



Original: **French**

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

Date: **15 March 2017**

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 Document

**Decision on the Application made by the Common Legal Representative of
Victims on 2 March 2017**

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

Office of the Prosecutor

Counsel for the Defence

Mr David Hooper

Ms Caroline Buisman

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**

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 (“Statute”), rules 85 and 89 of the Rules of Procedure and Evidence, and regulations 80, 81 and 86 of the Regulations of the Court, hereby decides as follows:

I. Background

1. On 2 March 2017, the Common Legal Representative of Victims (“Legal Representative”) filed an application to resume the action initiated by Applicant a/0142/08¹ (“Application for Resumption of Action”).
2. The Legal Representative submits that Applicant a/0142/08, who had been admitted as a victim participant in the trial of Germain Katanga (“Mr Katanga”), subsequently died. The Legal Representative further submits that the appointed successor is a close relative of Applicant a/0142/08 and that he has been appointed by his family council to continue the action initiated before the Court.² The Legal Representative also requests that, should the action be resumed, the same system of protective measures as previously granted be applied to the successor.³
3. In addition, the Legal Representative informs the Chamber of the death of Applicants a/0158/09, a/0376/09, a/0373/09 and a/0356/09.⁴
4. The Defence team for Mr Katanga has not filed a response.⁵

¹ “*Demande de reprise de l’action introduite par la victime a/0142/08 et informations relatives à la situation de certaines victimes*”, 2 March 2017, ICC-01/04-01/07-3725-Conf, and one confidential annex, *ex parte* Victims Participation and Reparations Section and the Legal Representative. A public redacted version of the Application for Resumption of Action and a redacted confidential version of the annex thereto were filed on the same day.

² Application for Resumption of Action, paras. 1, 4-9; Annex 1 to the Application for Resumption of Action.

³ *Ibid.*, para. 10 and p. 7.

⁴ *Ibid.*, para. 16.

⁵ “*Ordonnance fixant un calendrier pour le dépôt des observations sur la requête du Représentant légal commun des victimes du 2 mars 2017*”, 3 March 2017, ICC-01/04-01/07-3726.

II. Analysis

a. Application for Resumption of Action

5. The Chamber notes that, in a decision dated 5 August 2009, in its previous composition, Trial Chamber II granted the status of victim participant in the trial of Mr Katanga to Applicant a/0142/08.⁶ The Chamber further notes that a consolidated version of the application file of the above-mentioned applicant was submitted to the Chamber for consideration for the purpose of reparations and, in redacted version, transmitted to the Defence, on 13 and 25 November 2015 respectively.⁷

6. The Chamber recalls that the family members of an applicant who has been granted the status of victim participant by a Chamber, but who dies during the proceedings, may continue the action initiated by him or her 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. To this end, the person concerned must provide evidence of the death of the victim, his or her relationship to the victim, and his or her appointment by their family members as successor.⁸

7. The Chamber notes that, on behalf of the successor, the Legal Representative has submitted two documents which attest to the death of Applicant a/0142/08. One of them is entitled “[TRANSLATION] Minutes of the family council” and is signed by members of his family mandating him to act on behalf of the deceased applicant and

⁶ “Corrigendum of Operative part of the Decision on the 345 applications for participation as victim in the proceedings”, dated 5 October 2009 and registered on 6 August 2009, ICC-01/04-01/07-1347-Corr-tENG, p. 5.

⁷ ICC-01/04-01/07-3614-Conf-Exp-Anx32 et ICC-01/04-01/07-3614-Conf-Exp-Anx32-Red.

⁸ “*Décision relative à la demande de reprise d’instance introduite par un proche de la victime décédée a/0265/09 et de désignation d’un nouveau mandataire pour représenter la victime a/0071/08*”, 12 December 2016, ICC-01/04-01/07-3721 (“Decision of 12 December 2016”), para. 7; “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; “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”, 20 May 2016, ICC-01/04-01/07-3691, para. 7.

stating his relationship to the victim, as well as copies of the identification documents of each member of the Family Council.⁹

8. The Chamber considers that the information contained in the Application for Resumption of Action is sufficient to establish: (i) the successor's relationship to the deceased applicant; and (ii) the fact that the successor is duly mandated by his family to continue the action initiated by his deceased relative before the Court.

9. The Chamber notes that the Legal Representative has disclosed the successor's identity to the Defence.¹⁰ Accordingly, the Chamber recalls that protective measures granted to applicants also apply to successors.¹¹

b. Information about the deaths of Applicants a/0158/09, a/0376/09, a/0373/09 and a/0356/09

10. The Chamber notes that, in its previous composition, Trial Chamber II granted the status of victim participant in the trial of Mr Katanga to Applicants a/0158/09, a/0376/09, a/0373/09 and a/0356/09.¹² The Chamber further notes that, during the Legal Representative's last mission, the relatives of Applicants a/0158/09 and a/0376/09 informed him of their deaths and of their decision not to resume the action initiated by the applicants.¹³ The Chamber also notes that "[TRANSLATION] sources of varying proximity" to Applicants a/0373/09 and a/0356/09 have informed the Legal Representative of the probable deaths of said applicants.¹⁴

11. The Chamber considers that the information provided by the Legal Representative is sufficiently credible to establish the death of Applicants a/0158/09, a/0376/09, a/0373/09 and a/0356/09. Accordingly, the Chamber will no longer consider their files for the purposes of reparations.

⁹ Annex 1 to the Application for Resumption of Action.

¹⁰ Application for Resumption of Action, para. 1; Redacted version of Annex 1 to the Application for Resumption of Action.

¹¹ See, for example, the Decision of 12 December 2016, para. 10.

¹² "Corrigendum of Operative part of the Decision on the 345 applications for participation as victim in the proceedings", dated 5 August 2009 and registered on 6 August 2009, ICC-01/04-01/07-1347-Corr, pp. 6 and 7.

¹³ Application for Resumption of Action, p. 7.

¹⁴ *Idem*.

c. Legal representation of certain applicants

12. The Chamber recalls that, in its Decision of 6 September 2016, it accorded the termination of the representation agreement for some applicants for reparations and some participating victims in Mr Katanga's trial¹⁵ ("Applicants"), and stated that it would rule on the merits of their application in its Order for Reparations pursuant to article 75 of the Statute.¹⁶

13. The Chamber recalls that, on 24 March 2017, it will hold a hearing to pronounce said Order for Reparations.¹⁷ The Chamber further recalls that, under article 82(4) of the Statute, the Legal Representative may appeal against the Order.

14. Mindful of the foregoing, and given that these applicants currently have no legal representation, the Chamber deems it opportune¹⁸ to appoint, under regulations 80 and 81 of the Regulations of the Court, the Office of Public Counsel for Victims ("OPCV") as the Legal Representative in the appeals phase, if the need arises. The applicants are as follows:

a/0203/08; a/0005/09; a/0159/08; a/0112/09; a/0016/08; a/0033/08; a/0176/08;
a/0203/09; a/0231/08; a/0351/09; a/0029/08; a/0044/08; a/0067/09; a/0074/09;
a/0083/08; a/0083/09; a/0115/09; a/0117/09; a/0156/09; a/0162/09; a/0167/08;
a/0175/08; a/0214/08; a/0216/08; a/0218/09; a/0232/09; a/0302/09; a/0308/09;
a/0320/09; a/0321/09; a/0327/09; a/0385/09; a/0387/09; a/0398/08; a/0401/08;
a/0402/08 and a/0527/08.

15. Accordingly, the Chamber directs the Registry to grant the OPCV access to all documents admitted into evidence in the instant case, except documents marked as

¹⁵ "Second decision on the Legal Representative of the Victims' request for termination of the representation agreement", 6 September 2016, ICC-01/04-01/07-3706-Conf-tENG ("Decision of 6 September 2016").

¹⁶ The Chamber notes that, in conformity with its Decision of 6 September 2016, the Legal Representative has informed the relevant applicants of the termination of the representation agreement (Application for Resumption of Action, para. 16).

¹⁷ "Decision setting the Date for the Pronouncement of the Order for Reparations", 22 February 2017, ICC-01/04-01/07-3724-tENG.

¹⁸ Decision of 6 September 2016, para. 14.

“confidential *ex parte*”. The Chamber further directs the Registry to grant the OPCV access to the unredacted versions of these applicants’ dossiers.

FOR THESE REASONS, the Chamber,

GRANTS the Application for Resumption of Action;

AUTHORIZES the successor appointed by the family of the deceased Applicant a/0142/08 to continue the action initiated before the Court on behalf of said applicant;

RECALLS that the appointed successor shall be entitled to anonymity vis-à-vis the public;

DECIDES to no longer consider the dossiers of Applicants a/0158/09, a/0376/09, a/0373/09 and a/0356/09 for the purposes of reparations;

APPOINTS the OPCV as the Legal Representative of the applicants listed in paragraph 14;

INSTRUCTS the Registry to grant the OPCV access to the unredacted versions of the dossiers of applicants listed under paragraph 14; and

INSTRUCTS the Registry to grant the OPCV access to all documents admitted into evidence in the instant case, except for those marked as “confidential *ex parte*.”

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 15 March 2017

At The Hague, Netherlands

ICC-01/04-01/07

7/7

15 March 2017

Official Court Translation