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

Date: **3 June 2012**

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

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

Public Document with Confidential annexes

**Defence application for leave to present additional evidence at the sentencing
hearing scheduled for 13 June 2012**

Source: Defence team for Mr Thomas Lubanga

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

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**Unrepresented Applicants for
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REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Defence hereby seeks leave to present the following additional evidentiary material in support of its observations on sentencing, pursuant to articles 75(2), 64(9) and 69 and rule 63.

1. TESTIMONIAL EVIDENCE

2. The Defence needs to call the following witnesses at the sentencing stage in support of its observations:

(a) D01-0039

3. The Defence adverts to the summary of Witness D01-0039's anticipated testimony in Annex 1.
4. The witness was head of protocol at the UPC/RP presidency from late 2002 until 2004, during which time she worked primarily at Mr Thomas Lubanga's residence.
5. The witness will be able to enlighten the Chamber about, *inter alia*, what she observed at Mr Lubanga's residence whilst she worked there.
6. Her testimony is relevant to the sentencing stage in that it provides information supporting the Defence's observations on (1) Mr Lubanga's peace-building initiatives in Ituri;¹ (2) the assistance Mr Lubanga provided to individuals from all ethnic groups during the period from 2002 to 2003;² and (3) the scale of the crime.³ The witness will further confirm certain aspects of D01-0040's testimony.

(b) D01-0040

7. The Defence adverts to the summary of Witness D01-0040's anticipated testimony in Annex 1.

¹ The Defence adverts to paras. 105-107 of its observations.

² *Idem*.

³ The Defence adverts to paras. 7-32 of its observations.

8. The witness, who was born in Nyakunde on 8 April 1983, enrolled in the UPC in 2002 with a view to becoming a soldier. He then joined Mr Lubanga's bodyguard and was assigned to Mr Lubanga's residence. He appears in video excerpt EVD-OTP-00574, timestamp 01:49:02.
9. The witness will be able to enlighten the Chamber about what he observed at Mr Lubanga's residence during the period of his assignment as Mr Lubanga's bodyguard.
10. This testimony is necessary at this stage in order to support the Defence's observations on sentencing, in particular by providing significant information on the scale of the crime. It may further serve to confirm certain aspects of Witness D01-0039's testimony regarding the assistance Mr Lubanga provided to individuals from all ethnic groups during the period from 2002 to 2003.

2. DOCUMENTARY EVIDENCE

(a) Admission of evidence through witness D01-0040 at the sentencing hearing

11. In addition to the above witnesses, the Defence wishes to be granted the opportunity to tender the following exhibits in support of Witness D01-0040's testimony:
 - a. Copy of the witness's voter registration card (Annex 2);
 - b. Copy of the witness's high school certificate (Annex 3).
12. All of the above-mentioned documents provide sufficient indicia of reliability: They are official documents issued by the competent Congolese authorities, and the witness is in possession of the original of each.
13. Their reliability as official administrative documents cannot therefore seriously be contested.

14. These documents will confirm Witness D01-0040's civil status. They further establish the witness's age in 2002-2003.

(b) Admission of other evidentiary material

15. The Defence wishes to tender into evidence the following document, which will establish the periods which Mr Lubanga spent in pre-trial detention in Kinshasa prior to his transferral to the Seat of the Court. The Defence adverts to paragraphs 134 and 140 of its observations in this respect.

– *Document DRC-0001-0136 (Annex 4)*

16. This is a document dated 7 February and signed by Mr Lubanga. Mr Lubanga provides details of his treatment by the Congolese authorities, including the deprivation of his liberty.
17. This document was entered into the record before the Pre-Trial Chamber in connection with the confirmation of charges hearing (EVD-D01-00012). It bears the UPC/RP letterhead and Mr Lubanga's signature.
18. This material is relevant to an assessment of the period which Mr Lubanga spent in detention within the meaning of article 78(2).
19. Finally, the Defence wishes to inform the Chamber that it is still awaiting some of the documents which it intended to tender in connection with sentencing. If it obtains these documents in the coming days, the Defence will at such time submit an additional application to the Chamber seeking leave to present them.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I TO

GRANT the application;

ORDER the admission into the record of the proceedings the document in Annex 4;

GRANT the Defence leave to call Witnesses D01-0039 and D01-0040;

and

GRANT the Defence leave to tender the documents in Annexes 2 and 3 at the sentencing hearing, in connection with the testimony of Witness D01-0040.

[signed]

Ms Catherine Mabile, Counsel

Dated this 3 June 2012

At The Hague, The Netherlands