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No.: ICC-01/04-01/06

Date: **24 April 2017**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public Document
With One Confidential Annex**

**Observations of the Defence for Mr Lubanga on the Second Transmission of
Redacted Applications for Reparations of 22 March 2017**

Source: Defence for Mr Thomas Lubanga

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

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Mr Herman von Hebel

Trust Fund for Victims

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Victims Participation and Reparations

Section

Mr Philipp Ambach

CLASSIFICATION

1. Annex 1 to this filing by the Defence for Mr Lubanga is to be classified as confidential because it contains information that could be used to identify applicants for victim status.

BACKGROUND

2. On 22 February 2017,¹ Trial Chamber II issued an order setting deadlines for the transmission of applications of potentially eligible victims to the Defence for Mr Lubanga and for the submission of the Defence's observations.
3. On 22 March 2017, the Registry transmitted 23 redacted applications for reparations to the Defence ("Second Transmission").²
4. The Defence hereby submits these observations in response to the Second Transmission of 22 March 2017.

GENERAL OBSERVATIONS

5. The Defence refers to and reiterates its previous observations filed in response to the first transmission of redacted applications for reparations by the Registry.³
6. Accordingly, it recalls that eligibility for victim-beneficiary status must be determined on a balance of probabilities and in the light of relevant and reliable evidence.⁴ Each applicant's right to reparations is predicated on the adduction of proof that children under the age of 15 were enlisted into the armed forces of the UPC between September 2002 and August 2003, that harm was suffered and that the harm was causally linked to the crime committed.

¹ "Order for the Transmission of the Application Files of Victims who may be Eligible for Reparations to The Defence Team of Thomas Lubanga Dyilo", 22 February 2017, ICC-01/04-01/06-3275-tENG.

² "Second Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017", 22 March 2017, ICC-01/04-01/06-3281.

³ "*Observations de la Défense de M. Lubanga à la première transmission des formulaires de réparation expurgés du 8 mars 2017*", 10 April 2017, ICC-01/04-01/06-3291.

⁴ "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' [of 7 August 2012]", 3 March 2015, ICC-01/04-01/06-3129, paras. 81-84; ICC-01/04-01/06-3129-AnxA, para. 65.

7. Likewise, the Chamber cannot legally consider any evidence until that evidence has been fully subjected to the adversarial process required by the judicial framework of the reparations proceedings.⁵ The Defence must effectively be afforded the opportunity to test every aspect of every item of evidence presented.

SPECIFIC OBSERVATIONS

8. The Defence has specific observations to make on each of the applications for reparations, in particular as regards the proof of applicants' identities, enlistment in the UPC/FPLC between September 2002 and August 2003, the harms alleged and the link between those harms and the crime committed.
9. Those observations are elaborated on in the confidential Annex 1.⁶

⁵ "Order for Reparations pursuant to Article 75 of the Statute", 24 March 2017, ICC-01/04-01/07-3728-tENG, para. 16.

⁶ Annex 1, "*Observations spécifiques de la Défense de M. Lubanga sur la deuxième transmission des formulaires de réparation du Greffe ICC-01/04-01/06-3281*".

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER II TO:

FIND that none of the 23 applications for reparations cited here, as they stand, satisfy the conditions laid down by the Appeals Chamber; and

Consequently, REJECT the 23 applications for reparations transmitted to the Defence.

[signed]

Ms Catherine Mabilie, Lead Counsel

Dated this 24 April 2017

At The Hague