

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **18 July 2018**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccia
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Confidential

**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**

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, 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 24 March 2017, the Chamber issued its "Order for Reparations pursuant to article 75 of the Rome Statute" granting victim status for the purposes of reparations to 297 applicants, including victims a/0117/09 and a/0351/09,¹ and ordering the award of both individual and targeted collective reparations ("Order for Reparations").²

2. On 8 March 2018, the Appeals Chamber issued its judgment on the appeals³ against the Order for Reparations,⁴ upholding this Chamber's decision with regard to the 297 applicants, including victims a/0117/09 and a/0351/09.⁵

3. On 19 April 2018, the Office of Public Counsel for Victims ("OPCV") filed an application requesting, *inter alia*, that the family members of Victim a/0117/09 ("Application Concerning Victim a/0117/09") and of Victim a/0351/09 ("Application

¹ "Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure", 23 September 2009, ICC-01/04-01/07-1491-Red, and a redacted confidential annex, ICC-01/04-01/07-Conf-Anx-Red, para. 68.

² "Order for Reparations pursuant to Article 75 of the Statute", 24 March 2017, ICC-01/04-01/07-3728-tENG, with one public annex and one confidential annex *ex parte* Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga, p. 118.

³ "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; "Acte d'appel relatif à l'Order for Reparations en vertu de l'article 75 du Statut et son Annexe II", 25 April, ICC-01/04-01/07-3737.

⁴ "[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'", 8 March 2018, ICC-01/04-01/07-3778-Conf. On 9 March 2018, a public redacted version of the judgment was issued.

⁵ *Ibid.*, p. 4.

Concerning Victim a/0351/09") be authorized to resume the actions initiated by those victims ("Application").⁶

4. The Defence has not filed observations on the Application.

II. Analysis

a) Applicable law and procedure

5. The Chamber recalls that, provided the applicable conditions are met, the right to the reparations awarded to victims who are now deceased may be transferred to the persons appointed to resume the action.⁷ To that end, the person must provide evidence of the victim's death, his or her family relationship with the victim and his or her appointment by family members granting him or her authority to act on behalf of the victim.⁸ Once those conditions are met, the person resuming the action introduced by the deceased victim will be entitled to the reparations awarded.⁹

b) Application Concerning Victim a/0117/09

6. The Chamber notes that the applicant has submitted, via the OPCV: (a) a written statement from a close relative of Victim a/0117/09 attesting to the death of that victim, explaining why a death certificate was not provided and confirming both the family relationship between the applicant and Victim a/0117/09 and the applicant's appointment by the family of Victim a/0117/09 as the person resuming the action;¹⁰ and (b) a written statement from a person declaring that he or she is a former neighbour of Victim a/0117/09, attesting to the death of that victim and the

⁶ "Demande de reprise d'instance des actions introduites par les victimes a/0117/09 et a/0351/09 et Application aux fins de modification partielle de l'Ordonnance de réparation rendue en vertu de l'article 75 du Statut de Rome avec annexes 1 à 14 confidentielles Ex parte réservées au BCPV et mêmes annexes confidentielles expurgées réservées au BCPV et à la Défense", 19 April 2018, ICC-01/04-01/07-3789-Conf-Exp, paras. 9-19.

⁷ "Décision relative aux demandes de reprise d'instance introduites par des proches de victimes a/0281/08 et a/25049/16", 21 March 2018, ICC-01/04-01/07-3782-Conf, paras. 8 and 9 ("Decision of 21 March 2018").

⁸ Decision of 21 March 2018, para. 9 and cited references.

⁹ Decision of 21 March 2018, para. 9 and cited references.

¹⁰ ICC-01/04-01/07-3789-Conf-Exp-Anx1.

family relationship between the applicant and Victim a/0117/09. The Chamber notes that these statements were submitted together with copies of the identity documents of the witnesses and those of the applicant.

7. With regard to the documents required to provide evidence of the death of a family member or the family relationship, the OPCV submits that in previous rulings the Court has recognized the difficulties that may be encountered in obtaining a death certificate or a certificate of family relationship, and has therefore allowed statements signed by two credible witnesses as sufficient proof.¹¹

8. The Chamber recalls that it takes into consideration the factors specific to the present case¹² and, in this context, the difficulties the people who live in Ituri face in obtaining supporting documentation for their claims.¹³

9. Noting that as a rule death certificates or certificates of family relationship have been used in these proceedings, the Chamber also accepts, where necessary, any other documentation which allows it to determine the veracity of the allegations contained in the application submitted to it.¹⁴ According, for example, to previous decisions on proof of identity, if an applicant is unable to provide an acceptable document, the Chamber may accept a statement signed by two credible witnesses.¹⁵ The Chamber considers, therefore, that the submission of documents signed by two credible witnesses is also sufficient as proof of the death of a person or of the applicant's family relationship with that person.

¹¹ Application, para. 13.

¹² See, in this regard, *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, "Order for Reparations (amended)", ICC-01/04-01/06-3129-AnxA, para. 22; *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2", ICC-01/04-01/06-3129, para. 81.

¹³ See, for example, Order for Reparations, paras. 47, 53 and 60.

¹⁴ See, for example, Order for Reparations, paras. 119-120.

¹⁵ See, for example, *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Order for Reparations, ICC-01/04-01/06-3129-AnxA, para. 57; see also Order for Reparations, paras. 71 and 103.

10. In the present case, the Chamber is of the view that the two witnesses are credible and that their statements establish the death of Victim a/0117/09 and the family relationship between the victim and the person resuming the action.

11. With regard to the appointment of the person resuming the action by members of their family, the OPCV submits that, according to the Court's case law, express authorization by a family council is not required when the applicant can easily be presumed to be entitled to resume the action or to represent the family in that respect.¹⁶ The OPCV submits that such a presumption is possible, for example, when there is a spousal relationship between the person resuming the action and the deceased victim or when the former is the child of the deceased victim.¹⁷ The OPCV further submits that a document confirming the relationship between the deceased victim and the applicant and clearly stating the applicant's intention to resume the action initiated by the deceased victim is sufficient to demonstrate the applicant's appointment by the family members.¹⁸

12. The Chamber notes the OPCV's reference to a decision of Trial Chamber VI, in the case of *The Prosecutor v. Bosco Ntaganda*, in which that Chamber noted that the appointment by family members of the deceased victim is required "where the applicant cannot easily be presumed to be entitled to continue the action or represent the family".¹⁹ Trial Chamber VI stated that such a presumption can, for example, be drawn where the applicant is: the spouse of a deceased victim; an only surviving child of a deceased victim, where the child has reached the age of 18 and the deceased victim was either unmarried or the victim's spouse is already deceased; or the parents of an unmarried deceased victim who either has no children or whose children are below the age of 18.²⁰

¹⁶ Application, para. 13.

¹⁷ Application, para. 13.

¹⁸ Application, para. 13.

¹⁹ "Fourth decision on victims' participation in trial proceedings", ICC-01/04-02/06-805, 1 December 2015, paras. 8 and 11 ("Fourth decision on victims' participation in trial proceedings").

²⁰ "Fourth decision on victims' participation in trial proceedings", paras. 8 and 11.

13. The Chamber considers that the arguments of the OPCV reflect neither the reasoning nor the conclusion of Trial Chamber VI, in a decision concerning a specific situation and not a general ruling as the OPCV alleges. After having noted that the statement submitted attesting to the relationship between the victim and the applicant was signed by two members of the family and that it clearly referred to the applicant's intention to resume the action initiated by the victim, Trial Chamber VI concluded that, when there was a spousal relationship between the deceased victim and the person wishing to act on his or her behalf, no express authority was required and that, accordingly, the victim's wife was authorized to participate in the proceedings on behalf of her deceased husband.²¹

14. Nevertheless, it is standard practice before this Chamber that anyone seeking to resume an action initiated by a victim who has subsequently died must be appointed by the family members of that victim. On that score, the Chamber is of the view that the minimum requirement is a statement certifying the appointment of the applicant as the person resuming the action initiated by the deceased victim, signed by two members of the family of that deceased victim and submitted along with his or her identity documents. In the present case, the Chamber notes that the applicant has submitted a statement signed by a witness, according to which "[TRANSLATION] the whole family" considers that the applicant "[TRANSLATION] is [the only] person to whom it falls to resume the action initiated" by the deceased Victim a/0117/09. However, a statement from only one family member is insufficient especially since, in that statement, the first witness mentions the existence of other family members. The Chamber notes in this regard that the 2009 application of Victim a/0117/09 indicated that the victim was married and that no information to the contrary has been submitted to it.²²

²¹ "Fourth decision on victims' participation in trial proceedings", paras. 8 and 11.

²² ICC-01/04-01/07-3695-Conf-Anx12-Red, p. 4.

15. In the light of the above, the Chamber considers that all the information contained in the Application Concerning Victim a/0117/09 is sufficient to establish (i) the death of Victim a/0117/09 and (ii) the family relationship between the deceased Victim a/0117/09 and the person resuming the action. The Chamber is of the view, however, that the information presented to substantiate the appointment by the family of the deceased Victim a/0117/09 is insufficient. The Chamber believes that the OPCV must provide it with a statement made by the family of the deceased victim appointing the new holder of the rights so that it can make a fully informed decision on the merits of the application.

c) Application Concerning Victim a/0351/09

16. The Chamber notes that the applicant has submitted, via the OPCV, a document attesting to the death of Victim a/0351/09 and a document attesting to the family relationship signed by a civil registrar.²³ The applicant also relies on two statements from family members of Victim a/0351/09 establishing both their family relationship and his or her appointment by the family council as the person resuming the action.²⁴ The Chamber notes that these supporting documents were submitted along with copies of the identity documents of the witnesses and the applicant.

17. The Chamber considers that, taken as a whole, the information contained in the Application Concerning Victim a/0351/09 is sufficient to establish: (i) the death of Victim a/0351/09; (ii) the family relationship between the deceased Victim a/0351/09 and the applicant; and (iii) the fact that the applicant has been authorized by that victim's family to continue the action initiated before the Court by the deceased Victim a/0351/09. The Chamber decides, therefore, that the applicant becomes the holder of the right to the reparations awarded to the deceased Victim a/0351/09 in

²³ ICC-01/04-01/07-3789-Conf-Exp-Anx2.

²⁴ ICC-01/04-01/07-3789-Conf-Exp-Anx2.

accordance with the modalities proposed by the Trust Fund for Victims, subject to their approval by the Chamber.

18. With regard to the condition that the action may be continued only in respect 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 February 2018 mission, the Legal Representative and the Trust Fund for Victims met with the designated successors to determine the victim's choices of reparations modalities. The Chamber will therefore take into account the preferences expressed by the applicant.

d) Protective measures

19. The Chamber recalls that the same protective measures as those granted to victims – anonymity vis-à-vis the public – apply to the person resuming the action initiated by Victim a/0351/09.²⁵

²⁵ See, for example: Decision of 21 March 2018; Decision of 15 March 2017, para. 9; and Decision of 12 December 2016, para. 10.

FOR THESE REASONS, the Chamber

DIRECTS the OPCV to transmit to it a statement by the family of the deceased Victim a/0117/09 appointing the new holder of the right to the reparations awarded to that victim;

GRANTS the Application Concerning Victim a/0351/09;

DECIDES that the person authorized by the family of the deceased Victim a/0351/09 is the new holder of the right to the reparations awarded to the victim in the present case; and

RECALLS that the identity of the person authorized above shall not be disclosed 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 18 July 2018

At The Hague, Netherlands