

**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 Carbuccion  
Judge Péter Kovács

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

**Confidential**

**Decision on the Application for Resumption of Action Submitted by the  
Legal Representative of Victims in respect of Victim a/25103/16**

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**

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**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** of the International Criminal Court (“Chamber” and “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 24 March 2017, the Chamber issued its “Order for Reparations pursuant to article 75 of the Rome Statute” recognizing the victim status for the purposes of reparations of 297 applicants, including Victim a/25103/16,<sup>1</sup> and ordering the award of both individual and targeted collective reparations (“Order for Reparations”).<sup>2</sup>

2. On 8 March 2018, the Appeals Chamber rendered the judgment on the appeals against the Order for Reparations,<sup>3</sup> upholding this Chamber’s decision with regard to the 297 applicants, including the application by Victim a/25103/16.<sup>4</sup>

3. On 16 May 2018, the Legal Representative of Victims (“Legal Representative”) filed an application requesting that a family member of the deceased Victim a/25103/16 be authorized to resume the action initiated by that victim (“Application”).<sup>5</sup>

4. The Legal Representative declares that Victim a/25103/16 – who was admitted to participate in the trial of Mr Katanga (“Trial”) and subsequently granted victim status for the purposes of reparations pursuant to the Order for Reparations of 24 March 2017 – has died.<sup>6</sup> The Legal Representative submits that, in

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<sup>1</sup> Annex II of the Order for Reparations, ICC-01/04-01/07-3728-Conf-Exp-AnxII.

<sup>2</sup> “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.

<sup>3</sup> “[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.

<sup>4</sup> *Ibid.*, p. 4.

<sup>5</sup> “*Demande de reprise de l’action introduite par la victime a/25103/16*”, 16 May 2018, ICC-01/04-01/07-3793-Red.

<sup>6</sup> Application, paras. 1 and 12.

conformity with the applicable case law,<sup>7</sup> “[TRANSLATION] successors are designated in the minutes of the family council meeting. They are thus authorized by a family council to continue the action initiated before the Court”.<sup>8</sup> The Legal Representative also submits that, in the case at hand, this entails a change in the holder of the rights attaching to the action brought by Victim a/25103/16: namely the right to receive the reparations awarded in respect of the deceased victim.<sup>9</sup>

5. With regard to the protective measures to be accorded to the successor vis à vis the public, the Legal Representative submits that the identity of the designated successor should not be disclosed to the public until he or she has been consulted in that regard.<sup>10</sup>

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

## II. Analysis

7. The Chamber recalls that, provided the applicable conditions are met, the right to reparations granted to victims who are now deceased may be transferred to persons appointed to resume the action.<sup>11</sup> To do so, 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. Once those conditions are met, the successor in the action introduced by the deceased victim becomes entitled to the reparations granted.<sup>12</sup>

8. The Chamber notes that the applicant in this case has submitted, through the Legal Representative: a document attesting the death of Victim a/25103/16 (“Death Certificate”); a document entitled “*procès-verbal de conseil de famille* [minutes of the family council]”, signed by members of the victim’s family, authorizing the

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<sup>7</sup> Application, paras. 10-11.

<sup>8</sup> Application, para. 13.

<sup>9</sup> Application, para. 8.

<sup>10</sup> Application, para. 14.

<sup>11</sup> “*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”).

<sup>12</sup> Decision of 21 March 2018, para. 9 and cited references.

successor to act on behalf of Victim a/25103/16; and copies of documents establishing the identities of each member of the family council.<sup>13</sup>

9. The Chamber considers that the kinship between the applicant and the deceased victim has been established by the certificate of family relationship and the name of their common mother appearing on the victim's Death Certificate and the applicant's voter card. The Chamber also finds that all the information contained in the Application is sufficient to establish (i) the death of Victim a/25103/16 and (ii) the fact that the applicant has been authorized by the victim's family to continue the action introduced before the Court by the deceased Victim a/25103/16.

10. Accordingly, the Chamber decides that the applicant becomes the holder of the right, in respect of deceased Victim a/25103/16, to reparations awarded to the victim in accordance with the modalities proposed by the Trust Fund, subject to their approval by the Chamber.

11. With regard to the condition that the action may be resumed 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 met with the designated successors to determine the victims' choices of reparations modalities. The Chamber will therefore take into account the preferences expressed by the successor in this case.

12. Lastly, the Chamber recalls that the protective measures granted to victims – concerning disclosing identities to the public – also apply to the successor of the action introduced by Victim a/25103/16.<sup>14</sup>

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<sup>13</sup> Confidential *ex parte* annex, ICC-01/04-01/07-3793-Conf-Exp-Anx1.

<sup>14</sup> See, for example, Decision of 15 March 2017, para. 9, and Decision of 12 December 2016, para. 10.

**FOR THESE REASONS**, the Chamber

**GRANTS** the Application;

**DECIDES** that the person authorized by the family of the deceased Victim a/25103/16 is the new holder of the right to reparations awarded to the victim in the present case; and

**RECALLS** that the identity of the above-authorized person shall not be disclosed to the public.

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

[signed]

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**Judge Marc Perrin de Brichambaut,  
Presiding Judge**

[signed]

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**Judge Olga Herrera Carbuccion**

[signed]

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**Judge Péter Kovács**

Dated this 18 July 2018

At The Hague, Netherlands