

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: ICC-01/04-01/07
Date: **4 February 2019**

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 the Application for Resumption of Action Brought by Victim
a/0204/08**

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

TRIAL CHAMBER II ("Chamber") of the International Criminal Court ("Court"), acting pursuant to articles 68 and 75 of the Rome Statute, rules 85 and 89 of the Rules of Procedure and Evidence, and regulation 86 of the Regulations of the Court, decides as follows:

I. Procedural history

1. On 24 March 2017, the Chamber issued the "Order for Reparations pursuant to Article 75 of the Rome Statute" granting victim status for the purposes of reparations to 297 applicants, including Victim a/0204/08, and ordering the award of both individual and targeted collective reparations ("Order for Reparations").¹
2. On 8 March 2018, the Appeals Chamber issued the judgment on the appeals² against the Order for Reparations,³ confirming the Chamber's decision with regard to the 297 applicants for reparations, which covers the application submitted by Victim beneficiary a/0204/08.⁴
3. On 18 December 2018, the Legal Representative of Victims ("Legal Representative") filed an application requesting that a family member of deceased Victim a/0204/08 ("Applicant") be authorized to resume the action brought by that victim⁵ ("Application relating to Victim a/0204/08" or "Application").

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 (Annex I) and one confidential annex *ex parte* Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga (Annex II).

² "Defence Notice of Appeal against the '*Ordonnance de réparation en vertu de l'article 75 du Statut*'", 26 April 2017, ICC-01/04-01/07-3738; "Notice of Appeal against the Reparations Order and its Annex II issued in accordance with article 75 of the Statute on 24 March 2017", ICC-01/04-01/07-3739, 26 April 2017, ICC-01/04-01/07-3739; "Notice of Appeal Against the '*Ordonnance de réparation en vertu de l'article 75 du Statut*' and its Annex II", 25 April, ICC-01/04-01/07-3737-tENG.

³ 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*'" ("Judgment on Reparations"), 8 March 2018, ICC-01/04-01/07-3778-Conf. A public redacted version of the Judgment was issued on 9 March 2018.

⁴ Judgment on Reparations, p. 4.

⁵ "*Demande de reprise de l'action introduite par la victime a/0204/08*", 18 December 2018, ICC-01/04-01/07-3820-Conf, with one confidential annex *ex parte* Legal Representative and the Victims Participation

4. The Defence did not file submissions on the Application.

II. Analysis

a) Applicable law and procedure

5. The Chamber notes that, provided the relevant conditions are met, the successor in an action initiated by a deceased victim becomes entitled to the reparations awarded.⁶ In order to meet these conditions, the successor 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.⁷ Once those conditions have been met, the successor in the action brought by the deceased victim becomes entitled to the reparations awarded.⁸

b) Finding of the Chamber

6. The Chamber notes that the Applicant has submitted, through the Legal Representative, a document entitled "[TRANSLATION] Minutes of the Family Council Meeting", signed by six family members, mandating him to act on behalf of Victim a/0204/08 ("Minutes of the Family Council Meeting")⁹ The Applicant also relies on a document certifying the death of Victim beneficiary a/0204/08.¹⁰ The Chamber notes that the documents are supplemented by copies of the identity documents of each member of the family council.¹¹

7. The Chamber notes that the Applicant did not produce a certificate of family relationship with Victim beneficiary a/0204/08. Nonetheless, it considers that, where an applicant is unable to produce an acceptable document, such as a certificate of family relationship, the presentation of any other documentation or material that

and Reparations Section, and the same annex, redacted and confidential, *ex parte*, Trust Fund for Victims and the Defence only. On the same day, a public redacted version of the annex was filed.

⁶ "Decision on Applications for Resumption of Action Lodged by Family Members of Deceased Victims a/0281/08 and a/25049/16", 21 March 2018, ICC-01/04-01/07-3782-Conf-tENG, paras. 8 and 9 ("Decision of 21 March 2018").

⁷ Decision of 21 March 2018, para. 9 and references cited. See also "Decision on the Applications for Resumption of Action Submitted by the Legal Representative of Victims in respect of Victims a/0117/09 and a/0351/09" 18 July 2018, ICC-01/04-01/07-3803-Conf ("Decision of 18 July 2018").

⁸ Decision of 21 March 2018, para. 9 and references cited. See also Decision of 18 July 2018.

⁹ ICC-01/04-01/07-3820-Conf-Exp-Anx.

¹⁰ *Idem*.

¹¹ *Idem*.

enables the Chamber to determine the veracity of the allegations made in the application submitted to it, is also sufficient to establish the family relationship with the deceased victim.¹² In line with its previous decisions, the Chamber may accept a statement signed by at least two credible witnesses to establish the family relationship between the deceased victim beneficiary and the Applicant.¹³ In this instance, the Chamber notes that the minutes of the family council meeting, which were signed by six family members, contain information on the family relationship between the Applicant and Victim beneficiary a/0204/08. The information in that document is therefore sufficient to establish the family relationship between deceased Victim a/0204/08 and the Applicant.

8. In view of the foregoing, the Chamber considers that the information as a whole contained in the application relating to Victim a/0204/08 is sufficient to establish: (i) the death of Victim a/0204/08; (ii) the family relationship between deceased Victim a/0204/08 and the Applicant; and (iii) that the Applicant has been duly mandated by the victim's family to continue the action brought before the Court by deceased Victim a/0204/08.

9. Accordingly, the Chamber rules that the Applicant becomes entitled, on behalf of deceased Victim a/0204/08, to the reparations awarded to the victim in accordance with the modalities proposed by the Trust Fund, once those modalities are approved by the Chamber.

10. Regarding the condition that the action may be continued 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 notes that, during the mission which took place in February 2018,¹⁴ the Legal Representative and the Trust Fund held discussions with Victim beneficiary a/0204/08, now deceased, to determine the

¹² See, for example, Decision of 18 July 2018, para. 9. See also *Lubanga*, Appeals Chamber, "Order for Reparations", ICC-01/04-01/06-3129-AnxA, para. 57; See also "Order for Reparations", paras. 71 and 103.

¹³ See, for example, Decision of 18 July 2018, para. 9. See also *Lubanga*, Appeals Chamber, "Order for Reparations", ICC-01/04-01/06-3129-AnxA, para. 57; See also "Order for Reparations", paras. 71 and 103.

¹⁴ Application relating to Victim a/0204/08, para. 5.

victim's choice of modality with regard to reparations. The Chamber will therefore take into account the choices expressed by the Victim beneficiary.

11. Lastly, the Chamber recalls that the protective measures granted to victims – anonymity vis-à-vis the public – likewise apply to the successor in the action brought by Victim a/0204/08.¹⁵

FOR THESE REASONS, the Chamber

GRANTS the application relating to Victim a/0204/08;

DECIDES that the person mandated by the family of deceased Victim a/0204/08 is now entitled to the reparations awarded in the instant case; and

RECALLS that the above-mentioned successor is 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 Carbuccia

_____[signed]_____

Judge Péter Kovács

Dated this 4 February 2019,

At The Hague, Netherlands

¹⁵ See, for example, "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. 9, and "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, para. 10.