

**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:** 14 May 2018

**Original language:** English

**Classification:** Public

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**Decision Allowing the Oneissi Defence to Amend its Witness and Exhibit Lists and Admitting into Evidence Ten Witness Statements and Material Relied Upon in Professor Sporer's Expert Report**

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(Extract from Official Public Transcript of Hearing on 14 May 2018, page 5, line 14 to page 10, line 6)

This is a decision allowing the Oneissi Defence to amend its witness and exhibit lists and admitting into evidence ten witness statements and material relied upon in Professor Sporer's expert report. The decision is the following.

In filing F3650, "Defence For Hussein Hassan Oneissi Request For Amendment to the Rule 128 Witness and Exhibit Lists and For the Admission of Documents Used By DHO-001," which is the witness pseudonym for Professor Sporer, filed on the 7th of May, 2018. Counsel for the accused Mr. Oneissi sought the Trial Chamber's leave to amend their witness and exhibit lists filed under Rule 128 of the Special Tribunal's Rules of Procedure and Evidence by adding four witnesses and one exhibit and withdrawing 16 exhibits. They also sought the admission into evidence 1 of ten "witness statements" and 11 exhibits, including video and audio recordings of interviews. Now, this is the fourth version of the witness or exhibit list filed since the first was filed on the 7th of March, 2018. And the relevance of the material is that Professor Sporer used these documents in preparing his expert report. Moving

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forward two months. On Friday, the 11th of May 2018, the Oneissi Defence filed another witness and exhibit list, its fourth version, seeking to add further documents. This filing was "Rule 154 Motion For the Amendment of the 128 Exhibit List and For the Admission of Documents Related to Ahmad Abu Adass, " and that is filing F3659. On the 13th of April, 2018, in filing F3629, "Decision Allowing Professor Siegfried Ludwig Sporer (Witness DHO-001) to Give Expert Opinion Evidence and Admitting, in Part, His Expert Report, " which was finally distributed on Monday, the 7th of May, 2018, the Trial Chamber found Professor Sporer qualified to provide expert opinion evidence and declared his report admissible, with the exception of certain portions, in the absence of any proper application for the defence of Mr. Oneissi to admit into evidence the material underlying such as under Rule 155, " to tender witness statements without cross-examination or oral testimony. These were all witness statements and other documents that are not in evidence.

The Prosecution, in its filing of the 9th of April, F3621, "Prosecution's Rule 161(B) Notice in Relation to Witness DHO-001 Siegfried Ludwig Sporer and Request to Strike Portions of the Report, " had opposed the admission into evidence of parts of the report on the grounds that they relied on untendered witness statements and documents.

Also of relevance is on the 7th of March, 2018, the Oneissi Defence disclosed to the parties and the Trial Chamber Professor Sporer's report and the material he used. They did this when they filed their first witness and exhibit list. Now, the Oneissi Defence belatedly, on the 7th of May, two months after filing its original witness and exhibit list, now seeks to add four witnesses to its list asking the Chamber to receive them into evidence under Rule 155 without requiring them to appear to testify. Professor Sporer is scheduled to testify today, Monday, the 14th of May. Professor Sporer referred to the statements of these proposed witnesses in his report. The Prosecution responded today, the 14th of May, to the filing from a week ago, stating that it does not object to adding to the four witnesses to the list and it does not wish to cross-examine the four witnesses. The Trial Chamber, to avoid any delay to the proceedings resulting from this filing and to allow the presentation of the Defence case to start on the 14th of May, 2018, dramatically shortened the Prosecution's 14-day deadline for responses to the Oneissi Defence's application. The Trial Chamber has carefully reviewed the statements of the four witnesses the Oneissi Defence seeks to add to its witness list and the exhibit proposed for addition to the exhibit list, which comprises investigators' notes taken by two Prosecution investigators. The exhibit and the witness statements, with three exceptions -

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being, the transcript and audio of Defence interviews of two Prosecution employees - were obtained by the Prosecution or the United Nations International Independent Investigations Commission.

The combination of these circumstances satisfies the Trial Chamber that adding these witnesses' names to the list will neither delay the proceedings nor prejudice the preparation of the Prosecution for the Defence case. The Oneissi Defence submits that the witness statements are relevant and probative to the procedures the Prosecution used to obtain certain evidentiary material and thus allow other evidence already before the Trial Chamber, not to be "assessed in a vacuum. " The witness statements contain the necessary indicia of reliability, despite some minor breaches of 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. " The interests of justice and a fair and expeditious trial warrant the admission into evidence of the witness statements without cross-examination, and the Prosecution does not object to the statements being tendered under Rule 155. The Trial Chamber has previously set out the procedural safeguards for admitting statements into evidence under Rule 155, which allows it to receive written testimony in lieu of live oral testimony in the courtroom. In particular, a statement must meet the basic requirements for admission into evidence under Rule 149; have relevance in having some probative value; and, if going to proof of the acts or conduct of the accused, may not be admitted without 1 cross-examination. The Trial Chamber found Professor Sporer qualified to supply specialized knowledge that could -- sorry, to provide specialized knowledge that could assist the Trial Chamber in understanding the evidence. Professor Sporer, in his report, refers to and relies on the statements of these four witnesses that are not yet in evidence. The proposed witness statements, in the Trial Chamber' s view, are relevant and probative as sources for the Professor' s analysis and conclusions and help make his report understandable. The Trial Chamber will therefore admit them for this limited purpose under Rule 155 without cross-examination. In this respect, the Trial Chamber will carefully consider these statements and assess the weight that it can give them. It also notes that the subject matter and the substance of most of Professor Sporer's conclusions in his report are not contested. The Trial Chamber, therefore, allows the Oneissi Defence to amend its witness list by adding the names of four witnesses.

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Namely, DHO-003, -004, -005, and -006, assist listed in Annex C to the Oneissi Defence application, and also to amend the exhibit list by adding one document and withdrawing 16 from the exhibit list as listed in Annex D. The Trial Chamber will also admit into evidence under Rule 155, without requiring the witnesses to attend for cross-examination, the ten witness statements listed in Annex A of the application of Witnesses DHO-003, -1 004, -005, and -006. The last one, -006. That witness may not require protective measures. The Prosecution will inform the Chamber in due course, as that person is a former Prosecution investigator. Finally, under Rule 154 the Chamber will admit into evidence the exhibits listed at Annex B at items 4 and 5, namely, extracts from CDs.

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