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

Date: **8 March 2013**

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

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

Public Document

Women's Initiatives for Gender Justice Request for Leave to Submit Observations

Source: Women's Initiatives for Gender Justice

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

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**Victims Participation and Reparations
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Other

Mr Pieter de Baan, Executive Director
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I. Introduction

1. The Women's Initiatives for Gender Justice ("the Women's Initiatives") respectfully seeks leave to participate in the appeals proceedings, in response to the Appeals Chamber's "Decision on the admissibility of the appeals against Trial Chamber I's 'Decision establishing the principles and procedures to be applied to reparations' and directions on the further conduct of proceedings" of 14 December 2012,¹ and pursuant to Rule 103(1) of the Rules of Procedure and Evidence.
2. On 14 December 2012, the Appeals Chamber notified those organisations which were granted leave to submit observations before the Trial Chamber, including the Women's Initiatives, that they may request leave to submit observations before the Appeals Chamber on the issues arising from the documents in support of the appeals of Trial Chamber I's "Decision establishing the principles and procedures to be applied to reparations".²
3. Following the submission of the "Observations of the Women's Initiatives for Gender Justice on Reparations" ("Observations on Reparations")³ before the Trial Chamber on 10 May 2012, the Women's Initiatives requests leave to submit observations inclusive of a gender perspective to the Appeals Chamber on the issues outlined below in section III.
4. Further details of the Women's Initiatives and its interest in these proceedings are set out below in section IV.

¹ Appeals Chamber, *Decision on the admissibility of the appeals against Trial Chamber I's 'Decision establishing the principles and procedures to be applied to reparations' and directions on the further conduct of proceedings*, ICC-01/04-01/06-2953, 14 December 2012 (hereinafter 'Appeals Chamber Decision').

² Trial Chamber I, *Decision establishing the principles and procedures to be applied to reparations*, ICC-01/04-01/06-2904, 7 August 2012.

³ Women's Initiatives for Gender Justice, *Observations of the Women's Initiatives for Gender Justice on Reparations*, ICC-01/04-01/06-2876, 10 May 2012.

II. Relevant Procedural Background

5. On 14 March 2012, Trial Chamber I issued the “Judgment pursuant to Article 74 of the Statute”⁴ convicting Thomas Lubanga Dyilo of the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Statute from early September 2002 to 13 August 2003. Judge Odio Benito issued a Separate and Dissenting Opinion. Judge Fulford appended a Separate Opinion.

6. On 28 March 2012, the Women’s Initiatives submitted a “Request for leave to participate in reparations proceedings”,⁵ which was granted by Trial Chamber I on 20 April 2012.⁶

7. On 10 May 2012, the Women’s Initiatives submitted its Observations on Reparations.⁷ The Observations on Reparations addressed the principles and procedures to be applied to the reparations phase of proceedings, and specifically provided observations from a gender perspective on the following questions: (i) whether reparations should be awarded on a collective or an individual basis; (ii) to whom reparations are to be directed, how harm is to be assessed and the criteria to be applied to the awards; (iii) whether it is possible or appropriate to make a reparations order against the convicted person pursuant to Article 75(2); and (iv) whether it would be appropriate to make an order for an award for reparations through the Trust Fund for Victims pursuant to Article 75(2).

⁴ Trial Chamber I, *Judgment pursuant to Article 74 of the Statute*, ICC-01/04-01/06-2842, 14 March 2012.

⁵ Women’s Initiatives for Gender Justice, *Women’s Initiatives for Gender Justice request for leave to participate in reparations proceedings*, ICC-01/04-01/06-2853, 28 March 2012.

⁶ Trial Chamber I, *Decision granting leave to make representations in the reparations proceedings*, ICC-01/04-01/06-2870, 20 April 2012.

⁷ Women’s Initiatives for Gender Justice, *Observations of the Women’s Initiatives for Gender Justice on Reparations*, ICC-01/04-01/06-2876, 10 May 2012.

8. On 7 August 2012, Trial Chamber I issued a “Decision establishing the principles and procedures to be applied to reparations”,⁸ which the Defence,⁹ Legal Representatives of Victims VO2 jointly with the Office of Public Counsel for Victims,¹⁰ and the Legal Representatives of Victims V01¹¹ appealed. The documents in support of the appeals were subsequently filed on 5 February 2013.¹²
9. In its decision of 14 December 2012, the Appeals Chamber notified ‘those organisations which were granted leave to submit observations before the Trial Chamber that they may, pursuant to rule 103(1) of the Rules of Procedure and Evidence, request leave to submit observations before the Appeals Chamber’.¹³
10. The Appeals Chamber further instructed that ‘such requests must be filed within 30 days of the notification of the documents in support of the appeals’,¹⁴ and specified that ‘any request for leave under rule 103 of the Rules

⁸ Trial Chamber I, *Decision establishing the principles and procedures to be applied to reparations*, ICC-01/04-01/06-2904, 7 August 2012.

⁹ Defence, *Appeal of the Defence for Mr Thomas Lubanga against Trial Chamber I’s Decision establishing the principles and procedures to be applied to reparation rendered on 7 August 2012*, ICC-01/04-01/06-2917-tENG, 6 September 2012.

¹⁰ Office of Public Counsel for Victims & V02 team of Legal Representatives, *Appeal against Trial Chamber I’s Decision establishing the principles and procedures to be applied to reparations of 7 August 2012*, ICC-01/04-01/06-2909-tENG, 24 August 2012.

¹¹ V01 team of Legal Representatives, *Appeal against Trial Chamber I’s Decision establishing the principles and procedures to be applied to reparation of 7 August 2012*, ICC-01/04-01/06-2914-tENG, 3 September 2012.

¹² Defence, *Mémoire de la Défense de M. Thomas Lubanga relatif à l’appel à l’encontre de la « Decision establishing the principles and procedures to be applied to reparations », rendue par la Chambre de première instance le 7 août 2012*, ICC-01/04-01/06-2972, 5 February 2013 (hereinafter ‘Defence Document in support of Appeal’); Office of Public Counsel for Victims & V02 team of Legal Representatives, *Document déposé à l’appui de l’appel à l’encontre de la « Decision establishing the principles and procedures to be applied to reparations » délivrée par la Chambre de première instance I le 7 août 2012*, ICC-01/04-01/06-2970, 5 February 2013 (hereinafter ‘OPCV & LRV V02 Document in support of Appeal’); V01 team of Legal Representatives, *Document à l’appui de l’appel contre la « Decision establishing the principles and procedures to be applied to reparations » du 7 août 2012*, ICC-01/04-01/06-2973, 5 February 2013 (hereinafter ‘LRV V01 Document in support of Appeal’).

¹³ Appeals Chamber Decision, para 77.

¹⁴ Appeals Chamber Decision, para 77.

of Procedure and Evidence to make observations on the appeals must be filed by 16h00 on 8 March 2013'.¹⁵

III. Request for Leave

11. In accordance with the Appeals Chamber's instructions, and pursuant to Rule 103(1) of the Rules of Procedure and Evidence, the Women's Initiatives respectfully seeks leave to submit observations inclusive of a gender perspective on the following issues, which arise out of the documents in support of the appeals:

- a. The role of the Trust Fund for Victims ("Trust Fund") and the Registry in the reparations proceedings, and the decision by the Trial Chamber to delegate the implementation of aspects of the reparations order to the Trust Fund and the Registry;¹⁶
- b. The Trial Chamber's decision not to rule on individual victim applications and to refer them to the Trust Fund;¹⁷
- c. The Trial Chamber's decision to refer the oversight of the reparations proceedings to a newly-constituted Chamber;¹⁸
- d. The scope of potential victim beneficiaries adopted by the Trial Chamber in the reparations proceedings, including the participation of anonymous victims, and possible additional localities;¹⁹
- e. The link between sexual and gender-based violence and the charges for which Mr Lubanga was convicted, and the inclusion of victims/survivors of sexual and gender-based crimes within the scope of the reparations order;²⁰

¹⁵ Appeals Chamber Decision, para 8.

¹⁶ OPCV & LRV V02 Document in support of Appeal, paras 45-54; Defence Document in support of Appeal, paras 9-14.

¹⁷ LRV V01 Document in support of Appeal, paras 15, 19, 20; OPCV & LRV V02 Document in support of Appeal, paras 24-29; Defence Document in support of Appeal, 5 February 2013, paras 32-41.

¹⁸ OPCV & LRV V02 Document in support of Appeal, paras 32-42; Defence Document in support of Appeal, paras 21-31.

¹⁹ Defence Document in support of Appeal, paras 48-78, 153-171, 180-188.

²⁰ Defence Document in support of Appeal, paras 125-137.

- f. The question of whether collective reparations should be community-based;²¹
- g. The scope of Defence participation in the reparation proceedings, including the disclosure of the information on victim applications to the Defence;²²
- h. The Trial Chamber's decision to release Mr Lubanga from all obligations related to reparations;²³
- i. The application of the 'proximate cause' standard to determine causation between the crime and the harm;²⁴
- j. The adoption of 'balance of probabilities' as the standard of proof to be used in assessing victims' application for reparations;²⁵ and
- k. The procedures to be adopted by the Appeals Chamber in the subsequent phases of the reparations proceedings.²⁶

IV. Statement of Interest

12. The Women's Initiatives is an international women's human rights organisation that advocates for gender justice through the International Criminal Court ("ICC") and through domestic mechanisms, including peace negotiations and justice processes in both conflict and post-conflict countries, and works with women most affected by the conflict situations under investigation by the ICC. The Women's Initiatives has offices in: Cairo, Egypt; Kitgum and Kampala, Uganda; and The Hague, the Netherlands. The Women's Initiatives has legal monitoring initiatives in all of the countries under ICC investigation, and country-based programmes in the Democratic

²¹ Defence Document in support of Appeal, paras 138-152.

²² LRV V01 Document in support of Appeal, paras 42-56; Defence Document in support of Appeal, paras 42-47, 61-78.

²³ LRV V01 Document in support of Appeal, paras 27-37.

²⁴ Defence Document in support of Appeal, paras 172-179.

²⁵ Defence Document in support of Appeal, paras 79-109.

²⁶ OPCV & LRV V02 Document in support of Appeal, para 47; LRV V01 Document in support of Appeal, para 59; Defence Document in support of Appeal, paras 115-116, 188.

Republic of the Congo (“DRC”), Sudan, the Central African Republic, Uganda, and Libya.

13. The Women’s Initiatives currently has over 6,000 grassroots members and direct partners in armed conflicts under investigation by the ICC. Members include women victims/survivors of gender-based and other crimes, women living in camps for Internally Displaced People, women’s rights actors and organisations, development organisations, transitional and criminal justice partners, parliamentarians, and members of the security sector. In close cooperation with its country-based members and partners, the Women’s Initiatives carries out programme activities including documentation of gender-based crimes, provision of support and assistance to victims/survivors of crimes within the jurisdiction of the Court, participation in peace talks, monitoring and implementation of peace agreements, and supporting initiatives to align domestic sexual violence laws with Rome Statute standards.

14. The Women’s Initiatives has been working in the DRC since 2006, and has 120 members and partners in Province Orientale, including Ituri, and in North and South Kivu, as well as three focal points. The Women’s Initiatives works closely with victims/survivors in eastern DRC, including with former girl soldiers. Through our victim/survivor support and assistance initiatives in Ituri, we have provided victims/survivors of gender-based crimes with medical, psychosocial and material support. The support we provide to our partners has also included the temporary relocation of over 25 women’s human rights defenders and their families in eastern DRC, due to security concerns arising from their participation in accountability and victim/survivor support projects. We have an ongoing victims’ assistance programme operational in other provinces of eastern DRC including South Kivu. In addition to our victim/survivor support and assistance initiatives, we

have a collaborative documentation programme with our partners, to generate reliable data and knowledge about the commission of gender-based crimes in the DRC.

15. The Women's Initiatives has been closely following the developments in the Prosecutor's investigations in the DRC, and in *The Prosecutor v. Thomas Lubanga Dyilo*. On 16 August 2006, on the basis of data gathered by our documentation programme in Ituri, the Women's Initiatives submitted a confidential report and a letter to the Office of the Prosecutor describing our grave concerns that gender-based crimes had not been adequately investigated in the case against Thomas Lubanga Dyilo and providing information about the alleged commission of these crimes by the UPC.²⁷ In September 2006, the Women's Initiatives became the first organisation to file for leave to participate in the case, in respect of the failure of the Prosecutor to fully investigate, and to bring charges for, gender-based crimes within the case brought by the Office of the Prosecutor against Mr Lubanga.²⁸

16. The Women's Initiatives has been engaged in the reparations proceedings in the case against Mr Lubanga, which includes the submission of the Observations on Reparations to the Trial Chamber in May 2012. Many of the issues addressed in our filing before the Trial Chamber are implicated in the

²⁷ A redacted version of this confidential letter submitted to the Office of the Prosecutor is available at http://www.iccwomen.org/documents/Prosecutor_Letter_August_2006_Redacted.pdf.

²⁸ On 7 September 2006, the Women's Initiatives requested leave to participate as amicus curiae in the Article 61 Confirmation of Charges proceedings ("Request"), requesting the Pre-Trial Chamber to review the Prosecutor's exercise of discretion in the selection of charges and to determine whether broader charges could be considered (Women's Initiatives for Gender Justice, *Request submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence for Leave to Participate as Amicus Curiae in the Article 61 Confirmation Proceedings (with Confidential Annex 2)*, ICC-01/04-01/06-403, 7 September 2006). On 26 September 2006, Pre-Trial Chamber I issued its decision on the Request holding that the Women's Initiatives' Request had no link with the case brought against Thomas Lubanga Dyilo by the Prosecutor (Pre-Trial Chamber I, *Decision on Request pursuant to Rule 103(1) of the Statute*, ICC-01/04-01/06-480, 26 September 2006). Instead the Pre-Trial Chamber invited the Women's Initiatives to re-file its Request to prepare an amicus in relation to the DRC situation rather than the case against the suspect. Following the invitation by the Pre-Trial Chamber, on 10 November 2006, the Women's Initiatives re-submitted its application to Pre-Trial Chamber I in relation to the situation in the Democratic Republic of the Congo (Women's Initiatives for Gender Justice, *Request submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence for leave to participate as amicus curiae with confidential annex 2*, ICC-01/04-313, 10 November 2006). On 17 August 2007, the Pre-Trial Chamber declined to grant leave to submit further submissions (Pre-Trial Chamber I, *Decision on the Request submitted pursuant to Rule 103(1) of the Rules of Procedure and Evidence*, ICC-01/04-373, 17 August 2007).

current appeals proceedings, and the Women's Initiatives seeks to provide the Appeals Chamber with further submissions to ensure a gender perspective in the reparations proceedings.

17. The Women's Initiatives provides a unique perspective and expertise in monitoring, critiquing, and advocating for gender justice through the ICC, and has continually monitored and published analyses of the legal developments in the case against Mr Lubanga.²⁹ Given its recognised expertise on gender issues and its long investment and experience with the ICC, the Lubanga case, and victims/survivors in eastern DRC, the Women's Initiatives is uniquely placed to assist the Appeals Chamber with observations in the present matter.



Jeannette Wijnants, Senior Programme Officer
on behalf of
Women's Initiatives for Gender Justice

Dated this 8 March 2013

At The Hague, the Netherlands

²⁹ See *Gender Report Card on the ICC 2008, 2009, 2010, 2011 and 2012* available at <http://www.iccwomen.org/publications/index.php>; see also *Legal Eye on the ICC | Panorama légal de la CPI eLetter*, available at <http://www.iccwomen.org/news/index.php>.