

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **27 October 2022**

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 THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR v. BOSCO NTAGANDA**

Confidential

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

**Decision designating a State of enforcement and on the ‘Additional submissions
regarding Mr Ntaganda’s transfer to a State of enforcement’, dated 26 September 2022
(ICC-01/04-02/06-2784-Conf-Exp)**

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 Stéphane Bourgon

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 Belgium

Kingdom of the Netherlands

Amicus Curiae**REGISTRY**

Registrar

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section**

Mr Harry Tjonk

**Victims Participation and Reparations
Section****Other**

Trial Chamber II

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 Bosco Ntaganda shall serve his sentence of imprisonment. The Presidency also has before it a submission filed by Mr Ntaganda on 26 September 2022, requesting that his transfer to a State of enforcement be delayed (the ‘Request to Delay Transfer’).¹

I. PROCEDURAL HISTORY

1. On 8 July 2019, Trial Chamber VI found Mr Ntaganda guilty of five counts of crimes against humanity and thirteen counts of war crimes.² On 7 November 2019, he was sentenced to 30 years of imprisonment.³ On 30 March 2021, the Appeals Chamber confirmed Mr Ntaganda’s conviction and sentence.⁴ Accordingly, his conviction and sentence have become final.
2. On 12 May 2021, Mr Ntaganda *proprio motu* filed preliminary observations pertaining to enforcement, informing the Presidency that he wished to serve his sentence in one of two African States in close or relative proximity to his family (the ‘Preliminary Observations’).⁵
3. On 25 October 2021, 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 Ntaganda that it was addressing the designation of a State of enforcement and requested Mr Ntaganda to submit his views in this regard.⁶ It also informed

¹ Defence for Mr Bosco Ntaganda, *The Prosecutor v. Bosco Ntaganda*, Additional submissions regarding Mr Ntaganda’s transfer to a State of enforcement, 26 September 2022, ICC-01/04-02/06-2784-Conf-Exp, paras 21, 31.

² Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, [Judgment](#), 8 July 2019, ICC-01/04-02/06-2359, pp. 535-538.

³ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, [Sentencing judgment](#), 7 November 2019, ICC-01/04-02/06-2442, p. 117.

⁴ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, [Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’](#), 30 March 2021, ICC-01/04-02/06-2666-Red, para. 1170; Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, [Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’](#), 30 March 2021, ICC-01/04-02/06-2667-Red, para. 284.

⁵ Defence for Mr Bosco Ntaganda, *The Prosecutor v. Bosco Ntaganda*, Defence preliminary observations and request concerning the enforcement of the sentence imposed on Mr Ntaganda, 12 May 2021 (filed on 17 May 2021), ICC-01/04-02/06-2673-Conf-Exp, paras 16, 18-19, 38.

⁶ Presidency, *The Prosecutor v. Bosco Ntaganda*, Order seeking the views of Mr Ntaganda on the designation of a State of enforcement, 25 October 2021, ICC-01/04-02/06-2715-Conf-Exp (the ‘Presidency Order’), para. 5, p. 5.

Mr Ntaganda of the States it considered able and willing to enforce his sentence at the present stage.⁷ Mr Ntaganda was further informed that, although the Presidency had made enquiries with the States identified by Mr Ntaganda in his Preliminary Observations, it was not currently possible to envisage the enforcement of his sentence in these States.⁸

4. On 4 November 2021, Mr Ntaganda filed his observations pursuant to article 103(3)(c) of the Statute and rule 203(1) of the Rules, requesting the Presidency, *inter alia*, to reasonably delay the designation of a State of enforcement in order to further consult with additional African States Parties (the ‘Rule 203 Observations’).⁹
5. On 29 March 2022, the Presidency issued a decision denying, *inter alia*, the request to delay included in the Rule 203 Observations (the ‘Decision of 29 March 2022’).¹⁰ On 8 April 2022, Mr Ntaganda filed an application seeking reconsideration of certain aspects of the Decision of 29 March 2022 (the ‘Application for Reconsideration’).¹¹ On 6 June 2022, the Presidency issued a decision denying the Application for Reconsideration.¹²
6. On 8 June 2022, Mr Ntaganda filed a notice informing the Presidency, *inter alia*, of his consent to the transmission to prospective States of enforcement of ‘any necessary information concerning the state of his health, including any medical treatment that he is receiving’.¹³ In this regard, he asked the Presidency to first reach out to the Kingdom of Belgium (‘Belgium’).¹⁴

⁷ Presidency Order, ICC-01/04-02/06-2715-Conf-Exp, para. 5.

⁸ Presidency Order, ICC-01/04-02/06-2715-Conf-Exp, para. 6.

⁹ Defence for Mr Bosco Ntaganda, *The Prosecutor v. Bosco Ntaganda*, Bosco Ntaganda’s views on the designation of a State of enforcement, 4 November 2021, ICC-01/04-02/06-2721-Conf-Exp, paras 5, 14, 91, 105.

¹⁰ Presidency, *The Prosecutor v. Bosco Ntaganda*, Decision regarding ‘Bosco Ntaganda’s views on the designation of a State of enforcement’ dated 4 November 2021 (ICC-01/04-02/06-2721-Conf-Exp), 29 March 2022, ICC-01/04-02/06-2752-Conf-Exp, p. 19.

¹¹ Defence for Mr Bosco Ntaganda, *The Prosecutor v. Bosco Ntaganda*, Application on behalf of Mr Ntaganda seeking the Presidency to reconsider discreet aspects of the decision regarding ‘Bosco Ntaganda’s views on the designation of a State of enforcement’, 8 April 2022, ICC-01/04-02/06-2756-Conf-Exp, paras 2-3.

¹² Presidency, *The Prosecutor v. Bosco Ntaganda*, Decision on the ‘Application on behalf of Mr Ntaganda seeking the Presidency to reconsider discreet aspects of the decision regarding “Bosco Ntaganda’s views on the designation of a State of enforcement”’ dated 8 April 2022 (ICC-01/04-02/06-2756-Conf-Exp) and the ‘Request on behalf of Bosco Ntaganda seeking a limited extension of time to inform the Presidency whether he consents to the transmission of medical information’ dated 6 April 2022 (ICC-01/04-02/06-2753-Conf-Exp), 6 June 2022 (‘Decision of 6 June 2022’), ICC-01/04-02/06-2768-Conf-Exp, p. 13

¹³ Defence for Mr Bosco Ntaganda, *The Prosecutor v. Bosco Ntaganda*, Notice on behalf of Mr Ntaganda regarding the transmission of information concerning the state of his health to prospective States of enforcement, 8 June 2022, ICC-01/04-02/06-2771-Conf-Exp (the ‘Notice’), para. 3.

¹⁴ Notice, ICC-01/04-02/06-2771-Conf-Exp, para. 4.

7. On 12 September 2022, the Appeals Chamber issued its ‘Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”’, whereby it partially reversed the Reparations Order issued by Trial Chamber VI and remanded the matter to Trial Chamber II to issue a new order for reparations.¹⁵
8. On 26 September 2022, Mr Ntaganda filed a Request to Delay Transfer, requesting that his transfer to a State of enforcement be delayed until the reparations phase in his case is completed, or alternatively, until the process of assessment of victim application forms has been finalised.¹⁶

II. DETERMINATION OF THE PRESIDENCY

1. Applicable law

9. 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.¹⁷ 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;¹⁸ (b) the application of widely accepted international treaty standards governing the treatment of prisoners; (c) the views of the sentenced person;¹⁹ (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.

¹⁵ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”](#), 12 September 2022, ICC-01/04-02/06-2782 (‘Appeals Chamber Reparations Judgment’), p. 11.

¹⁶ Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 21, 31.

¹⁷ See chapter 12 of the Rules.

¹⁸ See also rule 201 of the Rules.

¹⁹ See also rule 203 of the Rules.

2. Designation of the State of enforcement

10. In view of the current unavailability of the enforcement possibilities raised by Mr Ntaganda in his Preliminary Observations and his Rule 203 Observations, Mr Ntaganda has expressed a preference for Belgium from amongst the currently available States of enforcement.²⁰ The Presidency has further taken into account a number of other factors that make Belgium the most suitable option at present, such as Mr Ntaganda's language skills and resulting ease in integrating into the life of a new detention facility, as well as the comparative ability to maintain family contact. These findings are without prejudice to the Presidency's prior indication that, if possible, it would consider it entirely appropriate to transfer Mr Ntaganda in future to a different State of enforcement willing and able to enforce Mr Ntaganda's sentence, which can provide a more culturally appropriate environment and better facilitate the maintenance of family ties.²¹
11. Having considered all factors listed in article 103(3) of the Statute, as well as the Agreement between the International Criminal Court and the Government of the Kingdom of Belgium on the Enforcement of Sentences of the International Criminal Court (the 'Agreement'), the Presidency is satisfied that Belgium fulfills all the necessary requirements to be considered as State of enforcement in this case.²² Pursuant to articles 103(3)(b) and 106 of the Statute and articles 4(2) and 6 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 of the sentence of imprisonment shall be subject to the supervision of the Court. In addition, Belgium 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.²³
12. 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 Belgium when designating it as State of enforcement. As a matter of practice, this information and documents have already been shared with Belgium. Nevertheless, the Presidency hereby orders the Registry to formally re-transmit to Belgium all information listed in rule 204(a)-(c) of the Rules, pursuant

²⁰ Notice, ICC-01/04-02/06-2771-Conf-Exp, para. 4.

²¹ Decision of 29 March 2022, ICC-01/04-02/06-2752-Conf-Exp, para. 30; Decision of 6 June 2022, ICC-01/04-02/06-2768-Conf-Exp, para. 14.

²² See also Decision of 29 March 2022, ICC-01/04-02/06-2752-Conf-Exp, para. 24.

²³ Article 7 of the Agreement.

to the present decision. Given the sensitivity of medical information, the Registry is not asked to re-transmit to the Belgian 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 Ntaganda's medical record or information, as necessary and appropriate, to the medical personnel who will assume responsibility for Mr Ntaganda's medical care at the detention facility in which he will serve his sentence of imprisonment.

3. The Request to Delay Transfer

13. Mr Ntaganda submits that on 12 September 2022, the Appeals Chamber found that the reparations order issued by Trial Chamber VI was underpinned by a series of errors and that the Appeals Chamber held, *inter alia*, that Trial Chamber II, to whom the matter was remanded, would need to ensure that Mr Ntaganda had the opportunity to review the victim application forms and file submissions thereon.²⁴ To support his Request to Delay Transfer, Mr Ntaganda argues that: (i) the process of reviewing application forms requires the participation of Mr Ntaganda whose review and assessment is central;²⁵ (ii) the process of assessment should take place in The Hague to avoid complicating the process, unnecessary security risks, placing an additional burden on counsel and for additional resources to be spent to finance missions to the enforcement State;²⁶ and (iii) a delayed transfer would provide additional time to facilitate the designation of an appropriate State of enforcement in closer proximity to Mr Ntaganda's family and to find an adequate resolution of a request for cooperation from a national judiciary.²⁷ Mr Ntaganda notably argues that his case is distinguishable from the *Lubanga* case where the Presidency had previously held that nothing in the legal framework for the enforcement of sentences of imprisonment required to delay transfer to a State of enforcement in view of ongoing reparations proceedings.²⁸

14. Having considered all arguments raised in the Request to Delay Transfer, the Presidency is not convinced that it is appropriate to delay any further Mr Ntaganda's transfer to a State of

²⁴ Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 11, 14, referring to [Appeals Chamber Reparations Judgment](#), ICC-01/04-02/06-2782, fn 1672.

²⁵ Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 16-18.

²⁶ Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 19-20.

²⁷ Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 26, 30. See also Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 25, 27-29.

²⁸ Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, paras 22-24, referring to Presidency, *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision designating a State of enforcement](#), 8 December 2015, ICC-01/04-01/06-3185 (the 'Decision of 8 December 2015'), p. 5.

enforcement, noting that his sentence became final on 30 March 2021. The Presidency sees no merit in the arguments that a delay is required in view of the ongoing reparations proceedings under the authority of Trial Chamber II or that Mr Ntaganda's case is distinguishable from the *Lubanga* case in this respect. As was previously held by the Presidency, pursuant to rule 202 of the Rules, the delivery of a sentenced person to the designated State of enforcement can occur any time after the decisions on conviction and sentence have become final.²⁹ Nothing in the legal framework for the enforcement of sentences of imprisonment requires the Presidency to delay transfer to a State of enforcement in view of ongoing reparations proceedings, with the control of such proceedings being a matter for the relevant trial chamber.³⁰ The potential practical challenges Mr Ntaganda raises in the Request to Delay Transfer appear entirely manageable and acceptable, and the Presidency is confident that the Belgian authorities will ensure Mr Ntaganda's capacity to participate, as necessary, in the ongoing reparations proceedings before the Court, including through access to his counsel.³¹ Furthermore, in response to the comparison made with the *Lubanga* case, the Presidency rejects the argument that there is lesser 'impetus' for transferring Mr Ntaganda to a State of enforcement.³² A significant amount of time has passed since Mr Ntaganda's conviction and sentence became final and, similar to the case of Mr Lubanga, a suitable enforcement State is willing to receive Mr Ntaganda. Finally, the Presidency reiterates that it considers that humanitarian reasons weigh in favour of a timely transfer to a State of enforcement, which relate both to the interests of the sentenced person to not unnecessarily delay this significant step and of other detained and untried persons whose rights are being affected by a prolonged stay of a sentenced person at the Detention Centre.³³

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

- (i) **REJECTS** the Request to Delay Transfer;
- (ii) **DESIGNATES** Belgium as the State in which Mr Ntaganda's sentence of imprisonment shall be served;

²⁹ Decision of 8 December 2015, ICC-01/04-01/06-3185, pp. 4-5.

³⁰ Decision of 8 December 2015, ICC-01/04-01/06-3185, p. 5.

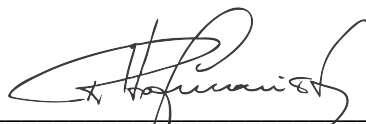
³¹ See Council of Europe: Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec(2006)2, para. 23.

³² See Request to Delay Transfer, ICC-01/04-02/06-2784-Conf-Exp, para. 24.

³³ Decision of 29 March 2022, ICC-01/04-02/06-2752-Conf-Exp, para. 28.

- (iii) **INVITES** Belgium, pursuant to article 103(1)(c) of the Statute and article 2(4) of the Agreement, to promptly inform the Court whether it accepts the present designation;
- (iv) **ORDERS** the Registry to transmit to Belgium the information and documents referred to in rule 204(a)-(c) of the Rules;
- (v) **ORDERS** the Registry, subject to Belgium's acceptance of the designation, to take the necessary steps to ensure the delivery of Mr Ntaganda to the State of enforcement, pursuant to rule 206 of the Rules; and
- (vi) **ORDERS** the Registry to reclassify the present decision as public following the completion of the transfer of Mr Ntaganda to Belgium.

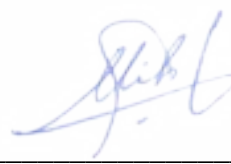
Done in both English and French, the English version being authoritative.



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 27 October 2022

At The Hague, The Netherlands