

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

### THE TRIAL CHAMBER

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

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

**Registrar:** Mr. Daryl Mundis

**Date:** 20 December 2013

**Original language:** English

**Classification:** Public

### THE PROSECUTOR

v.

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

### FIRST DECISION ON THE PROSECUTION MOTION FOR ADMISSION OF WRITTEN STATEMENTS UNDER RULE 155

**Office of the Prosecutor:**  
Mr. Norman Farrell

**Counsel for Mr. Salim Jamil Ayyash:**  
Mr. Eugene O'Sullivan  
Mr. Emile Aoun

**Victims' Legal Representative:**  
Mr. Peter Haynes

**Counsel for Mr. Mustafa Amine Badreddine:**  
Mr. Antoine Korkmaz  
Mr. John Jones

**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. On 13 December 2013, the Trial Chamber issued an interim order informing the Prosecution of certain witnesses it required to attend for cross-examination<sup>1</sup> under Rule 155 of the Rules of Procedure and Evidence. This decision provides the reasons for that order and deals with a portion of the Prosecution motion seeking admission of written witness statements in lieu of oral testimony and an amendment of its exhibit list. More specifically, this decision deals with the initial 33 witnesses of the motion – on the basis of their order of appearance at the beginning of the Prosecution case<sup>2</sup> – and the request to amend its exhibit list.
2. On 15 November 2013, the Prosecution filed a motion under Rule 155 seeking to admit into evidence 100 statements – and, where applicable, associated evidentiary material amounting to 126 items – of 77 non-expert witnesses.<sup>3</sup> The Prosecution also sought leave to add 40 exhibits to its exhibit list. On 26 November 2013, the Prosecution filed an addendum to its motion.<sup>4</sup> On 27 November 2013, counsel for the four Accused responded to the motion, while the Legal Representative for Victims submitted observations.<sup>5</sup> The Prosecution filed a consolidated reply on 29 November 2013 in which it withdrew the Rule 155 application for one witness, and a corrigendum on 6 December 2013 in which it sought to add one more exhibit to its exhibit list.<sup>6</sup> Defence counsel did not respond to the Prosecution’s corrigendum.<sup>7</sup> On 17 December 2013, the Prosecution filed a second addendum to its motion.<sup>8</sup>

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<sup>1</sup> STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Interim Order on the Prosecution Motion for Admission of Written Statements Under Rule 155, 13 December 2013.

<sup>2</sup> STL-11-01/PT/TC, Notice of Proposed Prosecution Witness Order for the First Part of the Trial, 19 November 2013.

<sup>3</sup> STL-11-01/PT/TC, Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, Confidential, 15 November 2013. A public redacted version of the motion was filed on 20 November 2013.

<sup>4</sup> STL-11-01/PT/TC, Addendum to Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, 26 November 2013.

<sup>5</sup> STL-11-01/PT/TC, Observations of the Legal Representative of Victims on the Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, Confidential, 27 November 2013; Defence for Hussein Hassan Oneissi Response to Prosecution’s Rule 155 Application of 15 November 2013, Confidential, 27 November 2013; Ayyash Response to Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, 27 November 2013; Sabra Defence Response to Prosecution Rule 155 Motion, Confidential, 27 November 2013; Badreddine Defence Response to “Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case”, 27 November 2013; Corrigendum to “Badreddine Defence Response to ‘Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case’”, 28 November 2013.

<sup>6</sup> STL-11-01/PT/TC, Prosecution Reply to Defence Responses and LRV Observations to Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, 29 November 2013; Corrigendum to Prosecution Rule 155 Motion, 6 December 2013.

<sup>7</sup> The deadline for response to the Prosecution corrigendum was shortened to 12.00 on 10 December 2013 by the Trial Chamber. This was communicated to the Defence by the Court Management Services Section.

<sup>8</sup> STL-11-01/PT/TC, Second Addendum to Prosecution Rule 155 Motion, 17 December 2013.

3. A subsequent decision will address the remaining 43 witnesses in the motion.<sup>9</sup>

### **PRELIMINARY MATTER**

#### **Amendment of the Rule 91 exhibit list**

4. In its motion and corrigendum, the Prosecution seeks the Trial Chamber's leave to add 41 exhibits to its exhibit list filed under Rule 91.<sup>10</sup> Counsel for Mr. Ayyash and Mr. Sabra do not oppose the proposed amendments.<sup>11</sup> Counsel for Mr. Badreddine and Mr. Oneissi did not respond.
5. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list. In doing so, the Chamber 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: i) whether the proposed evidence is *prima facie* relevant and probative; ii) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; iii) the stage of the trial; and, iv) whether granting the amendment would result in undue delay.<sup>12</sup>
6. The Trial Chamber considers that the 41 exhibits are *prima facie* relevant and probative because they are connected with the proposed witnesses with which they are associated. The admissibility of statements and associated exhibits to each witness is discussed individually below. Adding these exhibits to the Rule 91 exhibit list will neither delay the proceedings nor prejudice the preparation of the Defence for trial. The Trial Chamber is therefore satisfied that adding the 41 exhibits to the exhibit list is in the interests of justice.

### **APPLICABLE LAW**

7. As stated by the Trial Chamber in its 30 May 2013 Decision:

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

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<sup>9</sup> As a result of the Prosecution's withdrawal of the Rule 155 application for one witness in its reply (PRH262), only 76 witnesses remain in the pending Rule 155 motion. As 33 witnesses are dealt with by this decision, 43 remain.

<sup>10</sup> Prosecution motion, para. 29; Prosecution corrigendum, para. 2. There are 40 exhibits in Annex C of the Prosecution motion and one additional exhibit in the Prosecution corrigendum.

<sup>11</sup> Ayyash response, para. 14; Sabra response, para. 19.

<sup>12</sup> STL-11-01/PT/TC, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4, citing to: STL-11-01/PT/PTJ, Decision on the Prosecution Submission Pursuant to Rule 91(G)(ii) and (iii), 18 September 2013, para. 11.

contained in the statements must also meet the basic requirements for the admission of evidence, in that it must be relevant and probative [under Rule 149 (C)], and its probative value must not be outweighed by its prejudicial effect. 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.<sup>13</sup>

8. Rule 155 is derived from Rule 92 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which have nearly identical provisions. The rationale of ICTY and ICTR Rule 92 *bis* – which is also relevant for Rule 155 – is to use written statements to facilitate the admission of peripheral or background evidence to expedite proceedings, while protecting the rights of the accused under the Statute.<sup>14</sup>
9. Rule 155 is applicable when the evidence ‘goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment’. Rule 155 (A) (i) provides a non-exhaustive list of factors in favour of admitting a written statement, including when the evidence: ‘(a) is of a cumulative nature, in that other witnesses have given or will give oral testimony of similar facts; (b) relates to relevant historical, political or military background;’ or, ‘(d) concerns the impact of crimes upon victims’. In contrast, factors weighing against the admission of a written statement under Rule 155 (A) (ii) include whether: (a) there is an overriding public interest in the evidence being presented orally; (b) an objecting party can demonstrate that the evidence is unreliable (or, that its prejudicial effect outweighs its probative value); or, (c) there are other factors which make it appropriate to require cross-examination (for example, when the evidence goes to a ‘live’ or ‘critical’ issue between the Parties).<sup>15</sup> Further, and according to Rule 155 (B), the statement must have been signed by the interviewer and the interviewee, and shall note the date, time, place, and persons present at the interview. Rule 155 (C) states that the Trial Chamber, after hearing the parties, may decide that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of the statement without cross-examination.<sup>16</sup>

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<sup>13</sup> STL-11-01/PT/TC, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements Under Rule 155, 30 May 2013 (Trial Chamber Decision on Compliance), para. 13.

<sup>14</sup> Trial Chamber Decision on Compliance, para. 16.

<sup>15</sup> ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92*bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7; SCSL, *Prosecutor v. Sesay, Kallon, and Gbao*, SCSL-04-15-T, Decision on Defence Application for the Admission of Witness Statement of DIS-129 under Rule 92*bis* or in the alternative, under Rule 92*ter*, 12 March 2008, p. 3.

<sup>16</sup> Alternatively, if the Chamber decides that cross-examination is required, Rule 156 applies.

10. Regarding the form mandated by Rule 155, which provides the requisite indicia of reliability in a witness statement, the Special Tribunal's President issued a Practice Direction prescribing the pre-conditions for admitting statements into evidence under Rule 155.<sup>17</sup> It directs that: i) the first page of a statement includes a witness information sheet;<sup>18</sup> ii) each page of the statement is signed or initialled by the interviewer and interviewee; iii) a formal acknowledgement that the statement is made voluntarily, is true and correct, and an awareness that there are potential criminal consequences for knowingly providing false evidence is provided (in this regard, the witness should also be provided with the text of Rules 60 *bis* and 152);<sup>19</sup> iv) an interpreter's certification is provided, where applicable; and, v) the witness' identity is verified, if possible.
11. In its decision of 30 May 2013, the Trial Chamber held that it had a discretion to depart from strict application of the Practice Direction regarding non-compliant witness statements where the interests of justice so require. Consequently, a witness statement may be admitted into evidence, despite a minor or inconsequential breach of the Practice Direction if it does not affect that statement's reliability.
12. The Trial Chamber considered that a minor breach could include, but is not limited to: i) failing to list a former occupation or place of birth; ii) listing relevant information on the final page rather than on the cover page; iii) the absence of an interpreter's signature; or, iv) the witness not having signed the interpreter's certificate. However, the Trial Chamber held that it would only depart from the strict terms of the Practice Direction when compelling reasons exist. Alternatively, the Trial Chamber considered that a fundamental breach could include, but is not limited to: i) not properly identifying a witness; and, ii) failing to warn a witness that they could be prosecuted for contempt or false testimony for knowingly and willfully making a false statement. Regarding any non-complying statements, the Trial Chamber urged the Prosecution to make all reasonable attempts to rectify them in a timely manner, before seeking to admit them into evidence. Finally, where rectifying a statement with a fundamental (or, major) breach is not

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<sup>17</sup> STL-PD-2010-02, 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, 15 January 2010.

<sup>18</sup> A 'witness information sheet' should include: surname/family name; father and mother's name; nickname (if any); date of birth; place of birth; language(s) spoken; language(s) written; language(s) used in the interview; current and former occupation; date(s), time(s), and place(s) of interview; name of interviewer(s); name of interpreter(s); and name of other person(s) present during the interview(s).

<sup>19</sup> Rule 60 *bis* (formerly Rule 134) concerns contempt and obstruction of justice for those who knowingly and wilfully interfere with the administration of justice. Rule 152 concerns false testimony that has been knowingly and wilfully given before the Tribunal.

possible, the Trial Chamber stated that it will require the witness to attend for cross-examination (either in the Netherlands or via video-conference link).<sup>20</sup>

13. A Chamber may admit into evidence documents – or, other evidentiary material – that accompany a witness statement and which form an inseparable and indispensable part of the testimony, such that the statement would be of lesser probative value without them.<sup>21</sup> This is relevant in the context of evidentiary material tendered by the Prosecution as a component of a Rule 155 witness statement.<sup>22</sup>
14. Alternatively, and in appropriate circumstances, non-compliant statements could be admitted as evidence under Rule 154 (admission of documents). If documents were to be admitted in this manner, the Trial Chamber would later determine the weight to attribute to the admitted evidence.

### DISCUSSION

15. The Trial Chamber has reviewed each proposed Rule 155 witness statement – and, any associated exhibits – on an individual basis, and following the Prosecution’s proposed order of appearance at trial. This review has been guided by the Statute and the Rules, the Practice Direction, and the relevant case-law. Additionally, in its analysis, the Trial Chamber relies upon the Appeals Chamber’s broad definition of a witness statement, which is an account of a person’s knowledge of a crime recorded through due procedure in the course of an investigation.<sup>23</sup>

#### **The Parties’ submissions**

16. The Prosecution broadly asserts that all of the proposed witness statements: i) are relevant and have probative value, containing the necessary indicia of reliability; ii) do not go to the acts and conduct of the Accused; and, iii) satisfy factors in favour of admission under Rule 155 (A) (i). Further, it submits that the admission of all proposed statements is in the interests of justice, while the requirement of a fair and expeditious trial undermines the need for cross-examination.

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<sup>20</sup> Trial Chamber Decision on Compliance, paras 20-29, 31(b), 34-35.

<sup>21</sup> ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *Quarter*, 22 July 2012, para. 13, citing to: ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Motion for Admission of Evidence of Witness B-179 Pursuant to Rule 92 *quarter*, 11 March 2010, para. 33.

<sup>22</sup> See, Prosecution motion, paras 26-28.

<sup>23</sup> *In the Matter of El Sayed*, STL-CH/AC/2011/01, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge’s Decision of 12 May 2011, 19 July 2011, para. 89. The Special Tribunal’s Appeals Chamber endorsed the Special Court for Sierra Leone’s broad definition of the concept of a witness statement, namely that ‘transcribed trial testimony, radio interviews, unsigned witness declarations and records of questions put to witnesses and answers given, constitute witness statements’.

Finally, the Prosecution argues that the evidentiary material accompanying the statements – which forms an inseparable and indispensable part of the witness statement – should be admitted as an attached component.<sup>24</sup>

17. Counsel for Mr. Ayyash do not object to the admission of 24 statements which they consider sufficiently comply with Rule 155, the Practice Direction, and the Trial Chamber's decision of 30 May 2013. Where accompanying documents are duplicative of the proposed statement, they have objected to their admission. Regarding the nine remaining 'non-compliant' statements, they object to their admission under Rule 155.<sup>25</sup> Counsel for Mr. Badreddine do not object to the admission of the majority of the proposed Rule 155 statements, subject to witness specific caveats. However, they submit that admitting any statements at this stage of the proceedings should be provisional, and subject to a final decision at trial.<sup>26</sup> Counsel for Mr. Oneissi neither accept nor challenge the admission of the statements by the 33 witnesses evaluated in this decision, resulting they submit, from stated inability to 'adequately respond to the Rule 155 Applications' due to the circumstances of the case. Simultaneously, they 'reserve their right' to challenge the relevance and probative value of any of the proposed statements at trial.<sup>27</sup> Counsel for Mr. Sabra do not object to the admission of statements which comply with Rule 155 if the Trial Chamber is satisfied of their relevance and probative value. However, they do seek to cross-examine three of the witness concerned by this decision. Finally, they submit that any evidentiary material which accompanies the witness statements must be admitted as exhibits pursuant to Rule 154, rather than under Rule 155.<sup>28</sup> The response of each counsel to individual witness statement is identified in the specific analysis below.

18. The Legal Representative for Victims highlights that some of the Prosecution's proposed Rule 155 statements belong to witnesses who have been granted the status of participating victims; one such 'dual-status' witness (PRH351) is affected by this decision. This supports admitting these 'dual-status' statements into evidence under Rule 155. However, Rule 150 (D)<sup>29</sup> requires judicial consideration in regard to each 'dual-status' witness.<sup>30</sup>

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<sup>24</sup> Prosecution motion, paras 4-13, 14-28.

<sup>25</sup> Ayyash response, paras 8-12.

<sup>26</sup> Badreddine response.

<sup>27</sup> Oneissi response, paras 3-4, 10, 15-25.

<sup>28</sup> Sabra response, paras 13-16.

<sup>29</sup> Rule 150 (D) reads: 'A victim participating in the proceedings may be permitted to give evidence if a Chamber decides that the interests of justice so require'.

<sup>30</sup> LRV observations.

## Analysis of proposed Rule 155 statements

19. The evidence of the initial 33 witnesses falls into three categories: A) description of closed circuit television (CCTV) video footage and images around the crime scene before, during, and after the explosion; B) description by victims injured in the attack of what transpired; and, C) description of the explosion site by a witness who arrived after the attack.

### A. Rule 155 statements regarding CCTV and media of the crime scene

20. The first nine witnesses in the Prosecution's anticipated order of appearance are identified in paragraphs 5 (4)-(6) of the motion, as: PRH062; PRH070; PRH333; PRH240; PRH555; PRH310; PRH003; PRH053; and, PRH371. Their evidence can broadly be categorised as relating to video footage and images around the crime scene before, during, and after the explosion.

21. For all nine witnesses in this category, the Prosecution submits that this evidence relates to the crime scene investigation and does not require cross-examination.<sup>31</sup> Regarding eight of these nine witnesses, the Defence does not contest the admission of their statements;<sup>32</sup> the only witness who is contested – by counsel for Mr. Ayyash and Mr. Sabra due to non-compliance with the Practice Direction – is PRH003.<sup>33</sup> Finally, counsel for Mr. Sabra requests to cross-examine three of these witnesses (i.e., PRH333, PRH555, and PRH371).<sup>34</sup>

22. Upon analysis, the Trial Chamber considers that the following statements meet the requirements of the Practice Direction:

- Witness PRH062's statement and exhibit: Witness PRH062 worked in the St. George area where the explosion occurred. He describes the digital recording systems of the CCTV at his place of employment, providing video footage to the relevant authorities, and the injuries that he sustained.
- Witness PRH070's statement and exhibits: Witness PRH070 worked in CCTV. He describes the video footage provided to the relevant authorities by a business located in the St. George area.

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<sup>31</sup> Prosecution motion, paras 4-15.

<sup>32</sup> Ayyash response, para. 8; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, paras 13, 25.

<sup>33</sup> Ayyash response, paras 10-12; Sabra response, para. 25. Counsel for Mr. Badreddine and Mr. Oneissi do not contest admission of PRH003's statement (Badreddine response, para. 5; Oneissi response, para. 3).

<sup>34</sup> Sabra response, para. 14.



- Witness PRH333's statement and exhibit: Witness PRH333 describes the time discrepancy in some CCTV footage (i.e., between the real time of the explosion and the coded time which appears on the footage).
- Witness PRH240's statement and exhibits: Witness PRH240 worked in a hotel in the St. George area where the explosion occurred. He describes the CCTV at his place of employment, and providing video footage to the relevant investigating authorities.
- Witness PRH555's statement and exhibit: Witness PRH555 describes still images extracted from some of the CCTV footage.
- Witness PRH053's statement and exhibits: Witness PRH053 describes photographs taken by a media outlet, and giving them to the relevant authorities.

23. The Trial Chamber considers that the following statements contain minor breaches of the Practice Direction:

- Witness PRH310's statement and exhibits: Witness PRH310 worked in the St. George area where the explosion occurred. He describes the CCTV at his former place of employment, and providing video footage to the relevant authorities. The statement appears to be missing an interviewer's certification that the witness was provided with a copy of Rule 60 *bis* and 152, resulting in non-compliance with the Practice Direction. Nonetheless, the Trial Chamber considers that this breach is minor as PRH310 acknowledged that there are legal consequences for contempt and false testimony. In these circumstances, compelling reasons exist to depart from strict application of the Practice Direction.
- Witness PRH003's statements and exhibit: Witness PRH003 – for which two statements are proposed – describes video footage taken by a media outlet, and providing it to the relevant authorities. The statements appear to be missing an interviewer's certification that the witness was provided with a copy of Rules 60 *bis* and 152, resulting in non-compliance with the Practice Direction. Nonetheless, the Trial Chamber considers that this breach is minor as PRH003 acknowledged that there are legal consequences for contempt and false testimony.

In these circumstances, compelling reasons exist to depart from strict application of the Practice Direction.

- Witness PRH371's statements and exhibits: Witness PRH371 – for which four statements are proposed – describes photographs from media outlets, and the adjustment of the time on certain images.

24. Having analysed the proposed evidence of these nine witnesses' statements, the Trial Chamber is satisfied of its relevance as it concerns video footage, still images, and photographs collected at the crime scene, and relates to paragraphs 2-50 of the amended indictment. Accordingly, all of the evidence is admissible under Rule 149 (C). Further, the proposed evidence does not concern the acts and conduct of the Accused. In regard to the first six witnesses (i.e., PRH062, PRH070, PRH333, PRH240, PRH555, and PRH310), their evidence appears to be cumulative to that of Witness PRH283 who is expected to testify orally. All of these statements are admissible under Rule 155. As counsel for Mr. Sabra's requests to cross-examine three of these witnesses (i.e., PRH333, PRH555, and PRH371) are not substantiated, they will not be required to appear for cross-examination. Finally, all associated exhibits listed in Annex A of the Prosecution's motion related to these nine witnesses' statements are admissible as an indispensable part of the relevant statements.

#### **B. Rule 155 statements of victims of the explosion**

25. Witnesses 10 through 32 in the Prosecution's anticipated order of appearance are identified in paragraph 5 (1) of the motion. They can be broadly categorised as victims injured in the attack, and include: PRH351; PRH260; PRH288; PRH239; PRH286; PRH307; PRH401; PRH316; PRH353; PRH375; PRH485; PRH235; PRH245; PRH285; PRH396; PRH402; PRH378; PRH417; PRH376; PRH530; PRH545; PRH463; and, PRH587.

26. For all 23 witnesses in this category, the Prosecution submits that the evidence relates to the explosion and its effects, and does not require cross-examination.<sup>35</sup> However, the Prosecution acknowledges 'departures' from the Practice Direction in 15 of the statements as they were taken by the United Nations International Independent Investigation Commission or a national law enforcement agency before their adoption by the witness (i.e., PRH307, PRH401, PRH353,

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<sup>35</sup> Prosecution motion, paras 4-15.

PRH375, PRH235, PRH245, PRH285, PRH396, PRH402, PRH378, PRH417, PRH376, PRH530, PRH545, and PRH463).<sup>36</sup> Regarding five of these witnesses, the Defence does not contest admission of their statements (i.e., PRH288, PRH239, PRH286, PRH316, and PRH485).<sup>37</sup> Admission of the statements of the remaining 18 witnesses in this category is contested by counsel for at least one of the Accused.<sup>38</sup>

27. The Trial Chamber considers that the following statements meet the requirements of the Practice Direction:

- Witness PRH260's statement and exhibit: Witness PRH260 was driving to work in the St. George area when the explosion occurred, and describes what happened and the head and ear injuries he sustained.
- Witness PRH288's statement: Witness PRH288 was working in the St. George area during the explosion, and will describe what he experienced and the minor injuries to his legs he sustained.
- Witness PRH239's statement and exhibit: Witness PRH239 was in a building nearby visiting someone in the St. George area when the explosion occurred. He describes what happened and the superficial injuries and shock that he sustained.<sup>39</sup>
- Witness PRH286's statement and exhibit: Witness PRH286 was driving near the scene when the explosion occurred, and will describe what happened and the minor facial injuries that she sustained.
- Witness PRH316's statement and exhibit: Witness PRH316 was in a building in the St. George area when the explosion occurred, and will describe what occurred and the injuries he sustained as a result of flying glass.
- Witness PRH485's statement and exhibit: Witness PRH485 was working outside in the St. George area when the explosion occurred, and will describe what followed and the psychological shock he subsequently suffered.

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<sup>36</sup> Prosecution motion, paras 18-20.

<sup>37</sup> Ayyash response, para. 8; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, paras 13, 25.

<sup>38</sup> Ayyash response, paras 10-12; Badreddine response, para. 6; Sabra response, para. 25.

<sup>39</sup> The Trial Chamber notes that two different documents appear in Legal Workflow under the Rule 91 number provided in Annex B of the Prosecution motion (i.e., R91-400150). For the purpose of witness PRH239, ERN 60243947(RED)-60243950(RED) associated with R91-400150 is admitted.

- Witness PRH587's statement and exhibit: Witness PRH587 was working in the St. George area when the explosion occurred, and will describe her experiences and the head, arm, chest and leg injuries that she sustained.<sup>40</sup>

28. The Trial Chamber considers that the following statement contains minor breaches of the Practice Direction:

- Witness PRH351's statements: Witness PRH351 – for which two statements are proposed – was working in the St. George area when the explosion occurred, and will describe what happened and the physical and psychological injuries that he sustained. He will also describe the construction of the St. George Hotel. PRH351's first statement has the requisite indicia of reliability and meets the criteria of the Practice Direction and Rule 155. The second statement is proposed as independent evidence, and does not satisfy the Practice Direction on its own. However, as the second statement is specifically referenced in the first statement – which is fully compliant – the Trial Chamber considers it admissible as an indispensable part of the first statement.

29. The Trial Chamber also considers that the following six statements contain minor breaches of the Practice Direction as the witnesses' acknowledgement as to potential consequences for providing false evidence does not pertain explicitly to the Special Tribunal. Further, the witnesses were not given a copy of Rules 60 *bis* and 152. This was because the interviews occurred before the establishment of the Special Tribunal. Nonetheless, the Trial Chamber considers that compelling reasons exist to overlook these minor breaches as the witnesses acknowledged that there are legal consequences for contempt and false testimony.

- Witness PRH307's statement: Witness PRH307 was working in a hotel in the St. George area when the explosion occurred and suffered severe back injuries.
- Witness PRH401's statement: Witness PRH401 had just parked his car in the St. George area and was nearby when the explosion occurred. He sustained severe head and back injuries in the blast.
- Witness PRH353's statement: Witness PRH353 was in front of a market in the St. George area when the explosion occurred, and suffered severe head, chest, finger and leg injuries.

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<sup>40</sup> The Trial Chamber notes that two different documents appear in Legal Workflow under the Rule 91 number provided in Annex B of the Prosecution motion (i.e., R91-400150). For the purpose of witness PRH587, ERN 60243945(RED)-60243947(RED) associated with R91-400150 is admitted.

Witness PRH285's statement: Witness PRH285 was working in the St. George area when the explosion occurred, and will describe what happened and of sustaining extensive wounds to the head, arms and chest.

- Witness PRH530's statement: Witness PRH530 was in a hotel in the St. George area at the time of the explosion and sustained severe injuries from being crushed by a ceiling.
- Witness PRH463's statement: Witness PRH463 was walking in the St. George area during the explosion, and will describe what she experienced and suffering arm and head injuries.

30. The Trial Chamber considers that the following statements contain fundamental breaches of the Practice Direction:

- Witness PRH375's statement: Witness PRH375 was in a car in the St. George area at the time of the explosion. He will testify as to what he saw and to sustaining cuts to his head and face and psychological injuries. While the Trial Chamber considers that the proposed evidence does constitute a witness statement despite the objection of counsel for Mr. Ayyash, it does not satisfy Rule 155 and the Practice Direction due to the absence of several indicia of reliability: there is no witness information sheet or formal acknowledgement by PRH375; he did not sign the statement; and, he was not informed of potential consequences for knowingly providing false evidence or provided with the text of the relevant Rules. Further, these fundamental breaches are present in a statement that was taken after the Practice Direction was adopted.
- Witness PRH235's statement: Witness PRH235 was working in the St. George area when the explosion occurred, and will describe the events he witnessed and the physical injuries that he sustained. The statement is non-compliant as the witness' acknowledgement as to potential consequences for providing false evidence does not pertain explicitly to the Special Tribunal. Further, he was not given a copy of Rules 60 *bis* and 152; this, because the interview occurred before the establishment of the Special Tribunal. Additionally, the statement is not signed or dated at the end by PRH235, and while unidentified initials and a signature appear in the statement, it lacks a formal declaration and contains a number of unidentified handwritten notes.
- Witness PRH245's statement and exhibit: Witness PRH245 was in a restaurant in the St. George area during the explosion and suffered severe head and face injuries. The statement is non-compliant as the witness does not acknowledge potential consequences for providing

false evidence, and she was not given a copy of Rules 60 *bis* and 152. Additionally, the statement is not signed or dated by the witness (or, the interviewer) and it is missing a formal declaration and a witness information sheet. Finally, it appears that the witness' identification was not verified. Further, these fundamental breaches are present in a statement taken after the Practice Direction was adopted.

- Witness PRH396's statement: Witness PRH396 was in a hotel in the St. George area when the explosion occurred. He suffered internal hemorrhaging from the blast. The statement is non-compliant as the witness does not acknowledge potential consequences for providing false evidence, and he was not given a copy of Rules 60 *bis* and 152; this, because the interview was held before the establishment of the Special Tribunal. Additionally, the statement is missing a formal declaration and a witness information sheet, while the interviewer and date of the interview is not apparent.
- Witness PRH402's statement: Witness PRH402 was outside a hotel in the St. George area at the time of the explosion, and will describe what transpired and the severe neck injuries that he sustained. The statement is non-compliant as the witness does not acknowledge potential consequences for providing false evidence, and he was not given a copy of Rules 60 *bis* and 152; this, because the interview happened before the Special Tribunal's establishment. Additionally, the statement is missing a formal declaration and a witness information sheet.
- Witness PRH378's statement: Witness PRH378 was having lunch in the St. George area when the explosion occurred. He sustained internal injuries from flying glass and metal. The statement is non-compliant as the witness does not acknowledge potential consequences for providing false evidence, and he was not given a copy of Rules 60 *bis* and 152; and he was interviewed before the Special Tribunal was established. Additionally, the statement is missing a formal declaration and a witness information sheet, while the interviewer and date of the interview are not apparent.
- Witness PRH417's statement and exhibits: Witness PRH417 was having lunch in the St. George area when the explosion occurred, and will describe his experiences and of suffering hand, ear and psychological injuries. The statement is non-compliant as the witness does not acknowledge potential consequences for providing false evidence, and he was not given a copy of Rules 60 *bis* and 152. Additionally, the statement is not signed or dated by the witness or the interviewer, and it is missing a formal declaration and a witness information

sheet. Further, these fundamental breaches are present in a statement that was taken after the Practice Direction was adopted.

- Witness PRH376's statement: Witness PRH376 was working in a hotel in the St. George area at the time of the explosion. He will describe what he saw. He sustained leg injuries from the blast. The statement is non-compliant as the witness does not acknowledge the consequences for providing false evidence, and he was not given a copy of Rules 60 *bis* and 152; this, because the interview took place before the establishment of the Special Tribunal. Additionally, the statement is missing a formal declaration and a witness information sheet.
- Witness PRH545's statement: Witness PRH545 was working at a hotel in the St. George area during the explosion. She suffered head injuries and explains how. The statement is non-compliant as the witness does not acknowledge the potential consequences for providing false evidence, and she was not given a copy of Rules 60 *bis* and 152; this, because the interview took place before the establishment of the Special Tribunal. Additionally, the statement is missing a formal declaration and a witness information sheet.

31. Having analysed the proposed evidence of these 23 witnesses, the Trial Chamber is satisfied of its relevance as it concerns the effects of the explosion on victims, and relates to paragraphs 4, 36, and 41-43 of the amended indictment. Accordingly, all of the evidence is admissible under Rule 149 (C). Further, the proposed evidence does not concern the acts and conduct of the Accused. Consequently, the statements of witnesses PRH351, PRH260, PRH288, PRH239, PRH286, PRH307, PRH401, PRH316, PRH353, PRH485, PRH285, PRH530, PRH463, PRH587 are admissible under Rule 155. All exhibits associated with the statements listed in Annex B of the Prosecution motion are admissible as an indispensable part of these statements. However, the statements of witnesses PRH375, PRH245, PRH396, PRH402, PRH378, PRH417, PRH376 and PRH545 are not admissible under Rule 155 and the Prosecution is required to make the witness available for cross-examination either at the Tribunal in the Netherlands or via video-conference link. Witness PRH235 should be made available for cross-examination either in the Netherlands or via video-conference link unless the Prosecution can clarify who: i) the signature and initials in the statement belong to; and, ii) wrote the unidentified notes in the statement.

### C. Rule 155 statement of a witness who arrived at the scene after the explosion

- Witness PRH571's statement and exhibit: Witness 33 in the Prosecution's anticipated order of appearance is identified in paragraph 5 (7) of the motion. He describes what he encountered at the scene of the explosion upon arrival. The Prosecution submits that this evidence relates to the crime scene investigation and does not require cross-examination.<sup>41</sup> Admission of PRH571's statement is not contested by counsel for Mr. Badreddine and Mr. Oneissi, but is contested by counsel for Mr. Ayyash and Mr. Sabra due to non-compliance with the Practice Direction.<sup>42</sup>

32. The Trial Chamber is satisfied of the relevance of this evidence as it concerns paragraphs 4 and 41-43 of the amended indictment. Accordingly, it is admissible under Rule 149 (C). Further, the proposed evidence does not concern the acts and conduct of the Accused. However, the statement has a fundamental breach as the witness' identification was not verified; this, in a statement taken after the Trial Chamber's decision of 30 May 2013, which directed the Prosecution to make all reasonable attempts to rectify any non-complying statements before seeking to admit them. Consequently, the Trial Chamber does not consider that the statement – nor the associated exhibit – can be admitted under Rule 155. Accordingly, the Prosecution is required to make the witness available for cross-examination either in the Netherlands or via video-conference link, unless his identity can be properly verified by the Prosecution.

### CONCLUSION

33. Based on the analysis above, the Trial Chamber finds that the statements of 23 of the proposed witnesses – and, where applicable, associated exhibits – bear sufficient indicia of reliability and are therefore admissible under Rule 155. However, the Trial Chamber finds that the statements of 10 of the proposed witnesses – and, where applicable, associated exhibits – have fundamental breaches and do not bear sufficient indicia of reliability required to be admitted into evidence under Rule 155. Accordingly, they will not be not admitted into evidence under that Rule. At the end of this decision, there is a comprehensive table which encapsulates the results of the above analysis.

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<sup>41</sup> Prosecution motion, paras 4-15.

<sup>42</sup> Ayyash response, paras 10-12; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, para. 25.



**DISPOSITION**

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

**ALLOWS** the motion in part;

**ALLOWS** the Prosecution leave to amend its exhibit list by adding the 41 exhibits listed in Annex C of its motion and in the corrigendum;

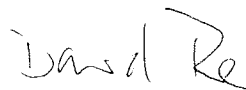
**DECIDES** that it will admit into evidence the statements – and, where applicable, associated exhibits – of 23 witnesses as identified above and in the following table;

**DENIES** the admission into evidence of the statements – and, where applicable, associated exhibits – of 10 witnesses as identified above and in the following table; and

**REQUIRES** the Prosecution to make available for cross-examination – either in Leidschendam, the Netherlands, or via video-conference link – the 10 witnesses whose proposed Rule 155 statements are inadmissible.

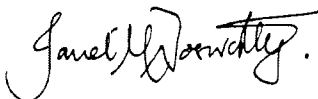
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands  
20 December 2013



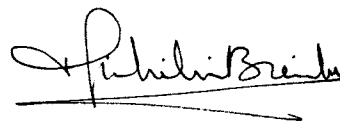
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

<u>Witness</u>	<u>Status</u>	<u>ERN Range of Statement</u>	<u>Associated Evidentiary Material</u>
<b>Rule 155 statements regarding CCTV and media of the scene</b>			
1	PRH062	Admitted	60289872-60289905 R91-200089
2	PRH070	Admitted	60289843-60289871 R91-100035; R91-100036; R91-200462; R91-200463; R91-200464; R91-606670
3	PRH333	Admitted	60283652-60283657 R91-200213
4	PRH240	Admitted	60289607-60289628 R91-200091; R91-200085; R91-200502
5	PRH555	Admitted	60285553-60285618 R91-200495
6	PRH310	Admitted	60130539-60130545 R91-200493; R91-200526; R91-200531; R91-200532; R91-200533; R91-200537; R91-200540; R91-200541; R91-200542
7	PRH003	Admitted	60174093-60174107 (1st statement); 60130741-60130757 (2nd statement) R91-200651
8	PRH053	Admitted	60289431-60289521 R91-100396; R91-200126; R91-200132; R91-200133; R91-200136; R91-200138; R91-200141; R91-200143; R91-607077; R91-607128; R91-607129; R91-607130; R91-607146; R91-607147; R91-607148; R91-607149; R91-607150; R91-607151; R91-607152; R91-607153
9	PRH371	Admitted	60282558-60282569 (1st statement); 60282570-60282576 (2nd statement); 60282577-60282585 (3rd statement); 60282652-60282662 (4th statement) R91-100365; R91-100375; R91-200054; R91-100369

<u>Witness</u>	<u>Status</u>	<u>ERN Range of Statement</u>	<u>Associated Evidentiary Material</u>
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<b>Rule 155 statements regarding victims of the explosion</b>			
10	PRH351	Admitted	60238737-60238781 (1st statement) 60004644-60004658 (2nd statement)
11	PRH260	Admitted	60290793-60290823 R91-600005
12	PRH288	Admitted	60290712-60290727 N/A
13	PRH239	Admitted	60290704-60290711 R91-400150 [ERN 60243947(RED)-60243950(RED)]
14	PRH286	Admitted	60290655-60290660 R91-400024
15	PRH307	Admitted	60004475-60004488 N/A
16	PRH401	Admitted	200380-200391B N/A
17	PRH316	Admitted	60290699-60290703 R91-400148
18	PRH353	Admitted	200404-200408 N/A
19	PRH375	Not Admitted	60243928-60243942 N/A
20	PRH485	Admitted	60290661-60290698 R91-400028
21	PRH235	Not Admitted	300245-300250 N/A
22	PRH245	Not Admitted	60220785-60220799 R91-400168
23	PRH285	Admitted	60004777-60004795A N/A
24	PRH396	Not Admitted	50004115-50004115 N/A
25	PRH402	Not Admitted	50011041-50011041 N/A
26	PRH378	Not Admitted	50011436-50011437 N/A
27	PRH417	Not Admitted	60220772-60220784 R91-400171; R91-400172
28	PRH376	Not Admitted	50004117-50004117 N/A
29	PRH530	Admitted	200464-200470A N/A
30	PRH545	Not Admitted	10000763-10000763 N/A

<u>Witness</u>	<u>Status</u>	<u>ERN Range of Statement</u>	<u>Associated Evidentiary Material</u>
31	PRH463	Admitted	60004940-60004954A N/A
32	PRH587	Admitted	60290648-60290654 R91-400150 [ERN 60243945(RED)-60243947(RED)]
<b>Rule 155 statement for a witness who arrived at the scene after the explosion</b>			
33	PRH571	Not Admitted	60286270-60286278 R91-400016

