

**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: 10 April 2014

Original language: English

Classification: Public

DECISION GRANTING PROSECUTION REQUEST (1478) TO ADD WITNESS PRH 499'S STATEMENT TO ITS EXHIBIT LIST AND DECLARING THE STATEMENT ADMISSIBLE UNDER RULE 155 (C)

(Extract from Official Public Transcript of Hearing on 10 April 2014, page 15, line 24 to page 18, line 3)

On the 2nd of April this year, the Prosecution filed a motion seeking leave to add a new witness statement of Witness PRH499 to its exhibit list and to admit the statement into evidence in lieu of oral testimony under Rule 155. The motion is entitled: Prosecution Rule 155 motion for admission of PRH499's written statement in lieu of oral testimony.

The witness is a member of the Lebanese Internal Security Force who assisted in the investigation of the explosion in Beirut on the 14th of February, 2005. His three-page statement, dated 1st of February, 2014, refers to relevant reports he made in February and March 2005, to photographs, and to a statement he made to the United Nations Independent International Investigation Commission in August 2005.

Under Rule 155, a written witness statement may be admitted into evidence in lieu of oral testimony if it goes to proof of a matter other than the acts and conduct of the accused. The witness's statement to the UNIIC of August 2005, however, did not comply with the

Interpretation serves to facilitate communication.
Only the original speech is authentic.

Practice Direction on admitting statements under Rule 155, and in a decision on 30th of January, 2014, the Trial Chamber ruled that the witness's statement was inadmissible under Rule 155. The Prosecution shortly thereafter took a new statement that did comply with the Practice Direction.

This statement refers to the witness inspecting buildings damaged in the explosion, searching for a specific victim, and observations he made at the crime scene. It also refers to reports he made at the time. The statement is relevant and probative and is admissible under Rule 155 and, as the statement -- the new statement complies with the Practice Direction, it is therefore admissible under Rule 155 without cross-examination.

The relevant content of the new witness statement, namely, the earlier statement and reports, was given to Defence counsel for the four accused in the Ayyash case in 2012 and to counsel for Hassan Habib Merhi in January of this year. The only relevant change to the statement is its format.

Good cause therefore exists to add the new witness statement as a proposed exhibit. The statement is relevant and probative and its addition to the exhibit list will not delay the proceedings. It is therefore in the interests of justice to add this new witness statement to the exhibit list.

The Prosecution also argued that cross-examination of the witness was not required because of the nature of the witness's evidence. Counsel for Mr. Oneissi responded on the 8th of April and, without objecting to the new witness statement or adding it to the witness list, asked that the witness be required to attend court for cross-examination. They want to cross-examine the witness, who they say can provide evidence relevant to the Defence in three discrete aspects of its case. No other Defence Counsel responded or have yet responded to the motion.

In the circumstances, the Trial Chamber is satisfied that Witness PRH499 should be required to attend court to testify, either in the Netherlands or via videolink, for cross-examination.

The written statement is therefore admissible under Rule 155 but the Prosecution must make the witness available for cross-examination under Rule 156, as Rule 155(C) provides. While noting that only counsel for Mr. Oneissi have thus responded to the Prosecution motion, this decision cannot prejudice the other four accused as their counsel may also cross-examine that witness.

Interpretation serves to facilitate communication.
Only the original speech is authentic.