



Original: **French**

No.: **ICC-01/04-01/07**
Date: **24 October 2011**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Document

**Corrigendum of the decision on the applications to resume action submitted by
the family members of deceased Victims a/0025/08 and a/0311/09**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

TRIAL CHAMBER II of the International Criminal Court (the “Chamber” and the “Court”, respectively), acting pursuant to article 68 of the Rome Statute, rules 85, 86, 87 and 89 of the Rules of Procedure and Evidence and regulation 86 of the Regulations of the Court, decides as follows.

1. By a decision of 14 June 2011 on the applications to resume action submitted by the family members of five deceased victims (“the 14 June 2011 Decision”),¹ the Chamber ordered the common legal representative of the main group of victims (“the Legal Representative”) “to transmit to it as soon as possible (i) in respect of the application to resume the action of deceased Victim a/0025/08, a statement by the family of the victim designating a person specifically to continue the action initiated before the Court; and (ii) in respect of Victim a/0311/09, a document certifying the victim’s death”.² On 15 September 2011, the Legal Representative transmitted the requested documents to the Chamber.³

2. In order to obtain the observations of the parties, the Chamber requested on 16 September 2011 that a redacted version of the Legal Representative’s filing, together with its annexes, be transmitted to them.⁴ On 21 September 2011, the Chamber authorised⁵ the deletions proposed by the Legal Representative,⁶ who submitted a redacted version of his filing on the same day.⁷ The Chamber set

¹ *Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09*, 14 June 2011, ICC-01/04-01/07-3018-tENG.

² ICC-01/04-01/07-3018-tENG, paras. 23 and 29 and operative part.

³ Common Legal Representative of the main group of victims, “*Transmission d’informations complémentaires relatives aux demandes de reprise d’instance des proches des victimes décédées a/0025/08 et a/0311/09*”, 15 September 2011, ICC-01/04-01/07-3156-Conf-Exp.

⁴ E-mail from a Legal Officer of the Chamber to the Legal Representative, 16 September 2011, at 18.19.

⁵ E-mail from a Legal Officer of the Chamber to the Legal Representative, 21 September 2011, at 12.01.

⁶ Common Legal Representative of the main group of victims, “*Propositions d’expurgations de deux documents relatifs aux demandes de reprise d’instance des proches des victimes décédées a/0025/08 et a/0311/09*”, 21 September 2011, ICC-01/04-01/07-3162-Conf-Exp.

⁷ Common Legal Representative of the main group of victims, “*Transmission d’informations complémentaires relatives aux demandes de reprise d’instance des proches des victimes décédées a/0025/08 et a/0311/09*”, 21 September 2011, ICC-01/04-01/07-3156-Red (public redacted version with confidential, redacted, *ex parte* Annexes 1 and 2 for the Defence teams of G. Katanga and M. Ngudjolo, the Prosecution, VPRS, VWU and Mr Nsita only, and confidential, *ex parte* Annex 3 for VPRS, VWU and Mr Nsita only).

30 September 2011 as the time limit for responding to the filing.⁸ None of the parties submitted observations within the prescribed time limit.⁹

3. In light of the additional documents provided by the Legal Representative and of its prior analysis in the 14 June 2011 Decision, the Chamber is now able to rule on the two applications it received from the persons wishing to act respectively on behalf of deceased Victims a/0025/08 and a/0311/09.

4. In respect of Victim a/0025/08, the Chamber recalls that it considered the family relationship between the deceased victim and the person wishing to act on his behalf to have been demonstrated.¹⁰ It notes that the Legal Representative has provided a specific mandate, as it requested.¹¹ Accordingly, it authorises the person mandated by the family of deceased Victim a/0025/08 to continue the action on behalf of this victim initiated before the Court.

5. In respect of Victim a/0311/09, the Chamber recalls that it considered the family relationship between the victim and the person wishing to act on the victim's behalf to have been established and that the person had indeed been mandated by the family to continue, on the victim's behalf, the action that the victim had initiated.¹² It notes that the Legal Representative has provided it with the requested death certificate.¹³ Accordingly, it authorises the person mandated by the family of deceased Victim a/0311/09 to continue on behalf of the victim the action initiated before the Court.

6. The Chamber recalls that the person designated to continue the action of Victim a/0311/09 has agreed that his own identity, as well as that of the victim, be disclosed to the parties, since the Chamber authorises the person to continue said

⁸ E-mail from a Legal Officer of the Chamber to the parties and participants on 21 September 2011, at 16.33.

⁹ See e-mails from the Office of the Prosecutor and the Defence for Mathieu Ngudjolo to the Chamber on 23 September 2011 at 15.37 and 3 October 2011 at 11.29, respectively, stating that they did not intend to submit observations.

¹⁰ ICC-01/04-01/07-3018, para. 23.

¹¹ ICC-01/04-01/07-3156-Conf-Exp-Anx1.

¹² ICC-01/04-01/07-3018, para. 29.

¹³ ICC-01/04-01/07-3156-Conf-Exp-Anx2.

action.¹⁴ Likewise, if his application is accepted by the Chamber, the person designated to continue the action of deceased Victim a/0025/08 does not object to his identity being known to the parties, as the victim's identity has already been disclosed to them.¹⁵

7. As this decision authorises the persons mandated by the families of deceased Victims a/0025/08 and a/0311/09 to continue the action initiated by said victims, the Chamber invites the Registry to disclose to the parties without delay the identity of Victim a/0311/09 and of the persons resuming their action. It further recalls that it considers that the protective measures granted to the victims authorised to participate in the proceedings also apply to the persons authorised to participate on behalf of the deceased victims.¹⁶ In this regard, it draws the parties' attention to their obligations relating to confidentiality and protection, including that of limiting the disclosure of such information to a restricted number of their team members.¹⁷

FOR THESE REASONS, the Chamber,

AUTHORISES the persons mandated respectively by the families of deceased Victims a/0025/08 and a/0311/09 to participate in these proceedings on behalf of said victims;

REMINDS the Registry that it is incumbent upon it to disclose to the parties the identity of deceased victim a/0311/09 and of those resuming their action;

ORDERS, accordingly, the Legal Representative to submit a version of documents ICC-01/04-01/07-3156-Conf-Exp-Anx1-Red and ICC-01/04-01/07-3156-Conf-Exp-Anx2-Red with fewer redactions; and

¹⁴ ICC-01/04-07-3018-tENG para. 30.

¹⁵ *Idem*.

¹⁶ *Ibid.*, paras. 32-33.

¹⁷ See *ibid.*, paras. 34-35.

RECALLS that all victims authorised to participate in these proceedings, including those persons authorised to participate on behalf of the deceased victims, are granted anonymity vis-à-vis the public.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Christine Van den Wyngaert

Dated this 21 October 2011,

At The Hague, The Netherlands