

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06

Date: 07 July 2015

**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**

**Confidential *ex parte* Registry and Defence only
with four confidential annexes *ex parte* Registry and Defence only**

**Confidential Redacted version of "Observations on the criteria set out in rule 223 (a)
to (e) of the Rules of Procedure and Evidence" (ICC-01/04-01/06-3144-Conf-Exp)**

Source: Registry

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Ms Caroline Buteau

Legal Representatives of Victims V01

Mr Franck Mulenda
Mr Luc Walley

Legal Representatives of Victims V02

Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Paul Kabongo Tshibangu

The Office of Public Counsel for

Victims Ms Paolina Massida

REGISTRY

Registrar

Mr Herman von Hebel

Detention Section

Mr Patrick Craig

Other

The Presidency

The Registrar of the International Criminal Court (the "Court");

NOTING the "Scheduling order for the review concerning reduction of sentence of Thomas Lubanga Dyilo" (the "Order") issued by the Appeals Chamber on 16 June 2015;¹

NOTING rule 223 of the Rules of Procedure and Evidence ("RPE") and regulations 23bis, 90, 91 and 105 of the Regulations of the Court, and regulation 156 of the Regulations of the Registry;

SUBMITS as follows:

1. The present report and its annexes are filed under the classification Confidential *ex parte* – only Registry and Defence for Mr Lubanga – since part of its content reveals information pertaining to the health of Mr Lubanga.
2. A public redacted version suppressing the aforementioned information will be submitted along with the present report.

I. Preliminary remarks

3. The present report will be articulated on the five criteria highlighted in rule 223 of the RPE.

a. The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime

4. While Mr Lubanga has an overall good behaviour vis-à-vis the other detained persons, the custodian staff and the administration of the ICC Detention Centre, it is difficult to assess whether his conduct shows a genuine dissociation from his

¹ ICC-01/04-01/06-3137.

crime. The Registry is not aware of any speech or any conduct which has showed regrets or other form of dissociation from his crime. In general, Mr Lubanga is well acquainted with the Detention Centre House Rules and abides by the instructions communicated to the detainees.

b. The prospect of resocialization and successful resettlement of the sentenced person

5. Since his conviction, Mr Lubanga has not been introduced to a rehabilitation programme due to his continuous detention at the ICC Detention Centre, which is not fully in conformity with applicable international standards.² He is however much involved in group activities with other detainees, such as common sport activities. This could hardly be indicative of a prospect of resocialization and successful resettlement of the sentenced person considering that the ICC Detention Centre does not possess the necessary expertise for assessing that criterion. Indeed, the ICC Detention Centre is not mandated by the Court legal texts to undertake those responsibilities, does not have the specialist staff with the requisite skills and is not designed for that purpose.

c. Whether the early release of the sentenced person would give rise to significant social instability

6. The Registrar is not yet in a position to provide reliable conclusions on the question. In anticipation of providing an impact assessment ahead of a potential

² Standard Minimum Rules for the Treatment of Prisoners, paragraph 61, "The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of **social rehabilitation of the prisoners**. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners."

early release and possible return of Lubanga to the Democratic Republic of the Congo ("DRC"), the Registry has identified a number of issues to consider.

- **Timing of early release:** The timing could potentially be more problematic if it coincided with local and provincial elections and implantation of the dividing existing 11 provinces into 26. Known in the DRC as *découpage*, this policy was mandated in the new 2006 constitution and has yet to be carried out. Incumbent President Joseph Kabila had set a 30 June 2015 deadline for implementation. Ituri would become a province in its own right (rather than a District in Province Orientale). Political leaders in Ituri (including within UPC) have indicated intent to strive for greater autonomy or even full independence for Ituri.
- **Potential political instability within UPC which is Mr Lubanga's political party:** It should be noted that Mr Lubanga remains a powerful figurehead for the UPC but the potential for rivals to emerge from within the party to stand in the elections should be considered. The election calendar remains a point of national controversy in DRC, but the current Election Commission timetable is as follows:
 - 25 October 2015 : *"Élections provinciales, municipales, urbaines et locales"* ;
 - 10 December 2015 : *"Publication résultats des élections provinciales, municipales, urbaines et locales"* ;
 - 17 January 2016: *"Elections des sénateurs et députés provinciaux"* ;
 - 31 January 2016: *"Elections des gouverneurs et vice-gouverneurs"*.
- **Local community views:** The local population in general and respective ethnic communities have not been consulted specifically to obtain views on a potential early release of Mr Lubanga. However, it is the prevailing sentiment that the UPC will await his return and maintain their loyalty. UPC supporters view Lubanga as a "hero/martyr" figure. Disturbances are possible if large crowds gather. It is a working assumption at this stage that any such disturbances would remain localised and could be sufficiently controlled by DRC authorities and UN peacekeepers.

- [REDACTED]³ [REDACTED]⁴.

7. [REDACTED].

d. Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release

8. [REDACTED]⁵ [REDACTED]⁶. REDACTED.

9. As regard the views of the victims, the Registry considers that their legal representatives would be in a better position to enunciate them as directed by the Appeals Chamber in the Order.⁷

e. Individual circumstances of the sentenced person, including a worsening state of physical or mental health of advanced age

10. Born on 29 December 1960, the Registry wishes to submit that Mr Lubanga is not an elderly man. He is married and is the father of seven children. Information regarding his health was requested from the ICC Detention Centre Medical Officer. Further to Mr Lubanga's consent, the Medical Officer provided a report which is appended to this submission. Because of the very nature of the report and the wish of Mr Lubanga Dyilo, it is submitted under the classification Confidential, *ex parte* available only to Defence and Registry.⁸

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ ICC-01/04-01/06-3137.p.4.

⁸ Annex 1: Medical report and consent.

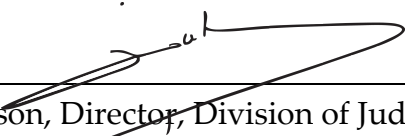
II. DRC authorities views

11. On 23 June 2015, the Registry invited the "*Parquet Général de la République*" in DRC to make its observations on criteria enumerated under rule 223 of the RPE by 26 June 2015.⁹

12. On 24 June the "*Procureur Général de la République*" copied the Registrar on an internal correspondence to the Minister of Justice in DRC, requesting an extension of deadline in order to transmit its observations to the Registry¹⁰. Such observations were provided on 29 June 2015¹¹ and tend to reservations expressed by the Congolese authorities in relation to some of the elements of Rule 223 of the RPE.

III. Final Observations

13. The Registry wishes to indicate that the above observations correspond to general information that can be made available considering the time constraints within which the Registry had worked to comply with the Order.



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

Dated this 07 July 2015

At The Hague, The Netherlands

⁹ Annex 2: Note Verbale from the Registry to the "*Parquet Général de la République*" in DRC (ref. 2015/ER/61/ab/JCA) dated 23 June 2015.

¹⁰ Annex 3: Note Verbale from the Registry to the "*Parquet Général de la République*" in DRC (ref. 2015/ER/69/ab/JCA) dated 26 June 2015.

¹¹ Annex 4: Correspondence and Observations by the DRC authorities.