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Date: 8 March 2017

**TRIAL CHAMBER II**

**Before:** Judge Marc Perrin de Brichambaut, Presiding Judge  
Judge Olga Herrera-Carbuccia  
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public  
With  
31 Confidential Redacted Annexes**

**First 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**

**Source: Registry**

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

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**Legal Representatives of V01 Victims**

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**Legal Representatives of Applicants**

**Legal Representatives of V02 Victims**

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**Unrepresented Applicants for  
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**Detention Section**

**Victims Participation and Reparations  
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Mr Philipp Ambach

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## I. Introduction

1. The Registry hereby transmits to the Defence 31 applications for reparations (“Applications”) in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“Lubanga Case”), in accordance with Trial Chamber II’s (“Chamber”) “Ordonnance relative à la transmission des dossiers de victimes potentiellement éligibles aux réparations à l’équipe de défense de Thomas Lubanga Dyilo”, issued on 22 February 2017 (“Order of 22 February 2017”).<sup>1</sup>

## II. Procedural history

2. In its Order of 22 February 2017, the Chamber ordered the Victims Participation and Reparations Section of the Registry (“VPRS”) to apply specific redactions to reparations forms received from the Trust Fund for Victims (“TFV”) and the Office of Public Counsel for victims (“OPCV”)<sup>2</sup> depending on whether the applicants have consented or not to disclosing their identities to the Defence,<sup>3</sup> and to transmit to the Defence:
  - by 8 March 2017 at the latest, the reparations forms transmitted to the Chamber by the TFV;<sup>4</sup>
  - by 22 March 2017 at the latest, the reparations forms transmitted to the Chamber by the OPCV through the VPRS on 22 December 2016;<sup>5</sup>
  - by 5 April 2017 at the latest, the reparations forms transmitted to the Chamber by the OPCV through the VPRS on 20 January 2017.<sup>6</sup>

## III. Classification

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<sup>1</sup> Trial Chamber II, “Ordonnance relative à la transmission des dossiers de victimes potentiellement éligibles aux réparations à l’équipe de défense de Thomas Lubanga Dyilo”, 22 February 2017, ICC-01/04-01/06-3275.

<sup>2</sup> See *id.* at paras. 2, 4 and 9-11.

<sup>3</sup> *Id.* at paras. 14-19.

<sup>4</sup> *Id.* at para. 20.

<sup>5</sup> *Id.* at paras. 10 and 21.

<sup>6</sup> *Id.* at paras. 11 and 22.

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("Regulations"), the Applications are transmitted as confidential redacted annexes, in accordance with the Order of 22 February 2017.

#### **IV. Applicable Law**

4. The present transmission is made pursuant to articles 68(1) and 75 of the Rome Statute, rules 85 and 94 of the Rules of Procedure and Evidence, regulation 88 of the Regulations and regulation 110 of the Regulations of the Registry, and in accordance with the Order of 22 February 2017.

#### **V. Submissions**

5. Pursuant to the Order of 22 February 2017, the VPRS drafted redactions guidelines and sent them for comments to the OPCV,<sup>7</sup> the TFV and the Legal Representatives of V01 victims and V02 victims ("LRVs").<sup>8</sup> The OPCV submitted comments on 2 March 2017,<sup>9</sup> and input from the TFV<sup>10</sup> and the Legal Representatives of V01 victims<sup>11</sup> was received on 6 March 2017.
6. The VPRS identified four victims whose names and dates of birth were disclosed at the earlier stages of the proceedings but who, in their reparations forms, did not consent to that information being disclosed to the Defence.<sup>12</sup> Upon VPRS's request for clarification, the TFV and the Legal Representatives of V01 victims indicated that the victims' denial of consent as expressed on the reparations forms should be considered as authoritative and that their

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<sup>7</sup> Email from VPRS to OPCV on 24 February 2017 at 16:29.

<sup>8</sup> Email from VPRS to TFV and LRVs on 24 February 2017 at 17:05.

<sup>9</sup> Emails from OPCV to VPRS on 2 March 2017 at 10:42, 10:49 and 10:55.

<sup>10</sup> Email from TFV to VPRS on 6 March 2017 at 13:21.

<sup>11</sup> Email from Legal Representatives of V01 victims to VPRS on 6 March 2017 at 17:00.

<sup>12</sup> a/0155/07 (see ICC-01/04-01/06-2003-Conf-Exp-Anx8); a/0156/07 (see ICC-01/04-01/06-2003-Conf-Exp-Anx9); a/0404/08 (see ICC-01/04-01/06-2003-Conf-Exp-Anx1) and a/0409/08 (see ICC-01/04-01/06-2003-Conf-Exp-Anx5).

identities as well as any identifying information should therefore be redacted.<sup>13</sup>

7. The VPRS further identified one applicant who submitted two reparations forms, namely a/25111/16, received by the VPRS from the TFV in July 2016 and transmitted by the TFV to the Chamber on 14 July 2016;<sup>14</sup> and /25250/16, received by the VPRS from the OPCV and transmitted by the VPRS to the Chamber on 20 January 2017.<sup>15</sup> The VPRS merged the two forms under the reference number a/25111/16 and informed the applicant's legal representative, the OPCV, that in the first reparations form submitted the applicant did not consent to disclosing his identity to the Defence because of security reasons, whereas in the second reparations form he gave consent for disclosure.<sup>16</sup> Upon VPRS's request for clarification, the OPCV indicated that given the explanations contained in the first reparations form and the fears expressed therein, the OPCV is of the opinion that the applicant's identity shall not be disclosed to the Defence.<sup>17</sup>
8. The VPRS notes that applications a/0610/08 and a/0611/08, as well as a/25108/16 and a/25109/16, are submitted by applicants who are relatives; in both cases one applicant consented to his/her identity being disclosed to the Defence whereas his/her relative did not. Considering that in both cases the reparations forms are supported by common documentation, the VPRS, after consulting the TFV and the LRVs,<sup>18</sup> redacted the identity and the identifying

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<sup>13</sup> Email from TFV to VPRS on 6 March 2017 at 13:21 and email from Legal Representatives of V01 victims to VPRS on 6 March 2017 at 17:00.

<sup>14</sup> TFV, "Second submission of victim dossiers", 14 July 2016, ICC-01/04-01/06-3216-Conf-Exp-Anx10.

<sup>15</sup> Registry, "Second Transmission and Report on Applications for Reparations", 20 January 2017, ICC-01/04-01/06-3270-Conf-Exp-Anx40.


<sup>16</sup> Email from VPRS to OPCV on 27 February 2017 at 13:09.

<sup>17</sup> Email from OPCV to VPRS on 28 February 2017 at 10:17.

<sup>18</sup> Email from VPRS to TFV on 6 March 2017 at 14:16 and email from TFV to VPRS on 6 March 2017 at 14:40.

information of the applicants in a/0610/08 and a/25109/16 in order to ensure the effective protection of the identities of their non-consenting relatives, a/0611/08 and a/25108/16.

9. The VPRS notes that in four out of the 31 Applications, the applicants consented to their identities being disclosed to the Defence by ticking the 'YES' box in the relevant question on the reparations forms, however they have also expressed general security concerns.<sup>19</sup> The VPRS notes that the forms were filled out in the presence of the applicants' legal representatives and TFV staff members. The TFV explained, in their previous filings, that at the outset of each interview, the various consent provisions in the reparations form as well as the probable consequences of each provision were addressed. Following this informed dialogue, in all four abovementioned cases, the victims still individually expressed their consent regarding the disclosure of their respective identity to the Defence.<sup>20</sup> Therefore, for these four applicants the VPRS took into consideration the consent as expressed on the reparations forms and did not redact their identities.

  
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 Marc Dubuisson, Director, Division of Judicial Services  
*per* delegation of Herman von Hebel, Registrar

Dated this 8 March 2017

At The Hague, The Netherlands

<sup>19</sup> a/0187/07; a/0271/07; a/0273/07; a/0275/07.

<sup>20</sup> TFV, "First submission of victim dossiers", 31 May 2016, ICC-01/04-01/06-3208, para. 27.