

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**
Date: **9 November 2023**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Confidential

***EX PARTE* only available to the Defence for Mr Ongwen and the Office of the Prosecutor**

Decision designating a State of enforcement

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

The Office of the Prosecutor

Mr Karim A. A. Khan

Counsel for the Defence

Mr Chief Charles Achaleke Taku

Ms Beth Lyons

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States

Kingdom of Norway

Kingdom of the Netherlands

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section**

Other

Trial Chamber IX

The Presidency of the International Criminal Court (the ‘Court’) hereby issues its decision pursuant to article 103(1) and (3) of the Rome Statute (the ‘Statute’) designating the State of enforcement in which Mr Dominic Ongwen shall serve his sentence of imprisonment.

I. PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX found Mr Ongwen guilty of 61 crimes constituting crimes against humanity and war crimes.¹ On 6 May 2021, he was sentenced to 25 years of imprisonment.²
2. On 15 December 2022, the Appeals Chamber confirmed Mr Ongwen’s conviction and sentence.³ Accordingly, his conviction and sentence have become final.
3. On 20 June 2023, the Presidency issued an order in accordance with article 103(3)(c) of the Statute and rule 203(1) of the Rules of Procedure and Evidence (the ‘Rules’), whereby it formally notified Mr Ongwen that it was addressing the designation of a State of enforcement and requested Mr Ongwen to submit his views in this regard.⁴ It also informed Mr Ongwen of the States potentially willing to enforce his sentence at the present stage.⁵
4. On 5 July 2023, Mr Ongwen filed his observations pursuant to article 103(3)(c) of the Statute and rule 203(1) of the Rules, indicating his preference to serve his sentence in a prison in the Kingdom of Norway (‘Norway’) and consenting to the transmission of his medical information to the prospective State of enforcement (the ‘Observations’).⁶

¹ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Trial Judgment, 4 February 2021, ICC-02/04-01/15-1762-Red, para. 3116.

² Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Sentence, 6 May 2021, ICC-02/04-01/15-1819-Red, p. 138.

³ Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, 15 December 2022, ICC-02/04-01/15-2022-Red, p. 15, para. 1687; Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled “Sentence”, 15 December 2022, ICC-02/04-01/15-2023, p. 6, para. 374.

⁴ Presidency, *The Prosecutor v. Dominic Ongwen*, Order seeking the views of Mr Ongwen on the designation of a State of enforcement, 20 June 2023, ICC-02/04-01/15-2051-Conf-Exp (the ‘Presidency Order’), para. 3, p. 4.

⁵ Presidency Order, ICC-02/04-01/15-2051-Conf-Exp, para. 3.

⁶ Defence for Mr Dominic Ongwen, *The Prosecutor v. Dominic Ongwen*, Defence Submissions on the State for the Enforcement of the Sentence, 5 July 2023, ICC-02/04-01/15-2052-Conf-Exp, paras 18, 24.

II. DETERMINATION OF THE PRESIDENCY

A. Applicable law

5. The Presidency recalls that the enforcement of sentences is regulated in part 10 of the Statute and chapter 12 of the Rules. Pursuant to article 103(1)(a) of the Statute, a sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons, with this designation being conducted by the Presidency.⁷ Article 103(3) of the Statute mandates that, in exercising its discretion to designate a State of enforcement pursuant to article 103(1)(a) of the Statute, the Court shall take into account: (a) the principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution;⁸ (b) the application of widely accepted international treaty standards governing the treatment of prisoners; (c) the views of the sentenced person;⁹ (d) the nationality of the sentenced person; and (e) such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate.

B. Designation of the State of enforcement

6. The Presidency has taken note of Mr Ongwen's Observations and that he has expressed a preference for Norway from amongst the States willing to enforce his sentence, emphasising features of the Norwegian prison system that he considers particularly suitable to his personal situation.¹⁰
7. Having considered all factors listed in article 103(3) of the Statute, as well as the Agreement between the Kingdom of Norway and the International Criminal Court on the Enforcement of Sentences of the International Criminal Court (the 'Agreement'), the Presidency is satisfied that Norway fulfills all the necessary requirements to be considered as State of enforcement in this case. Pursuant to articles 103(3)(b) and 106 of the Statute and articles 4(2) and 5 of the Agreement, the conditions of imprisonment in the State of enforcement shall be governed by the law of the State of enforcement, shall be consistent with widely accepted international standards governing the treatment of prisoners, and the enforcement

⁷ See chapter 12 of the Rules.

⁸ See also rule 201 of the Rules.

⁹ See also rule 203 of the Rules.

¹⁰ Observations, ICC-02/04-01/15-2052-Conf-Exp, para. 18.

of the sentence of imprisonment shall be subject to the supervision of the Court. In addition, Norway has agreed to allow the inspection of the conditions of imprisonment and treatment of the sentenced person by the International Committee of the Red Cross.¹¹

8. Finally, the Presidency notes that rule 204 of the Rules and article 2(1) of the Agreement require the transmission of certain procedural information to Norway when designating it as State of enforcement. As a matter of practice, this information and documents have already been shared with Norway. Nevertheless, the Presidency hereby orders the Registry to formally re-transmit to Norway all information listed in rule 204(a)-(c) of the Rules, pursuant to the present decision. Given the sensitivity of medical information, the Registry is not asked to re-transmit to the Norwegian authorities any information referred to in rule 204(d) of the Rules. In addition, once the transfer to an enforcement State has occurred, the Registry shall verify that the medical personnel of the Court's Detention Centre directly transfer Mr Ongwen's medical record or information, as necessary and appropriate, to the medical personnel who will assume responsibility for Mr Ongwen's medical care at the detention facility in which he will serve his sentence of imprisonment.

9. In light of the foregoing, the Presidency hereby:

- (i) **DESIGNATES** Norway as the State in which Mr Ongwen's sentence of imprisonment shall be served;
- (ii) **INVITES** Norway, pursuant to article 103(1)(c) of the Statute and article 2(2) of the Agreement, to promptly inform the Court whether it accepts the present designation;
- (iii) **ORDERS** the Registry to transmit to Norway the information and documents referred to in rule 204(a)-(c) of the Rules;
- (iv) **ORDERS** the Registry, subject to Norway's acceptance of the designation, to take the necessary steps to ensure the delivery of Mr Ongwen to the State of enforcement, pursuant to rule 206 of the Rules; and
- (v) **ORDERS** the Registry to reclassify the present decision as public following the completion of the transfer of Mr Ongwen to Norway.

¹¹ Article 6 of the Agreement.

Done in both English and French, the English version being authoritative.



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 9 November 2023

At The Hague, The Netherlands