

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

**No.: ICC-01/04-01/06  
Date: 8 December 2015**

**THE PRESIDENCY**

**Before:** Judge Silvia Fernández de Gurmendi, President  
Judge Joyce Aluoch, First Vice-President  
Judge Kuniko Ozaki, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

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

**Confidential with confidential annex**

**Decision designating a State of enforcement**

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

Ms Fatou Bensouda

Mr James Stewart

**Counsel for Mr. Thomas Lubanga Dyilo**

Ms Catherine Mabile

Mr Jean-Marie Biju-Duval

**State**

Democratic Republic of the Congo

Kingdom of the Netherlands

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Division of Court Services**

Mr Marc Dubuisson

**Detention Section**

Mr Paddy Craig

**Other**

Trial Chamber II

Judges appointed pursuant to decision

ICC-01/04-01/06-3135

The Presidency of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“case”), notes the “Judgment pursuant to Article 74 of the Statute” of 14 March 2012 in which Mr. Thomas Lubanga Dyilo (“sentenced person”) was found guilty of the war crime of conscripting and enlisting children under the age of fifteen years into the Force patriotique pour la liberation du Congo and using them to participate actively in hostilities within the meaning of articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute,<sup>1</sup> the “Decision on Sentence pursuant to Article 76 of the Statute” of 10 July 2012 in which the sentenced person was sentenced to a total period of 14 years’ imprisonment<sup>2</sup> and the Appeals Chamber judgments in which the verdict and sentence were confirmed.<sup>3</sup>

The Presidency further notes its “Decision referring the case of *The Prosecutor v. Thomas Lubanga Dyilo* to Trial Chamber II” dated 17 March 2015 by which the case was referred to Trial Chamber II.<sup>4</sup>

The Presidency further notes that on 22 September 2015, the three judges of the Appeals Chamber appointed for the review concerning reduction of sentence,<sup>5</sup> pursuant to article 110(3) of the Rome Statute and rule 224(1) of the Rules of Procedure and Evidence (hereinafter all references to rules are to the Rules of Procedure and Evidence), determined that a reduction was not appropriate and that the next review of the sentence would occur in two years’ time.<sup>6</sup>

The Presidency also notes its “Order seeking the views of Mr. Thomas Lubanga Dyilo concerning the designation of a State of enforcement” dated 23 April 2015 in which, pursuant to article 103(3)(c) of the Rome Statute and rule 203, the Presidency sought the views of the sentenced person on the designation of a State in which his sentence of imprisonment would be served.<sup>7</sup>

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<sup>1</sup> Trial Chamber I, ICC-01/04-01/06-2842, para. 1358.

<sup>2</sup> Trial Chamber I, ICC-01/04-01/06-2901, para. 107.

<sup>3</sup> Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red; Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute”, 1 December 2014, ICC-01/04-01/06-3122.

<sup>4</sup> ICC-01/04-01/06-3131; See also Appeals Chamber, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, 3 March 2015, ICC-01/04-01/06-3129, paras. 240-243; Appeals Chamber, Order for Reparations, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 75.

<sup>5</sup> 15 June 2015, ICC-01/04-01/06-3135.

<sup>6</sup> Decision on the review concerning reduction of sentence of Mr Thomas Lubanga Dyilo, ICC-01/04-01/06-3173, paras. 78-79.

<sup>7</sup> ICC-01/04-01/06-3133-Conf.

The Presidency further notes the “Observations de la Défense de M. Thomas Lubanga sur la designation d’un état chargé de l’exécution de la peine”<sup>8</sup> dated 4 May 2015 (“Observations”) in which the sentenced person requested, *inter alia*, that the Presidency examine the possibility that he serve his sentence in the Democratic Republic of the Congo (“DRC”).<sup>9</sup>

The Presidency notes articles 103, 105, 106 and 108 of the Rome Statute and rules 200-208.

The Presidency notes that the sentenced person has expressed a clear view, pursuant to article 103(3)(c) of the Rome Statute and rule 203, that his preference is to return to the DRC, his state of nationality, in order to serve his sentence of imprisonment, noting in particular his need to maintain ties with his family and his capacity to be properly integrated into a prison community.<sup>10</sup>

The Presidency notes that, on 24 November 2015, pursuant to rule 200(5) and regulation 114 of the Regulations of the Court, the signature of an “Accord ad hoc entre le gouvernement de la République Démocratique du Congo et La Cour Pénale International sur l’exécution de la peine de M. Thomas Lubanga Dyilo, prononcée par la Cour” (“Agreement”) was finalised (Annex I), in which the DRC accepted that the sentenced person would serve the remainder of his sentence of imprisonment at a prison facility in the DRC.

The Presidency further notes that, pursuant to articles 103(3)(b) and 106 of the Rome Statute and article 4 of the Agreement, the enforcement of the 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, noting that the DRC 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.

The Presidency further notes that, in his Observations, the sentenced person submits that his transfer to a State of enforcement should be delayed until after he has presented certain observations in the ongoing reparations proceedings before Trial Chamber II.<sup>11</sup> The Presidency notes that, pursuant to rule 202, the delivery of a sentenced person to the designated State of enforcement can occur any time after the decisions on conviction and

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<sup>8</sup> ICC-01/04-01/06-3134-Conf.

<sup>9</sup> *Id.* at paras. 16-25.

<sup>10</sup> *Id.* at para. 23.

<sup>11</sup> *Id.* at paras. 26-35, pp. 10-11.

sentence have become final. The Presidency has identified nothing in the legal framework for the enforcement of sentences of imprisonment requiring it to delay such transfer in view of ongoing reparations proceedings, with the control of such proceedings being a matter for Trial Chamber II.

The Presidency *hereby designates* the DRC as the State in which the sentenced person's sentence of imprisonment shall be served.

The Presidency *hereby orders* the Registry to:

- transmit to the DRC the information and documents referred to in rule 204 and Article 2(3) of the Agreement, noting, in this regard, that the sentenced person has consented in writing to the transmission to the State of enforcement, on a confidential basis, of necessary information concerning his state of health, including any medical treatment that he is receiving;<sup>12</sup>
- take the necessary steps to ensure the delivery of the sentenced person to the State of enforcement, pursuant to rule 206; and
- reclassify this present Order and its Annex as public following the completion of the transfer of the sentenced person to the DRC.

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



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**Judge Silvia Fernández de Gurmendi**  
**President**

Dated this 8 December 2015

At The Hague, The Netherlands

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<sup>12</sup> *Id.* at para. 39.