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No.: ICC-02/04-01/05

Date: 16 March 2009

THE APPEALS CHAMBER

Before: Judge Georgios M. Pikis, Presiding Judge
 Judge Philippe Kirsch
 Judge Sang-Hyun Song
 Judge Erkki Kourula
 Judge Daniel David Ntanda Nsereko

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR

*v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO, DOMINIC
 ONGWEN*

Public Document

**Defence Appeal against “Decision on the admissibility of the case under
 article 19 (1) of the Statute” dated 10 March 2009**

Source: Jens Dieckmann, Counsel for the Defence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr. Louis Moreno Ocampo

Ms. Fatou Bensouda

Counsel for the Defence

Mr. Jens Dieckmann

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

The Government of the Republic of Uganda

Amicus Curiae

The Uganda Victims' Foundation
Redress Trust

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. Pursuant to articles 19(6), 82(1)(a) and 83(2)(a) of the Rome Statute (“the Statute”) and rule 154(1) of the Rules of Procedure and Evidence (“the Rules”), the undersigning Counsel for the Defence hereby files an appeal against the “Decision on the admissibility of the case under article 19(1) of the Statute” of Pre-Trial Chamber II in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* dated 10 March 2009.

II. Outline of the Procedure

2. On 8 July 2005, Pre-Trial Chamber II issued the warrant of arrest for Joseph KONY, as amended on 27 September,¹ as well as the warrants of arrest for Vincent OTTI,² Okot ODHIAMBO,³ and Dominic ONGWEN⁴ in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (“the Case”).
3. On the same day, the request for arrest and surrender of Joseph KONY, as amended on 27 September 2005,⁵ and the requests for arrest and surrender of Vincent OTTI,⁶ Okot ODHIAMBO,⁷ and Dominic ONGWEN⁸ to the Republic of Uganda were issued.
4. On 22 November 2006, Pre-Trial Chamber II designated Honorable Judge Mauro Politi as Single Judge in the Situation in Uganda as well as in the Case.

¹ ICC-02/04-01/05-53.

² ICC-02/04-01/05-54.

³ ICC-02/04-01/05-56.

⁴ ICC-02/04-01/05-57.

⁵ ICC-02/04-01/05-29-US-EXP, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁶ ICC-02/04-01/05-13-US-EXP, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁷ ICC-02/04-01/05-15-US-EXP, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁸ ICC-02/04-01/05-16-US-EXP, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

5. On 29 June 2007, the Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba, Sudan was signed.
6. An "Annexure to the Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement" was issued on 19 February 2008.
7. On 29 February 2008, Pre-Trial Chamber II issued a "Request for information from the Republic of Uganda on the Status of the execution of the Warrants of Arrest",⁹ and the Registrar filed her report on the execution of this request on 28 March 2008.¹⁰ Attached to this First Report was the Response of the Acting Solicitor General of the Republic of Uganda.¹¹
8. On 18 June 2008, Pre-Trial Chamber II issued its "Request for further information from the Republic of Uganda on the status of execution of the Warrants of Arrest".¹² The Registrar filed her report on the execution of this request on 10 July 2008.¹³ Attached to this Second Report was the Response of the Acting Solicitor General of the Republic of Uganda.¹⁴
9. On 21 October 2008, in its decision initiating proceedings under article 19(1) of the Statute, requesting observations and appointing counsel for the Defence ("Decision of 21 October 2008"), Pre-Trial Chamber II appointed the undersigning Counsel as counsel for the Defence ("Counsel"), "within the context and for the purposes of the present proceedings".¹⁵ Further, the Chamber invited the Republic of Uganda, the Prosecutor, the Counsel and the victims who have already communicated with the Court with respect to the Case, or their legal

⁹ ICC-02/04-01/05-274.

¹⁰ ICC-02/04-01/05-286.

¹¹ ICC-02/04-01/05-286-Anx2.

¹² ICC-02/04-01/05-299.

¹³ ICC-02/04-01/05-305.

¹⁴ ICC-02/04-01/05-305-Anx2.

¹⁵ ICC-02/04-01/05-320.

representatives, to submit their observations on the admissibility of the Case by 10 November 2008.

10. On 28 October 2008, Counsel requested the Presidency to review and clarify the mandate of Counsel. Additionally, Counsel requested an order for a conditional stay/suspension of the proceedings.¹⁶
11. On the same day, Counsel submitted his "Request for conditional stay of proceedings" to Pre-Trial Chamber II.¹⁷
12. In its decision from 31 October 2008, Pre-Trial Chamber II rejected Counsel's request for stay or suspension of the proceedings.¹⁸ On Counsel's alternative request, the Chamber decided to re-classify the transcripts of the hearings held on 3 and 6 October 2005 as "confidential *ex parte*" and ordered the Prosecution to disclose specific material. Furthermore, the Chamber extended until 18 November 2008 the time limit for the Republic of Uganda, the Prosecutor, the Defence and the victims having communicated with the Court with respect to the Case to submit observations in the proceedings.¹⁹
13. On 31 October 2008, the Uganda Victim's Foundation and the Redress Trust filed an application for leave to submit observations to the Pre-Trial Chamber II of the International Criminal Court pursuant to rule 103 of the Rules of Procedure and Evidence.²⁰
14. On 3 November 2008, the Prosecution confidentially submitted the material as ordered by the Pre-Trial Chamber II in its Decision from 31 October 2008.²¹

¹⁶ ICC-02/04-01/05-326.

¹⁷ ICC-02/04-01/05-325.

¹⁸ ICC-02/04-01/05-328.

¹⁹ *Ibid.*, p. 4.

²⁰ ICC-02/04-01/05-330.

²¹ ICC-02/04-01/05-329-Conf.

15. On the 7 November 2008, the Presidency issued its “Order concerning the Application of Mr. Jens Dieckmann of 28 October 2008 for judicial review of the decision of Pre-Trial Chamber II of 21 October 2008 and the conditional stay/suspension of the proceedings”,²² whereby the Presidency ordered the Registrar to describe the consultative role played by the Registrar in the instant appointment, in accordance with regulation 76(1) of the Regulations of the Court, by 10 November 2008.
16. On 9 November 2008, Counsel filed his “Request for leave to appeal the ‘Decision on Defence Counsel’s Request for conditional stay of proceedings’ from 31 October 2008”.²³
17. On 10 November 2008, Pre-Trial Chamber II rendered its “Decision on application for leave to submit observations under Rule 103 dated 7 November 2008.
18. On 11 November 2008, the Presidency issued its “Decision on the Application of Mr. Jens Dieckmann of 28 October 2008 for judicial review of the decision of Pre-Trial Chamber II of 21 October 2008 and the conditional stay/suspension of the proceedings”,²⁴ whereby the Presidency dismissed Counsel’s application on the basis of “reasons to be given shortly”.
19. On 12 November 2008, Pre-Trial Chamber II ordered the Prosecutor to file redacted versions of documents in the record up to 14 November 2008 at the latest.²⁵
20. On 13 November 2008, Pre-Trial Chamber II rendered its “Decision On The Defence Request For Leave To Appeal The 31 October 2008 Decision”,²⁶ whereby the Chamber rejected Counsel’s request.

²² ICC-02/04-01/05-337.

²³ ICC-02/04-01/05-339.

²⁴ ICC-02/04-01/05-344.

²⁵ ICC-02/04-01/05-345.

²⁶ ICC-02/04-01/05-346.

21. The Prosecution,²⁷ the undersigning Counsel,²⁸ Uganda²⁹ and the Office of Public Counsel for Victims (the “OPCV”)³⁰ submitted their observations on the admissibility of the Case on 18 November 2008.
22. On the same day, the Uganda Victims Foundation and Redress submitted their observations under rule 103 of the Rules (the “*Amici curiae* Submissions”).
23. On 27 February 2009, the Presidency issued its “Order Concerning the Observations of the Registrar of 10 November 2008 in the Application of Mr. Jens Dieckmann of 28 October 2008 for judicial review of his appointment by the Registrar as defence counsel, in accordance with the decision of Pre-Trial Chamber II of 21 October 2008”.³¹
24. On 10 March 2009, the Presidency delivered its “Reasons for the Decision on the Application of Mr. Jens Dieckmann of 28 October 2008 for judicial review of his appointment by the Registrar as defence counsel, in accordance with the decision of Pre-Trial Chamber II of 21 October 2008”.³²
25. In its “Decision on the admissibility of the case under article 19(1) of the Statute” rendered on 10 March 2009,³³ Pre-Trial Chamber II determined that “at this stage the Case is admissible under article 17 of the Statute”.

III. The Law on Appeal

26. Article 19(6) of the Rome Statute provides that

“Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the

²⁷ ICC-02/04-01/05-352

²⁸ ICC-02/04-01/05-350

²⁹ ICC-02/04-01/05-354-Anx2.

³⁰ ICC-02/04-01/05-349

³¹ ICC-02/04-01/05-373

³² ICC-02/04-01/05-378

³³ ICC-02/04-01/05-377

Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.”

27. Article 82(1)(a) of the Rome Statute reads as follows:

“(1) Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(a) A decision with respect to jurisdiction or admissibility;”

28. Article 83(2)(a) of the Rome Statute sets out that

“If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:

(a) Reverse or amend the decision or sentence;”

29. Rule 154(1) of the Rules of Procedure and Evidence stipulates that

“an appeal may be filed under article 81, paragraph 3 (c) (ii), or article 82, paragraph 1 (a) or (b), not later than five days from the date upon which the party filing the appeal is notified of the decision.”

30. This Rule is supplemented by regulation 64(1) through (4) of the Regulations of the Court. In particular, regulation 64(2) *inter alia* provides that

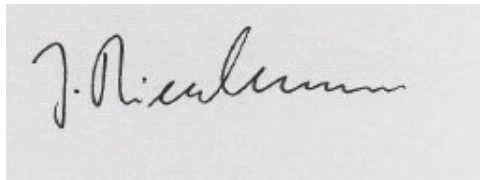
“the appellant shall file a document in support of the appeal, with reference to the appeal, within 21 days of notification of the relevant decision. The document in support of the appeal shall set out the grounds of appeal and shall contain the legal and/or factual reasons in support of each ground of appeal.”

IV. Relief Sought

31. Pursuant to articles 19(6), 82(1)(a) and 83(2)(a) of the Rome Statute
Counsel respectfully requests the Appeals Chamber

- a) to reverse the “Decision on the admissibility of the case under article 19(1) of the Statute” dated 10 March 2009; and
- b) to suspend the present proceedings under article 19(1) of the Rome Statute pending proper implementation of the defendants’ right to effectively participate in the proceedings.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "J. Dieckmann", is centered on a light gray rectangular background.

Counsel for the Defence, Mr. Jens Dieckmann

Dated this 16 March 2009

At The Hague, The Netherlands