



Original: French

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

Date: 11 May 2015

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***

Public

**Decision on the applications for resumption of action submitted by the family
members of deceased victims a/0170/08 and a/0294/09**

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Éric MacDonald

Counsel for Germain Katanga

Mr David Hooper

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Herman von Hebel

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 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 background and submissions

1. On 13 January 2015, the Legal Representative of Victims (“the Legal Representative”) filed an application for the family members of deceased victims a/0170/08 and a/0294/09 to be authorised to continue the action initiated by those victims (“the Application”).¹

2. The Legal Representative submits that victims a/0170/08 and a/0294/09, who by an earlier Chamber decision were given leave to participate in the proceedings, have since died. He further submits that the appointed successors are family members of the two victims and that they have been mandated by a family meeting to continue the action initiated before the Court.² He provides documentation in support of the Application (“Annexes 1 and 2”).

3. The Legal Representative submits that meetings were held with the two successors as part of the consultation on reparations organised pursuant to the Chamber’s order of 27 August 2014.³

4. The Legal Representative also requests that the same system of protective measures as previously granted be applied to the two successors should the action be resumed.⁴ He stated that the persons appointed to continue the action initiated by the two victims do not object, if their application is accepted by the Chamber, to their

¹ “*Demande de reprise des actions introduites par les victimes a/0170/08 et a/0294/09*”, 13 January 2015, ICC-01/04-01/07-3515-Conf-Exp with confidential *ex parte*, and confidential redacted Annexes 1 and 2. A public redacted version of the Application was filed on the same date (ICC-01/04-01/07-3515-Red) along with a confidential redacted version of Annexes 1 and 2 (ICC-01/04-01/07-3515-Conf-Anx1-Red and ICC-01/04-01/07-3515-Conf-Anx2-Red).

² Application, ICC-01/04-01/07-3515-Red, paras. 10-16.

³ Application, ICC-01/04-01/07-3515-Red, para. 17, citing the “Order instructing the Registry to report on applications for reparations”, 27 August 2014, ICC-01/04-01/07-3508. See also, “Order on the ‘Request for an Extension of Time to Report on Applications for Reparations Pursuant to Regulation 35 of the Regulations of the Court’”, 24 November 2014, ICC-01/04-01/07-3511.

⁴ Application, ICC-01/04-01/07-3515-Red, paras. 19-25 and pp. 11-12.

identity being disclosed to the parties. In this regard, should the application be granted, the Legal Representative proposes to file a version of Annexes 1 and 2 containing fewer redactions.⁵

5. In observations filed on 3 February 2015, the Defence for Germain Katanga (“the Defence”) did not oppose the Application.⁶ With regard to the protective measures sought, it points out that, were the Chamber to make an order concerning the Legal Representative’s request that disclosure of the victims’ identity be limited to a restricted number of members of the Defence team, that order would be unnecessary given the current composition of the team. It further submits that the accused retains the right to receive full disclosure of material disclosed to the Defence.⁷

II. Discussion

6. The Chamber has acknowledged that the close relatives of a victim authorised to participate in the proceedings and 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. To this end, the person concerned must provide evidence of the death of the victim in question, his or her relationship to the victim, and his or her appointment by their family members.⁸

⁵ Application, ICC-01/04-01/07-3515-Red, paras. 23-25.

⁶ “Defence Observations on the ‘*Demande de reprise des actions introduites par les victimes a/0170/08 et a/0294/09*’”, 3 February 2015 (notified on 4 February 2015), ICC-01/04-01/07-3520 (“the Response”), para. 2.

⁷ Response, ICC-01/04-01/07-3520, paras. 3-5.

⁸ See, for example, “*Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*”, 22 December 2009, ICC-01/04-01/07-1737, paras. 30-32; “*Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*”, 17 March 2010, ICC-01/04-01/07-1967; “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; “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”, 24 October 2011, ICC-01/04-01/07-3185-Corr-tENG; and “Decision on the application to resume action, submitted by a family member of deceased victim a/0253/09”, 10 June 2013, ICC-01/04-01/07-3383-tENG.

7. The Chamber notes that victims a/0170/08 and a/0294/09 were authorised to participate in the proceedings by a decision of 31 July 2009.⁹ It notes further that the persons wishing to resume the action initiated by the two deceased victims have provided, respectively, through their legal representatives, a death certificate for the victim in question and documents indicating the family relationship with the victim. They have also submitted a document signed by family members of the deceased victim granting them a mandate to act on behalf of the victim.¹⁰

8. The Chamber considers, therefore, that the persons intending to resume the action initiated by victims a/0170/08 and a/0294/09 have demonstrated the family relationship with the deceased victims. As regards victim a/0170/08, the Chamber notes that, although the family relationship is not stated on the record of the family meeting, the information on the identity documents provided in the light of all the information contained in the request is sufficient to establish the said family relationship. The successors have also established that they have been given a mandate by their respective families to continue the action initiated by the deceased victims.

9. Accordingly, the Chamber authorises the persons thus mandated by the families of deceased victims a/0170/08 and a/0294/09 to continue the action initiated before the Court on behalf of those victims.

10. The Chamber notes that, should the Chamber grant their application, the persons appointed to continue the action of the two victims have no objection to their identity being disclosed to the parties.

11. As this decision authorises the persons mandated by the families of deceased victims a/0170/08 and a/0294/09 to continue the action initiated by those victims, the Chamber invites the Registry to disclose to the Defence without delay the identity of the successors in question, and invites the Legal Representative to file versions of

⁹ “Corrigendum of Operative part of the Decision on the 345 applications for participation as victims in the proceedings”, 6 August 2009, ICC-01/04-01/07-1347-Corr-tENG.

¹⁰ Annexes 1 and 2 (death certificate, identity documents and record of the family meeting), ICC-01/04-01/07-3515-Conf-Anx1-Red and ICC-01/04-01/07-3515-Conf-Anx2-Red.

Annexes 1 and 2 containing fewer redactions. It further recalls 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. In this regard, and having regard to the Defence submission concerning the current composition of its team, it draws the parties' attention to their obligations of confidentiality and protection.

12. The Chamber refers to its decision of 8 May 2015¹¹ and emphasises that this decision is without prejudice to the Chamber's order pursuant to article 75 of the Statute, which will decide as to the award of reparations.

¹¹ "Décision sur la demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve et étapes ultérieures de la procédure", ICC-01/04-01/07-3546.

FOR THESE REASONS, the Chamber,

AUTHORISES the persons mandated by the families of deceased victims a/0170/08 and a/0294/09 to continue the action initiated in the Court on behalf of those victims;

REMINDS the Registry that it is incumbent on it to disclose to the Defence the identity of the successors;

Accordingly, **ORDERS** the Legal Representative to file a version of Annexes 1 and 2 containing fewer redactions; and

RECALLS that all the victims authorised to participate in these proceedings, including the 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 Marc Perrin de Brichambaut

Presiding Judge

[signed]

[signed]

Judge Olga Herrera Carbuccion

Judge Péter Kovács

Dated this 11 May 2015

At The Hague, The Netherlands