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

Date: **22 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 Fourth Transmission of
Redacted Applications for Reparations of 24 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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Section

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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. In its Decision of 6 April 2017,¹ Trial Chamber II instructed the Registry to transmit to the Defence the redacted version of the Transmission of 31 March 2017 by 24 April 2017 and instructed the Defence for Mr Lubanga to submit its observations within 30 days of the notification.
3. On 24 April 2017, the Registry transmitted 92 redacted applications for reparations to the Defence ("Fourth Transmission").²
4. The Defence hereby submits these observations in response to the Fourth Transmission dated 24 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

¹ "Decision on Requests for the Extension of Time submitted by the Office of Public Counsel for Victims, the Registry and the Legal Representatives of V02 Victims", 6 April 2017, ICC-01/04-01/06-3290-tENG.

² "Fourth Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017", 24 April 2017, ICC-01/04-01/06-3287-Red.

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.

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.

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

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.

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 quatrième transmission des formulaires de réparation du Greffe ICC-01/04-01/06-3287-Red – Annexes 1 à 45*"; Annex 2, "*Observations spécifiques de la Défense de M. Lubanga sur la quatrième transmission des formulaires de réparation du Greffe ICC-01/04-01/06-3287-Red – Annexes 46 à 92*".

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

FIND that none of the 92 applications for reparations cited here, as they stand, satisfy the conditions laid down by the Appeals Chamber; and

Consequently, REJECT the 92 applications for reparations transmitted to the Defence.

[signed]

Ms Catherine Mabile, Lead Counsel

Dated this 22 May 2017

At The Hague