

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-01/04-01/07**

Date: **21 March 2018**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA**

Confidential

**Decision on Applications for Resumption of Action Lodged by Family Members
of Deceased Victims a/0281/08 and a/25049/16**

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

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Counsel for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

TRIAL CHAMBER II of the International Criminal Court ("Chamber" and "Court", respectively), acting pursuant to articles 68 and 75 of the Rome Statute ("Statute"), rules 85 and 89 of the Rules of Procedure and Evidence and regulation 86 of the Regulations of the Court, hands down the following decision.

I. Procedural History

1. On 24 March 2017, the Chamber issued its Order for Reparations concerning Germain Katanga ("Order for Reparations" and "Mr Katanga", respectively), finding that 297 of the 341 applicants for reparations in the instant case had shown to the standard of proof of a balance of probabilities that they were victims of the crimes of which Mr Katanga had been convicted.¹ Accordingly, for the purpose of reparations, the Chamber recognized the victim status of these 297 applicants for reparations and ordered that they be awarded both individual and targeted collective reparations.²

2. On 20 February 2018, the Legal Representative of Victims ("Legal Representative") filed an application requesting that family members of deceased victims a/0281/08 and a/25049/16 be authorized to resume the actions initiated by these victims ("Application").³

3. The Legal Representative apprised the Chamber of the deaths of victims a/0281/08 and a/25049/16, who had been admitted to participate in the proceedings against Mr Katanga ("Proceedings") and subsequently granted the *locus standi* of victim for the purpose of reparations pursuant to the Order for Reparations of

¹ "Order for Reparations pursuant to Article 75 of the Statute", 24 March 2017, ICC-01/04-01/07-3728-tENG, with one public annex and one confidential annex *ex parte* Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga.

² Order for Reparations, p. 118.

³ "*Demande de reprise des actions introduites par les victimes a/0281/08 et a/25049/16*", dated 19 February 2018 and registered on 20 February 2018, ICC-01/04-01/07-3774-Conf, with two confidential annexes *ex parte* Legal Representative of Victims, Trust Fund for Victims, and Victims Participation and Reparations Section. A confidential version of the annexes *ex parte* Victims Participation and Reparations Section, Trust Fund for Victims and Legal Representative was also filed on the same day. A public redacted version of the application and redacted confidential versions of both annexes were filed on the same day.

24 March 2017.⁴ He submitted that in conformity with relevant case law,⁵ "[TRANSLATION] successors are designated in the minutes of each family council meeting. They are thus mandated by a family council to continue the action initiated before the Court."⁶ The Legal Representative further argued that, in the case at hand, this implies a change in the holder of the rights attaching to the actions initiated by victims a/0281/08 and a/25049/16, viz. the right, on behalf of the deceased, to the reparations awarded.⁷

4. With regard to the protective measures to be granted to the successors vis-à-vis the public, the Legal Representative submitted that the designated successors should be granted anonymity until they have been consulted on this matter.⁸

5. The Defence team for Mr Katanga has not filed a response.

6. On 8 March 2018, the Appeals Chamber issued the judgment on the appeals against the Order for Reparations.⁹

II. Analysis

7. First, the Chamber recalls that on 24 March 2017, it awarded reparations to victims who were able to show that they had suffered harm as a result of the crimes of which Mr Katanga was convicted.¹⁰ The Chamber reiterates that it granted the *locus standi* of victim for the purpose of reparations to applicants a/0281/08 and a/25049/16, among others.¹¹ Moreover, on 8 March 2018, the Appeals Chamber rendered the judgment on appeal on reparations in which it upheld the Chamber's

⁴ Application, paras. 12-13.

⁵ Application, paras. 10-11.

⁶ Application, para. 13.

⁷ Application, para. 8.

⁸ Application, para. 14.

⁹ "Confidential Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled 'Order for Reparations pursuant to Article 75 of the Statute'", 8 March 2018, ICC-01/04-01/07-3778-Conf. A public redacted version of the judgment was issued on 9 March 2018.

¹⁰ "Order for Reparations", ICC-01/04-01/07-3728-tENG, paras. 307 and 309, pp. 107 and 108, with one public annex and one confidential annex *ex parte* Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga.

¹¹ Annex II of the Order for Reparations, ICC-01/04-01/07-3728-Conf-Exp-AnxII, pp. 683 to 685 and pp. 726 to 728.

decision on the 297 applicants for reparations to whom the Chamber had accorded victim status, which included victims a/0281/08 and a/25049/16.¹² The Chamber's decision on the victim status of the 297 applicants for the purpose of reparations is therefore final.

8. With regard to the applications for the resumption of action, the Chamber recalls that case law has been consistent in permitting the close relatives of a victim – who has been authorized to participate in the trial but dies during the course of the proceedings – to continue the action initiated by the victim before the Court. To do so, the person concerned must establish the victim's death, his or her family relationship with the victim, and his or her designation as successor by their family members.¹³

9. As stated above, the Chamber awarded reparations to victims a/25049/16 and a/0281/08. Therefore, the issue is not whether the designated people may be authorized to *resume the actions* initiated by the deceased victims, but rather whether the *right to the reparations* awarded to the deceased victims must be *transferred* to them. To the Chamber's knowledge, this is the first time that such an issue has arisen before this Court. The Chamber is of the view that the fact that a victim can no longer benefit from the reparations awarded to him or her because he or she has died does not terminate this right, especially where the victim's family wishes to continue the action. Accordingly, and provided that the relevant conditions are met, the Chamber considers that the successor in the action initiated by the deceased victim becomes entitled to the reparations awarded. In this connection, the Chamber

¹² Judgment on Reparations, p. 4.

¹³ "Decision on the Application made by the Common Legal Representative of Victims on 2 March 2017", 15 March 2017, ICC-01/04-01/07-3727-tENG, para. 6; "Decision on the Application for Resumption of Action Submitted by a Relative of Deceased Victim a/0265/09 and the Appointment of a New Representative for Victim a/0071/08", 12 December 2016, ICC-01/04-01/07-3721-tENG ("Decision of 12 December 2016"), para. 7; "Decision on the applications for resumption of action lodged by the family members of deceased victims a/0015/09, a/0032/08, a/0057/08, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0286/09, a/0298/09, a/0354/09, a/0361/09, a/0391/09, a/2743/10 and a/3049/15", 20 May 2016, ICC-01/04-01/07-3691-tENG, para. 7; "Decision on the applications for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09", 11 May 2015, ICC-01/04-01/07-3547-tENG, para. 6; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure", 22 December 2009, ICC-01/04-01/07-1737-Conf-Exp, para. 30.

considers that the conditions to be met to be authorized to resume the action initiated by a victim who dies during the course of the proceedings, as explained above,¹⁴ apply *mutatis mutandis* to the implementation phase of reparations.

10. As regards victim a/25049/16, the Chamber notes that this victim was admitted to participate in the proceedings by a decision of 23 September 2009.¹⁵ The Chamber also notes that a consolidated version of this victim's dossier was submitted to the Chamber, as well as to the Defence in redacted form, on 26 and 29 February 2016, respectively, for participation in the reparations proceedings.¹⁶

11. The Chamber notes that the successor submitted through the Legal Representative a document attesting to the death of victim a/25049/16 entitled "[TRANSLATION] Minutes of the family council" signed by members of the victim's family and mandating the successor to act on behalf of deceased victim a/25049/16, as well as copies of the identity documents of each member of the family council.¹⁷

12. The Chamber finds that the information contained in the Application is sufficient to establish (i) the death of victim a/25049/16; (ii) the family relationship between the deceased victim a/25049/16 and the successor; and (iii) that the successor has indeed been mandated by the family to continue the action initiated before the Court by deceased victim a/25049/16.

13. The Chamber therefore decides that the successor becomes the holder of the right, on behalf of deceased victim a/25049/16, to reparations awarded to this victim in accordance with the modalities proposed by the Trust Fund, subject to the approval of these modalities by the Chamber.

¹⁴ See, above, para. 8.

¹⁵ "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", 23 September 2009, ICC-01/04-01/07-1491-Conf-Exp-Anx, with one confidential annex *ex parte* Registry and Legal Representatives of Victims. A public redacted version was filed on the same day.

¹⁶ ICC-01/04-01/07-3661-Conf-Exp-Anx28 and ICC-01/04-01/07-3661-Conf-Anx28-Red.

¹⁷ Annex 2.

14. As regards victim a/0281/08, the Chamber notes that this victim was admitted to participate in the proceedings by a decision of 23 September 2009.¹⁸ The Chamber also notes that a consolidated version of this victim's dossier was submitted to the Chamber, as well as to the Defence in redacted form, on 26 and 29 February 2016, respectively, for participation in the reparations proceedings.¹⁹

15. The Chamber recalls, however, that by its decision of 20 May 2016 it took note of the death of victim a/0281/08 and authorized a family member to resume the action initiated by this victim.²⁰ Hence, the Application is not prompted by the death of victim a/0281/08, but by the death of the *successor* authorized by the Chamber to continue the action initiated by victim a/0281/08. In this instance, therefore, the issue concerns the transfer of a right from one successor to another. The Chamber finds that the reasoning given as it applies to victim a/25049/16 is also valid here.

16. The Chamber notes that the newly designated person submitted, through the Legal Representative, a document attesting to the death of the successor entitled "[TRANSLATION] Minutes of the family council" signed by the family members of a/0281/08, mandating him or her to act on behalf of the successor, as well as copies of the identity documents of each member of the family council.²¹

17. The Chamber considers that the information contained in the Application and in the Legal Representative's application filed on 14 March 2016²² is sufficient to establish (i) the death of the person initially authorized to resume the action; (ii) the family relationship between victim a/0281/08 and the newly designated person; and

¹⁸ "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", 23 September 2009, ICC-01/04-01/07-1491-Conf-Exp-Anx and a confidential annex *ex parte* Registry and Legal Representatives of Victims. A public redacted version was submitted on the same day.

¹⁹ ICC-01/04-01/07-3661-Conf-Exp-Anx15 and ICC-01/04-01/07-3661-Conf-Anx15-Red.

²⁰ "Decision on the applications for resumption of action lodged by the family members of deceased victims a/0015/09, a/0032/08, a/0057/08, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0286/09, a/0298/09, a/0354/09, a/0361/09, a/0391/09, a/2743/1", 20 May 2016, ICC-01/04-01/07-3691-tENG.

²¹ Annex 1.

²² "*Demande de reprise des actions introduites par les victimes a/0015/09, a/0032/08, a/0057/08, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0286/09, a/0298/09, a/0354/09, a/0361/09, a/0391/09, a/2743/10 et a/30490/15*" with confidential *ex parte* annexes 1-15 and confidential redacted annexes, dated 14 March 2016 and registered on 15 March 2016, ICC-01/04-01/07-3668-Conf. A public redacted version of the application was filed on the same day.

(iii) that the newly designated person has indeed been mandated by his or her family to continue the action initiated before the Court by victim a/0281/08.

18. Therefore, the Chamber also decides that the newly designated successor becomes, on behalf of deceased victim a/25049/16, the holder of the right to reparations awarded to this victim in accordance with the modalities proposed by the Trust Fund, subject to the approval of these modalities by the Chamber.

19. As for the condition whereby the action may be resumed only on behalf of the deceased victim and within the limits of the views and concerns expressed by the victim in his or her initial application, the Chamber recalls that the Legal Representative and the Trust Fund met with the designated successors during the mission in February 2018 to determine the victims' choices of reparations modalities.²³ The Legal Representative affirmed that he would record the choices that the designated successors had expressed on behalf of the deceased victims, subject to the Chamber's decision on the transfer of rights.²⁴ In the light of the Chamber's decision granting the designated successors the right to receive the reparations awarded to deceased victims a/0281/08 and a/25049/16, the Chamber will take into account the preferences expressed by these successors.

20. Lastly, the Chamber recalls that the protective measures granted to victims – anonymity vis-à-vis the public – likewise apply to the respective successors of the actions initiated by victims a/0281/08 and a/25049/16.²⁵

FOR THESE REASONS, the Chamber

GRANTS the Application;

DECIDES that the people mandated by the families of deceased victims a/0281/08 and a/25049/16 are the new holders of the right to the reparations awarded in the instant case; and

²³ Application, para. 16.

²⁴ Application, paras. 15-16.

²⁵ See, for example, Decision of 15 March 2017, para. 9, and Decision of 12 December 2016, para. 10.

REITERATES that the above-mentioned authorized people are granted anonymity vis-à-vis the public.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 21 March 2018

At The Hague, Netherlands