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

Date: **5 May 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 Two Confidential Annexes**

**Observations of the Defence for Mr Lubanga on the Third Transmission of
Redacted Applications for Reparations of 5 April 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

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Victims Participation and Reparations

Section

Mr Philipp Ambach

CLASSIFICATION

1. The two annexes to this filing by the Defence for Mr Lubanga are to be classified as confidential because they contain information that could be used to identify applicants for victim status.

BACKGROUND

2. On 22 February 2017, Trial Chamber II issued an order¹ 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 5 April 2017, the Registry transmitted 95 redacted applications for reparations to the Defence ("Third Transmission").²
4. The Defence hereby submits these observations in response to the Third Transmission dated 5 April 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

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 "Third Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3575 of 22 February 2017", 5 April 2017, ICC-01/04-01/06-3288.

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.

the UPC between September 2002 and August 2003, that harm was suffered and that the harm was causally linked to the crime committed.

7. Likewise, the Chamber cannot legally consider any evidence that has not 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 harm alleged and the link between that harm and the crime committed.
9. Those observations are elaborated on in the two confidential annexes.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 troisième transmission des formulaires de réparation du Greffe ICC-01/04-01/06-3288 – Annexes 1 à 49*"; Annex 2, "*Observations spécifiques de la Défense de M. Lubanga sur la troisième transmission des formulaires de réparation du Greffe ICC-01/04-01/06-3288 – Annexes 50 à 96*".

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

FIND that none of the 95 applications for reparations cited here, as they stand, satisfy the conditions laid down by the Appeals Chamber; and

Consequently, REJECT the 95 applications for reparations transmitted to the Defence.

[signed]

Ms Catherine Mabile, Lead Counsel

Dated this 5 May 2017

At The Hague