

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

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: 29 August 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**DECISION ON THE LEGAL REPRESENTATIVES OF VICTIMS' APPLICATION
TO AMEND AND UPDATE THEIR EXHIBIT LIST**

Office of the Prosecutor:Mr Norman Farrell & Mr Alexander Hugh
Milne**Legal Representatives of
Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Salim Jamil Ayyash:**Mr Emile Aoun, Mr Thomas Hannis &
Mr Chad Mair**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Jad Youssef Khalil**Counsel for Mr Hussein Hassan Oneissi:**Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie von Wistinghausen**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Geoffrey Roberts &
Ms Sarah Bafadhel

INTRODUCTION

1. On 3 May 2017, the Legal Representatives of Victims submitted an application to be permitted to present *viva voce* (live) and written evidence. Pursuant to an order of the Trial Chamber's Presiding Judge, they also filed, as annexes to their application, an amended and updated witness and exhibit list. On 31 July 2017, the Trial Chamber authorised the Legal Representatives, among other things, to submit formal applications to tender documentary evidence.¹

2. The Legal Representatives now seek the Trial Chamber's leave to amend their exhibit list, by adding five documents.² The Parties raised no objection and stated that they would not respond to the application.³

THE PROPOSED EXHIBITS

3. The five documents are:

- a) Two witness statements, of V033 and V034,⁴ which the Legal Representatives submit they obtained the day after they filed their exhibit list on 3 May 2017; the statements were disclosed on 15 August 2017;
- b) A 'list of medical records' of V016—or extract from V016's medical record—that the Legal Representatives submit V016 communicated and transmitted to them on 11 August 2017;⁵ this document was disclosed on 24 August 2017;
- c) The report of Dr Rianne Letschert—a witness authorised to testify, upon the Legal Representatives' request, by the Trial Chamber,—and her *curriculum vitae*, which were disclosed on 21 and 24 August 2017, respectively.⁶

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3116, Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C, 3 May 2017 (public with confidential annexes), confidential annexes A-B; F3260, Decision on the Legal Representative of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017 ('Decision of 31 July 2017'), disposition.

² F3279, The Legal Representative of Victims Request to Amend and Update Its Exhibit List with Confidential Annex A, 17 August 2017 (public with confidential Annex A) ('Application'). Confidential annex A contains an amended exhibit list, including the documents whose admission is sought.

³ See transcript of 22 August 2017, pp 57-59.

⁴ V033-E012 and V034-E009; see Application, para. 5.

⁵ V016-E018 ('Medical Record').

4. The Legal Representatives submit that the ‘list of medical records’ and Dr Letschert’s report and *curriculum vitae* will be displayed in court during the testimonies of V016 and Dr Letschert, respectively.⁷

5. As to Dr Letschert’s report and *curriculum vitae*, the Trial Chamber will deal with the request for their addition to the exhibit list when deciding on the Legal Representatives’ motion for admission of her report into evidence.⁸

DISCUSSION

6. The Trial Chamber has consistently held that it may, in the interests of justice, allow ‘a Party’ to amend its exhibit list. The evidence must be *prima facie* relevant and probative. The Trial Chamber has also held that it may consider, among other factors: (i) whether ‘the Prosecution’ has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.⁹

7. Under Rule 87 (B), ‘a victim participating in the proceedings may request the Trial Chamber, after hearing the Parties, to call witnesses and authorise him to tender other evidence’, and the Trial Chamber has already authorised the Legal Representatives to submit documents for admission into evidence.¹⁰ Accordingly, the Trial Chamber may, in the interests of justice, authorise the Legal Representatives to amend their exhibit list, on a similar basis.

8. In its decision of 31 July 2017, the Trial Chamber authorised the Legal Representatives’ request of 10 May 2017 to amend their witness list by adding four witnesses, including V034 and V034, whose statements they intended to tender. The Trial Chamber’s,

⁶ V000-E010 (‘We want our rights back’ – Expert Report on the Views and Concerns of the Victims Participating at the Special Tribunal for Lebanon); V000-E012 (*Curriculum vitae* Prof. Dr. Letschert). See Application, paras 6-8.

⁷ Application, para. 8.

⁸ F3282, The Legal Representative of Victims Request for the Admission of the Opinion Evidence of Professor Doctor Rianne Letschert with Confidential Annex A, 18 August 2017 (public with confidential annex A).

⁹ F2544, Decision on Prosecution Motion to Add Inventory and Supporting Documents relating to the Searches of the Residence of Ahmed Abu Adass, 11 April 2016, para. 4; F2270, Decision Authorising the Prosecution to Amend Its Exhibit List, 15 October 2015, para. 4; F2149, Decision on Prosecution Motion to Admit 62 Photographs, 28 August 2015, para. 3; F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related Evidence’, 9 July 2015, para. 62; F1901, Decision on Prosecution Motion to Amend its Exhibit List and Oneissi Defence Request to Stay the Proceedings, 13 April 2015, para. 34; F1820, Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony relating to ‘Red Network’ Mobile Telephone Subscriptions, 19 January 2015, para. 5.

¹⁰ Decision of 31 July 2017, disposition.

decision allowing the Legal Representatives to present the proposed witness statements by formally applying for their admission under Rule 155 encompassed those of V033 and V034.¹¹

9. In these circumstances, and as the Trial Chamber has previously held that witness statements do not have to be on a *Party's* exhibit list to be admitted into evidence under Rule 155, 156 or 158,¹² there is no need to add the witness statements of V033 and V034 to the Legal Representatives' exhibit list. The reasoning applies by analogy.

10. With regard to V016's 'list of medical records', the Trial Chamber has reviewed it and is satisfied that it is relevant and probative of V016's health condition and therefore may be *prima facie* relevant and probative of the harm he suffered as a result of the explosion in Beirut, on 14 February 2005.¹³ The Legal Representatives submit that V016 only transmitted the document to them on 11 August 2017. Its addition to the exhibit list will not delay the proceedings, nor prejudice the Accused's fair trial rights. The document has been disclosed to the Parties—which have not opposed the Legal Representatives' application—and will be used in court during V016's testimony. It may therefore be added to the exhibit list. The Trial Chamber will consider any request for its admission into evidence when it is submitted.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

AUTHORISES the Legal Representatives to amend their exhibit list by adding V016's 'list of medical records'.

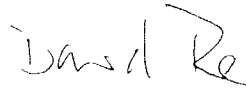
¹¹ Decision of 31 July 2017, paras 89, 92, disposition; *see also* F3132, Request of the Legal Representative of Victims to add four Witnesses to its Witness List, with Confidential Annex A, 10 May 2017 (public with confidential annex A).

¹² F2648, Decision on Evidence related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon, 14 July 2016, para. 19; *see also* F2224, Corrected Version of 'Decision on Prosecution Motion for the Admission of the Statements of Witnesses PRH056 and PRH087' of 29 September 2015, 5 October 2015, para. 18.

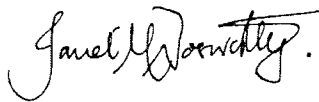
¹³ As to the date appearing on the second page of the document, '5 July 1999', the Trial Chamber notes that, according to a revised translation of the document, this is the date when the 'single copy of this medical record [was] created by the General Directorate of General Security'.

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

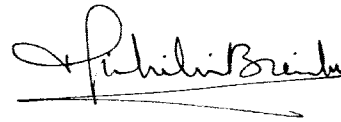
Leidschendam,
The Netherlands
29 August 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

