

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: 7 September 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION PERMITTING PROFESSOR DOCTOR RIANNE LETSCHERT TO
GIVE OPINION EVIDENCE AND ADMITTING HER
REPORT INTO EVIDENCE**

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 Robert & Ms Sarah Bafadhel



INTRODUCTION AND BACKGROUND

1. The Pre-Trial Judge granted 76 people the status of victims participating in the case.¹ Seventy-two are currently participating, as two have withdrawn from the proceedings and two are deceased.² In May 2012, pursuant to a decision of the Pre-Trial Judge, the Registrar designated Legal Representatives to represent the interests of the participating victims.³
2. The decision of the Pre-Trial Judge granting the status of participating victims was based on *prima facie* evidence that the 76 had suffered physical, material or mental harm as a direct result of the attack of 14 February 2005 against the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut. This attack, for which the Prosecution attributes responsibility to the four Accused—Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra,⁴ and to the former Accused—the late Mr Mustafa Amine Badreddine—resulted in the death of Mr Hariri and of 21 others, and in the injury of 226 others.⁵
3. Professor Dr Rianne Letschert is a victimologist whom the Legal Representatives intend to call to provide observations on the collective harm suffered generally—by participating victims and by others who have not chosen to participate as victims in the case—and the wider social, cultural and economic impact of the attack on the Lebanese people.⁶ She studied international law in the Netherlands and France and, in 2005, obtained her PhD with a thesis on the impact of minority rights mechanisms. Between 2011 and 2016 Dr Letschert

¹ In eight decisions, the main one being: STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0236, Decision on Victims' Participation in the Proceedings, 8 May 2012 (public with confidential and *ex parte* annex); and the last one being: STL-11-01/T/PTJ, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3226, Eighth Decision on Victims' Participation in the Proceedings, 13 July 2017.

² *See e.g.* Decision on the Request of the Legal Representative of Victims to Withdraw One Participating Victim from the Proceedings, delivered in court on 24 April 2017, *see transcript* at pp 2-3.

³ STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0249, Designation of Victims' Legal Representatives, 16 May 2012. Rule 2 defines the legal representative of a victim participating in the proceedings as 'counsel representing a victim participating in proceedings before the Tribunal'.

⁴ The Prosecution's case is that five interconnected mobile phone groups—operating in four closed networks, which are colour-coded as 'red', 'green', 'blue' and 'yellow'—were involved in the planning, preparation and execution of the attack in Beirut on 14 February 2005. The 'purple phones', a group of three mobiles, were allegedly used to coordinate a false claim of responsibility for the attack, made soon after the explosion—*see* STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended consolidated indictment, 12 July 2016, paras 14-19.

⁵ Amended consolidated indictment, para. 4; F3260, Decision on the Legal Representatives of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017 ('Decision of 31 July 2017'), fn. 95 referring to F1492, Second Decision on Agreed Facts under Rule 122, 11 April 2014, para. 1, recording, among others, the following facts as not contested at trial: (i) in addition to killing Mr Rafik Hariri, the explosion killed 21 other persons listed in Schedule A of the Indictment; (ii) the explosion injured 226 persons listed in Schedule B of the Indictment.

⁶ Decision of 31 July 2017, para. 52.

held the Victimology and International Law chair at the Tilburg University where she directed the International Victimology Institute of Tilburg. She is currently a Professor of International Law and Victimology (Rector Magnificus) at Maastricht University.

4. Dr Letschert has conducted studies on the needs of victims of terrorism and participated in expert meetings on terrorist victimisation. She has also consulted for the United Nations (UN) Special Rapporteur on Counter Terrorism and Human Rights, and the UN Human Rights Council Advisory Committee's 2012 drafting study, 'Victimisation through hostage taking'. Among other appointments she is a member of the Supervisory Board of the Dutch National Organisation for Victim Support, and a member of the Board of Trustees of Redress, the Netherlands (a non-governmental organisation). She has also authored and edited academic publications and books, in the field (generally) of international law, transitional justice, terrorism and the rights of victims.⁷

5. Relevantly, for this case, Dr Letschert has interviewed the majority of the participating victims.⁸

6. On 31 July 2017, the Trial Chamber authorised the Legal Representatives to present *viva voce* (live) evidence through Dr Letschert. The Trial Chamber noted that her testimony will relate to the victimological profile of the participating victims as alleged victims of terrorism, their needs and the significance for them of accessing justice. Dr Letschert's evidence was considered conducive to give a more complete picture of the impact upon the victims of the attack and of the crimes charged. The Trial Chamber thus concluded that it is in the interests of justice to authorise her to present evidence through in-court testimony.⁹

7. On 18 August 2017, the Legal Representatives filed a motion under Article 17 of the Special Tribunal's Statute, and under Rules 149 (C) and (D), 150 (D), and 161 of the Special Tribunal's Rules of Procedure and Evidence requesting the Trial Chamber to permit Dr Letschert to provide opinion evidence on the victimological profile of the participating

⁷ A short *curriculum vitae* contained in the report 'We Want Our Rights Back'—Expert Report on the Views and Concerns of the Victims Participating at the Special Tribunal for Lebanon', by Professor Dr Rianne Letschert, August 2017, V000-E010 ('Dr Letschert's report').

⁸ Dr Letschert's report, p. 4.

⁹ Decision of 31 July 2017, para. 85.

victims as victims of terrorism, the needs of such victims, and the ways in which access to justice can fulfil those needs.¹⁰

8. The Legal Representatives also sought the admission into evidence of Dr Letschert's report—containing a short *curriculum vitae*—confidential annex A to their application. Another *curriculum vitae* was disclosed on 24 August 2017.¹¹ In sum, the report contains Dr Letschert's findings concerning the impact of the attack on the participating victims, the harm they suffered as a result of the attack and how this may continue to affect their lives. It provides detailed information about the types of loss suffered by the participating victims and whether those she interviewed showed symptoms of post-traumatic stress disorder (PTSD), such as depression, dependency on medicine, fear of further attacks. The report also describes the consequences of terrorist victimisation with reference to the types of injuries and trauma typically sustained as a result of terrorist attacks and their psychological impact.¹²

9. On 29 August 2017, in granting the Legal Representatives' application to amend and update their exhibit list, the Trial Chamber held that it would determine adding Dr Letschert's report and *curriculum vitae* to the exhibit list when deciding the application to admit her report into evidence.¹³

SUBMISSIONS

Legal Representatives of Victims

10. The Legal Representatives submit that Dr Letschert's identity, qualifications and expertise were notified to the Parties in 2013 and summaries of her intended testimony were provided in annex A to the Legal Representatives' filing of 3 May 2017. According to the Legal Representatives, Dr Letschert is one of the world's foremost victimologists but her testimony is not 'classically expert evidence', and they do not seek to tender her report as

¹⁰ 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 ('Motion'), para. 1.

¹¹ *Curriculum vitae* of Prof Dr Rianne Monique Letschert, V000-E012, see F3300, Decision on the Legal Representatives of Victims' Application to Amend and Update Their Exhibit List, 29 August 2017 ('Decision of 29 August 2017'), para. 3 (c).

¹² Dr Letschert's report, pp 10-17, 21-23.

¹³ Decision of 29 August 2017, para. 5.

such, despite its title. Instead, they request that Dr Letschert be permitted to provide opinion evidence, comprised of her report and her in-court evidence.¹⁴

11. Dr Letschert is not a psychologist and has not conducted clinical examinations of the participating victims. Her methodology, rather, involved a ‘desk review’ of previously conducted research on this topic, consideration of much of the ‘case file’, field research in Beirut and serial interviews with the participating victims. She is familiar with the findings of researchers on psychological trauma among victims of terrorism and has questioned the participating victims about their complaints and medication, and had access to their medical records.¹⁵

12. Further, the Trial Chamber has decided that it may receive opinion evidence from witnesses not formally qualified as experts, as it did with the evidence of a Prosecution analyst, Mr Andrew Donaldson (Witness PRH230).¹⁶ In addition, international precedent permits the admission of summary evidence prepared by analysts and consultants working for Parties submitting evidence.¹⁷

13. Dr Letschert’s opinion evidence is relevant because it touches upon harm suffered by individuals affected by acts of terrorism. Her report is *prima facie* reliable given her qualifications and methodology. Dr Letschert’s testimony will consider the totality of the participating victims’ evidence and can thus be regarded as summary evidence. It has probative value, as it summarises the physical, mental and material harm suffered by the participating victims and describes their effect on them. Dr Letschert’s evidence is a complete, concise and an economical way to present a case for the participating victims. The report does not seek to assign criminal responsibility to any particular group or person, and does not address the issue of the Accused’s culpability.¹⁸

¹⁴ Motion, paras 3, 10-11, 18; 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, Annex A, p. 1.

¹⁵ Motion, paras 11, 20, 24-25.

¹⁶ Motion, paras 12-15, 17 and fn. 16 referring to F3172, Decision Allowing Prosecution Analyst Andrew Donaldson to Provide Opinion Evidence, 2 June 2017 (‘Decision of 2 June 2017’), paras 73-76.

¹⁷ Motion, paras 15-16.

¹⁸ Motion, paras 20-28.

Prosecution and Defence

14. The Prosecution does not object to the application, and counsel for Mr Sabra take no position on it.¹⁹

15. Counsel for Mr Ayyash and Mr Merhi also take no position on the admission of the report or of Dr Letschert's opinion evidence as a non-expert witness. They submit, however, that that this lack of objection should not be interpreted as accepting the relevance of the entire report, or accepting any line of questioning on the issue of compensation claims or reparations. The Special Tribunal is not the appropriate forum to consider such issues. Further, the legal basis for the admission of Dr Letschert's report and her *viva voce* testimony is not clear. Therefore, counsel reserve the right to make further submissions on the report and evidence at a later stage.²⁰

16. Counsel for Mr Oneissi object to the admission of the report, challenging its legitimacy and Dr Letschert's qualifications. The report presents the victims as victims of terrorism and takes a position on the legal characterisation of the facts, which are yet to be determined by the Trial Chamber. In assuming this legal characterisation the report undermines the presumption of innocence. The summaries of the views of participating victims contained in the report are redundant. Hence, the motion should be rejected.²¹

DISCUSSION AND DECISION*Dr Letschert's testimony as opinion evidence*

17. The Trial Chamber—consistent with the principles of international criminal law—has previously decided that it may hear opinion evidence from a suitably experienced and qualified witness, even if the witness has not been declared an expert under Rule 161. Opinion evidence is not confined to witnesses who have been declared experts, and the Trial Chamber has allowed non-expert witnesses to provide such evidence. Based on their personal and or professional experience, non-expert witnesses may draw conclusions from circumstances they

¹⁹ Transcript of 30 August 2017, pp 91-92.

²⁰ F3301, Merhi Defence Response to the Legal Representatives of Victims Request Concerning the Opinion Evidence of Professor Doctor Rianne Letschert, 30 August 2017, paras 3-5; F3303, Ayyash Response to 'The Legal Representative of Victims Request for the Admission of Opinion Evidence of Professor Doctor Rianne Letschert, with Confidential Annex A', 30 August 2017, paras 3-4.

²¹ F3304, Réponse de la Défense de M. Oneissi à la Requête du Représentant Légal des Victimes visant à obtenir l'Admission du Rapport du Professeur Dr Rianne Letschert, 30 August 2017, paras 3-8.

had witnessed or from facts with which they were familiar.²² These findings are applicable here.

18. In authorising Dr Letschert's testimony the Trial Chamber determined its scope and admissibility by noting that it would relate to the victimological profile of the participating victims as alleged victims of terrorism, their needs and the significance for them of accessing justice.²³ The Legal Representatives' motion, however, erroneously refers to Rule 161, which governs the testimony of expert witnesses,²⁴ although not calling Dr Letschert as an expert witness. As the Trial Chamber was not requested to and has not authorised her to testify as an expert witness, the issue is whether Dr Letschert may give opinion evidence as a non-expert witness.

19. The Trial Chamber has considered the term 'expert' within the meaning of Rule 161 and the principles applicable to expert evidence.²⁵ Qualifying a witness as an expert under Rule 161 depends on whether they 'by virtue of some specialized knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute.'²⁶ Dr Letschert is a professor of international law and victimology, with a PhD in the area, and has conducted studies on the needs of victims of terrorism and participated in expert meetings on terrorist victimisation. Based on her *curriculum vitae* and her report, Dr Letschert is probably well qualified to provide expert evidence in the field of victimology. The Trial Chamber therefore disagrees with and rejects the Oneissi Defence's challenge to her qualifications to provide opinion evidence in this area. But although she is conceivably qualified as an expert, the

²² Decision of 2 June 2017, paras 70-78, 86, 93; F3126, Interim Decision on Joint Defence Motion *in Limine* to Exclude Evidence of Analyst Mr Andrew Donaldson, 5 May 2017 ('Decision of 5 May 2017'), paras 22-23; Transcript of 17 February 2016, pp 4-5, 12; Oral Order on PRH265's opinion evidence, 13 March 2015, *see* transcript at pp 3-9.

²³ *See supra*, para. 6, and Decision of 31 July 2017, para. 85.

²⁴ According to Rule 161, the full statement of any expert witness to be called by a Party shall be disclosed to the opposing Party and to the victims participating in the proceedings within the time-limit prescribed by the Pre-Trial Judge or Trial Chamber. Within thirty days of disclosure of the statement of the expert witness, or such other time prescribed by the Pre-Trial Judge or the Trial Chamber, the opposing Party shall file a notice indicating whether it accepts or challenges the qualifications of the witness as an expert or the relevance of all or parts of the report and, if so, which parts, as well as whether it wishes to cross-examine the expert witness. Rule 161 also provides that if the opposing Party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

²⁵ Decision of 5 May 2017, paras 15-23; F2549, Decision Allowing Mr Gary Platt (Witness PRH147) to Give Expert Opinion Evidence, 13 April 2016 ('Decision of 13 April 2016'), paras 4-5; F2529, Decision on the Admission of Mr Gary Platt (Witness PRH147) as an Expert Witness, 31 March 2016, para. 2; F1616, Decision on Witness PRH 348, Mr. Gerhard Geyer, and Expert Witness PRH 387, Mr. Bart Hoogeboom, 11 July 2014, para. 3; F1610, Decision on Expert Witness PRH120, Professor Fouad Hussein Ayoub, and Expert Witness PRH508, Dr. Issam Mansour, 7 July 2014 ('Decision of 7 July 2014'), paras 5-6.

²⁶ Decision of 7 July 2014, para. 6.

Legal Representatives want the Trial Chamber to hear Dr Letschert not as an expert witness, but rather as one who can provide relevant opinion evidence.

20. Dr Letschert's evidence is based, in part, on interviews with participating victims, on her review of the victims' applications for participating victim status in the proceedings and the documents supporting their applications. It also contains opinions and conclusions founded on her expertise. Considering Dr Letschert's professional experience and qualifications, the Trial Chamber is of the view that she is qualified to provide opinion evidence concerning the victimological profile of the participating victims as victims of an explosion—which may ultimately be found to have been a terrorist act—their needs, views and concerns, and how access to justice can fulfil those needs.

21. However—and counsel for Mr Oneissi have raised a legitimate point here—throughout the report it also terms the participating victims as victims of terrorism. The Trial Chamber can understand why Dr Letschert has assumed that an explosion that targeted Mr Hariri's convoy—a fact which is not in dispute between the Parties—could be viewed as an act of terrorism. The four Accused, however, are charged in the amended consolidated indictment with participating in a conspiracy to commit a terrorist act (count 1), and either with 'committing a terrorist act by means of an explosive device' (count 2 with respect to Mr Ayyash) or with 'being an accomplice to the felony of committing a terrorist act by means of an explosive device' (count 6 with respect to the other three Accused). And this goes directly, as counsel for Mr Oneissi correctly submit, to the legal characterisation of what occurred in Beirut on 14 February 2005, and hence the Trial Chamber's adjudication of the charges.

22. As the Trial Chamber has previously noted,²⁷ in the *Charles Taylor* case the Special Court for Sierra Leone received the non-expert summary evidence of a human rights adviser, who had previously worked for the Office of the Prosecutor, and had collected and documented the testimonies of victims and witnesses. In doing so, however, the Special Court's Trial Chamber held that the non-expert summary evidence was solely admissible for its factual content and that any opinion evidence, including touching upon the ultimate issue of the case, or reaching conclusions which are within the Trial Chamber's province were to be

²⁷ Decision of 2 June 2017, para. 76.

disregarded.²⁸ The Trial Chamber agrees with this assessment. But whether Dr Letschert is really providing analytical summary overview evidence—in a manner similar to, for example, Mr Donaldson, as the Legal Representatives submit—is less clear.

23. Only in a judgment—either on an application for acquittal under Rule 167 at the close of the Prosecution’s case, or at the end of the trial—can the Trial Chamber determine whether the explosion, which targeted Mr Rafik Hariri and affected the participating victims, was a terrorist act. The Trial Chamber will therefore disregard, at this point, any suggestion or assumption in Dr Letschert’s evidence that the participating victims were the victims of a terrorist act. In other words, the Trial Chamber will ignore, for present purposes, Dr Letschert’s opinions insofar as they go to the ultimate issue of whether a terrorist act was committed. In this respect, however, the Trial Chamber notes that Dr Letschert’s opinions do not imply that the Accused themselves are guilty of complicity in committing a terrorist act as charged in the amended consolidated indictment.

Law and principles governing the admissibility of Dr Letschert’s report

24. The Trial Chamber has noted the law and principles applicable to the presentation of evidence upon the request of participating victims in its decision of 31 July 2017 authorising the presentation of evidence by the participating victims.²⁹ The Trial Chamber has also acknowledged the general principles and rules relating to the admission and exclusion of evidence under Rule 149 (C) and (D), the procedural safeguards for the admission of documents under Rule 154³⁰ and those governing the amendment of the Legal Representatives’ exhibit list.³¹ These are applicable here.

²⁸ SCSL, *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or, in the Alternative, to Limit its Scope And on Urgent Prosecution Request for Decision, 19 June 2008, para. 27.

²⁹ Decision of 31 July 2017, paras 11-25, noting Article 17 of the Special Tribunal’s Statute and Rules 87 (B), 146 (A), 150 (D) of the Special Tribunal’s Rules of Procedure and Evidence and relevant case law of the International Criminal Court (ICC).

³⁰ According to Rule 149 (C) and (D), a Chamber may admit any relevant evidence which it deems to have probative value and may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules. Rule 154 states that: ‘[s]ubject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149 (C) and (D)’.

³¹ *E.g.* Decision of 29 August 2017, paras 6-7; F3104, Decision Admitting 12 Documents and a Witness’ Statement Related to Hezbollah, Its Officials and Telephone Numbers, 26 April 2017, para. 6; F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIC and STL’s Prosecution, 6 May 2015, paras 66, 111; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015,

25. Dr Letschert will not testify as an expert witness. Consequently, the Trial Chamber will assess whether the report, containing opinion evidence of a non-expert witness, is admissible in accordance with the general requirements for admissibility of evidence, that is, whether it is *prima facie* relevant, reliable and probative.

Relevance of Dr Letschert's report

26. In its decision of 31 July 2017, the Trial Chamber found that evidence relevant to the attack and to the harm suffered by the participating victims will enable them to express their views and concerns. The Trial Chamber acknowledged that the submission of evidence at trial may be a means for the participating victims to express their views and concerns, consistent with the International Criminal Court's (ICC) case law.³² In assessing the relevance of evidence, the ICC Trial Chamber in *Lubanga* considered how material sought for admission 'relates to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused *or in its evaluation of the views and concerns of participating victims*' [emphasis added].³³

27. Dr Letschert's report addresses the psychological impact, the physical and financial consequences for participating victims resulting from the attack, and their needs and expectations.³⁴ It presents the witness's findings concerning the impact of the attack on the participating victims. It discusses the harm they suffered as a result of the attack and how this may continue to impact their lives. Her opinion evidence provides detailed information about the types of loss suffered by the participating victims, the essence of PTSD and of traumatic or complicated grief, as well as whether the participating victims showed symptoms of PTSD, such as depression, dependency on medicine, fear of further attacks, etc.³⁵ The report also canvasses the consequences of terrorist victimisation in general (in psychological, physical and economical aspects) with reference to the types of injuries and trauma typically sustained

para. 33; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, paras 5-7.

³² Decision of 31 July 2017, paras 16, 90.

³³ ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-2588-Red, Redacted Decision on the "Prosecution's Application for Admission of Documents related to Witness 297 Pursuant to Article 64(9)", 12 November 2010, para. 10, referring to ICC-01/04-01/06-1399, Public Redacted Version of a Decision on the admissibility of four documents, 13 June 2008, para. 27 (in this decision the *Lubanga* Trial Chamber set forth its general approach to the admissibility of documents at trial).

³⁴ Dr Letschert's report, pp 15, 21-33.

³⁵ Dr Letschert's report, pp 12-14, 16-17.

as a result of terrorist attacks and their psychological impact.³⁶ Dr Letschert notes the effect, in general, of media attention on victims of terrorism, as well as terrorist victimisation of children and adolescents.³⁷

28. Dr Letschert's report provides some summary evidence of participating victims and some specific accounts related to the effects of the explosion on the participating victims, and the resulting harm suffered. This makes the report relevant, as reflected in Article 17 of the Statute, 'Rights of victims', which permits participating victims to present their views and concerns where their personal interests are affected.³⁸

29. Dr Letschert's report provides an effective, convenient and judicially economical manner to receive this evidence without affecting the rights of the Accused to a fair trial. The alternative would be the Legal Representatives seeking permission to present statements from all 72 participating victims. But this would unnecessarily consume court time and resources. The Trial Chamber therefore rejects the Oneissi Defence submission that any summary evidence is 'redundant'.

Reliability and probative value of Dr Letschert's report

30. Next, the Trial Chamber must assess whether Dr Letschert's report satisfies the threshold test of *prima facie* reliability for it to have some probative value. This is distinct from the issue of the weight, if any, to be given to her report and opinion evidence as a whole when evaluated in light of the totality of the evidence in the case.

31. Dr Letschert's professional experience and research in victim support, victimology and terrorist victimisation provide sufficient indicia of *prima facie* reliability of her report concerning the impact on participating victims of the crimes charged. Furthermore, the report is based, in part, on Dr Letschert's interviews with participating victims conducted over several days since 2013 in a way—according to Dr Letschert—that allowed focused, two-way communication.³⁹ The report thus conveys her direct and first-hand impressions of the long-

³⁶ Dr Letschert's report, pp 10-11.

³⁷ Dr Letschert's report, pp 18-20.

³⁸ Decision of 31 July 2017, para. 77; F1371, Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014, para. 21; F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 31 (where the Trial Chamber was satisfied of the relevance of 23 witness statements as concerning the effects of the explosion on victims); Amended consolidated indictment, paras 4, 42.

³⁹ Dr Letschert's report, p. 4.

term impact of the attack on participating victims and their needs. It also contains Dr Letschert's findings, based on her review of the participating victims' applications for participation and supporting documentation, such as medical reports, describing the harm they suffered as a result of the attack.⁴⁰

32. The Trial Chamber considers that Dr Letschert's qualifications, methodology and the content of her report have the necessary indicia of reliability to provide it with some probative value. Moreover, the probative value of the report is not outweighed by the need to ensure a fair trial within the meaning of Rule 149 (D).

33. The Trial Chamber is also satisfied that receiving Dr Letschert's opinion evidence in this manner is 'not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial', as specified in Article 17 of the Statute. And, as noted above at paragraph 23, the Trial Chamber will disregard any opinion evidence touching upon the legal characterisation of the offences charged, and hence the ultimate issue for the Trial Chamber's determination. The Trial Chamber will hear further submissions from the Parties before deciding the weight that it can give to Dr Letschert's opinion evidence in a judgement.

34. The report is therefore relevant and has some probative value and it may be received into evidence. The Trial Chamber will evaluate Dr Letschert's in-court opinion testimony in the same light.

Adding Dr Letschert's report and her curriculum vitae to the Legal Representatives' exhibit list

35. For the same reasons, the Trial Chamber finds that Dr Letschert's report and her *curriculum vitae* may be added to the Legal Representatives' exhibit list. The report and the *curriculum vitae* have been disclosed and will be used in court during Dr Letschert's testimony and their addition will neither delay the proceedings nor prejudice the fair trial rights of the Accused. The Legal Representatives may thus add these documents to their exhibit list.

⁴⁰ Dr Letschert's report, pp 4, 15.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

PERMITS Professor Dr Rianne Letschert to provide opinion evidence on the victimological profile of the participating victims as the victims of an explosion, their needs and the ways in which access to justice can fulfil those needs;

AUTHORISES the Legal Representatives of Victims to amend their exhibit list by adding Professor Dr Letschert's report, "We Want Our Rights Back"—Expert Report on the Views and Concerns of the Victims Participating at the Special Tribunal for Lebanon', August 2017, and her *curriculum vitae*; and

DECLARES ADMISSIBLE, pursuant to Rule 149 (C) and Rule 154, Professor Dr Letschert's report, "We Want Our Rights Back"—Expert Report on the Views and Concerns of the Victims Participating at the Special Tribunal for Lebanon', August 2017, and will formally admit it into evidence during Professor Dr Letschert's testimony.

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

Leidschendam,
The Netherlands
7 September 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

