « Response on behalf of Mr Ayyash to Prosecution's Submissions Regarding the Admission of Statements under Rule 155 which do not comply with the Practice Direction »*, 21 May 2013, Response on Behalf of Mr. Sabra to Prosecution's Submissions Regarding the Admission of Statements under Rule 155 which do not Comply with the Practice Direction, 21 May 2013.

7. According to the Prosecution, Practice Directions are only non-binding administrative guidelines; binding the Trial Chamber would undermine its judicial discretion to determine the admissibility of statements at trial. The reliability of witness statements must be assessed on a case by case basis. The essential issue is whether the statement is reliable as opposed to whether it complies strictly with the Practice Direction. Statements not conforming to all of the criteria in the Practice Direction may nonetheless be admitted into evidence if they contain sufficient indicia of reliability. Statements which are inherently reliable, due to the nature of their evidence, should be admitted into evidence despite their non-compliance.<sup>8</sup>
8. The submissions of counsel for the four Accused agree that although the Practice Direction is presumptively binding, the Trial Chamber may, in certain circumstances, nonetheless admit into evidence statements that do not comply strictly with its terms. All disagree with the Prosecution's assertion that the Practice Direction operates as a guideline. The Defence submissions also agree with the Prosecution that any departure from compliance with the Practice Direction must be assessed on a case by case basis.
9. Counsel for Mr. Sabra submit that the Prosecution's argument that the Practice Direction is a non-binding guideline is misconceived. In principle, all witness statements must comply with the letter and spirit of the Practice Direction but in practice exceptions may be allowed, depending on the consent of the opposing Party, and whether the 'mischief that the Rule 155 Practice Direction was created to prevent applies'.<sup>9</sup> Although compliance with the Practice Direction is mandatory, non-complying statements could be received into evidence in two circumstances. One is where all Parties consent while the other would be where a Party opposing the Party that took the statement seeks to tender it into evidence (for example, the Defence tendering into evidence a statement of a Prosecution investigator). It could thus be admitted into evidence under Rule 155 because 'where such a statement favours the position and case of the opposing party the concerns about reliability of such deficient

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<sup>8</sup> For example, witnesses who do not recognize specific telephone numbers, subscriber information or mobile handsets falsely obtained with their identification and thus falsely attributed to them – being facts that are not reasonably in dispute; Prosecution submissions, para. 16.

<sup>9</sup> Sabra submissions, para. 1.

statements melt away'.<sup>10</sup> This is argued as analogous to the exception to the hearsay rule in some common law jurisdictions, reflecting the statement against interest rule. This, it is submitted, makes the statement inherently more reliable.

10. Counsel for Mr. Badreddine submit that the Practice Direction is presumptively binding and not a mere guideline, and, relying upon the case-law of international courts and tribunals, state that Practice Directions are binding legal documents of the Court that cannot be ignored by the Parties.<sup>11</sup> The Trial Chamber does, however, retain an overarching discretion to admit evidence under Rule 149 (C) and may admit non-complying statements. But it should not do so lightly. And this requires either the consent of the Parties or exceptional circumstances. Non-compliance with certain terms of the Practice Direction, such as the absence of a declaration certifying the truth of a statement, that the witness has been informed of the consequences of making an untruthful statement, and the date on which it was made, however, would be 'intolerable'. The Trial Chamber should declare that it will not tolerate non-compliance with any of the requirements of the Practice Direction, or alternatively, with those 'fundamental requirements' (as described).<sup>12</sup>
11. Counsel for Mr. Ayyash likewise argue that Practice Directions are binding and that the Practice Direction exists to preserve the reliability and integrity of evidence. The procedural safeguards set out in the Practice Direction are necessary where evidence is admitted without cross-examination. There are two permissible exceptions to this (those argued by counsel for Mr. Sabra. The Defence of Mr. Oneissi joined the submissions of the Defence of Mr. Ayyash.

## **Analysis**

### **The policy rationale for Rule 155 and its international equivalents**

12. Rule 155 (A) allows the Trial Chamber to receive witness evidence in lieu of oral testimony and without cross-examination. The factors in favour of admitting such

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<sup>10</sup> Sabra submissions, para. 23.

<sup>11</sup> The Prosecution, however, by filing its motion is not attempting to ignore the Practice Direction.

<sup>12</sup> Badreddine submissions, para. 20.

evidence include whether it is cumulative, or is background material, or concerns the impact of crimes upon victims, or relates to the character of the accused.

13. Admitting witness statements into evidence without allowing cross-examination necessitates providing procedural safeguards, and most particularly that written statements or transcripts must not contain evidence going to the proof of the acts or conduct of the accused. The evidence contained in the statements must also meet the basic requirements for the admission of evidence, in that it must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect.<sup>13</sup> After hearing the parties the Trial Chamber decides whether to require the witness to appear for cross-examination, either in The Hague or by video-link.
14. The Rule aims to reduce the court time needed for Parties to present their cases, thus increasing the expeditiousness and efficiency of trials. It allows the Parties to submit statements or previous court transcripts in place of live witness testimony, but while safeguarding the procedural rights of the Parties.
15. Rule 155 has its origins in similar rules originating in Rule 92 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), later adopted by the International Criminal Tribunal for Rwanda and in a modified form by the Special Court for Sierra Leone.<sup>14</sup> The first version of the ICTY Rules,<sup>15</sup> however, provided only that witnesses should testify orally before the Tribunal (as in many domestic systems). International criminal proceedings, though, differ in many ways from domestic criminal trials including in their length, seriousness,

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<sup>13</sup> Rule 155 (A)(ii)(b); see also e.g. ICTY, *Prosecutor v Stanislav Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June 2002, para.12; *Prosecutor v. Radovan Karadžić*, IT-95-5/18-PT, Decision on Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in lieu of *Vive Voce* Testimony pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality), 15 October 2009, para. 4; ICTR, *The Prosecutor v Bagosora and others*, ICTR-98-41-T, Decision on Prosecutor's Motion for the Admission of Written Witness Statements under Rule 92 *bis*, 9 March 2004, para. 12.

<sup>14</sup> The SCSL's Rule 92 *bis* (B) provides that 'information submitted may be received in evidence... if it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation'. Its Appeals Chamber has held that 'proof of reliability is not a condition of admission; all that is required is that the information should be capable of corroboration in due course', *Prosecutor v. Sam Hinga Norman, Moinina Fofaana, Allieu Kondewa*, SCSL-2004-14-AR73, Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005, para. 26.

<sup>15</sup> IT/32, 14 March 1994, adopted 11 February 1994.

complexity, cost and the location of the courts and tribunals away from the crime scenes. Consequently, in circumstances in which almost all witnesses had to travel internationally to the seat of the Tribunal in The Hague, The Netherlands, and in which many were providing evidence that was uncontroversial, or uncontested, or cumulative, or of background or historical interest, the length (and hence the increased cost) of the ICTY's early trials were viewed as unnecessarily long.

16. Subsequently, in 2001, Rule 92 *bis* was added to the ICTY Rules in an attempt to reduce the length of trials, while simultaneously attempting to safeguard the fundamental procedural rights of the Parties. The ICTY's Annual Report to the United Nations of September 2001 explained that the new Rule was created 'to facilitate the admission by way of written statement of peripheral or background evidence in order to expedite proceedings while protecting the rights of the accused under the Statute.'<sup>16</sup> Rule 155 has the same policy rationale.

#### **Relationship of the Practice Direction to the Statute and Rules of Procedure and Evidence**

17. Article 28 of the Statute of the Tribunal specifies that the judges of the Special Tribunal shall adopt Rules of Procedure and Evidence. Rule 32 (E) provides that the President of the Tribunal may, 'in consultation with the Council of Judges, the Registrar, the Head of Defence Office and the Prosecutor, issue Practice Directions, consistent with the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Tribunal'. In exercising this function, the President has issued several Practice Directions.
18. Practice Directions are intended to assist the Tribunal and its Chambers in managing procedural matters not specified in the Statute or Rules. They are subordinate to,

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<sup>16</sup> Eighth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, A/56/352, S/2001/865, 17 September 2001, p. 17; see also ICTY, *Prosecution v. Jadranko Prlić and others*, IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007, para. 43. In examining the policy rationale for the Rule change the ICTY Appeals Chamber held that the policy consideration of an economical trial may be relevant to determining whether to admit written statements in the interests of justice, but under its Rule 89 (F), *Prosecutor v. Slobodan Milošević*, IT-02-54-AR73.4, Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements, 30 September 2003, para. 20.

supplement, and must be consistent with the Statute and Rules of Procedure and Evidence. They are issued at the President's discretion and in his administrative capacity; they are neither adopted nor approved by the judges of the Tribunal sitting in plenary session.

19. A Practice Direction would be invalid to the extent of any inconsistency with the Statute or Rules. The Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155 prescribes the pre-conditions for admitting statements into evidence under Rule 155. The Trial Chamber is satisfied that this Practice Direction, by providing criteria regulating the conditions for the admissibility of statements under Rule 155, is consistent with both the Statute and the Rules and that it is intended to operate conjunctively with Rule 155 and does not weaken the Trial Chamber's judicial discretion in determining the admission of evidence.
20. This Practice Direction is expressed in mandatory terms, specifying in Article 2.1 that 'in order for the Trial Chamber to consider the written statement of a witness to be admissible under Rule 155, the following requirements must be satisfied...' Although Practice Directions are legally binding documents that the Parties must follow, a Chamber should not inflexibly enforce strict adherence to them, and must retain a general discretion to depart from strict application where it could result in injustice or prejudice to a Party.<sup>17</sup>
21. The Trial Chamber is thus satisfied that departure from the strict terms of a Practice Direction is permissible where the interests of justice so require.

### **Criteria for admissibility of statements under Rule 155**

22. The Prosecution and the Defence agree that in some circumstances witness statements may be admitted into evidence under Rule 155 notwithstanding some non-compliance with the Practice Direction. They agree that this must be assessed on an individual

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<sup>17</sup> See e.g. on the issue of the status of Practice Directions generally, ICTY, *Prosecutor v. Dario Kordić and Mario Čerkez*, IT-95-14/2-A, Decision Authorising Appellant's Brief to Exceed the Limit Imposed by the Practice Direction on the Length of Motions and Briefs, 29 August 2001, para. 6.



basis. All submissions agree that the basic policy requirement for admitting statements under the Rule is to establish the necessary indicia of reliability. The Trial Chamber concurs with each of these propositions.

23. Rule 155 contains strict criteria for admitting witness statements into evidence without cross-examination. This is necessarily so as the policy rationale for Rule 155 and its international equivalents – of expediting trials utilizing international criminal procedural law – entails constricting the normal rights of a Party to cross-examine witnesses called by an opposing Party. A Trial Chamber must therefore perform a careful balancing exercise in weighing the public interest in ensuring a fair and expeditious trial against the prejudice that a Party may experience in not cross-examining a witness testifying against its interests. It must exercise this power sparingly and provide cogent reasons for doing so.

24. The Practice Direction that supplements Rule 155 is directed at ensuring that – in circumstances in which the right to cross-examine is curtailed – witness statements have the indicia of reliability necessary to admit them into evidence under Rule 155. The Trial Chamber must therefore undertake a similar balancing exercise in deciding whether there are circumstances in which following the Practice Direction to the letter would cause an injustice (or an incurable prejudice) to any Party by excluding an otherwise reliable statement from admission into evidence.

25. The Trial Chamber must decide whether it can receive into evidence a statement that does not comply with the Practice Direction. The question therefore is whether any criterion in the Practice Direction is so fundamental in guaranteeing the indicia of reliability that non-compliance will bar the statement from admission into evidence under Rule 155. And, conversely, whether it is possible to list or categorise any criteria, a breach of which could be considered so ‘minor’ or ‘inconsequential’ as not to affect a statement’s reliability.

26. The Practice Direction’s numerous criteria for admissibility include: that a statement must have a witness information sheet as its first page specifying, (in descending order) family and given names, father’s and mother’s names, nicknames, date and place of birth, language(s) spoken, written language(s) if different, language(s) used in the

interview, current and former occupation, date(s), times and place of interview(s), name of interviewer(s), name of interpreter(s), and names of other persons present during the interview(s). Some criteria are evidently less significant than others in giving a statement the indicia of reliability necessary to admit it into evidence without cross-examination.

27. Examining the list, the Trial Chamber does not believe that the interests of justice could be served by denying the admissibility of a statement under Rule 155 solely for non-compliance with a minor technical requirement of the Practice Direction. To illustrate, failing to list a former occupation or a place of birth may have no impact on the statement's reliability. Nor would listing this information on a final page rather than on its cover. Likewise, as the Prosecution submits, a missing interpreter's signature, or the witness not having signed the certificate, may not affect the reliability of the statement.<sup>18</sup> These types of minor breaches of the Practice Directions could thus safely be disregarded for the purposes of establishing the statement's reliability and admitting it into evidence. Where the Trial Chamber considers a breach of the Practice Direction to be minor in nature it will consider whether the statement can be admitted into evidence under Rule 155, and will decide the issue on a case by case basis after hearing from the Parties.

28. The Trial Chamber therefore holds that where the interests of justice so require, it may deem a statement 'as complying' for the purposes of admissibility under Rule 155, notwithstanding a minor breach of the Practice Direction. The reasons for departing from the strict requirements of the Practice Direction, however, should be compelling. Moreover, the Trial Chamber must always be otherwise satisfied of the indicia of the statement's reliability, especially those concerning identity, acknowledging the statement's veracity, and that its deponent has either read it or had it read to them in their own language.

29. On the other hand, however, some requirements of Articles 1 and 2 of the Practice Direction would appear to be so fundamental to establishing the indicia of reliability

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<sup>18</sup> The Prosecution, however, also submits that an omission to verify a witness's identity with an identity card will not affect the reliability of the statement; Prosecution's submissions, para. 16.

that it is difficult to envisage overlooking non-compliance. These could include not properly identifying a witness, or failing to warn them that they could be prosecuted for contempt or false testimony for knowingly and wilfully making a false statement, knowing that it may be used in proceedings at the Tribunal (as specified in Article 2 par. 2 (d)). (This list is non-exhaustive). Where such breaches occur the Trial Chamber will examine also each application on its merits and examine the individual circumstances of each witness statement.

30. The Trial Chamber does not concur with the Defence submissions specifying two possible exceptions – namely where all Parties consent to the tendering of the statement, and where an opposing Party attempts to tender the other Party’s witness statement into evidence. The consent of the Parties is just one factor that the Trial Chamber will consider in determining whether a statement should be admitted into evidence under Rule 155 (or any other Rule). The Trial Chamber also disagrees with the argument that the mere act of a Party tendering a witness statement taken by an opposing Party provides the necessary indicia of reliability to accept it into evidence. It is the combination of factors surrounding the statement (its content, its deponent, the circumstances of its making) rather than the identity of the tendering Party that provides the statement with the necessary indicia of reliability. Moreover, the Rules of the Tribunal do not prohibit hearsay evidence and the common law rule identified by the Defence submissions operates in a restricted manner in certain national legal systems. The situation is not analogous to the principles of international criminal procedural law generally, and in particular, to those provided in the Rules of the Special Tribunal.

31. The Trial Chamber will therefore adopt the following principles in deciding applications to admit into evidence under Rule 155 statements that do not comply with the Practice Direction:

- a) First, the overriding principle is to determine the reliability of a witness statement;
- b) Second, it will depart from the strict terms of the Practice Direction only where compelling reasons exist;

- c) Third, this will be done on a case by case basis. Each application will be considered separately and carefully scrutinized;
- d) Fourth, some breaches will be considered so consequential or fundamental to establishing the reliability of a statement that the non-compliance cannot be overlooked. Providing an exhaustive list of such possible breaches is not possible; and
- e) Fifth, in the case of minor breaches, if sufficient indicia of reliability exists to overlook the breach, statements may be deemed to comply with the requirements for admissibility.

### **Inapplicability of Rule 155 (B)**

32. Rule 155 (B) allows the admission of unsigned statements, 'in exceptional circumstances' as an exception to the general rule that 'the statement must have been signed by the person who records and conducts the questioning...'. This Rule, however, is strictly applicable to the absence of a signature on the statement and cannot be construed as giving a general discretionary power in respect of all non-compliances with the Practice Direction.

### **Rectifying defects and other consequences of non-compliance**

33. The rationale of referring this issue to the Trial Chamber before it is seized of the case under Rule 95 was to notify the Parties (and in particular the Prosecution) in advance of the trial as to whether statements not fully complying with the Practice Direction could nevertheless be admitted into evidence. Emphasis should thus now be given to attempting to rectify any statements violating the requirements of the Practice Direction.

34. The Prosecution – if it seeks to tender statements under Rule 155 without requiring witnesses to appear for cross-examination – should therefore make all reasonable attempts to rectify any non-complying statements before seeking to admit them into evidence. The Trial Chamber urges the Prosecution to do this in a timely manner.

35. Where this is not possible – and if the Prosecution still wishes to tender the statement into evidence – and where the breach is so significant that in the absence of any rectifying factors it casts doubt on the reliability of the statement, the Trial Chamber will require the witness to attend for cross-examination (either in The Hague or via video-link).
36. Alternatively, in appropriate circumstances, the Prosecution could seek to tender such a statement under Rule 158 (unavailable persons). The Trial Chamber would still have to be satisfied of the reliability of the statement under Rule 158 (A) (ii).

**Admitting statements into evidence under Rule 155 at this stage of the proceedings**

37. The Trial Chamber is not seized of the case under Rule 95 and does not yet have a sufficient basis upon which it could decide whether the Prosecution's ten statements should be admitted as evidence at trial, under either Rule 155 or another Rule. The Trial Chamber will decide the admissibility of any statement proposed for admission into evidence (under any Rule) on a case by case basis at the appropriate time, noting that any Party may seek to tender statements under the Rule at any stage of the trial.


**FOR THESE REASONS the Trial Chamber:**

- (i) Defers until an appropriate time the Prosecution's application to admit statements into evidence under Rule 155; and
- (ii) Urges the Prosecution to take all necessary steps to remedy or rectify any non-compliance with the Practice Direction identified in the statements proposed for admission under Rule 155.

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

Leidschendam, The Netherlands, 30 May 2013

  
Judge Micheline Braidy

  
Judge Robert Roth, Presiding

  
Judge David Re

