

**AD HOC AGREEMENT BETWEEN THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC  
OF THE CONGO AND THE INTERNATIONAL CRIMINAL COURT ON ENFORCEMENT OF  
THE SENTENCE OF THE INTERNATIONAL CRIMINAL COURT IMPOSED ON MR THOMAS  
LUBANGA DYILO**

The International Criminal Court (hereinafter referred to as "the Court") and  
The Democratic Republic of the Congo (hereinafter referred to as "the DRC"),

**PREAMBLE**

**RECALLING** Article 103(1)(a) of the Rome Statute of the International Criminal Court (hereinafter referred to as "the Rome Statute"), adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries, according to which sentences of imprisonment pronounced by the Court shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons,

**RECALLING** Rule 200(5) of the Rules of Procedure and Evidence of the Court (hereinafter referred to as "the Rule(s)"), according to which the Court may enter into bilateral arrangements with States with a view to establishing a framework for the acceptance of persons sentenced by the Court, consistent with the Rome Statute,

**RECALLING** the widely accepted international standards governing the treatment of prisoners including the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the United Nations Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990,

**RECALLING** Article 103(3)(c) of the Rome Statute and Rule 203 of the Rules, in accordance with which, in exercising its discretion to designate the State of enforcement, the Court takes into account the views of the sentenced person,

**NOTING THAT**, on the instruction of the Presidency, the Registry has informed the competent authorities of the DRC of the wish of Mr Thomas Lubanga Dyilo (hereinafter referred to as "the sentenced person"), a Congolese national, to be allowed to complete his sentence in his home country, the DRC,

**NOTING** the willingness of the DRC to accept the sentenced person to complete his sentence,

**IN ORDER** to establish a framework for acceptance of the sentenced person and describing the conditions under which his sentence will be enforced in the DRC,

**HAVE AGREED** as follows:

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## Article 1

### *Purpose and scope of the Agreement*

The Agreement (hereinafter "the Agreement") shall regulate matters relating to or arising from the enforcement of sentences pronounced by the Court against the sentenced person and to be served in the DRC.

## Article 2

### *Procedure and information relating to designation*

1. The sentenced person, a Congolese national, has expressed his wish to serve his sentence in the territory of the DRC.
2. If the DRC indicates its readiness, as a practical matter, to receive a person convicted by the Court, the Presidency shall request it to provide the Court with updated information regarding its national detention regime, including, *inter alia*, recently promulgated legislation and administrative guidelines.
3. If the Presidency designates the DRC as the State in which the sentenced person shall serve his sentence, it shall notify it of its decision. When notifying the DRC of its designation as the State of enforcement, the Presidency shall transmit, *inter alia*, the following information and documents:
  - (a) The name, nationality, date and place of birth of the sentenced person;
  - (b) A copy of the final judgment of conviction and of the sentence imposed;
  - (c) The length and commencement date of the sentence and the time remaining to be served;
  - (d) The date on which the sentenced person is eligible for review of his sentence;
  - (e) With due respect for medical confidentiality, any necessary information concerning the state of the sentenced person's health, including any medical treatment that he is receiving.

## Article 3

### *Transfer of the sentenced person*

1. The sentenced person shall be transferred to the DRC as soon as possible after its designation by the Presidency.
2. The Registrar of the Court (hereinafter "the Registrar") shall ensure the proper transfer of the sentenced person in consultation with the DRC and the host State.

## Article 4

### *Supervision of enforcement of sentence and conditions of imprisonment*

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international standards governing the treatment of prisoners.

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2. In order to supervise the enforcement of sentences of imprisonment, the Presidency shall:
  - (a) When necessary, request any information, report or expert opinion from the DRC or from any reliable sources;
  - (b) Where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the DRC, for meeting the sentenced person and hearing his views, without the presence of national authorities;
  - (c) Where appropriate, give the DRC an opportunity to comment on the views expressed by the sentenced person pursuant to sub-paragraph (b).
3. Communications between the sentenced person and the Court shall be unimpeded and confidential. The Presidency, in consultation with the DRC, shall respect these requirements when establishing appropriate arrangements for the exercise by the sentenced person of his right to communicate with the Court about the conditions of imprisonment.
4. The conditions of imprisonment shall be governed by the law of the DRC and shall be consistent with widely accepted international standards governing the treatment of prisoners. In no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the DRC.
5. The DRC shall notify the Court of any circumstances, including the exercise of any conditions agreed under Article 103(1) of the Rome Statute, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the DRC shall take no action that might prejudice its obligations under Article 110 of the Rome Statute.
6. The DRC shall promptly inform the Presidency of any important event concerning the sentenced person.
7. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the DRC which may entail some activity outside the prison facility, the DRC shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.
8. The DRC shall allow the inspection of the conditions of imprisonment and treatment of the sentenced person by the International Committee of the Red Cross (hereinafter referred to as "the ICRC") at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. After each visit to the enforcement State by the ICRC:
  - (a) The ICRC shall submit a confidential report on its findings together with recommendations, as necessary, to the DRC and to the Presidency;
  - (b) The DRC and the Presidency shall consult each other on the findings of the report. The Presidency shall thereafter request the DRC to report any changes in the conditions of imprisonment as a result of the recommendations by the ICRC;
  - (c) The DRC and the Presidency shall submit a joint response to the ICRC within 30 calendar days of receiving the report. The joint response shall address the findings of the report and detail measures to implement the recommendations of the report by the DRC and the Presidency.

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## Article 5

### *Appearances before the Court*

If, after transfer of the sentenced person to the DRC, the Court orders that the sentenced person appear before the Court, the sentenced person shall be transferred temporarily to the Court, conditional on his return to the DRC within the period decided by the Court. The time spent in the custody of the Court shall be deducted from the term of the overall sentence remaining to be served in the DRC.

## Article 6

### *Limitation on prosecution or punishment*

1. The sentenced person shall not be tried before a court of the DRC with respect to conduct which formed the basis of crimes for which the person has already been convicted or acquitted by the Court.
2. The sentenced person in the custody of the DRC shall not be subject to prosecution or punishment or to extradition to another State for any conduct engaged in prior to that person's transfer to the DRC, unless such prosecution, punishment or extradition has been approved by the Presidency at the request of the DRC.
  - (a) When the DRC intends to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to the sentenced person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:
    - (i) A statement of the facts of the case and their legal characterization;
    - (ii) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;
    - (iii) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;
    - (iv) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.
  - (b) In the event of a request for extradition made by another State, the DRC shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.
  - (c) The Presidency may in all cases request any document or additional information from the DRC or the State requesting the extradition.
  - (d) The Presidency may decide to conduct a hearing.
  - (e) The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.
  - (f) If the request for prosecution, punishment, or extradition to another State concerns the enforcement of a sentence, the sentenced person may serve that sentence in the DRC or

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be extradited to another State only after having served the full sentence pronounced by the Court.

- (g) The Presidency may authorize the temporary extradition of the sentenced person to another State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in that State and transferred back to the DRC after the prosecution.
3. Paragraph 2 of this article shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the DRC after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

#### **Article 7**

##### *Appeal, revision, reduction, and extension of sentence*

1. Subject to the conditions contained in the Agreement, the sentence of imprisonment imposed on the sentenced person shall be binding on the DRC, which shall in no case modify it.
2. The DRC shall not release the person before expiry of the sentence pronounced by the Court. The DRC shall terminate the enforcement of the sentence as soon as it is informed by the Court of any decision or measure as a result of which the sentence ceases to be enforceable.
3. The Court alone shall have the right to decide any application for appeal and revision of its decision on guilt or sentence and the DRC shall not impede the making of any such application by the sentenced person.
4. The Court alone shall have the right to decide any reduction of sentence, and shall rule on a reduction of sentence after having heard the sentenced person.
5. Where the Presidency extends the term of imprisonment pursuant to Rule 146(5) and (6), the Presidency may ask for observations from the DRC.

#### **Article 8**

##### *Escape*

1. If the sentenced person escapes from custody, the DRC shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record.
2. If the sentenced person escapes from custody and flees the DRC, the DRC may, after consultation with the Presidency, request the person's extradition or surrender from the State in which the person is located pursuant to any existing bilateral or multilateral arrangements, or may request that the Presidency seek the person's surrender, in accordance with Part 9 of the Rome Statute. It may direct that the person be delivered to the DRC or to another State designated by the Court.
3. If the State in which the sentenced person is located agrees to surrender him to the DRC, pursuant to either international agreements or its national legislation, the DRC shall so advise the Registrar in writing. The person shall be surrendered to the DRC as soon as possible, if necessary in consultation with the Registrar. The Registrar shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with Rule 207.

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4. If the sentenced person is surrendered to the Court, the Court shall transfer him to the DRC. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the DRC, designate another State, including the State to the territory of which the sentenced person has fled.
5. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his escape and, where paragraph 4 of this Article is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he was located shall be deducted from the sentence remaining to be served.

#### **Article 9**

##### *Change in designation of the DRC as the State of enforcement*

1. The Presidency, acting on its own motion or at the request of the DRC or the sentenced person or the Prosecutor, may, at any time, decide to transfer a sentenced person to a prison of another State.
2. Before deciding to change the designation of the DRC as the State of enforcement, the Presidency may:
  - (a) Request views from the DRC;
  - (b) Consider written or oral presentations of the sentenced person and the Prosecutor;
  - (c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;
  - (d) Obtain any other relevant information from any reliable sources.
3. The Presidency shall inform the sentenced person, the Prosecutor, the Registrar and the DRC of its decision and of the reasons therefor.

#### **Article 10**

##### *Completion of the sentence*

1. The DRC shall notify the Presidency 90 calendar days before the scheduled completion of the sentence, that the sentence is nearing completion.
2. Subject to the provisions of Article 6, the DRC may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

#### **Article 11**

##### *Costs*

1. The ordinary costs for the enforcement of the sentence in the territory of the DRC shall be borne by the DRC.
2. Other costs, including those for the transport of the sentenced person to and from the seat of the Court and to and from the DRC, shall be borne by the Court.

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3. In case of escape, the costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

**Article 12**  
*Channels of Communication*

1. The channel of communication for the DRC shall be the *Procureur Général de la République* [Principal State Prosecutor].
2. The channel of communication for the Court shall be the Legal and Enforcement Unit of the Presidency.

**Article 13**  
*Entry into force*

The Agreement shall enter into force upon the signature of both parties.

**Article 14**  
*Amendment of the Agreement*

1. The Agreement may be amended, after consultation, by mutual consent of the parties.
2. From such time as the sentenced person has started to serve his sentence in the DRC, the provisions of the Agreement shall continue to apply until the sentence has been completed or, if applicable, the sentenced person has been transferred in accordance with Article 10 of the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed the Agreement.

Done at The Hague this 24th day of November 2015, in duplicate, in the French language.

**FOR THE COURT**

**FOR THE GOVERNMENT OF THE  
DEMOCRATIC REPUBLIC OF THE  
CONGO**

[Signed]

[Signed]

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Judge Joyce Aluoch  
First Vice-President of the International Criminal  
Court

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Mr Alexis Thambwe Muamba  
Minister of Justice, Keeper of the Seals and  
Human Rights

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