

Annex

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| FOUNDATIONS OF APPEAL | Re-filed document in support of "Defence Appeal against 'Decision on the admissibility of the case under article 19(1) of the Statute' dated 10 March 2009", No. ICC-02/04-01/05-394, 15 April 2009 | Defence's Submission of observations on the admissibility of the Case under article 19 (1) of the Statute, No. ICC-02/04-01/05-350, 18 November 2008 and Decision on the admissibility of the case under article 19(1) of the Statute (Pre-Trial Chamber II), No. ICC-02/04-01/05-377, 10 March 2009 | Request for conditional stay of proceedings, No. ICC-02/04-01/05-325, 28 October 2008 and Decision on Defence Counsel's "Request for conditional stay of proceedings" (Pre-Trial Chamber II), No. ICC-02/04-01/05-328, 31 October 2008. | Request for review of Counsel's appointment by the Registrar in accordance with Pre Trial Chamber's Decision of 21 October 2008 and request for conditional stay/suspension of the proceedings, No. ICC-02/04-01/05-326, 28 October 2008 and Decision (and Reasons) 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 (Presidency), No. ICC-02/04-01/05-344, 11 November 2008 and, No. ICC-02/04-01/05-378, 10 March 2009. |
| FIRST GROUND OF APPEAL | <i>The Chamber misconstrued the nature and scope of Counsel's mandate.</i> | The Defence argued that the terms of his mandate are "very broad and indeed ambiguous." The Defence added that he has been appointed to represent the four defendants and thus "he cannot effectively perform his duty to represent all four defendants without violating his obligations under the Code of Professional Conduct for counsel." (paras. 32-40.) The Pre-Trial Chamber <u>rejected</u> the arguments of the Defence counsel by stating that "[t]he arguments of the Defence seem to stem from [...] a misconstruction of the function and role of counsel appointed to represent the interests of the Defence in the absence of the persons sought by the Court." (paras. 24-32) | The Defence requested conditional stay/suspension of the proceedings and argued such stay is necessary "to ensure that Counsel is able to perform his functions in a manner that does not violate his obligations under the Code of Professional Conduct for Counsel." (par. 18) The Pre-Trial Chamber <u>rejected</u> the request of the Defence counsel by stating that no statutory text of the Court provide for a suspensive effect due to a request filed to the Presidency and "the mandate of the Defence in the current proceedings is strictly confined to the submission of observations on the admissibility of the Case." (p. 4) | The Defence requested the Presidency to review his appointment and order a conditional stay/suspension of the proceedings in order to ensure that "Counsel is able to function without in a manner which does not violate his obligations under the Code of Professional Conduct for Counsel." (par. 40) The Defence argued that the terms of his mandate are "broad and ambiguous" and the Registrar has committed an error of law. (paras. 15 and 23-38) The Presidency <u>dismissed</u> the Defence's application by reasoning that "[t]here is nothing before the Presidency which suggests that the Registrar acted improperly in her consultative role in compiling the list of counsel that was subsequently submitted to the Chamber." (par. 32) |
| SECOND GROUND OF APPEAL | <i>The Chamber has improperly used its discretion to convocate admissibility proceedings in the absence of the defendants.</i> | The Defence argued that "[t]he Chamber has improperly used its discretion to convocate admissibility proceedings in the absence of the defendants." (paras. 41-43) The Chamber <u>rejected</u> the arguments of the Defence by stating that "[t]he opening of proceedings under article 19(1) of the Statute by the Chamber on a proprio motu basis appears solidly grounded in law and appropriate in light of the factual scenario and developments of the Case." (paras. 13-29) | | |

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| THIRD GROUND OF APPEAL | <i>The Chamber erred in finding that a determination of the admissibility of the case by the Chamber under article 19(1) of the Statute at a stage, when none of the persons sought by the court is in custody, would not jeopardize their right to bring a challenge pursuant to article 19(2) of the Statute at a later stage, and would not constitute a predetermination.</i> | <i>The Defence argued that “[t]he defendants will face a heightened risk of judicial pre-determination concerning any future challenges to admissibility since the Chamber will already have ruled on defence oriented challenges to admissibility, albeit defence challenges formulated in a precipitous and under-resourced manner, and without the benefit of instructions from the defendants.” (par. 44) The Pre-Trial Chamber <u>rejected</u> the arguments of the Defence by stating that “[t]he overall regime governing the determination of the admissibility of a case deprives of any merit the Defence’s arguments that a determination of the admissibility of the Case by the Chamber at this stage would necessarily result in exposing the persons sought in the Case to ‘a heightened risk of judicial predetermination’ in the context of possible future challenges to the admissibility of the Case.” (paras. 30-32)</i> | <i>The Defence requested conditional stay/suspension of the proceedings and argued such stay is necessary in order to “ensure that Counsel’s actions (in particular, the filing of observations concerning admissibility) do not irreversibly prejudice the ability of the four defendants to exercise their right to effectively challenge the admissibility at a later stage in the proceedings.” (par. 18) The Pre-Trial Chamber <u>rejected</u> the request of the Defence counsel by stating that “the current proceedings were initiated by the Chamber on its own motion and, accordingly, are without prejudice to the rights of the accused to challenge the admissibility pursuant to article 19(2)(a) of the Statute.” (p. 7)</i> | <i>The Defence requested the Presidency to review his appointment and order a conditional stay/suspension of the proceedings in order to ensure that “the actions of Counsel (in particular, the filing of observations concerning admissibility) do not irreversibly prejudice the ability of the defendants to exercise their right to challenge admissibility in the future in an effective manner.” (par. 40) The Defence also requested the Presidency to determine “if a challenge of admissibility due to Article 19(2) would prejudice the defendant’s right to challenge the admissibility at a later stage of the proceedings due to Article 19(4).” (par. 42) The Presidency <u>dismissed</u> the Defence’s application by reasoning that “[t]here is nothing before the Presidency which suggests that the Registrar acted improperly in her consultative role in compiling the list of counsel that was subsequently submitted to the Chamber.” (par. 32)</i> |
| FOURTH GROUND OF APPEAL | <i>The Chamber erred in finding that Counsel had adequate time and resources to effectively participate in the current admissibility proceedings.</i> | <i>The Defence argued that “[t]he defence lacks adequate time and resources to effectively participate in the current admissibility proceedings.” (paras. 46-51) The Pre-Trial Chamber <u>rejected</u> the arguments of the Defence by stating that “[t]he appointment of a counsel for the defence under the authority of [regulation 76(1)] vested with a limited mandate, has indeed become the established practice of the Court. [...] This constitutes an adequate response to the Defence’s argument that the Proceedings would violate article 67(l)(d) of the Statute.” (paras. 30-32)</i> | | |