



Original: **English**

No.: ICC-01/04-01/06  
Date: **04 September 2017**

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW  
CONCERNING REDUCTION OF SENTENCE**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmánski

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

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

**Public  
With one confidential Annex**

**Registry's Observations on the Criteria set out in rule 223 of the Rules  
of Procedure and Evidence**

**Source:** Registry

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

**The Office of the Prosecutor**

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Ms Helen Brady

**Counsel for the Defence**

Ms Catherine Mabilile  
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**Legal Representatives of the Victims  
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Mr Franck Mulenda  
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**Legal Representatives of the Applicants**

**Legal Representatives of the Victims  
V02**

Ms Carine Bapita Buyangandu  
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**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States' Representatives**

The Democratic Republic of the Congo

**Trust Fund for Victims**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Detention Section**

**Victims and Witnesses Unit**

**Other**

The Presidency

## I - Introduction

1. Following its “Scheduling Order for the second review concerning reduction of sentence of Mr Lubanga Dyilo” (“Order” and “Mr Lubanga” respectively),<sup>1</sup> the three judges of the Appeals Chamber appointed for this review (“Panel”), invited the Registrar to file written representations on the criteria set out in rule 223(a) to (e) of the Rules of Procedure and Evidence (“RPE”). In addition, the Panel requested the Registrar to “consult as necessary with any states considered to have potentially relevant information in relation to these criteria”.<sup>2</sup>
  
2. The Registry’s observations are limited to whether there has been a significant change in circumstances since the Panel’s first review decision. The Registry recalls that since the first review decision, Mr Lubanga has been transferred to the Makala prison in the Democratic Republic of the Congo (“DRC”).<sup>3</sup> For the period at issue, the Registrar will report on relevant information pertaining to criteria set out in rule 223(c) and (d) of the RPE. As far as the other relevant criteria are concerned, the Registry considers that either the parties or participants, including the DRC and the legal representatives for victims, are better placed to report thereon. Further, in line with the approach taken in 2015 for the Panel’s first review decision, the Registrar has not considered it necessary to consult any state other than the DRC.
  
3. As assessed below, the Registry is of the view that the early release of Mr Lubanga would not appear to give rise to significant social instability in DRC nor would it appear to affect the security situation of the dual status individuals who testified or the victims who expressed their views and concerns before the Court. Accordingly, the Registrar notes that the circumstances have not significantly changed since the Panel’s first review decision.

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<sup>1</sup> Panel, Scheduling Order for the second review concerning reduction of sentence of Mr Lubanga Lubanga Dyilo, 7 August 2017, ICC-01/04-01/06-3346, para. 3(a).

<sup>2</sup> *Id.*

<sup>3</sup> Mr Lubanga was transferred to the Makala Prison on 19 December 2015.

## II- Classification

4. Pursuant to regulation 23 *bis*(1) of the Regulations of the Court, the annex to the present submissions is classified as confidential as it contains personal information and contact details from Registry staff members and the Court's focal point within the DRC authorities.

## III - Submissions

### A. Registry's observations:

- a. No early release of the sentenced person would give rise to significant social instability*
5. The present report is based on information gathered by the Registry Country Analysis Unit in coordination with the Registry's DRC Field Office. It examines the potential impact of the current political dynamic and security situation affecting the DRC and more particularly the Ituri province.
6. Although political tensions and related violence have significantly increased in the country due, in part, to delays of the presidential election initially scheduled for November 2016, tensions are less pronounced in Ituri. The causal factors of social unrest in Kinshasa and elsewhere are multi-layered and exist alongside the resurgence and emergence of armed groups in Kongo Central, the Kasai and Kivu. However, there are no indications that these dynamics have significantly changed the circumstances around Mr Lubanga and the implication of his potential early release on social instability.
7. Insofar as there are tensions in Ituri, there are currently three main factors contributing to insecurity, namely (1) the continued activity of the *Force de*

*résistance patriotique de l'Ituri* ("FRPI"), a predominantly Lendu-Ngiti armed group primarily affecting southern parts of Irumu Territory,<sup>4</sup> (2) simmering election-related tensions in Bunia town, and (3) an influx of refugees, including rebel armed forces, from South Sudan to Aru territory. Nonetheless, there is no armed group activity recorded in Djugu territory and there has been no Hema affiliated armed group activity in Ituri for more than a decade. Moreover, regional actors no longer have the same motives and interests in using Ituri armed groups as proxies to achieve wider objectives.

8. In recent months (June-August 2017), reported incidents have been portrayed as illustrative of ethnic tensions between the Hema and the Lendu.<sup>5</sup> However, information available to date suggests that these incidents were criminally, rather than ethnically, motivated. While tensions between communities do rise and fall depending on localised events and developments at any given time, the overall context of continued tensions between Hema and Lendu communities has not significantly altered.
9. Regarding the current state of the *Union des Patriotes Congolais* ("UPC") founded by Mr Lubanga, it was recognised as a formal political party in recent years with candidates running in the 2011 legislative elections securing two seats out of the 500 of the National Assembly. As opposed to what was reported by the Registry in its previous observations with regard to the election calendar,<sup>6</sup> there is currently no clear timeline for the next legislative elections.
10. Additionally, there is no confirmation of Thomas Lubanga's political interests or ambitions. Regardless of his intentions, set against the backdrop of the general

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<sup>4</sup> ICC-01/04-01/06-3261-Conf-Exp-AnxI, para. 18.

<sup>5</sup> For example, on 21 June 2017 an angry crowd attacked a joint provincial government-UN delegation at Kasenyi in protest of the disappearance of two Hema youths; there were further protests when two bodies from the Hema ethnic community were discovered; the 08 August 2017 killing of a business man (Hema) on the Tchomia-Bogoro axis (NE Irumu Territory).

<sup>6</sup> Registry, Observations on the criteria set out in rule 223(a) to (e) of the Rules of Procedure and Evidence, 17 August 2015, ICC-01/04-01/06-3144-Red, para. 6.

context in DRC, specific dynamics in Ituri, and the current state of the UPC,<sup>7</sup> the overall political context in Ituri has not altered significantly since the first review decision.

11. In light of the above, there is an insufficient basis to conclude that Mr Lubanga's early release would give rise to significant social instability.

*b. No significant action taken by the sentenced person for the benefit of the victims; and impact on the victims and their families as a result of the early release*

12. The Registry is not aware of any significant action taken by the sentenced person for the benefit of the victims.

13. The below analysis focuses on the impact of a potential early release on victims who have testified before the Court - dual status individuals – and on victims who have expressed their views and concerns. It does not represent the views of all victims who are represented in the case, as the Registry considers that their respective legal representatives would be in a better position to do so.

14. During the trial proceedings, 11 dual-status individuals testified before the Court and three victims expressed their views and concerns. All 14 of them were granted full in-court protection measures. Out of the 11 dual-status witnesses, some have been internationally relocated, others have been internally resettled or have been handed back to the referring party. According to the Victims and Witnesses Unit ("VWU"), the victims are all safe following their testimony and the VWU has not received any information concerning security incidents stemming from their cooperation with the Court.

15. From a psychological standpoint, the early release of Mr Lubanga is likely to increase, among dual status individuals and victims, stress levels and to raise

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<sup>7</sup> See footnote 4, part IV, paras 19-30.

concerns about the physical security of relatives living in the area of Ituri. It might further affect the victims' perception of justice, especially of those ones with limited understanding of the judicial process.

16. Although the early release of Mr Lubanga could increase the victims' stress levels, the VWU is of the opinion that it would not affect the security situation of the victims who testified before the Court and of their families.

**B - DRC authorities' request for extension of time limit**

17. On 8 August 2017, pursuant to the Order and upon the Registry's invitation,<sup>8</sup> the "*Parquet Général de la République*" ("PGR") in DRC was invited to make its observations on the criteria enumerated under rule 223 of the RPE. On 31 August 2017, by way of an email,<sup>9</sup> the DRC authorities informed the Registry that it requested an extension of time limit until 8 September 2017 to file their observations. The Registry transmits this request to the Panel in annex.

  
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 Marc Dubuisson, Director, Division of Judicial Services  
 on behalf of  
 Herman von Hebel, Registrar

Dated this 04 September 2017

At The Hague, The Netherlands

<sup>8</sup> Annex 1: Note Verbale from the Registry to the "*Parquet Général de la République*" in DRC (ref: NV/2017/EOSS/207/JCA/nv) dated 8 August 2017 and related acknowledgement of receipt.

<sup>9</sup> Annex 1: Email from the PGR to the Registry dated 31 August 2017 at 16:56 and related correspondance.