



## 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:** 30 January 2014

**Original language:** English

**Classification:** Public

## THE PROSECUTOR

v.

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

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

### Office of the Prosecutor:

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

### Victims' Legal Representative:

Mr. Peter Haynes  
Mr. Mohammad F. Mattar  
Ms. Nada Abdelsater-Abusamra

### Counsel for Mr. Salim Jamil Ayyash:

Mr. Eugene O'Sullivan  
Mr. Emile Aoun  
Mr. Thomas Hannis

### Counsel for Mr. Mustafa Amine Badreddine:

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

### Counsel for Mr. Hussein Hassan Oneissi:

Mr. Vincent Courcelle-Labrousse  
Mr. Yasser Hassan  
Mr. Philippe Laroche

### Counsel for Mr. Assad Hassan Sabra:

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



## INTRODUCTION

1. On 20 December 2013, the Trial Chamber issued a decision on a portion of the Prosecution motion under Rule 155 of the Rules of Procedure and Evidence seeking admission of written witness statements *in lieu* of oral testimony and without cross-examination of the witness.<sup>1</sup> That first decision dealt with the initial 33 witnesses – on the basis of their order of appearance at the beginning of the Prosecution case<sup>2</sup> – out of a total of 76.<sup>3</sup> The remaining witnesses are the subject of this decision. The relevant procedural history and applicable law are set out in the first decision.<sup>4</sup>
2. On 19 December 2013, the Prosecution filed a notice identifying three witnesses (PRH284, PRH599, and PRH352) that were subject to its Rule 155 motion who were available and willing to give evidence in person before the Tribunal.<sup>5</sup> The Trial Chamber accepted the change in mode of testimony for these three witnesses. Additionally, the Prosecution requested permission for Witness PRH261 to testify by video-conference link, if he would be required to provide *viva voce* testimony.<sup>6</sup> The Trial Chamber granted this application on 9 January 2014, having previously denied the Rule 155 application.<sup>7</sup> Finally, the Prosecution requested permission for Witness PRH427 to testify by video-conference link.<sup>8</sup> The Trial Chamber granted this request on 22 January 2014.<sup>9</sup> As these five witnesses have now testified *viva voce*,<sup>10</sup> their Rule 155 applications are no longer relevant.
3. Thirty-eight witnesses from the Rule 155 motion remain outstanding. The Prosecution also filed additional statements in two addenda to the Rule 155 motion, submitting that they adhered more properly to the requirements of Rule 155 and 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. Additionally, the Prosecution filed the statements of three Prosecution investigators

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<sup>1</sup> STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013. See also, Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, 15 November 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> As a result of the Prosecution's withdrawal of the Rule 155 application for one witness in its reply of 29 November 2013, only 76 witnesses were then concerned by the Rule 155 motion (out of the original 77).

<sup>4</sup> STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 1-2, 7-14.

<sup>5</sup> STL-11-01/PT/TC, Prosecution Notice regarding In-Person and Video-Conference Link Witnesses, and Motion for Testimony by Video-Conference Link, 19 December 2013, para. 5.

<sup>6</sup> STL-11-01/PT/TC, Prosecution Notice regarding In-Person and Video-Conference Link Witnesses, and Motion for Testimony by Video-Conference Link, 19 December 2013, paras 16-19.

<sup>7</sup> STL-11-01/PT/TC, Transcript of Pre-Trial Conference, 9 January 2014, pp. 12-14.

<sup>8</sup> STL-11-01/PT/TC, Urgent Prosecution Motion for Video-Conference Link Testimony and Protective Measures for Witness PRH427, 20 January 2014.

<sup>9</sup> STL-11-01/T/TC, Transcript, 22 January 2014, pp. 64-65.

<sup>10</sup> Witnesses PRH284 and PRH599 testified on 22 January 2014. Witnesses PRH352 and PRH261 testified on 24 January 2014. Witness PRH427 testified on 28 January 2014.

outlining the standard organisational practices for witness interviews (including, verifying the identity of the witness).<sup>11</sup>

4. Counsel for the Accused, Mr. Salim Jamil Ayyash, responded to the two addenda, encouraging the Prosecution to replace the non-compliant statements and stating that they did not object to the admission into evidence of the compliant version of the statements.<sup>12</sup> Defence counsel for the other three Accused did not respond. These statements have been disclosed to the Defence and are the same in substance as the previously disclosed non-compliant statements.

### DISCUSSION

5. As in its first decision, guided by the Statute and the Rules, the Practice Direction, and the relevant case-law including the Appeals Chamber's definition of a witness statement, the Trial Chamber has reviewed each witness statement and any associated exhibits.<sup>13</sup> Rule 149 (F) provides that the Trial Chamber may receive the evidence of a witness orally or in written form pursuant to Rules 93, 123, 125, 155, 156, 157 and 158. Rule 155 (C) provides that, while the admission of a witness statement *in lieu* of oral testimony without cross-examination remains exceptional, it is permitted when it is in the interests of justice and contributes to a fair and expeditious trial.

#### **The Parties' submissions**

6. The Prosecution broadly submits that its proposed witness statements: i) are relevant, probative and contain the necessary indicia of reliability; ii) do not go to the acts and conduct of the Accused; and, iii) satisfy the factors in favour of admission under Rule 155 (A) (i). Further, it submits that admitting the proposed statements into evidence is in the interests of justice, while cross-examination is not required. Finally, the Prosecution argues that any document that

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<sup>11</sup> STL-11-01/PT/TC, Second Addendum to Prosecution Rule 155 Motion, 17 December 2013; Third Addendum to Prosecution Rule 155 Motion, 7 January 2014.

<sup>12</sup> STL-11-01/PT/TC, Ayyash Defence Response to "Second Addendum to Prosecution Rule 155 Motion", 19 December 2013; Ayyash Defence Response to the "Third Addendum to Prosecution Rule 155 Motion", 13 January 2014.

<sup>13</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 as an account of a person's knowledge of a crime recorded through due procedure in the course of an investigation. Further, 'transcribed trial testimony, radio interviews, unsigned witness declarations and records of questions put to witnesses and answers given, constitute witness statements'.

accompanies the statements forms an inseparable and indispensable part of the witness statement and should be admitted as an attached component of the statement.<sup>14</sup>

7. Counsel for Mr. Ayyash do not object to the admission of fifteen statements which they consider sufficiently compliant with Rule 155, the Practice Direction, and the Trial Chamber's decision of 30 May 2013.<sup>15</sup> Where accompanying documents duplicate the proposed statement, they have objected to their admission. They consider the remaining statements 'non-compliant' and object to their admission under Rule 155.<sup>16</sup> Counsel for Mr. Mustafa Amine Badreddine do not object to the majority of the proposed Rule 155 statements, subject to witness-specific caveats. However, they submit that receiving into evidence any statements at this stage of trial should be provisional, and subject to a final decision at trial.<sup>17</sup> As the trial has now commenced, this submission is no longer relevant. Counsel for Mr. Hussein Hassan Oneissi neither accept nor challenge the statements of 37 of the 38 witnesses because of their stated inability to 'adequately respond to the Rule 155 Applications' due to the circumstances of the case. However, they challenge the admissibility of the statement of one witness (PRH128), and request to cross-examine him. Simultaneously, they reserve their right to challenge the relevance and probative value of any of the proposed statements at trial.<sup>18</sup>

8. Counsel for Mr. Assad Hassan 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 want to cross-examine two witnesses. Further, any documents accompanying the witness statements must be admitted as exhibits pursuant to Rule 154, rather than under Rule 155.<sup>19</sup>

9. The Legal Representative for Victims highlights that one of the Prosecution's proposed Rule 155 statements is of a witness who is a participating victim (PRH469). While he supports admitting

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<sup>14</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), paras 4-28.

<sup>15</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.

<sup>16</sup> STL-11-01/PT/TC, 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, paras 8-12; Ayyash response to Prosecution 2<sup>nd</sup> addendum; Ayyash response to Prosecution 3<sup>rd</sup> addendum.

<sup>17</sup> STL-11-01/PT/TC, 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.

<sup>18</sup> STL-11-01/PT/TC, Defence for Hussein Hassan Oneissi Response to Prosecution's Rule 155 Application of 15 November 2013, Confidential, 27 November 2013, paras 2-4, 10, 15-25, 28.

<sup>19</sup> STL-11-01/PT/TC, Sabra Defence Response to Prosecution Rule 155 Motion, Confidential, 27 November 2013, paras 13-16.

this ‘dual-status’ statement into evidence under Rule 155, he submits that Rule 150 (D)<sup>20</sup> requires judicial consideration.<sup>21</sup>

### **Analysis of proposed Rule 155 statements**

10. The evidence of the 38 witnesses falls into seven categories: A) identification of victims; B) surrender of bodies to families; C) collection of human remains at the explosion site; D) crime scene investigation by Lebanese authorities; E) search near the explosion site and the collection of items; F) receipt of mechanical parts from the explosion site; and G) the Mitsubishi Canter van allegedly used in the explosion. Several victims listed in Schedule A of the amended indictment are referred to in these statements or the documents and reports attached, namely: Abdel-Hamid Ghalayini, Abou Bou Farah, Farhan Ahmad Al-Issa, Joseph Emile Aoun, Mahmoud Saleh Al-Hamad Al-Mohamed, Mahmoud Saleh Al-Khalaf, Mazen Adnan Zahabi, Omar Ahmad Masri, Rafik Hariri, Rima Mohammed Raef Bazzi, Sobhi Mohammed El Khoder, Talal Nasser, Yahya Ben Mustafa Al-Arab, Yamama Kamel Damen, and Zahi Halim Abu Rajaily.

11. Some of the statements and accompanying documents are extracts from the Lebanese official records of the investigation into the explosion of 14 February 2005. These extracts contain statements given to the Lebanese investigating authorities and therefore record both the words of the witness and some of the steps undertaken by the authorities in relation to the victims. Defence counsel have not objected to the Trial Chamber receiving evidence in this format. The Trial Chamber, when appropriate, will admit this material under Rule 155 and partly under Rule 154.

#### **A. Statements regarding identification of victims**

12. Witnesses 34 through 40 in the Prosecution’s anticipated order of appearance are: PRH537; PRH397; PRH389; PRH489; PRH450; PRH596; and PRH344. Their evidence can broadly be categorised as relating to the search for and identification of victims after the explosion.

13. For all seven witnesses in this category, the Prosecution submits that this evidence relates to confirming the identity of a deceased victim and detailing the effects of the explosion, and does not require cross-examination. Additionally, any ‘departures’ from the Practice Direction in these

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<sup>20</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>21</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.

statements were cured by the second and third addenda.<sup>22</sup> The admission of all seven statements is not contested by counsel for Mr. Ayyash, Mr. Oneissi, and Mr. Sabra;<sup>23</sup> only one – that of PRH450 – is contested by counsel for Mr. Badreddine.

14. The following statements meet the requirements of the Practice Direction and may be admitted into evidence under Rule 155 without cross-examination:

- Witness PRH537, a medical doctor whose identity was verified by the Lebanese judicial police, describes the identification of a victim, Mr. Rafik Hariri. The doctor states that he was authorised by Mr Hariri's family to receive the body. His statement is an extract from the Lebanese investigation case file.
- Witness PRH397, a Lebanese police officer, describes viewing the bodies of two unidentified victims taken to a hospital morgue after the explosion. The documents are extracts from the Lebanese investigation case file. The witness's statement incorporates the statements of two family members who identified the two victims and requested to take their bodies for burial.
- Witness PRH389, a Lebanese police officer, describes the identification of a victim of the explosion. The document is an extract from the Lebanese case file, and includes the statement of a person who identified one of the victims and claimed the body on behalf of the family. It also includes the report of a forensic pathologist, detailing the cause and time of death that was prepared upon the instructions of the then Commissioner (Prosecutor) for the Military Tribunal, Judge Jean Fahd. The pathology report in reality is an expert report, admissible under Rule 161. The Defence has not objected to its admission into evidence, and the Trial Chamber will admit it as an expert report under Rule 161.
- Witness PRH489, a Lebanese police officer, describes the identification of a victim of the explosion. The statement is an extract from the Lebanese case file and includes the statement of a person who identified one of the victims and claimed the body on behalf of the family. The extract also includes a forensic pathology report related to the deceased prepared upon the instructions of the Commissioner (Prosecutor) for the Military Tribunal. In the absence of an objection from the Defence, this report may also be admitted under Rule 161.

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<sup>22</sup> Prosecution motion, paras 4-15, 19-20; Prosecution 2<sup>nd</sup> addendum; Prosecution 3<sup>rd</sup> addendum.

<sup>23</sup> Ayyash response to Prosecution 2<sup>nd</sup> addendum; Ayyash response to Prosecution 3<sup>rd</sup> addendum; Sabra response, paras 13, 25; Oneissi response, para. 3.

- Witness PRH596, a Lebanese police officer, describes the discovery of an unidentified victim under a Mercedes vehicle on 21 February 2005. The victim's severe burns made it impossible to ascertain whether the victim was male or female. His statement is an extract from the Lebanese investigation case file.

15. The statements of the following witness contain a minor breach (i.e., the witness was not provided with the relevant Rules, but he did acknowledge the consequences of making a false statement). As the breach is minor, compelling reasons exist to depart from strict application of the Practice Direction and the statements may be admitted into evidence without cross-examination under Rule 155:

- Witness PRH344, a Lebanese police officer, states that he was tasked with collecting biological remains at the crime scene on 15 February 2005 and describes some of the human body parts recovered. His statements include an extract from the Lebanese case file and 18 photographs taken during the investigation, while the Prosecution has offered associated exhibits as evidentiary material. These exhibits, listed in Annex A of the Prosecution's motion, are also admissible as an indispensable part of the relevant statement.

16. The Trial Chamber is satisfied of the relevance of the evidence of these six witnesses as it concerns the death of victims charged in the amended indictment and the examination of the crime scene, and paragraphs 4, 36, and 41-43 of the amended indictment. Accordingly, all of the evidence is admissible under Rule 149 (C). Further, the statements of witnesses PRH537, PRH397, PRH389, PRH489, PRH596, and PRH344 do not concern the acts and conduct of the Accused. Consequently, all of the statements above and their associated documents are admissible under Rule 155 and Rule 154.

17. Witness PRH450, a Lebanese police officer, describes the discovery of an unidentified male victim under a car, in the presence of Judge Fahd on 21 February 2005. His statement is an extract from the Lebanese investigation case file. It is relevant and probative, does not concern the acts and conduct of the Accused, and meets the requirements of the Practice Direction. However, it is challenged by counsel for Mr. Badreddine,<sup>24</sup> and counsel for Mr. Sabra request to cross-examine PRH450 on the basis that his testimony is 'capable of providing evidence relevant to the Defence making its case in accordance with Rule 150 (I)'.<sup>25</sup> The Trial Chamber agrees that PRH450 is

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<sup>24</sup> Badreddine response, para. 6.

<sup>25</sup> Sabra response, para. 14.

capable of offering testimony relevant to the Defence. Accordingly, the statement of PRH450 is admissible, but the Prosecution is required to make him available for cross-examination either in The Netherlands or via video-conference link under Rule 156.

### **B. Statements regarding surrender of bodies to families**

18. Witnesses 41 through 47 in the Prosecution's anticipated order of appearance are: PRH454; PRH300; PRH524; PRH255; PRH280; PRH354; and PRH469. Their evidence can broadly be categorised as relating to the search for, and identification of, acquaintances or relatives killed by the explosion.

19. For all seven witnesses in this category, the Prosecution submits that the evidence relates to confirming the identity of a deceased victim and the effects of the explosion, and does not require cross-examination. Additionally, any 'departures' from the Practice Direction in three witness statements (PRH300, PRH354, and PRH469) were cured by the two addenda.<sup>26</sup> Defence counsel do not contest the admission into evidence of these three statements under Rule 155. The statements of the remaining four witnesses (PRH454, PRH524, PRH255, and PRH280) are contested by counsel for Mr. Ayyash and Mr. Sabra for non-compliance with the Practice Direction.<sup>27</sup> On the basis of the 'dual-status' of PRH469, the Legal Representative for Victims submits that Rule 150 (D) requires judicial consideration of his statement but does not oppose its admission into evidence *in lieu* of oral testimony.<sup>28</sup>

20. The following statements meet the requirements of the Practice Direction and may be admitted into evidence under Rule 155:

- Witness PRH300 is the relative of a victim of the explosion who identified and collected the victim's body. His statement is extracted from the Lebanese investigation case file.
- Witness PRH354 is the relative of a victim of the explosion who describes his unsuccessful search for the victim. On 2 March 2005, the victim's body was found in the St. Georges area and handed over to his family. PRH354's statement is part an extract from the Lebanese case file.

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<sup>26</sup> Prosecution motion, paras 4-15, 19-20; Prosecution 2<sup>nd</sup> addendum; Prosecution 3<sup>rd</sup> addendum.

<sup>27</sup> Ayyash response, paras 10-12; Ayyash response to Prosecution 2<sup>nd</sup> addendum; Ayyash response to Prosecution 3<sup>rd</sup> addendum; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, paras 13, 25. Counsel for Mr. Ayyash submit that the proposed documents cannot be considered statements under Rule 155.

<sup>28</sup> LRV observations, para. 5.



- Witness PRH469 describes identifying a relative, who was a victim of the explosion, and collecting his body. The statement is extracted from the Lebanese investigation case file.

21. The Trial Chamber is satisfied of the relevance of the proposed evidence in these statements as it concerns the effects of the explosion, and relates to paragraphs 4 and 42 of the amended indictment; PRH354's statement also relates to paragraphs 41 and 43. The evidence is therefore admissible under Rule 149 (C). Further, the proposed evidence does not concern the acts and conduct of the Accused. Consequently, the statements of witnesses PRH300, PRH354, and PRH469 are admissible under Rule 155 without cross-examination.

22. The remaining statements contain fundamental breaches of the Practice Direction: the identity of the witnesses was not verified by the Prosecution (although the witnesses' identification was verified by Lebanese law enforcement officials in early 2005); there is no witness information sheet or formal acknowledgement by the witness; and, the witnesses were not informed of potential criminal consequences for knowingly providing false evidence or provided with the text of the relevant Rules. For these reasons, the Trial Chamber considers that the following statements contain fundamental breaches of the Practice Direction and cannot be admitted into evidence under Rule 155:

- Witness PRH454 identified and collected the body of a relative who was killed by the explosion of 14 February 2005. His statement is an extract from the Lebanese investigation case file.
- Witness PRH524 identifies a relative who was a victim of the explosion, and the collection his body. The statement comes from the Lebanese investigation case file.
- Witness PRH255 was a relative of a victim of the explosion. His statement, which is an extract from the Lebanese case file, describes the identification of his relative and the collection of the body.
- Witness PRH280 describes the search for three individuals he knew and who he believed were victims of the explosion, and the identification of one of them. His statement is extracted from the Lebanese investigation case file.

23. The Prosecution is required to make witnesses PRH454, PRH524, PRH255, and PRH280 available to testify either in The Netherlands or via video-conference link.

### C. Statements regarding collection of human remains at the explosion site

24. Witnesses 48 through 53 in the Prosecution's anticipated order of appearance are: PRH499; PRH461; PRH257; PRH653; PRH139; and PRH301. Their evidence broadly relates to the search for, and collection of, human remains at the explosion site.

25. For all six witnesses the Prosecution submits that the evidence relates to the crime scene investigation and does not require cross-examination. For witnesses PRH461 and PRH499, the Prosecution acknowledges 'departures' from the Practice Direction as the statements were taken by a Lebanese law enforcement agency.<sup>29</sup> A fundamental defect in three statements (PRH461, PRH257 and PRH653) has been addressed by the Prosecution's second addendum. Admission of PRH499's statement is contested by counsel for all four Accused because the proposed document cannot be considered a statement, while no English translation has been made available (the proposed document exists only in Arabic).<sup>30</sup> The remaining five witness statements (PRH461, PRH257, PRH653, PRH139, and PRH301) are not contested by counsel for Mr. Badreddine and Mr. Oneissi, but are contested by counsel for Mr. Ayyash and Mr. Sabra for non-compliance with the Practice Direction.<sup>31</sup>

26. The statements of the following three witnesses contain a minor breach (i.e., the witness was not provided with the relevant Rules). As the breach is minor, compelling reasons exist to depart from strict application of the Practice Direction and the statements may be admitted into evidence under Rule 155:

- Witness PRH461 and Witness PRH257 worked with the Lebanese Internal Security Forces and describe the search of the crime scene in two statements and the recovery of exhibits and human remains. The second statement of Witness PRH461 – extracted from the Lebanese case file – is a report co-authored by the two witnesses about human flesh samples retrieved from the crime scene, including photographs.
- Witness PRH653 worked with the Lebanese Internal Security Forces (ISF) and describes the chain of custody for DNA samples discovered during the search of the crime scene and sent to laboratories for forensic analysis on 15 February 2005.

<sup>29</sup> Prosecution motion, paras 4-15, 19-20.

<sup>30</sup> Ayyash response, paras 10-12, Annex A; Badreddine response, para. 6; Oneissi response, para. 29; Sabra response, para. 25.

<sup>31</sup> Ayyash response, paras 10-12; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, para. 25. Counsel for Mr. Ayyash submit that the second proposed document for PRH461 cannot be considered a statement under Rule 155.

27. The Trial Chamber is satisfied that this evidence is relevant as it concerns the effects of the explosion on victims, and relates to paragraphs 4 and 41-43 of the amended indictment. Accordingly, the evidence is admissible under Rule 149 (C), and does not concern the acts and conduct of the Accused. Consequently, the statements of witnesses PRH461, PRH257, and PRH653 are admissible under Rules 155 without cross-examination. Additionally, all associated exhibits listed in Annex A of the Prosecution's motion related to these three witnesses are admissible as an indispensable part of the statements under Rule 154.

28. The remaining three statements contain a fundamental breach of the Practice Direction (i.e., the identity of the witnesses was not verified by the Prosecution) and cannot be admitted into evidence under Rule 155. These three statements contain additional breaches, as described:

- Witness PRH499's statement is said to describe a search of the crime scene for a specific victim. The statement – an extract from the Lebanese case file – is however only available in Arabic, and does not include a witness information sheet or formal acknowledgement. Further, PRH499 was not informed of potential criminal consequences for knowingly providing false evidence or provided with the text of the relevant Rules.
- Witness PRH139 worked with the ISF and provides an analysis of the collection of human remains found at the explosion site, and their chain of custody. The statement was taken by the Prosecution, but the witness was not given a copy of Rules 60 *bis* and 152; yet he did acknowledge the potential consequences for providing false evidence. The breach is therefore minor. The second document – a report about the genetic testing of unidentified dead bodies and body parts upon the orders of Chief Military Investigating Magistrate Rashid Mezher – appears to be an extract from the Lebanese case file and is substantially non-compliant with the Practice Direction as it lacks a formal declaration and a witness information sheet. This second document has been submitted as a 'statement', and is only available in Arabic.
- Witness PRH301 worked with the ISF and provides an analysis of the collection of items, especially shrapnel, found at the explosion site, and their chain of custody (including their long-term storage in a freezer). The statement was taken by the Prosecution, but the witness was not given a copy of Rules 60 *bis* and 152; yet he did acknowledge the potential consequences for providing false evidence. The breach is therefore minor. Accompanying the statement is an extract from the Lebanese case file of a chronological report of a forensic

investigation carried out with Swiss experts upon the instructions of Investigating Judge at the Judicial Council, Michael Abou-Arraj. It is substantially non-compliant with the Practice Direction because it is missing a formal declaration and a witness information sheet. Moreover, the witness's statement does not annex or acknowledge these documents.

29. The Prosecution is required to make witnesses PRH499, PRH139, and PRH301 available for testimony either in The Netherlands or via video-conference link. The Trial Chamber notes that the statements of PRH139 and PRH301, taken by the Prosecution in January 2013, failed to have the witness identify the material accompanying the statements which is sought to be tendered into evidence.

#### **D. Statements regarding the crime scene investigation by Lebanese authorities**

30. Witnesses 54 through 59 in the Prosecution's anticipated order of appearance are: PRH513; PRH593; PRH127; PRH128; PRH129; and PRH125. Their evidence broadly describes the crime scene investigation by Lebanese authorities, including: examination of Mr. Hariri's convoy vehicles; information regarding other vehicles and parts near the explosion site; maps and images of the explosion site; and, collection of items near the site.

31. The Prosecution submits that the evidence of the six witnesses relates to the crime scene investigation and does not require cross-examination.<sup>32</sup> The Prosecution also submits that this evidence is cumulative as it relates to the *viva voce* testimony of PRH130.<sup>33</sup> A fundamental defect in three statements (PRH513, PRH593, and PRH127) has been addressed by the Prosecution's second addendum. Admission of PRH593 and PRH127's statements is not contested by the Defence.<sup>34</sup> The remaining four statements (PRH513, PRH128, PRH129, and PRH125) are not contested by counsel for Mr. Badreddine and Mr. Oneissi, but are contested by counsel for Mr. Ayyash and Mr. Sabra for non-compliance with the Practice Direction.<sup>35</sup>

32. The following three statements meet the requirements of the Practice Direction and may be admitted into evidence under Rule 155:

- Witness PRH513, a member of the Lebanese Armed Forces, confirmed the accuracy of a report about the inspection of the crime scene and related photographs he had made in 2005. The report and photographs are annexed to the statement.

<sup>32</sup> Prosecution motion, paras 4-15, 17.

<sup>33</sup> Prosecution motion, para. 5(10).

<sup>34</sup> Ayyash response, para. 8; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, paras 13, 25.

<sup>35</sup> Ayyash response, paras 10-12; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, para. 25.

- Witness PRH593, a Lebanese law enforcement officer, refers to a prior statement he gave in 2005 to the United Nations International Independent Investigation Commission (UNIIC), and video clips, maps, and other material relating to the inspection of the crime scene. This material – some of which is an extract from the Lebanese case file – is annexed to the statement.
- Witness PRH127, a Lebanese law enforcement officer, refers to a statement he gave in 2005 to the UNIIC and to two reports he assisted in drafting regarding an inspection of the crime scene. These documents – some of which are extracted from the Lebanese case file – are annexed to the statement.

33. The Trial Chamber is satisfied that the statements contain evidence relevant to the case as it concerns the effects of the explosion on victims, and relates to paragraphs 4 and 41-43 of the amended indictment. The evidence is thus admissible under Rule 149 (C), and, further, it does not concern the acts and conduct of the Accused. Consequently, the statements of witnesses PRH513, PRH593, and PRH127 are admissible under Rule 155 without cross-examination. All associated exhibits listed in Annex A of the Prosecution's motion related to these three witnesses are also admissible under Rule 154 as an indispensable part of the statements.

34. The statements of the three remaining witnesses contain a fundamental breach of the Practice Direction (i.e., the identity of the witnesses was not verified by the Prosecution) and cannot be admitted into evidence under Rule 155 without cross-examination:

- The statements of Witness PRH128, a Lebanese law enforcement officer with expertise in explosives, relate to the inspection of the crime scene. The first statement – which is an extract from the Lebanese case file – incorporates a report co-authored by the witness, with photographs. His second statement – a report about an inspection of the crime scene, including photographs of mechanical and metal parts which were collected – is an extract from the Lebanese case file, and has additional breaches of the Practice Direction: it is missing a formal declaration and a witness information sheet; the interviewer and date of the interview is not apparent; the witness does not acknowledge the potential consequences of providing false evidence; and, he was not given a copy of Rules 60 *bis* and 152.
- The statement of Witness PRH129, an expert in explosives working with Lebanese law enforcement, refers to his inspection of the crime scene and to various items collected from the crater after the explosion.

- The statement of Witness PRH125, a Lebanese law enforcement officer with expertise in explosives, refers to the inspection of the crime scene and the location of items found there. His statement also refers to a report that he co-authored which includes images and annotations, although the report is not attached.

35. The Prosecution is required to make witnesses PRH128, PRH129, and PRH125 available to testify either in The Netherlands or via video-conference link.

**E. Statements regarding the search near the explosion site and the collection of items**

36. Witnesses 60 through 68 in the Prosecution's anticipated order of appearance are: PRH337; PRH131; PRH544; PRH500; PRH566; PRH589; PRH422; PRH538; and PRH585. Their evidence describes the crime scene investigation by Lebanese authorities, focusing on the search near the explosion site and the collection of items.

37. The Prosecution submits that their evidence relates to the crime scene investigation and does not require cross-examination.<sup>36</sup> A fundamental defect in four statements (PRH131, PRH500, PRH589, and PRH422) has been addressed by the Prosecution's second addendum. Admission of PRH538's statement is not contested by the Defence.<sup>37</sup> Admission of the statements of the eight remaining witnesses (PRH337, PRH131, PRH544, PRH500, PRH589, PRH422, PRH566, and PRH585) is not contested by counsel for Mr. Badreddine and Mr. Oneissi, but is contested by counsel for Mr. Ayyash and Mr. Sabra for non-compliance with the Practice Direction.<sup>38</sup>

38. The following five statements meet the requirements of the Practice Direction and may be admitted into evidence under Rule 155:

- Witness PRH131, who worked with the ISF, describes the investigation of the crime scene by Lebanese authorities, including the search near the explosion site and collection of items underwater on 18 February 2005. He also refers to reports (which include photographs and images) produced by his office, and to video clips of the recovery operations of metal items following the explosion. These documents – some of which are extracts from the Lebanese case file – are annexed to the statement.

<sup>36</sup> Prosecution motion, paras 4-15.

<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. 5; Oneissi response, para. 3; Sabra response, para. 25.

- Witness PRH500, who worked with the ISF, describes the investigation of the crime scene by Lebanese authorities, including the search near the explosion site and collection of items. He describes the report his office produced and sent to the investigating judge and which formed part of the Lebanese investigation case file. This material is annexed to the statement and includes a map of the crime scene with an overview of where pieces of the Mitsubishi truck and remains of unidentified individuals were found after the explosion.
- Witness PRH589 describes an underwater search for a missing victim in the days immediately after the explosion. Additionally, he describes a later underwater search to retrieve car parts from the sea in March 2005. He also describes certain reports and related video clips made by his office following these missions. This material – some of which is extracted from the Lebanese investigation case file – is annexed to the statement.
- Witnesses PRH422 and PRH538 describe the investigation of the crime scene by Lebanese authorities, including the search near the explosion site and the collection of body parts and car parts in the days after the explosion. They refer to reports produced by their office and video footage which focuses primarily on the technical and forensic examination of human remains, and to the recovery of metal items retrieved from the seabed. All of this material – some of which is extracted from the Lebanese case file – is annexed to the statements. The annexed material appears to be available only in Arabic. Accordingly, and while the statements and annexures remains admissible, their formal in-court admission into evidence will be deferred until the annexed material is translated into English.

39. The Trial Chamber is satisfied of the relevance of this proposed evidence, relating as it does to the crime scene investigation, and paragraphs 4 and 41–43 of the amended indictment. The evidence is therefore admissible under Rule 149 (C). Moreover, it does not concern the acts and conduct of the Accused. The statements of witnesses PRH131, PRH500, PRH589, PRH422 and PRH538 are consequently admissible under Rule 155, as are all associated exhibits related to these five witnesses listed in Annex A of the Prosecution’s motion under Rule 154. However, the admission of all material associated with PRH422 and PRH538 is deferred pending disclosure of English translations of the annexures to the statements.

40. The four remaining statements contain at least one fundamental breach of the Practice Direction (i.e., the witnesses’ identity has not been verified by the Prosecution) even though some

statements were taken after the Trial Chamber's decision of 30 May 2013. They cannot be admitted into evidence under Rule 155:

- Witness PRH337, who worked in the ISF, describes the investigation of the crime scene by Lebanese authorities, including the search near the crime scene and the collection and location of items and body parts in the immediate aftermath of the explosion. Three photographs – one of the crime scene and two of biological remains – are attached to the statement.
- Witness PRH544, an explosives expert, describes the investigation of the crime scene by Lebanese authorities, including the search near the explosion site and the collection of items. He also describes two documents, one of which he signed. These documents – which are official reports extracted from the Lebanese investigation case file – are annexed to the statement.
- Witness PRH566, who worked with the ISF, describes the investigation of the crime scene by Lebanese authorities (including the search near the explosion site and collection of items) and reports that he authored, with a general focus on explosives. A number of his statements are reports of the investigation extracted from the Lebanese case file.
- Witness PRH585 describes the investigation of the crime scene as recounted to him by Lebanese authorities, including the underwater search and collection of items in the immediate aftermath of the explosion. However, his two statements – comprising reports by the witness, the second of which primarily comprises photographs of collected items in August 2005 – are non-compliant with the Practice Direction as: they are missing a witness information sheet and a formal declaration; the interviewer and date of the interview is not apparent; PRH585 does not acknowledge potential consequences for providing false evidence; and, he was apparently not provided a copy of Rules 60 *bis* and 152.

41. The Prosecution is therefore required to make witnesses PRH337, PRH544, PRH566, and PRH585 available to testify either in The Netherlands or via video-conference link.

#### **F. Statements regarding receipt of mechanical parts from the explosion site**

42. The evidence of witnesses 69 and 70 in the Prosecution's anticipated order of appearance (PRH514 and PRH355) describes the receipt by the UNIIC of mechanical parts collected at the explosion site.



43. The Prosecution submits that this evidence relates to the crime scene investigation and does not require cross-examination.<sup>39</sup> Admission of both statements is not contested by the Defence.<sup>40</sup> However, counsel for Mr. Sabra requests that PRH355 appear for cross-examination as the testimony might be relevant to the defence case.<sup>41</sup> Counsel for Mr. Badreddine note that PRH355's statement contains some inconsistencies that need to be clarified through cross-examination.<sup>42</sup>

44. The following statements meet the requirements of the Practice Direction:

- Witness PRH514 worked for UNIIC and describes the processing and resealing or repackaging of exhibits retrieved on the crime scene. Notes made by the witness in July 2008 – which relate to 25 exhibits – are annexed to the statement.
- Witness PRH355 worked for UNIIC and describes the receipt and examination of mechanical parts collected at the explosion site. Annexed to his statement are investigator's notes that he prepared on 4 July 2005. A contemporaneous report by the Lebanese Judicial Police is also incorporated.

45. The Trial Chamber is satisfied that both statements are relevant as the receipt and examination of mechanical parts collected at the explosion site relates to paragraphs 4 and 42-43 of the amended indictment. Accordingly, they are admissible under Rule 149 (C), and, further, the evidence does not relate to the acts and conduct of the Accused. The statement of PRH514 has sufficient indicia of reliability according to Rule 155 and the Practice Direction – relating to its origin – and is therefore admissible (along with the associated exhibit listed in Annex A of the Prosecution motion) without cross-examination. The statement of PRH355 also has the necessary indicia of reliability and could be admitted under Rule 155. However, because of potential inconsistencies in the substance of the statement the Prosecution must make PRH355 available for cross-examination either in The Netherlands or via video-link.

### **G. Statements regarding the Mitsubishi Canter van**

46. Witness 71 (PRH445), who works in Japan, describes the Mitsubishi Canter van that was allegedly involved in the explosion of 14 February 2005. In the statement, the witness states that a 'tentative investigation has revealed that the vehicle was stolen in Japan' on 12 October 2004.

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<sup>39</sup> Prosecution motion, paras 4-15.

<sup>40</sup> Ayyash response, para. 8; Badreddine response, para. 5; Oneissi response, para. 3; Sabra response, paras 13, 25.

<sup>41</sup> Sabra response, paras 14-15.

<sup>42</sup> Badreddine response, Annex A, p. 4.

47. The Prosecution submits that this evidence relates to the crime scene investigation and does not require cross-examination.<sup>43</sup> Counsel for Mr. Oneissi submitted that PRH445's statements in Japanese require translation into English before they can take a position.<sup>44</sup> Admission of PRH445's statements is not contested by counsel for Mr. Badreddine, but is contested by counsel for Mr. Ayyash and Mr. Sabra due to non-compliance with the Practice Direction.<sup>45</sup>

48. The Trial Chamber considers that the two proposed statements of Witness PRH445 – which are reports – contain fundamental breaches of the Practice Direction as they: do not display that the witnesses' identification was verified; are missing a formal declaration and a witness information sheet; do not demonstrate that the witness acknowledged potential consequences for providing false evidence. Further, the second statement is unclear, containing a mixture of Japanese, English, and Arabic. For these reasons, the statements breach the Practice Direction, and cannot be admitted into evidence under Rule 155.

49. The Trial Chamber is satisfied of the relevance of this proposed evidence as the description of the vehicle containing the explosives relates to paragraphs 4 and 41-43 of the amended indictment, and it is thus admissible under Rule 149 (C). Further, the proposed evidence does not concern the acts and conduct of the Accused. However, the statements cannot be admitted under Rule 155. Accordingly, the Prosecution should call witness PRH445 to testify, either in The Netherlands or via video-conference link.

### CONCLUSION

50. Twenty-two of the proposed Rule 155 statements – and, where applicable, associated exhibits – bear sufficient indicia of reliability and are therefore admissible under Rule 155 and Rule 154. For these statements, the interests of justice and the demands of a fair and expeditious trial exceptionally warrant their admission without cross-examination under Rule 155 (C). However, the admission of the statements of two witnesses (PRH422 and PRH538) is deferred until all of the associated material is translated into English.

51. The statements of the remaining 16 witnesses have fundamental breaches of the Practice Direction or internal inconsistencies; hence, they do not bear sufficient indicia of reliability. Accordingly, they – and, where applicable, associated exhibits – will not be admitted into evidence under Rule 155. The attached table reflects this.

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<sup>43</sup> Prosecution motion, paras 4-15.

<sup>44</sup> Oneissi response, para. 29.

<sup>45</sup> Badreddine response, para. 5; Ayyash response, paras 10-12; Sabra response, para. 25.

52. The Prosecution may further consider seeking admission of these statements and material as evidence under Rule 154 (Admission of Documents) or, if appropriate, Rule 158 (Unavailable Persons). If documents were to be admitted under these Rules, the Trial Chamber would later determine the weight to attribute to the admitted evidence.

53. The Trial Chamber encourages the Parties and the Legal Representative for Victims, where relevant, to provide better information in any future application under Rule 155 as to why they could not verify the identity of a given witness,<sup>46</sup> and to clearly distinguish between witness statements and any additional material sought to be tendered for admission through a witness.

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<sup>46</sup> For example, and to satisfy Article 2(2)(c) of the Practice Direction, a Party could: explicitly show that the witnesses' identity was verified (e.g., by photocopying the ID card as was done in some statements); *or*, indicate why verification of identity was not possible.

**DISPOSITION**

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

**ALLOWS** the Prosecution to add the documents in its second and third addenda to its exhibit list;

**ORDERS** the admission into evidence under Rule 155 of the statements of 20 witnesses, and the exhibits associated with these statements under Rule 154 (or Rule 161 where appropriate), as listed in the following table;

**DEFERS** the admission into evidence under Rule 155 and Rule 154 of the statements and associated exhibits of 2 witnesses listed in the table; and,

**DENIES** the admission into evidence of the statements under Rule 155 – and, where applicable, associated exhibits – of 16 witnesses listed in the following table, and requires the Prosecution to make these witnesses available for testimony, either in The Netherlands or via video-conference link.

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

Leidschendam,  
The Netherlands  
30 January 2014



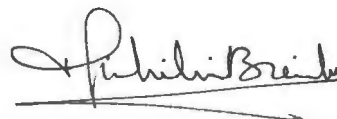
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Judge David Re, Presiding



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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>A. Rule 155 statements regarding identification of victims</b>			
34	PRH537	Admitted	60291723-60291727 N/A
35	PRH397	Admitted	60291998-60292006 N/A
36	PRH389	Admitted	60291988-60291996 60291997-60291997 (Forensic pathology report)
37	PRH489	Admitted	60291975-60291984 60291985-60291987 (Forensic pathology report)
38	PRH450	Admitted (cross-examination required)	60291964-60291974 N/A
39	PRH596	Admitted	60291956-60291963 N/A
40	PRH344	Admitted	60279025-60279034 (1 <sup>st</sup> Statement); 50002652-50002662 (2 <sup>nd</sup> Statement) R91-600020; R91-602925; R91-606640; R91-607301; R91-607304;
<b>B. Rule 155 statements regarding surrender of bodies to families</b>			
41	PRH454	Not Admitted	10001037-10001038 N/A
42	PRH300	Admitted	60291903-60291910 N/A
43	PRH524	Not Admitted	50004221-50004221 N/A
44	PRH255	Not Admitted	50011048-50011048 N/A
45	PRH280	Not Admitted	50004196-50004199 N/A
46	PRH354	Admitted	60291703-60291715 N/A
47	PRH469	Admitted	60292007-60292011 N/A
<b>C. Rule 155 statements regarding collection of human remains at the explosion site</b>			
48	PRH499	Not Admitted	L0014549-L0014550A N/A
49	PRH461	Admitted	60278918-60278923 (1 <sup>st</sup> Statement) 50002663-50002669 (2 <sup>nd</sup> Statement) R91-606639

50	PRH257	Admitted	60278985- 60278989	R91-606482; R91-606485; R91-606498
51	PRH653	Admitted	60278889- 60278895	N/A
52	PRH139	Not Admitted	60278932- 60278942 (1 <sup>st</sup> Statement); 50002592- 50002635 (2 <sup>nd</sup> Statement)	N/A
53	PRH301	Not Admitted	60278966- 60278970 (1 <sup>st</sup> Statement); L0038728- L0038855 (2 <sup>nd</sup> Statement)	N/A
<b>D. Rule 155 statements regarding the crime scene investigation by Lebanese authorities</b>				
54	PRH513	Admitted	60287009- 60287022	R91-602942
55	PRH593	Admitted	60286503- 60286587	R91-600009; R91-600061; R91-606411; R91-606460; R91-606530; R91-606635
56	PRH127	Admitted	60286447- 60286502	R91-600025; R91-606505; R91-606462
57	PRH128	Not Admitted	60278853- 60278888 (1 <sup>st</sup> Statement); 50007811- 50007829 (2 <sup>nd</sup> Statement)	N/A
58	PRH129	Not Admitted	60278925- 60278930	N/A
59	PRH125	Not Admitted	60278960- 60278965	N/A
<b>E. Rule 155 statements regarding the search near the explosion site and the collection of items</b>				
60	PRH337	Not Admitted	60278991- 60278999	R91-606483; R91-606498
61	PRH131	Admitted	60286337- 60286446	R91-606518; R91-606493; R91-606519; R91-606636
62	PRH544	Not Admitted	60286230- 60286244	R91-606496
63	PRH500	Admitted	60286221- 60286229	R91-606511; R91-606721
64	PRH566	Not	60279018-	R91-602878; R91-602880; R91-602881;

		Admitted	60279023 (1 <sup>st</sup> Statement); L0014822- L0014863 (2 <sup>nd</sup> Statement); 50007711- 50007714 (3 <sup>rd</sup> Statement); 50007693- 50007698 (4 <sup>th</sup> Statement); 50007699- 50007702 (5 <sup>th</sup> Statement); 50007772- 50007788 (6 <sup>th</sup> Statement); L0014919- L0014949 (7 <sup>th</sup> Statement); L0038983- L0038988 (8 <sup>th</sup> Statement)	R91-602887; R91-606503; R91-606504; R91-602871; R91-602872; R91-602873; R91-602874; R91-602876; R91-602877; R91-602879; R91-602882; R91-602883; R91-602884; R91-602886; R91-602888; R91-606512; R91-602889; R91-602890; R91-602891; R91-602892; R91-602893; R91-602895; R91-602897; R91-602961
65	PRH589	Admitted	60286245- 60286268	R91-606645; R91-606515; R91-606516
66	PRH422	Admission deferred	60286280- 60286336A	R91-606497; R91-606517; R91-606513; R91-606514; R91-606633; R91-602958
67	PRH538	Admission deferred	60287836- 60287959	R91-606517; R91-606632
68	PRH585	Not Admitted	200001-200001F (1 <sup>st</sup> Statement); 202333-202354 (2 <sup>nd</sup> Statement)	R91-606459
<b>F. Rule 155 statements regarding receipt of mechanical parts from the explosion site</b>				
69	PRH514	Admitted	60285967- 60285981	R91-606723
70	PRH355	Not Admitted	60282983- 60283015	R91-606465
<b>G. Rule 155 statements regarding the Mitsubishi Canter van</b>				
71	PRH445	Not Admitted	202295-202295 (1 <sup>st</sup> Statement); 202296-202307 (2 <sup>nd</sup> Statement)	N/A

