

ANNEX 11

PUBLIC REDACTED

From: Trial Chamber VI Communications
Sent: 21 July 2022 10:45
To: Naouri, Jennifer; Trial Chamber VI Communications
Cc: OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV; [REDACTED]
Subject: RE: Request for guidance regarding PTC II Decision #396
Follow Up Flag: Follow up
Flag Status: Flagged

Dear parties and participants

The Chamber takes note of the Pre-Trial Chamber's 'Decision on the "Prosecution's application to amend the charges"' (ICC-01/14-01/21-396) of 8 July 2022 and the parties' related requests below. It acknowledges that the Pre-Trial Chamber's decision has introduced an element of legal and procedural uncertainty regarding the scope of the charges in the present case.

The Chamber considers it necessary to address this uncertainty prior to the commencement of the trial. It must therefore determine, in light of the confirmation of charges decision and the above mentioned decision, whether the addition of incidents (c) and (q) to the list of charged incidents in the Trial Brief is indeed permissible absent a formal amendment of the charges.

The parties and participants are directed to file any submissions they may wish the Chamber to consider by 17 August 2022. Pursuant to regulation 24(1) of the Regulations, responses to these submissions are permitted only to the extent that the opposing party raises an argument that could not have been reasonably anticipated. Responses meeting this criterion shall be filed by 22 August 2022.

Kind regards,

Trial Chamber VI

-----Original Message-----

From: Naouri, Jennifer [REDACTED]
Sent: 19 July 2022 10:42
To: Trial Chamber VI Communications [REDACTED]
Cc: OTP CAR IIA Communications [REDACTED]; D33 Said Defence Team
[REDACTED] Said LRV Team OPCV [REDACTED]
[REDACTED]
Subject: RE: Request for guidance regarding PTC II Decision #396

Chère Chambre de première instance VI,

En réponse à la demande de l'Accusation ci-dessous, la position de la Défense est qu'il conviendrait que l'Accusation dépose une écriture officielle au dossier de l'affaire, à laquelle la Défense pourra répondre.

Pour la Défense, la situation actuelle requiert un débat contradictoire et transparent puisqu'il existe aujourd'hui, dans la présente affaire, deux décisions qui n'ont pas la même teneur: l'une de la Chambre de première instance VI qui exige de l'Accusation d'obtenir un amendement des charges pour l'ajout de tout nouvel incident (ICC-01/14-01/21-282, par. 17) et l'une de la Chambre préliminaire disant le contraire (ICC-01/14-01/21-396, par. 25).

A l'heure actuelle, la Défense relève que la seule décision qui a l'autorité de la chose jugée est la décision de la Chambre de première instance VI, puisque l'Accusation n'en a pas fait appel. Au contraire, la décision de la Chambre

préliminaire rendue le 8 juillet 2022 n'est pas encore définitive puisqu'une demande d'autorisation d'interjeter appel de la décision par la Défense est pendante (ICC-01/14-01/21-416).

Pour toutes ces raisons, la Défense estime qu'il convient que l'Accusation dépose une écriture dans laquelle elle expliquerait sa propre compréhension de la situation juridique prévalant dans la présente affaire concernant les charges, écriture à laquelle la Défense pourra donc répondre.

Bien à vous,

Jennifer Naouri

De [REDACTED] > Envoyé : lundi 18 juillet 2022 20:37 À : Trial Chamber VI
Communications Cc : OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV Objet : Request for guidance regarding PTC II Decision #396

Dear Trial Chamber,

In its Decision on the 'Prosecution's application to amend the charges' the Pre-Trial Chamber (#396) noted in para. 25 that

"The Prosecution and the chambers confirming a case and hearing a trial have a shared duty to ensure that the accused has received proper notice of the content and scope of the charges against him or her by the time the trial commences. A pre-trial chamber can provide such notice in the confirmation decision. It would be unworkable for the Prosecution to come back to the relevant pre-trial chamber every time it has identified one or more further victims of a specific crime that has already been confirmed. However, the Defence needs to be put on notice. Subsequent to the confirmation decision, and prior to the commencement of the trial, the burden to provide notice shifts to the Prosecution: more detailed notice must be promptly provided if and when information has become available that allows further specification. This may be done by way of auxiliary documents, such as a trial brief."

The Prosecution has set out the material facts and supporting evidence in relation to the witnesses P-1432, P-1762 (paras. 243-251) and P-3047 (paras. 148-150) in its Trial Brief and therefore believes it has provided the Accused with sufficiently detailed notice.

However, to err on the side of caution, the Prosecution respectfully requests guidance as to whether the Chamber would deem any additional submissions on this issue necessary; and if this were to be the case by which date such submissions would be required.

Thank you in advance for your consideration.

Kind regards [REDACTED]

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