

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **French**

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

Date: **26 September 2019**

**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 brought by Victims  
a/0011/08 and a/0014/09**

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 ("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 as follows.

### **I. Procedural history**

1. On 24 March 2017, the Chamber issued the "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/0011/08 and a/0014/09, and ordering the award of both individual and targeted collective reparations ("Order for Reparations").<sup>1</sup>
2. On 8 March 2018, the Appeals Chamber issued the judgment on the appeals<sup>2</sup> against the Order for Reparations,<sup>3</sup> confirming the Chamber's decision with regard to the 297 applicants, including Victim beneficiaries a/0011/08 and a/0014/09.<sup>4</sup>
3. On 10 September 2019, the Legal Representative of Victims ("Legal Representative") filed an application requesting that a family member of deceased Victim a/0011/08 ("First Applicant") and a family member of deceased Victim a/0014/09 ("Second Applicant") be authorized to resume the action brought by those victims ("Applications relating to Victims a/0011/08 and a/0014/09" or "Applications").<sup>5</sup>
4. The Defence did not file submissions on the Applications.

### **II. Analysis**

---

<sup>1</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 (Annex I) and one confidential annex *ex parte* Legal Representative of Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga (Annex II).

<sup>2</sup> "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", 26 April 2017, ICC-01/04-01/07-3739; "Notice of Appeal against the '*Ordonnance de réparation en vertu de l'article 75 du Statut*' and its Annex II", 25 April, ICC-01/04-01/07-3737-tENG.

<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*'" ("Judgment on Reparations"), 8 March 2018, ICC-01/04-01/07-3778-Conf. A public redacted version of the judgment was issued on 9 March 2018.

<sup>4</sup> Judgment on Reparations, p. 4.

<sup>5</sup> [Reference to be added].

### a) Applicable law and procedure

5. The Chamber notes that, provided the relevant conditions are met, the successor in an action initiated by a deceased victim becomes entitled to the reparations awarded.<sup>6</sup> In order to meet these conditions, the successor must establish the victim's death, his or her family relationship with the victim, and his or her designation as successor by their family members.<sup>7</sup> Once those conditions have been met, the successor in the action brought by the deceased victim becomes entitled to the reparations awarded.<sup>8</sup>

### b) Findings of the Chamber

6. The Chamber notes that, in seeking to resume the action brought by deceased Victim a/0011/08, the First Applicant submitted through the Legal Representative a document entitled "[TRANSLATION] Minutes of the Family Council Meeting" signed by five family members, mandating him to act on behalf of deceased Victim beneficiary a/0011/08 ("Minutes of the Family Council Meeting concerning Victim beneficiary a/0011/08").<sup>9</sup> The applicant also relies on a document certifying the death of Victim beneficiary a/0011/08.<sup>10</sup> The Chamber notes that the documents are supplemented by a copy of the identity document of the applicant in question and those of four members of the family council.<sup>11</sup>

7. The Chamber notes that the First Applicant did not produce a certificate of family relationship to Victim beneficiary a/0011/08. Nonetheless, it considers that, where an applicant is unable to produce an acceptable document, such as a certificate of family relationship, the presentation of any other documentation or material that enables the Chamber to determine the veracity of the allegations made

---

<sup>6</sup> "Decision on Applications for Resumption of Action Lodged by Family Members of Deceased Victims a/0281/08 and a/25049/16", 21 March 2018, ICC-01/04-01/07-3782-Conf-tENG, paras. 8-9 ("Decision of 21 March 2018").

<sup>7</sup> Decision of 21 March 2018, para. 9 and references cited. See also "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", 18 July 2018, ICC-01/04-01/07-3803-Conf-tENG ("Decision of 18 July 2018").

<sup>8</sup> Decision of 21 March 2018, para. 9 and references cited. See also Decision of 18 July 2018.

<sup>9</sup> ICC-01/04-01/07-3840-Conf-Exp-Anx1, p. 2.

<sup>10</sup> ICC-01/04-01/07-3840-Conf-Exp-Anx1, p. 3.

<sup>11</sup> ICC-01/04-01/07-3840-Conf-Exp-Anx1, pp. 4, 5, 6.

in the application submitted to it, is also sufficient to establish the family relationship with the deceased victim.<sup>12</sup> In line with its previous decisions, the Chamber may accept a statement signed by at least two credible witnesses to establish the family relationship between the deceased victim beneficiary and the First Applicant.<sup>13</sup> In this instance, the Chamber notes that the minutes of the family council meeting concerning the application for resumption of the action brought by deceased Victim a/0011/08, which was signed by five members of the family, contains information on the family relationship between the First Applicant and Victim beneficiary a/0011/08. The information in that document is therefore sufficient to establish the family relationship between deceased Victim a/0011/08 and the First Applicant.

8. The Chamber notes that, in seeking to resume the action brought by deceased Victim a/0014/09, the Second Applicant submitted through the Legal Representative a document entitled “[TRANSLATION] Minutes of the Family Council Meeting” signed by four family members, mandating him to act on behalf of deceased Victim a/0014/09 (“Minutes of the Family Meeting concerning Victim beneficiary a/0014/09”).<sup>14</sup> The Second Applicant also relies on a document certifying the death of Victim beneficiary a/0014/09.<sup>15</sup> The Chamber notes that the documents are supplemented by a copy of the identity documents of the family council members.<sup>16</sup>

9. The Chamber notes that the Second Applicant did not produce a certificate of family relationship with Victim beneficiary a/0014/09. Nonetheless, it considers that, where an applicant is unable to produce an acceptable document, such as a certificate of family relationship, the presentation of any other documentation or material that enables the Chamber to determine the veracity of the allegations made in the application submitted to it is also sufficient to establish the family relationship

---

<sup>12</sup> See, for example, Decision of 18 July 2018, para. 9. See also *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.

<sup>13</sup> See, for example, Decision of 18 July 2018, para. 9. See also *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.

<sup>14</sup> ICC-01/04-01/07-3840-Conf-Exp-Anx2, p. 2.

<sup>15</sup> ICC-01/04-01/07-3840-Conf-Exp-Anx2-Red, p. 3.

<sup>16</sup> ICC-01/04-01/07-3840-Conf-Exp-Anx2-Red, pp. 4-5.

with the deceased victim.<sup>17</sup> In line with its previous decisions, the Chamber may accept a statement signed by at least two credible witnesses to establish the family relationship between the deceased victim beneficiary and the Second Applicant.<sup>18</sup> In this instance, the Chamber notes that the minutes of the family council meeting concerning the application for resumption of the action brought by deceased Victim a/0014/09, which were signed by four members of the family, contain information on the family relationship between the Second Applicant and Victim beneficiary a/0014/09. The information contained in that document is therefore sufficient to establish the family relationship between deceased Victim a/0014/09 and the Second Applicant.

10. In view of the foregoing, the Chamber considers that the information as a whole contained in the Applications relating to Victims a/0011/08 and a/0014/09 is sufficient to establish (i) the death of Victims a/0011/08 and a/0014/09; (ii) the family relationship between deceased Victim a/0011/08 and the First Applicant and between deceased Victim a/0014/09 and the Second Applicant; and (iii) that both applicants have been duly mandated by their respective families to continue the actions brought before the Court by deceased Victims a/0011/08 and a/0014/09.

11. Accordingly, the Chamber rules that the First Applicant and the Second Applicant become entitled, on behalf of deceased Victims a/0011/08 and a/0014/09, to the reparations awarded to those victims in accordance with the modalities proposed by the Trust Fund, once those modalities are approved by the Chamber.

12. Regarding the condition that the action may be continued 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, the Chamber notes that, during the mission which took place in February 2018, the Legal Representative and the Trust Fund held

---

<sup>17</sup> See, for example, Decision of 18 July 2018, para. 9. See also *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.

<sup>18</sup> See, for example, Decision of 18 July 2018, para. 9. See also *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.

discussions with Victim beneficiaries a/0011/08 and a/0014/09, now deceased, to determine their choice of modality with regard to reparations.<sup>19</sup> The Chamber will therefore take into account the choices expressed by those victim beneficiaries.

13. Lastly, the Chamber recalls that the protective measures granted to victims – anonymity vis-à-vis the public – likewise apply to the respective successors in the actions brought by Victims a/0011/08 and a/0014/09.<sup>20</sup>

**FOR THESE REASONS, the Chamber**

**GRANTS** the Applications relating to Victims a/0011/08 and a/0014/09.

**DECIDES** that the persons mandated by the families of deceased Victims a/0011/08 and a/0014/09, respectively, are now entitled to the reparations awarded in the instant case; and

**RECALLS** that the above-mentioned successors 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]

---

**Judge Olga Herrera Carbuccia**

[signed]

---

**Judge Péter Kovács**

Dated this 26 September 2019,

At The Hague, Netherlands

---

<sup>19</sup> Applications relating to Victims a/0011/08 and a/0014/09, para. 5.

<sup>20</sup> See, for example, “Decision on the Application made by the Common Legal Representative of Victims on 2 March 2017”, 15 March 2017, ICC-01/04-01/07-3727-tENG, para. 9, and “Decision on the Application for Resumption of Action Submitted by a Relative of Deceased Victim a/0265/09 and the Appointment of a New Representative for Victim A/0071/08”, 12 December 2016, ICC-01/04-01/07-3721-tENG, para. 10.