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

Date: 10 June 2013

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***

Public Document

**Decision on the application to resume action, submitted by a family member of
deceased Victim a/0253/09**

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart, Deputy Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

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 the following.

I. Background

1. In its *Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons*, issued on 21 November 2012,¹ the Chamber specified that the victims admitted to participate in the initial proceedings were authorised to continue participating in both of the severed proceedings.²

2. In a filing of 12 April 2013, the Common Legal Representative of the Main Group of Victims (“the Legal Representative”) notified the Chamber, *inter alia*, of the death of a certain number of the victims who had been authorised to participate in proceedings in *Katanga and Ngudjolo*.³ In the same filing, the Legal Representative stated that he would submit to the Chamber, by way of a separate filing, an application for resumption of action in respect of Victim a/0253/09.⁴

3. On 15 May 2013, the Legal Representative filed this application, requesting the Chamber to authorise the resumption of action in respect of Victim a/0253/09 by a member of the victim’s family, and to provide the successor of the action and the

¹ *Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons*, 21 November 2012, ICC-01/04-01/07-3319-tENG.

² *Ibid.*, para. 64.

³ Common Legal Representative of the Main Group of Victims, “*Observations du représentant légal sur la liste des victimes participant à la procédure*”, 12 April 2013 (notified on 15 April 2013), ICC-01/04-01/07-3368, paras. 12-13. The Legal Representative informed the Chamber that Victims a/0175/08, a/0117/09, a/0321/09, a/0373/09, a/0166/09, a/0253/09, a/0354/09 and a/0376/09 had died and that, since the victims authorised to participate are the same in both cases, he would also transmit the information that had been brought to the attention of Trial Chamber II to the Appeals Chamber.

⁴ *Ibid.*, para. 13.

members of the family meeting who designated the successor with protective measures (“the Application”).⁵

4. By e-mail of 20 May 2013,⁶ the Chamber noted that Annex 3 of the Application contained a redacted version of relevant material submitted in support of the Application and that the proposed redactions had already been approved by the Victims Participation and Reparations Section (“VPRS”) and the Victims and Witnesses Unit.⁷ However, the Chamber also noted, as stated by VPRS, that the redaction of the reference to the day and the month of the victim’s death was not necessary as the victim’s identity was known to the parties. Accordingly, the Chamber requested the Legal Representative to file a new version of Annex 3, in which this information was not redacted, not later than 4 p.m. on 22 May 2013.⁸ The Legal Representative complied with this request.⁹

5. The parties, who had been invited to submit their observations on the Application by 4 p.m. on 28 May 2013,¹⁰ refrained from doing so.¹¹

⁵ Common Legal Representative of the Main Group of Victims, “*Demande de reprise de l’action introduite par la victime décédée a/0253/09*”, 15 May 2013 (notified on 16 May 2013), ICC/04-01/07-3372, with confidential, *ex parte* Annexes 1 and 2, only available to Mr Nsita, VPRS and VWU, and confidential Annex 3. Insofar as the deceased person is also a participating victim in the proceedings against Mathieu Ngudjolo currently before the Appeals Chamber, the Legal Representative filed a similar application to the Appeals Chamber on the same day, seeking leave for the designated successor to continue the action initiated by Victim a/0253/09 in these proceedings (Application, para. 7).

⁶ E-mail from a Legal Officer of the Chamber to the parties and participants on 20 May 2013 at 5.05 p.m.

⁷ Application, paras. 35-37.

⁸) E-mail from a Legal Officer of the Chamber to the parties and participants on 20 May 2013 at 5.05 p.m.

⁹ Common Legal Representative of the Main Group of Victims, “*Transmission d’une annexe moins expurgée relative à la demande de reprise de l’action introduite par la victime décédée a/0253/09*”, 21 May 2013 (notified on 22 May 2013), ICC/04-01/07-3373, with a confidential Annex (ICC/04-01/07-3372-Conf-Anx3-Red).

¹⁰ E-mail from a Legal Officer of the Chamber to the parties and participants on 20 May 2013 at 5.05 p.m.

¹¹ By e-mail sent to the Chamber on 22 May 2013 at 10.27 a.m., the Prosecution stated that it did not intend to submit observations on this resumption of action.

II. Discussion

6. The Chamber recalls its decision that the close relatives of a victim authorised to participate in the proceedings who is now deceased, may decide to continue the action initiated by the victim before the Court, but that they may do so 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.¹²

7. By decision of 31 July 2009, Victim a/0253/09 was authorised to participate in the proceedings.¹³ The Chamber notes that, according to the death certificate attached to the Application,¹⁴ this victim died in 2012. The Chamber also notes the minutes of the family meeting, mandating one of the victim's close family members to continue the action initiated before the Court, as formulated in the application for participation.¹⁵ The Chamber observes that the three signatory family members, one of whom is the designated individual, provided a copy of their identity documents.¹⁶

8. The Chamber therefore considers that the family relationship between the deceased victim and the person wishing to act on her behalf has been established and that the person has been mandated by the family of the deceased to continue the action initiated by the victim on her behalf. Accordingly, the Chamber authorises the person mandated by the family of deceased Victim a/0253/09 to continue the action before the Court on behalf of that victim.

¹² *Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*, 22 December 2009, ICC-01/04-01/07-1737, para. 30.

¹³ *Decision on the 345 applications for participation as victim in the proceedings*, 31 July 2009, ICC-01/04-01/07-1347; *Corrigendum of Operative part of the Decision on the 345 applications for participation as victim in the proceedings*, 5 August 2009, ICC-01/04-01/07-1347-Corr-tENG; *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-Red-tENG, with a confidential, *ex parte* Annex (see also the redacted, confidential version of the Annex, ICC-01/04-01/07-1491-Conf-Anx-Red).

¹⁴ Application, Annexes 1 and 2, p. 2, and Annex 3, p. 1.

¹⁵ Application, Annexes 1 and 2, p. 3, and Annex 3, p. 2.

¹⁶ Application, Annexes 1 and 2, pp. 3-5 and Annexe 3, pp. 2-4.

9. The Legal Representative seeks three types of protective measures: that the deceased victim's anonymity vis-à-vis the public be maintained,¹⁷ that certain protective measures be imposed in relation to the parties,¹⁸ and that the anonymity of the successor and the successor's family members be maintained vis-à-vis the public.¹⁹

10. The Chamber, first of all, recalls that all of the victims authorised to participate in the present proceedings have been granted anonymity vis-à-vis the public.²⁰

11. The Chamber also observes that the person designated to continue the action of Victim a/0253/09 does not object, if his application is accepted by the Chamber, to his identity being disclosed to the parties,²¹ as the victim's identity has already been made known to them.²² As this decision authorises the person mandated by the family of deceased Victim a/0253/09 to continue the action initiated by the victim, the Chamber therefore invites the Registry to disclose to the parties, without delay, the identity of the person resuming the action.

12. In respect of the request for protective measures for the person resuming the action, the Chamber recalls that the protective measures granted to victims authorised to participate in the proceedings also apply to persons authorised to participate on behalf of deceased victims.²³ In this regard, the Chamber would also recall its decision granting anonymity vis-à-vis the public to all of the victims

¹⁷ Application, paras. 25 and 26.

¹⁸ Application, paras. 27-37.

¹⁹ Application, paras. 38-43.

²⁰ See, *inter alia*, ICC-01/04-01/07-T-104-Red-FRA WT 18-02-2010, pp. 33 and 34.

²¹ Application, para. 27.

²² *Second Decision on the Disclosure to the Parties of the Identities of the Victims*, ICC-01/04-01/07-1650, 18 November 2009, para. 9.

²³ *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 ("Decision of 14 June 2011"), para. 32.

authorised to participate in these proceedings, including persons authorised to participate on behalf of deceased victims.²⁴

13. The Chamber would also draw the parties' attention to their obligations with regard to confidentiality and protection, in particular the obligation to limit disclosure of this information to a restricted number of team members.²⁵

14. Lastly, the Chamber recalls that the *Decision on the "Protocol on investigations in relation to witnesses benefiting from protective measures"* of 26 April 2010²⁶ and the *Decision on the arrangements for contact between represented victims and the parties* of 23 November 2010²⁷ apply to all victims, both protected and represented, including persons authorised to participate in the proceedings on behalf of deceased victims.²⁸

FOR THESE REASONS, the Chamber,

AUTHORISES the person mandated by the family of deceased Victim a/0253/09 to participate in the present proceedings on behalf of that victim;

REMINDS the Registry that it is incumbent upon it to disclose to the parties the identity of the person resuming the action; and

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

²⁴ See, *inter alia*, ICC-01/04-01/07-T-104-Red-FRA WT 18-02-2010, pp. 33 and 34; *Decision of 14 June 2011*, para. 33.

²⁵ See, in particular, *Decision of 14 June 2011*, para. 34.

²⁶ *Decision on the "Protocol on investigations in relation to witnesses benefiting from protective measures"*, 26 April 2010, ICC-01/04-01/07-2047-tENG.

²⁷ *Decision on the arrangements for contact between represented victims and the parties*, 23 November 2010, ICC-01/04-01/07-2571-tENG.

²⁸ See, in particular, *Decision of 14 June 2011*, para. 35.

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 10 June 2013

At The Hague, The Netherlands