

ANNEX 4

CONFIDENTIAL, *EX PARTE*, REGISTRY AND DEFENCE

**Cour
Pénale
Internationale**



**International
Criminal
Court**

To: Mr Jean-Claude Aubert
Chief, Field Operations Section/Registry
International Criminal Court
The Hague, The Netherlands
+31 (0)7 05 15 90 43
+31 (0)6 46 16 86 81

Date: 1 July 2015

From: Adrien Luciani
Head, Field Office
Democratic Republic of the Congo
Field Operations Section/Registry
International Criminal Court
Adrien.Luciani@icc.cpi.int
+243.97.10.06.511
[signed]

Ref.: FOS/KIN/RB/0481/2015

Re: PGR – Correspondence Nos. 4079, 4222 & 4224.

Dear Jean-Claude,

Please find attached from the PGR, the following correspondence:

- No. 4079/D.028/3670/PGR/MUN/2015
- No. 4222/D.030/166/PGR/MUN/2015
- No. 4224/D.030/3670/PGR/MUN/2015.

Best Regards

DEMOCRATIC REPUBLIC OF THE CONGO

Kinshasa,

KNF/MLM [FLAG]

No. 4079/D.028/3670/PGR/MUN/2015

Public Prosecution Office

Public Prosecutor

COPIED for information:

- **The Auditeur Général** (Chief Military Prosecutor) of the Armed Forces of the Democratic Republic of the Congo in Kinshasa/Gombe
- **The Registrar** of the International Criminal Court
The Hague, The Netherlands

Kinshasa, 24 June 2015

THE PUBLIC PROSECUTOR

[Round stamp of the Public Prosecution Office,
Democratic Republic of the Congo]

[signed]

Re: Observations – Case of

Flory Kabange Numbi

The Prosecutor v. Thomas Lubanga

Dyillo

**To His Excellency the Minister of
Justice, Keeper of the Seals and
Human Rights**

In Kinshasa/Gombe

Your Excellency,

I hereby transmit to you, for the observations of the Government of the Republic, note verbale 2015/ER/61/ab/JCA of 23 June 2015 and the annex thereto, sent to me by the Registry of the International Criminal Court in relation to the case referred to at heading.

I am, however, requesting the Registrar of the International Criminal Court, who has been copied in, to ask that the authorities of the Republic be granted additional time to enable them to provide the requested observations.

Please accept, Your Excellency, the assurances of my highest consideration,

THE PUBLIC PROSECUTOR

Flory Kabange Numbi

7016 Kin. 1 – Fax: 002431221502 – email: pgr_rdcongo15@yahoo.com

Official Court Translation

DEMOCRATIC REPUBLIC OF THE CONGO

Kinshasa

MLM [FLAG]

No. 4222/D.030/166/PGR/MUN/2015

Public Prosecution Office

Public Prosecutor

COPIED for information:

- **The Registrar of the International Criminal Court**
The Hague, The Netherlands

Kinshasa, 29 June 2015

THE PUBLIC PROSECUTOR

[Round stamp of the Public Prosecution Office,
Democratic Republic of the Congo]

[signed]

Re: Case of

Flory Kabange Numbi

The Prosecutor v. Jean Pierre

Bemba Gombo et al.

ICC-01/05-01/13-1029

**To His Excellency the Minister of
Justice, Keeper of the Seals and
Human Rights**

In Kinshasa/Gombe

Your Excellency,

I hereby transmit to you, for action, the document entitled "Order Requesting Observations from Relevant States on Interim Release" in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* (ICC-01/05-01/13-1029) of 24 June 2014, sent to me by note verbale 2015/ER/68/ab/JCA of 26 June 2015 issued by the Registry of the International Criminal Court in relation to the matter at heading.

Please accept, Your Excellency, the assurances of my highest consideration,

THE PUBLIC PROSECUTOR

Flory Kabange Numbi

DEMOCRATIC REPUBLIC OF THE CONGO

Kinshasa, 29.06.2015

KNF/MLM [FLAG]

No. 4224/D.030/3670/PGR/MUN/2015

Public Prosecution Office

Public Prosecutor

COPIED for information:

- **His Excellency the Minister** of Justice, Keeper of the Seals and Human Rights
- **The Auditeur Général** (Chief Military Prosecutor) of the Armed Forces of the Democratic Republic of the Congo.

(All) in Kinshasa/Gombe

Kinshasa,

THE PUBLIC PROSECUTOR

Re: Case of

Flory Kabange Numbi

The Prosecutor v. Thomas Lubanga

Dyilo

**To the Registrar of the International
Criminal Court**

The Hague, The Netherlands

The Registrar,

Further to your notes verbales 2015/ER/61/ab/JCA of 23 June 2015 and 2015/ER/69/ab/JCA of 26 June 2015, and also to my letter no. 4079/D.028/3670/PGR/MUN/2015 of 24 June 2015 addressed to His Excellency the Minister of Justice, Keeper of the Seals and Human Rights concerning the matter at heading, in which you were copied, please find herewith the observations of the Authorities of the Democratic Republic of the Congo in the above-mentioned case.

Please accept the assurances of my highest consideration,

THE PUBLIC PROSECUTOR

[initials]

Flory Kabange Numbi

[Round stamp of the Public Prosecution Office,
Democratic Republic of the Congo]

Democratic Republic of the Congo
[Flag]
Ministry of Justice and Human Rights

URGENT *For transmission to
the Registrar/ICC
(Illegible) 25 VI 2015*

[Stamp: Democratic Republic of the Congo, Public
Prosecution Office]
Received 29 June 2015 at 15.25. [Initialled]

OBSERVATIONS OF THE DRC AUTHORITIES

1. In its note verbale referenced 2015/ER/61/ab/JCA of 23 June 2015, the Registry of the International Criminal Court ("the Registry") sought the observations of the authorities of the Democratic Republic of the Congo (DRC) on the issue of a possible reduction in the sentence imposed on Thomas Lubanga Dyilo. That request was made following the decision of the three judges of the Appeals Chamber appointed for the review concerning reduction of sentence of 15 June 2015 (ICC-04/04-01/06-3137). The procedural history of the *Thomas Lubanga* case will be set out before the DRC authorities make their observations.
2. **Procedural history**
Thomas Lubanga, a national of the DRC, was sentenced on 10 July 2012 to 14 years' imprisonment for the war crime of enlisting and conscripting children under the age of fifteen years and using them to participate in hostilities. In accordance with the provisions of the Rome Statute, the Bench considered that the six years spent by Thomas Lubanga in the custody of the Court should be deducted from his sentence. Otherwise put, on the date of sentencing Thomas Lubanga had only eight years of his sentence left to serve. The verdict and the sentence were confirmed by the Appeals Chamber on 1 December 2014.
3. Furthermore, it should be noted that, on 7 August 2012, Trial Chamber I issued a decision establishing the principles for reparations to victims in this case; and that, in March this year, the Appeals Chamber definitively adopted the principles for reparations owed to the victims and amended the Trial Chamber decision. It (the Appeals Chamber) also instructed the Trust Fund for Victims to present an implementation plan for collective reparations so that the victims of Thomas Lubanga's crimes could finally receive the long-awaited reparations.
4. The DRC authorities are now invited to submit their observations on the application by the Defence for Thomas Lubanga for a reduction in sentence.
These observations will focus on analysis of the legal basis for these proceedings, the arguments of the Defence for Thomas Lubanga in support of its application, and other specific considerations concerning various proceedings still pending.

[Initials]

Palais de Justice, Place de l'Indépendance – Kinshasa/Gombe – Tel:+243 15 16 45 95
E-mail: info@minjustice.cd – Website: www.minjustice.cd

5. Observations of the DRC authorities:

(a) *Analysis of the legal basis of the application for a reduction in sentence:*

Rule 223 (a) to (e) of the Rules of Procedure and Evidence sets out the four criteria to justify such an application. The position of the DRC authorities in this connection is as follows:

✓ *The conduct of the sentenced person shows dissociation from his or her crime:*

This can be confirmed only by the relevant prison authorities. However, as far as the DRC authorities are concerned, **Thomas Lubanga's dissociation must be public and unequivocal.**

✓ *The prospect of resocialization and successful resettlement of the sentenced person:*

Here again, this is a matter which can be assessed only by the prison authorities. The DRC authorities, for their part, stress that **the attitude of the sentenced person in detention does not always reflect the reality of his or her genuine prospects of resocialization and resettlement and that, in many cases, such an attitude may be deceitful.**

✓ *The prospect of early release of the person not giving rise to significant social instability:*

The DRC authorities have serious reservations on this point. Indeed, Thomas Lubanga's conviction only of the war crime of enlisting and conscripting children under the age of fifteen and using them in the hostilities was poorly received by communities in Ituri who had, however, witnessed other, more serious crimes. Thomas Lubanga's early release and return to Ituri could compound that perception and rekindle bitter memories of suffering and trauma among victims who have not yet received reparation.

✓ *Any action undertaken by the sentenced person for the benefit of the victims:*

The DRC authorities consider that it is up to Thomas Lubanga to demonstrate his good faith, in particular by cooperating in locating and identifying his assets so as to accelerate the process of reparations to the victims and affected communities.

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- ✓ The individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age:

In the view of the DRC authorities, none of these criteria would appear to be met, unless the prison authorities have other information.

(b) Criticism of the arguments of the Defence for Thomas Lubanga:

Thomas Lubanga's Defence advances his continuing willingness to cooperate with the Court in its investigations and prosecutions and his voluntary assistance in enabling the enforcement of the judgments and orders of the Court.

As far as the DRC authorities are concerned, there is no evidence at this stage to conclude that Thomas Lubanga is clearly willing to meet these criteria.

(c) Specific considerations:

- ✓ The DRC authorities express legitimate concerns about the damaging consequences of Thomas Lubanga's early release as the *Bosco Ntaganda* case is still pending before the Court.
- ✓ Furthermore, while General Jérôme Kakwavu is serving a 10-year prison sentence having been convicted by the Supreme Military Court of the DRC, it would be misguided to release Thomas Lubanga. That would give the impression of a two-tier justice system.

6. CONCLUSION

In view of the foregoing, the DRC authorities express the strongest reservations concerning the grant of early release for the sentenced person, Thomas Lubanga.

Dated this 29 June 2015

At Kinshasa

For the Minister

[signed]

Christophe Mboso N'Kodia Pwanga

Deputy Minister of Justice and Human Rights