

## **ANNEX 32**

**PUBLIC REDACTED**

**From:** Trial Chamber VI Communications  
**Sent:** 21 June 2022 17:16  
**To:** OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV  
**Subject:** RE: Response to Defence request for clarification (ICC-01/14-01/21-364)

Dear Parties and Participants,

The Chamber has taken note of Defence filing ICC-01/14-01/21-364 and the Prosecution's response via email below.

The Chamber received a phone call from the Prosecution on Wednesday 15 June, asking for guidance as to which procedure the Chamber intended to adopt in relation to testimony via video link. The Chamber informed the Prosecution that it will not issue any specific guidance at this point and will rather leave the initiative with the parties and encouraged the Prosecution to consult with the Defence. It was understood that, in case the parties were unable to come to an agreement, they would have the opportunity to seize the Chamber. The Chamber therefore did not yet adopt a specific procedure or impose any time limit. All communication occurred via telephone, so there is nothing to reclassify.

The Chamber agrees with the Prosecution that it should be open to the parties to approach the Chamber on an informal basis regarding purely technical or practical matters. However, as highlighted by the Defence, questions of a procedural nature must be raised on an *inter partes* basis unless there are imperative reasons to the contrary.

In respect of the matter at hand, the Chamber expects that the *inter partes* discussions are ongoing and it will await the outcome thereof. More generally, the Chamber expects the parties to collaborate in good faith and to avoid unnecessary friction and litigation in relation to this and other matters.

Kind regards,  
Trial Chamber VI

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**From:** [REDACTED]  
**Sent:** 20 June 2022 21:10  
**To:** Trial Chamber VI Communications [REDACTED]  
**Cc:** D33 Said Defence Team [REDACTED]; OTP CAR IIA Prosecution Team [REDACTED]; Said LRV Team OPCV [REDACTED]  
**Subject:** Response to Defence request for clarification (ICC-01/14-01/21-364)

Dear Trial Chamber,

the Prosecution hereby responds to the Defence request for clarification (ICC-01/14-01/21-364).

Insofar as Defence alleges any impropriety about the Prosecution's contact with the Chamber, this is inapposite and regrettable. The Prosecution merely reached out to the Chamber via the legal officer by phone to inquire about a technical issue.

It did so on the basis of (i) that there were no clear instruction regarding video-link in the Chamber's orders, and

(ii) mixed jurisprudence of chambers on this very issue (for instance in Ongwen, the Chamber deferred to the Parties (see ICC-02/04-01-15-497, para. 17), in Abd-Al-Rahman, the Prosecution typically requests use of AVL).

There was nothing improper in making the phone conversation; parties should be able to engage with the Chamber on purely technical matters. This goes both for the Prosecution and Defence. The Prosecution thereafter transparently informed the Defence that it made the inquiry and about the outcome of its inquiry as the Prosecution understood it.

The Prosecution invited the response from the Defence regarding the use of AVL. The Defence did not respond that it requires more information, but instead immediately approached the Chamber. This goes against constructive *inter partes* dialogue. If the Defence wanted more information, they could, and should have, simply approached the Prosecution. The Prosecution would have – and will be – happy to oblige, and explain the basis for its recommendations. The Prosecution gave a short deadline in the interest of expediency as these matters should be resolved quickly and noting that, in case agreement cannot be reached, this will require litigation and ruling by the Chamber. Because use of AVL impacts on the planning of witnesses appearing before the Chamber, a swift resolution is imperative not do delay or disrupt proceedings in the upcoming trial. Would the Defence have stated that it would require more time to respond, the Prosecution would not have found this problematic and would have sought an agreement.

The Prosecution invites the Chamber to confirm the accuracy of discussions between the Chamber LO and Prosecution Senior Lawyer, namely: (i) Parties should engage in *inter partes* discussions and attempt to reach agreement with regard to AVL witnesses, (ii) pending that, the Prosecution should request AVL for any witnesses where agreement could not be reached.

In light of this Defence Filing, having now learnt about the Defence's position, the Prosecution will provide general reasons for AVL recommendation for each witness to the Defence via email by 24 June 2022. For the future, the Prosecution invites the Defence to approach it first in similar matters, as they can be – as here – solved quickly.

In the interest of quick resolution, the Prosecution makes its observations to Filing 364 via email, and stands ready to file a formal written response should the Chamber direct it to do so.

Kind regards, [REDACTED]