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No.: ICC-01/04-01/06
Date: 26 November 2012

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

PUBLIC REDACTED VERSION

With public annexes A and 7 and confidential annexes 1-6 and 8

**Defence application to present additional evidence in the appeals against the
*Judgment pursuant to Article 74 of the Statute and the Decision on sentence pursuant
to Article 76 of the Statute***

Source: Defence team for Mr Thomas Lubanga Dyilo

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr Fabricio Guariglia

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Paul Kabongo Tshibangu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

BACKGROUND

1. On 14 March 2012, Trial Chamber I handed down its *Judgment pursuant to Article 74 of the Statute*.¹
2. On 10 July 2012, Trial Chamber I handed down its *Decision on Sentence pursuant to Article 76 of the Statute*.²
3. On 3 October 2012, the Defence filed its appeal against the Judgment.³
4. The Defence hereby seeks the Appeals Chamber's leave under regulation 62 of the Regulations of the Court to present additional evidence, on the grounds set forth below.

SUBMISSIONS

5. Regulation 62 of the Regulations of the Court provides that a participant may seek leave to present additional evidence before the Appeals Chamber. Such application must set out (a) the evidence to be presented, (b) the ground of appeal to which the evidence relates and, if relevant, (c) the reasons why the evidence was not adduced before the Trial Chamber.

(A) ADDITIONAL EVIDENCE WHICH THE DEFENCE WISHES TO PRESENT

6. The Defence seeks the Appeals Chamber's leave to present the following additional evidentiary materials:
 - a. Evidence pertaining to Witness D-0040 (who testified before the Trial Chamber at the sentencing hearing on 13 June 2012;⁴ the materials pertaining to this witness were therefore already admitted into evidence at that hearing):

¹ ICC-01/04-01/06-2842.

² ICC-01/04-01/06-2901.

³ ICC-01/04-01/06-2934.

⁴ ICC-01/04-01/06-T-360.

- An examination of D-0040 or, if the Chamber deems it more appropriate, consideration of the transcript of D-0040's testimony (ICC-01/04-01/06-T-360-CONF-FRA, pages 21 to 33), in which the witness acknowledged that he is the individual in video excerpt EVD-OTP-00574, timestamp 01:49:02;
- D-0040's voting card (EVD-D01-01111), confirming D-0040's date of birth (8 April 1983);⁵
- D-0040's *Diplôme d'état* (EVD-D01-01112), confirming D-0040's date of birth (8 April 1983);⁶
- Transcript of the testimony of D-0039 (ICC-01/04-01/06-T-360-CONF-FRA, pages 1 to 19), who recognised that D-0040 is the individual appearing in video excerpt EVD-OTP-00574, timestamp 01:49:02.

b. Evidence pertaining to Witness D-0041:

- An examination of D-0041 or, if the Chamber considers it more appropriate, the admission into evidence of D-0041's signed written statement (DRC-D01-0003-5980),⁷ by which he recognised that he is the individual appearing in video excerpt EVD-OTP-00571, timestamp 02:47:16, in the centre foreground of the frame, wearing camouflage clothing and cap, with a weapon on his right shoulder;
- D-0041's voting card (DRC-D01-0003-5983), confirming D-0041's date of birth (2 December 1984).⁸

⁵ Confidential Annex 1.

⁶ Confidential Annex 2.

⁷ Confidential Annex 3.

⁸ Confidential Annex 4.

c. Evidence pertaining to Witness P-0297:

- Letter dated 29 June 2011 from a representative of [REDACTED] attesting that P-0297 was a member of the association (ICC-01/04-01/06-2784-Conf, Annex 1);⁹
- A series of photographs showing [REDACTED], attesting that P-0297 was a member of an [REDACTED], (ICC-01/04-01/06-2784-Conf, Annex 2).¹⁰

d. Evidence pertaining to the failure to disclose a list of FPLC soldiers:

- A list of names from the FPLC dated 11 December 2004 (DRC-OTP-0141-0009);¹¹
- Correspondence between the Office of the Prosecutor and the Defence concerning the disclosure of said list (DRC-D01-0003-5985).¹²

(B) GROUNDS OF APPEAL TO WHICH THE ADDITIONAL EVIDENCE RELATES

a. Evidence pertaining to Witness D-0040

7. The evidence pertaining to Witness D-0040 concerns the following grounds of appeal:

- *The Trial Chamber erred in finding that assessing an individual's age on the basis of his or her physical appearance is sufficient to determine beyond reasonable doubt whether that individual was under the age of 15 years.*

8. Following the exclusion from evidence of the testimony of all individuals presented as being former child soldiers,¹³ the only remaining evidence to

⁹ Confidential Annex 5.

¹⁰ Confidential Annex 6.

¹¹ Annex 7.

¹² Confidential Annex 8.

¹³ ICC-01/04-01/06-2842, paras. 480 and 502.

demonstrate the age of the FPLC soldiers is simple assessments based for the most part on the physical appearance of the individuals concerned.¹⁴

9. While acknowledging that for many of the young soldiers shown in the video excerpts tendered into evidence by the Prosecution, it was often difficult to determine whether they were above or below the age of 15, the Chamber held that some of the videos depicted children who were clearly under the age of 15.¹⁵
10. The Trial Chamber considers, *inter alia*, that video excerpt EVD-OTP-00574, 01:49:02, filmed on 24 February 2003,¹⁶ depicts a soldier clearly under the age of 15, and refers to this excerpt four times in its Judgment to support its findings.¹⁷ Thus, the Trial Chamber considers that, even applying a “wide margin of error”,¹⁸ this individual was unquestionably well below the age of 15.
11. However, the additional evidence proves that D-0040 was in fact almost 20 years of age on the date on which the video was filmed, thereby demonstrating that it is impossible to rely on physical appearance alone to determine “beyond reasonable doubt” whether an individual is under the age of 15.
12. Demonstrating this fact is crucial to the instant case, since the majority of the evidence concerning the soldiers’ ages – one of the elements of the crime – is founded only on mere assessments by the Chamber and certain witnesses.

¹⁴ ICC-01/04-01/06-2842, para. 641.

¹⁵ ICC-01/04-01/06-2842, para. 644.

¹⁶ T-129-CONF-FRA-CT, p. 51, lines 6 and 7.

¹⁷ ICC-01/04-01/06-2842, paras. 713, 858, 915 and 1254.

¹⁸ ICC-01/04-01/06-2842, para. 643.

- *The Trial Chamber erroneously reversed the burden of proof by placing on the Defence the responsibility for proving that the individuals shown on the video excerpts were not under the age of 15 years.*

13. The onus is on the Prosecution to prove the guilt of the Accused beyond reasonable doubt.¹⁹ The Accused has the fundamental right not to have imposed on him any reversal of the burden of proof or any onus of rebuttal.²⁰ Since the age of the alleged child soldiers is one of the elements of the crime, it was incumbent upon the Prosecution to prove beyond reasonable doubt that the soldiers to whom its evidence pertains were under the age of 15.
14. The fact that the video excerpts depicted individuals with a youthful appearance did not absolve the Prosecution of its obligation to prove beyond reasonable doubt that those individuals were under the age of 15 years, where applicable. However, no evidence whatsoever was tendered as to the identity or age of the individuals shown on the excerpts, and the Chamber's findings rely solely on its assessment of their age on the basis of their physical appearance.²¹
15. The evidence pertaining to D-0040 shows that the Chamber's findings in relation to the video images placed the Accused in an unfair situation, imposing upon him a reversal of the burden of proof. It was incumbent upon the Prosecution, not the Defence, to conduct investigations into the real age of the individual shown in that excerpt and to demonstrate it at trial. However, the Prosecution did not examine any witnesses, tender any evidence or disclose any information to the Defence concerning the identity or age of this individual (D-0040).

¹⁹ Article 66.

²⁰ Article 67(1)(i).

²¹ ICC-01/04-01/06-2842, para. 668.

b. Evidence pertaining to Witness D-0041

16. The Trial Chamber finds that video excerpt EVD-OTP-00571, 02:47:15 to 02:47:19, filmed on 23 January 2003,²² depicts a soldier unquestionably under the age of 15, and refers to that excerpt four times in its Judgment to support its findings.²³ It must be emphasised that no evidence whatsoever as to this individual's identity or real age was tendered at trial.
17. At his meeting with the members of the Defence team on 27 September 2012, D-0041 recognised himself as the person appearing on this video excerpt,²⁴ and stated that he was born on 2 December 1984,²⁵ which is confirmed by his voting card.²⁶ Therefore, D-0041 was actually almost 19 years old when the video was filmed.
18. The Prosecution did not examine any witnesses or tender any evidence at trial concerning this individual's identity or age, and did not disclose any information to the Defence on this matter.
19. The evidence pertaining to Witness D-0041 therefore relates to the same grounds of appeal as for Witness D-0040.²⁷

c. Evidence pertaining to Witness P-0297

20. The evidence pertaining to Witness P-0297 relates to the following grounds of appeal:
 - *In view of the fact that agents working for the Congolese authorities were shown to have interfered in the Court's activities, the Trial Chamber should automatically have found that the proceedings were unfair towards the Accused.*

²² T-128-CONF-FRA-CT, p.53, line 17.

²³ ICC-01/04-01/06-2842, paras. 713, 860, 915 and 1251.

²⁴ DRC-D01-0003-5980, para. 8.

²⁵ *Idem*, para. 5.

²⁶ DRC-D01-0003-5983.

²⁷ See *supra*, paras. 7-15.

- *The Trial Chamber erred by failing to appreciate the consequences which the fact that agents working for the Congolese authorities were shown to have interfered in the Court's activities would necessarily have on the entirety of the evidence.*

21. In its Judgment, the Chamber stated that it was particularly concerned that the Prosecution used an intermediary, P-0316, with close ties to the Congolese authorities.²⁸ P-0316 held a position of responsibility within the Congolese intelligence services,²⁹ and he stated at trial that he had always remained loyal to his government.³⁰ The Chamber considers that, given the likelihood of political tension, or even animosity, between the Accused and the government, it was wholly undesirable for witnesses to be identified, introduced and handled by one or more individuals who, on account of their work or position, may not have had the necessary qualities of independence and impartiality, *inter alia* on account of the risks of manipulation or distortion of the evidence.³¹
22. It was also shown that, in addition to P-0316, at least three other agents of the Congolese intelligence services had contact with Prosecution witnesses.³²
23. Despite these concerns, the Chamber does not refer to any consequences that such interference by the Congolese authorities could have on the Court's activities, and particularly on the Prosecution's investigations, the fairness of the proceedings in respect of Mr Thomas Lubanga and the entirety of the Prosecution evidence.
24. However, the evidence pertaining to P-0297 shows that the Chamber clearly erred in its assessment of the extent of the Congolese authorities' interference in the Court's activities.

²⁸ ICC-01/04-01/06-2842, para. 368.

²⁹ Judgment, para. 366.

³⁰ Judgment, para. 367.

³¹ ICC-01/04-01/06-2842, para. 368.

³² See, *inter alia*, T-331-CONF-FRA-ET, p. 79, lines 10-13, and p. 82, lines 15-22; T-333-CONF-FRA-ET, p. 15, lines 7-13, and p. 25, lines 12-14; Bernard Lavigne: Rule68Deposition-CONF-FRA-ET, 17-11-2010, p. 66, lines 9-28; EVD-D01-00371; EVD-D01-01043.

25. On 28 July 2011, the Registry informed the Chamber that P-0297 [REDACTED],³³ [REDACTED].³⁴ [REDACTED],³⁵ [REDACTED].³⁶
26. [REDACTED] showing that P-0297 was a member of the “[REDACTED]” organisation.³⁷ These identity documents, showing that P-0297 had been, at least since [REDACTED],³⁸ a “[REDACTED]” within this “[REDACTED]”, stipulate that [REDACTED].
27. Therefore, for the entire duration of his participation in the Court’s protection programme,³⁹ as well as during his testimony before the Court,⁴⁰ P-0297 was a member of a [REDACTED] at the service of President Joseph Kabila.
28. The evidence pertaining to P-0297 shows that the only reasonable finding which the Chamber could reach was that the proceedings against the Accused were unfair, considering that the Congolese authorities’ interference in the Court’s activities was demonstrated. The evidence also shows that it was impossible for the Chamber to gauge the extent to which the Congolese authorities influenced the Court’s investigations, particularly in view of the Prosecution’s failure to conduct investigations.

d. Evidence pertaining to the failure to disclose a list of FPLC soldiers

29. The evidence pertaining to the failure to disclose a list of FPLC soldiers relates to the following grounds of appeal:

³³ ICC-01/04-01/06-2777-Conf, para. 3.

³⁴ ICC-01/04-01/06-2777-Conf, paras. 5 and 9.

³⁵ ICC-01/04-01/06-2777-Conf, para. 10.

³⁶ ICC-01/04-01/06-2777-Conf, para. 11; ICC-01/04-01/06-2784, Annex 1.

³⁷ ICC-01/04-01/06-2777-Conf, para. 10; ICC-01/04-01/06-2784, Annex 2.

³⁸ [REDACTED].

³⁹ P-0297 was placed in the Court’s protection programme in January 2008 (EVD-D01-00335).

⁴⁰ P-0297 testified before the Court from 17 to 24 May 2010.

- *The Trial Chamber erred in considering that it had remedied any prejudice which may have been caused to the Accused by the incomplete or late disclosure of evidence and that it had thus guaranteed him a fair trial.*⁴¹

30. During its preparation of the document in support of its appeal against the decision pursuant to article 74, the Defence noted that it could not identify one of the documents used by the investigators of the Office of the Prosecutor in their telephone conversation with P-0089 on 18 March 2010.⁴² The Defence therefore requested the Prosecution to provide it with the reference number of the document or, if possible, a copy thereof.⁴³
31. On 25 October 2012, the Prosecution responded to the Defence, stating that it was a list compiled in 2004, and therefore “outside the temporal scope of the charges at trial”, but that it agreed to disclose the document as a “courtesy”.⁴⁴
32. On 29 October 2012, the Prosecution disclosed the document, entitled “*Liste Nommiative de F.P.L.C. [sic]*”, to the Defence.⁴⁵
33. The fact that the Prosecution considers that, in principle, this document need not have been disclosed since it was compiled outside the period of the charges unequivocally demonstrates its erroneous conception of the Prosecution’s disclosure obligations.
34. The Prosecution has been in possession of this list since 10 February 2006.⁴⁶ However, it was not disclosed to the Defence until 29 October 2012 – more than six years later – and only then because the Defence requested it specifically.
35. Even *prima facie*, this document is of paramount importance in the instant case. It is the only apparently exhaustive list of FPLC soldiers in the record. It was

⁴¹ ICC-01/04-01/06-2842, paras. 121 and 123.

⁴² EVD-D01-00985.

⁴³ Defence e-mail of 18 October 2012 (Annex 8; DRC-D01-0003-5985, p. DRC-D01-0003-5985).

⁴⁴ Prosecution e-mail of 25 October 2012 (Annex 8; DRC-D01-0003-5985, p. DRC-D01-0003-5987).

⁴⁵ DRC-OTP-0141-0009. Letter of disclosure of 29 October 2012; it is worth noting that pursuant to rule 77, the Defence may inspect documents in the Prosecution’s possession. Hence the list was disclosed *a minima* pursuant to this rule, and not as a mere “courtesy”.

⁴⁶ See metadata pertaining to DRC-OTP-0141-0010.

signed by Bosco Ntaganda, who was the FPLC Chief of Staff in December 2004,⁴⁷ and who is presented by the Prosecution as one of Mr Thomas Lubanga's co-perpetrators in this case.⁴⁸ Furthermore, the document's exculpatory value cannot seriously be contested.

36. Amongst other things, this list can be used to verify whether individuals were members of the FPLC, at least until 9 December 2004. Furthermore, the Prosecution used the list in connection with its telephone conversation with Witness P-0089 for the purpose of confirming his FPLC membership, thereby confirming that it considered it relevant within the present case.
37. The list can also be used to verify witnesses' allegations that they belonged to the FPLC, at least until 9 December 2004. It thus tends to contradict the testimony of Prosecution witnesses who claimed to have belonged to the FPLC at least until 9 December 2004, but whose names do not appear on the list. This applies, *inter alia*, to P-0038, who stated that he belonged to the FPLC until 2005.⁴⁹ However, the Prosecution's failure to disclose the list denied the Defence the possibility of relying on it during its cross-examination of P-0038. The Chamber nevertheless relied on P-0038's testimony very frequently in its Judgment,⁵⁰ despite the fact that the Defence strongly challenged the witness's credibility.⁵¹
38. Furthermore, the list corroborates the testimony of certain Defence witnesses, since it confirms that they belonged to the FPLC in December 2004.⁵² Moreover, the Defence was denied an opportunity to examine D-0037 as to the precise circumstances surrounding the preparation of the list, since D-0037 acted as

⁴⁷ DRC-OTP-0141-0010, p. DRC-OTP-0141-0147.

⁴⁸ ICC-01/04-01/06-2748-Conf, para. 3.

⁴⁹ T-113-CONF-FRA-CT, p. 31, line 8; T-114-CONF-FRA-CT, p. 54, line 16.

⁵⁰ See, *inter alia*, ICC-01/04-01/06-2842, paras. 648, 693, 801, 812 and 821.

⁵¹ See, *inter alia*, ICC-01/04-01/06-2773, paras. 450-475.

⁵² *Inter alia* Witnesses D-0037 (whose name appears at page DRC-OTP-0141-0009, line 7, of the list) and D-0006 (whose name appears at page DRC-OTP-0141-0110, line 24, of the list).

Mr Bosco Ntaganda's private secretary.⁵³ The list would also have been of prime importance in the Defence's investigations, in particular by facilitating its search for former FPLC soldiers.

39. Not only was it obvious that this document should have been disclosed unprompted and without delay in accordance with the Prosecution's statutory disclosure obligations, but the Defence also submitted many disclosure requests which should have led the Prosecution to disclose said document. Amongst other things, the Defence requested the Prosecution to disclose any and all documents originating from the UPC/RP⁵⁴ and documents which make reference to Defence witnesses.⁵⁵
40. What is more, the Prosecution cannot reasonably claim that it has no obligation to disclose exculpatory documents or documents which are material to the preparation of the defence merely because they bear a date outside the period of the charges. The Prosecution itself tendered many evidentiary materials prepared outside the period of the charges or in relation to events which occurred outside the period of the charges, in particular in the course of 2004.⁵⁶ The Chamber also relied on evidence outside the period of the charges in order to reach its verdict on Mr Thomas Lubanga's criminal responsibility.⁵⁷
41. The Prosecution's failure to disclose this list in good time shows the limits of the Chamber's power to remedy such contraventions. The Chamber can issue an order instructing the Prosecution to respect its obligation to disclose an item of evidence only if the Prosecution has revealed the existence of that item. Such proof, at such a late stage, of the Prosecution's grossly erroneous conception of its disclosure obligations means that it is impossible to determine whether it is in possession of other similar evidentiary materials

⁵³ T-349-FRA-ET, p. 7, lines 25-27; p. 8, lines 8-12.

⁵⁴ Defence e-mail dated 26 April 2010.

⁵⁵ *Inter alia*, Defence e-mail dated 27 August 2009.

⁵⁶ See, *inter alia*, video EVD-OTP-00474 dated 21/07/2004, referenced by the Prosecution in its closing observations: ICC-01/04-01/06-2748-Conf. para. 391, footnote 1116, and para. 429, footnote 1256.

⁵⁷ See, *inter alia*, ICC-01/04-01/06-2842, para. 774.

which have never been disclosed and whose existence was never brought to the Chamber's attention or disclosed to the Defence.

(C) REASONS WHY THE ADDITIONAL EVIDENCE WAS NOT ADDUCED BEFORE THE TRIAL CHAMBER

a. Evidence pertaining to Witness D-0040

42. As part of its preparation for the sentencing hearing of 13 June 2012, the Defence undertook an investigation mission in Ituri and was able to establish that the individual appearing in video excerpt EVD-OTP-00574, 01:49:02 is one Mbogo Malobi Justin (D-0040). The Defence met D-0040 for the first time during that mission, on 19 May 2012. At that meeting, the Defence obtained a copy of D-0040's voting card (EVD-D01-01111) and a copy of his *Diplôme d'état* (EVD-D01-01112). The Defence also met D-0039 for the first time on 19 May 2012.
43. It would have been unfair and contrary to the fundamental rights of the Accused to require the Defence to conduct the requisite investigations during the trial to identify D-0040, determine his real age and demonstrate it before the Court, for the following reasons.
44. Firstly, it is contrary to the fundamental rights of the Accused to have imposed on him any reversal of the burden of proof or any onus of rebuttal, as set out at paragraphs 13 to 15 of this application.
45. Secondly, the video excerpts tendered into evidence by the Prosecution run to several hours in total, and show many hundreds of individuals; the Prosecution did not precisely identify in these excerpts any individuals under the age of 15; nor did the Chamber identify at trial the excerpts which it would consider to show soldiers under the age of 15.
46. In such circumstances, it was wholly impossible for the Defence to determine prior to the Judgment which of these hundreds of individuals, about whom it

had no information whatsoever, the Trial Chamber would consider to be under the age of 15.

47. Thirdly, the Chamber clearly indicated at trial that it did not consider that a non-expert witness could make a valid assessment of an individual's age on the basis of his or her physical appearance alone.
48. During the trial, the Defence constantly maintained that an individual's physical appearance cannot be relied upon to determine his or her age beyond reasonable doubt.
49. On 20 February 2009, the Trial Chamber stated that it would explore the issue of whether a video image of a person could truly reflect his or her age with any degree of certainty, and asked the Prosecution whether it was contemplating calling an expert witness on this matter.⁵⁸ The Prosecution never responded to this question from the Chamber, and no expert on age assessment based on physical appearance was called to appear in the instant case.
50. On 2 April 2009, the Prosecution asked Witness P-0002 to provide an estimate of the age of the young boys whom he had identified in his testimony as former UPC soldiers. The Presiding Judge then made the following intervention: "I doubt whether the witness is an expert on age. His opinion as to that, I don't think it has very much value, does it?"⁵⁹
51. The Trial Chamber – whose own position is no different from that of "non-expert" witnesses when it comes to age assessment based on physical appearance – never subsequently expressed any different position on the matter.

⁵⁸ T-132-FRA-CT, p. 34, line 22, to p. 35, line 21.

⁵⁹ T-162-ENG-CT, p. 49, lines 6-8.

b. Evidence pertaining to Witness D-0041

52. The Defence team met D-0041 for the first time on 27 September 2012 in Bunia, DRC. It was only then that the Defence was informed that D-0041 was the individual shown at timestamp 02:47:16 of video excerpt EVD-OTP-00571, in the centre foreground, wearing camouflage clothes and cap, with a weapon on his right shoulder. That same day, the Defence obtained a copy of D-0041's voting card (DRC-D01-0003-5983), and a written statement (DRC-D01-0003-5980).
53. The Prosecution tendered no evidence at trial in relation to the identity or age of D-0041.
54. It would have been unfair and contrary to the fundamental rights of the Accused to require the Defence to conduct the requisite investigations during the trial to identify D-0041, determine his real age and demonstrate it before the Court, for the reasons set forth at paragraphs 13 to 15 of this application.

c. Evidence pertaining to Witness P-0297

55. The evidentiary materials pertaining to P-0297 were not transmitted to the Defence until 10 August 2011,⁶⁰ that is, more than two months after the closure of evidence in the instant case.⁶¹

d. Evidence pertaining to the failure to disclose a list of FPLC soldiers

56. The list of FPLC soldiers was not disclosed to the Defence until 29 October 2012, that is, more than seven months after the *Judgment pursuant to Article 74 of the Statute*.

⁶⁰ ICC-01/04-01/06-2784, Annexes 1 and 2.

⁶¹ The Trial Chamber declared the closure of evidence at the hearing of 20 May 2011: T-355-FRA-ET p. 6, lines 8-10.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO:

TAKE into account in the appeal against the *Judgment pursuant to Article 74 of the Statute* the following evidentiary materials filed in the record in connection with the sentencing hearing of 13 June 2012:

- Transcript of the examination of D-0040 (ICC-01/04-01/06-T-360-CONF-FRA, pp. 21 to 33) or, if the Chamber considers it more appropriate, ORDER D-0040 to appear before the Court;
- D-0040's voting card (Annex 1);
- D-0040's *Diplôme d'état* (Annex 2);
- Transcript of the examination of D-0039 (ICC-01/04-01/06-T-360-CONF-FRA, pp. 21 to 33).

AUTHORISE the Defence to present the following additional evidence in the context of its appeal against the *Judgment pursuant to Article 74 of the Statute* and its appeal against the *Decision on Sentence pursuant to Article 76 of the Statute*:

- An examination of D-0041 as a witness before the Court or, if the Chamber considers it more appropriate, to authorise the filing of D-0041's written statement (Annex 3);
- D-0041's voting card (Annex 4);
- Letter dated 29 June 2011 from a representative of [REDACTED] referring to the fact that P-0297 was a member of the association (Annex 5);
- A series of photographs depicting identity [REDACTED], attesting that P-0297 was a member [REDACTED], (Annex 6);
- A list of FPLC names as at 11 December 2004 (Annex 7);

- Correspondence between the Office of the Prosecutor and the Defence on disclosure of the list of FPLC names (Annex 8).

[signed]

Ms Catherine Mabilie, Lead Counsel

Dated this 26 November 2012, at The Hague