



Original: **French**

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

Date: 20 May 2016

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 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/30490/15

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

Office of the Prosecutor

**Counsel for the Defence of 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 Isabelle Guibal

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 the following.

I. Procedural history

1. On 14 March 2016, the Legal Representative of victims (“the Legal Representative”) sought leave for the family members of 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/30490/15 to continue the action initiated by the victims at the reparations stage of the proceedings (“the Request”).¹

2. The Legal Representative submits that 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/30490/15, who were granted leave to participate in the trial of Germain Katanga (“the Trial” and “Mr Katanga”, respectively) by an earlier decision of the Chamber (“the Participating Victims”), and a/2743/10 and a/30490/15, who lodged applications for reparations (“the Applicants”), subsequently died. The Legal Representative states that the appointed successors who wish to resume action are family members of the above-mentioned deceased Participating Victims or Applicants and have been appointed by a council of their family members to continue action initiated before the Court.² He provides documentation in support of the Request³ (“the Annexes”).

¹ “*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 avec Annexes 1 à 15 confidentielles ex parte, et confidentielles expurgées*”, dated 14 March 2016 and filed on 15 March 2016, ICC-01/04-01/07-3668-Conf. A public redacted version of the Request was filed on the same day.

² Request, paras. 16-45.

³ Annexes 1-15 to the Request.

3. The Legal Representative requests in addition that the same system of protective measures as previously granted be applied to the successors should the action be resumed.⁴ Moreover, the Legal Representative considers that, pursuant to the Order of 26 February 2016,⁵ the identity of the successors may be disclosed to the Defence. He has therefore filed less redacted versions of the Annexes.⁶

4. On 5 April 2016, the Defence team for Mr Katanga ("the Defence") informed the Chamber that it would not be filing any observations on the Request.⁷

5. On 14 April 2016, the Chamber dismissed the Defence application⁸ for access to non-redacted versions of the death certificates contained in the Request.⁹

II. Analysis

6. The Chamber notes that Participating Victims a/0015/09, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0298/09 and a/0354/09 were authorised to participate in the Trial by a decision of 5 August 2009;¹⁰ that Participating Victims a/0032/08 and a/0057/08 were authorised to participate in the Trial by a decision of 10 June 2008;¹¹ and that the Participating Victims a/0286/09, a/0361/09 and a/0391/09 were authorised to participate in the Trial by a decision of 23 November 2009.¹² The Chamber notes that the application for reparations of Applicant a/2743/10 was

⁴ Request, paras. 51-55.

⁵ "Corrigendum to the 'Order relating to the submission of the legal representative of Victims'", 16 February 2016, ICC-01/04-01/07-3653-Corr-tENG.

⁶ Request, para. 53.

⁷ E-mail sent to the Chamber on 5 April 2016 at 09.52.

⁸ "URGENT Defence Requests with relation to the Victims Applications", dated 25 March 2016 and filed 29 March 2016, ICC-01/04-01/07-3675.

⁹ "Decision on the submission of observations on the requests for reparations and the applications to resume action", 14 April 2016, ICC-01/04-01/07-3682-tENG, para. 26 ("the Decision of 14 April 2016").

¹⁰ "Corrigendum of Operative part of the Decision on the 345 applications for participation as victim in the proceedings", dated 5 August 2009 and filed 6 August 2009, para. 6.

¹¹ "Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case", ICC-01/04-01/07-578-Conf, 10 June 2008, para. 127. The status of victim was subsequently confirmed at the trial stage by the Decision of 29 February 2009 ("Decision on the treatment of applications for participation", dated 26 February 2009 and filed on 27 February 2009, ICC-01/04-01/07-933-tENG, p. 24).

¹² "Décision relative au traitement des demandes de participation", 23 November 2009, ICC-01/04-01/07-1669, page 6.

notified to the Defence and the Legal Representative on 13 August 2013.¹³ The Chamber notes that the redacted consolidated files of the above-mentioned Participating Victims and of Applicant a/2743/10 were transmitted to the Chamber and the Defence, on 17 and 19 February 2016 respectively, with a view to their participation in the reparations proceedings.¹⁴ Lastly, the Chamber notes that the application for reparations of Applicant a/30490/15 was transmitted to the Chamber¹⁵ and the Defence,¹⁶ on 27 November 2015 and 17 February 2016, respectively.

7. The Chamber recalls that the family members of a victim who has been authorised to participate in a trial but dies during the proceedings may continue the action which that victim initiated before the Court. However, 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.¹⁷ 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, as successor.¹⁸

8. The Chamber notes that all the successors have submitted, through the Legal Representative, a certificate attesting to their family member's death or a copy of the entry in the civil register recording their relative's death. They have also produced a

¹³ *"Notification à la Défense de 8 formulaires de demande de réparation en application de la règle 94(2) du Règlement de procédure et de preuve"*, 13 August 2013, ICC-01/04-01/07-3395 and six confidential, *ex parte* annexes.

¹⁴ Decision of 8 May 2015.

¹⁵ ICC-01/04-01/07-3621-Conf-Exp-Anx33.

¹⁶ ICC-01/04-01/07-3621-Conf-Anx33-Red2.

¹⁷ "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 Decision of 11 May 2015").

¹⁸ Decision of 11 May 2015, para. 6. See also "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; "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; "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, para. 20; *"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; *"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.

document signed by members of their family that authorises them to act on behalf of the deceased victims or applicants and that indicates their relationship with the deceased, as well as identity documents for each member of the family council.¹⁹

9. The Chamber considers that the information contained both in the Request and in the relevant applications for reparations is sufficient to establish the respective family relationships between the deceased applicants and the successors. The Chamber likewise considers that, on the basis of the records of the meetings of family councils, the successors have established that they were appointed by their respective families to continue the action brought before the Court by their deceased relatives.

10. Accordingly the Chamber authorises the persons appointed by the families of 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/30490/15 to continue the action brought before the Court on their behalf.

11. The Chamber notes that the Legal Representative, acting in accordance with the Order of 16 February 2016 and having ensured that the successors did not object, has disclosed the successors' identities to the Defence.²⁰ The Chamber recalls in this respect that it has considered that the protective measures granted to the victims shall also apply to their successors.²¹

¹⁹ Annexes 1, 4, 5, 6, 7 and 8 (death certificates, identity documents of the successor, identity documents of family members and records of the meetings of family councils), ICC-01/04-01/07-3668-Conf-Exp-Anx1, ICC-01/04-01/07-3668-Conf-Exp-Anx4, ICC-01/04-01/07-3668-Conf-Exp-Anx5, ICC-01/04-01/07-3668-Conf-Exp-Anx6, ICC-01/04-01/07-3668-Conf-Exp-Anx7 and ICC-01/04-01/07-3668-Conf-Exp-Anx8.

²⁰ Request, para. 53.

²¹ "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. 1; Order of 16 February 2016; Decision of 14 April 2016, para. 26.

FOR THESE REASONS, the Chamber

GRANTS the Request;

AUTORISES the persons appointed by the families of deceased applicants 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/30490/15 to resume the action brought before the Court on their behalf; and

RECALLS that all applicants, including persons authorised to resume action initiated by deceased applicants, have the right to remain anonymous to 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 20 May 2016

At The Hague, the Netherlands