

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04
Date: 11 April 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

**Decision on the Notification of the Board of Directors of the Trust Fund for
Victims in accordance with Regulation 50 of the Regulations of the Trust Fund**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Mr Emmanuel Daoud
Mr Luc Walley
Mr Frank Mulenda
Ms Carine Bapita Buyangandu
Mr Michel Shebele
Mr Patrick Baudoin
Mr Michael Verhaeghe
Mr Sylvestre Bisimwa
Mr Joseph Keta
Mr J.L. Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda, Principal Counsel

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta, Principal Counsel

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Ralph Martens, acting Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Trust Fund for Victims
André Laperrière, Executive Director

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court”, respectively);

NOTING the “Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund for Victims with Confidential Annex”¹ (“the Notification”) filed on 24 January 2008 in the record of the Situation of the Democratic Republic of Congo by the Board of Directors (“the Board”) of the Trust Fund for Victims (“the Trust Fund”) in which the Trust Fund proposes sixteen activities it would undertake in accordance with rule 98 of the *Rules of Procedure and Evidence* (“the Rules”);

NOTING the “Decision on the time limit for the filing of observations on the Notification by the Board of Directors of the Trust Fund for Victims”² issued by the Chamber on 5 February 2008 in which the Chamber decided that the Prosecution, the Office of Public Counsel for the Defence (“the OPCD”) and the legal representatives of victims would have until 20 February 2008 to submit observations on the Notification;

NOTING the “Additional information on the Notification by the Board of Directors of the Trust Fund for Victims and annex”³ filed by the Board as confidential, and notified to the Prosecution and the OPCD;

NOTING the observations on the Notification filed on 20 February 2008 by the Prosecution⁴ in which the Prosecution concludes that since the activities contained in the Notification are aimed at benefiting general groups of victims and not specific

¹ ICC-01/04-439.

² ICC-01/04-441.

³ ICC-01/04-445-Conf + Conf-Anx.

⁴ ICC-01/04-462.

individuals participating in the proceedings, the projects, being unconnected to the Court's proceedings, would not be incompatible with the criteria set forth in regulation 50(a)(ii) of the Regulations of the Trust Fund for Victims ("the Regulations of the Trust Fund");

NOTING the observations on the Notification filed on 20 February 2008 by the OPCD⁵ in which the OPCD concludes that the proposed activities would pre-determine issues to be determined by the Court, including jurisdiction, and could violate the presumption of innocence or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;

NOTING the observations on the Notification filed on 20 February 2008 by the Office of Public Counsel for Victims ("the OPCV")⁶ in which the OPCV observes that the activities contained in the Notification undertaken under Regulation 50(a) were implemented through the "other resources of the Fund" and that projects proposed by the Fund correspond with the criteria set forth in regulation 50(a)(i) of the Regulations of the Trust Fund; that Regulation 50(a)(ii) does not apply to the situation in the Democratic Republic of the Congo ("the DRC Situation") but only to cases before the Court; and finally, that the proposed activities would not pre-determine any issue to be determined by the Pre-Trial Chamber in the DRC Situation;

NOTING the observations on the Notification filed on 20 February 2008 by the Legal Representative of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06 and a/0228/06⁷ in which the Legal Representatives

⁵ ICC-01/04-459-Conf and ICC-01/04-458.

⁶ ICC-01/04-460.

⁷ ICC-01/04-461.

observe, *inter alia*, that the proposed activities are consistent with the independent mandate of the Trust Fund, *vis-à-vis* voluntary contributions and other funding sources not related to the Court's enforcement procedures; that the relevant Chamber should not be involved in considerations concerning activities related to the use of the Trust Fund's other resources; that the Chamber should adopt a narrow approach in determining whether a specific activity or project would pre-determine any issue; and that the existence of victims does not impact in any way on particular individuals responsibility for crimes;

NOTING the observations on the Notification filed on 20 February 2008 by the Legal Representatives of VPRS1 and a/0071/06⁸ in which the Legal Representatives request, *inter alia*, that the Chamber decide that the specific activities proposed by the Board of Directors do not pre-determine any issue to be determined by the Court, do not violate the presumption of innocence and or prejudice the rights of the accused, and the fairness and impartiality of the trial;

NOTING the "Board of Directors of the Trust Fund for Victims' application for Leave to Respond to the 'OPCD Observations on the Notification by the Board of Directors of the Trust Fund for Victims'"⁹ filed on 25 February 2008 and the Chamber's "Decision on the request of the Trust Fund for leave to respond to the Observations" issued on the 28 February 2008¹⁰, in which the Chamber authorized the Board of the Trust Fund to respond to the observations of the OPCD;

NOTING the "*Clarifications et explications par le Conseil de direction du Fonds au profit des victimes des observations du Bureau du conseil public pour la Défense du 20 février 2008*"

⁸ ICC-01/04-463.

⁹ ICC-01/04-441.

¹⁰ ICC-01/04-473.

conformément à la décision de la Chambre préliminaire I du 28 février 2008¹¹ filed on 6 March 2008 in which the Trust Fund observes, *inter alia*, that:

- (i) the Trust Fund should not be required to provide additional information on the proposed activities, because it complied with the Court's order to provide the specific places, the types of victims and the crimes within the jurisdiction of the Court that the proposed activities aim to address;
- (ii) the notified activities relate solely to the Trust Fund's second mandate, pursuant to rule 98(5) of the Rules to use its "other resources" and not to its first mandate which is to implement reparations orders issued by the Court pursuant to rule 98(2) and (3);
- (iii) the principle of complementarity does not apply to the second mandate and the notified activities cannot prejudice or predetermine national proceedings; and,
- (iv) the OPCD's argument that "the Trust Fund should also verify whether the alleged victims of the offences have already been compensated or will be compensated by national authorities" is irrelevant because the notified activities should not be qualified as reparations;

NOTING articles 68, 69, 75 and 79 of the *Rome Statute* ("the Statute"), rule 98 of the Rules, and regulations 50 and 56 of the *Regulations of the Trust Fund*;

CONSIDERING that pursuant to article 79(1) of the Statute, the Trust Fund was "established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court";¹²

¹¹ ICC-01/04-485.

¹² ICC-ASP/1/Res.6.

CONSIDERING that, pursuant to articles 75(2), 79(2) of the Statute and rule 98 of the Rules, the Court may order that an award for reparations be made through the Trust Fund; that the Court order concerning awards for reparations may be executed with (i) funds collected through fines and forfeiture as provided for in article 79(2) of the Statute, or (ii) other resources as provided for in rule 98(5) of the Rules which is subject to the provisions of article 79 of the Statute; and that therefore, the responsibility of the Trust Fund is first and foremost to ensure that sufficient funds are available in the eventuality of a Court reparation order pursuant to article 75 of the Statute;

CONSIDERING that the Trust Fund has a further mandate, which relates to “other resources”¹³ to be used for the benefit of victims under rule 98(5) of the Rules and chapter II of the Regulations of the Trust Fund; and that the implementation of activities and projects in execution of this further mandate, including those referred to in the Notification of the Trust Fund, is, on the one hand, unrelated to Court-ordered reparations, and on the other hand, subject to the responsibility of the Trust Fund to ensure that there are sufficient funds to comply with any reparation order that the Court may make under article 75 of the Statute;

CONSIDERING that, in light of the above, and given the fact that no property or assets have been seized to date from the accused and/or suspects in the cases pending before the Court, the Chamber strongly recommends that, in compliance with regulation 56 of the Regulations of the Trust Fund, before resorting to other activities or projects, the Trust Fund undertake a study evaluating and anticipating the resources which would be needed to execute an eventual reparation order pursuant to article 75 of the Statute in the cases pending before this Court;

¹³ Regulations 47 and 48 of the Regulations of the Trust Fund.

CONSIDERING that the Prosecution, the OPCV¹⁴, the Legal Representative of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06 and a/0228/06 and the Legal Representatives of VPRS1 and a/0071/06 submit, *inter alia*, that the proposed activities do not pre-determine any issue to be determined by the Court, do not violate the presumption of innocence or prejudice the rights of the accused, the fairness or impartiality of the trial; and that, in relation to the specific activities and projects included in the Notification of the Trust Fund, only the OPCD has raised concerns, including that:

- (i) the additional information provided by the Trust Fund does not allow the participants to make a complete assessment of the issues listed in regulation 50 of the Regulations of the Trust Fund;
- (ii) the Trust Fund's proposed activities could pre-determine the issue of reparations, under article 75(1) of the Statute;
- (iii) it would be difficult to determine precisely that the activities undertaken by the Trust Fund are within the Court's jurisdiction;
- (iv) any activities taken on behalf of victims in a situation referred to the Court could compromise the principle of complementarity and would have to defer to national proceedings;
- (v) the use by the Trust Fund of decisions of the Court in order to assess whether crimes within the Court's jurisdiction had occurred are preliminary decisions of the Chamber, and therefore could be prejudicial to the outcome of trial proceedings; and,
- (vi) if any of the beneficiaries of the Trust Fund's proposed projects later participate in the proceedings as victims or witnesses, the fact that they have received a benefit from the Trust Fund should be fully disclosed;

¹⁴ The OPCV's observations were made acting in the capacity of legal representative to victims a/0007/06; a/0008/06; a/0022/06 to a/0024/06, a/0026/06, a/0030/06, a/0033/06, a/0040/06, a/0041/06, a/0046/06, a/0072/06, a/0128/06 to a/0141/06, a/0145/06 to a/0147/06, a/0149/06, a/0151/06, a/0152/06, a/0161/06, a/0162/06, and a/0209/06.

CONSIDERING that the Notification of the Trust Fund, and the observations on the Notification filed by the Prosecution, the OPCD and those granted the procedural status of victims in the proceedings concerning the DRC situation, provide sufficient information for the Chamber to make an initial determination within the time limit established in regulation 50(a)(ii) of the Regulations of the Trust Fund on whether such activities and projects:

“would pre-determine any issue to be determined by the Court, including the determination of jurisdiction pursuant to article 19, admissibility pursuant to articles 17 and 18, or violate the presumption of innocence pursuant to article 66, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.¹⁵

CONSIDERING that, in the view of the Chamber, the proposed activities and projects appear to be within the jurisdiction of the court, and do not appear to have an impact on the principle of complementarity, to pre-determine any issue to be determined by the Court, to violate the presumption of innocence, prejudice the rights of the accused, or affect the fairness or impartiality of the proceedings, because:

- (i) the proposed activities and projects are all undertaken in relation to a situation for which the Court has already initiated an investigation (the DRC situation);
- (ii) the proposed activities appear unrelated to national proceedings, to the proceedings concerning the investigation of the DRC situation, or to any case arising out of such investigation;
- (iii) the Trust Fund’s mere reference to decisions of the Court in its Notification, such as the decision assigning the DRC Situation to Pre-Trial Chamber I¹⁶, has no impact on the outcome of proceedings;
- (iv) should any beneficiaries of the proposed activities ever appear as witnesses before the Court, the competent Chamber retains,

¹⁵ Art. 50 (a) (ii) of the Regulations of the Trust Fund.

¹⁶ See, ICC-01/04-439, fn. 20 and ICC-01/04-1, reclassified as public pursuant to ICC-01/04-01/06-42.

pursuant to article 69 of the Statute, the authority to rule on the admissibility and probative value of their testimony;

CONSIDERING that regulation 50(a)(iii) of the Regulations of the Trust Fund provides that “[s]hould there be no response from the Chamber [concerning the Notification] or should additional time be needed by the Chamber, consultations may be held with the Board to agree on an extension” and “[in] the absence of such an agreement, the extension shall be 30 days from the expiry of the period specified in sub-paragraph (a) (ii)”;

CONSIDERING that consultations were held with the Board to agree on an extension, but no agreement was reached¹⁷; that the default 30-day extension, with a one-week suspension¹⁸, of the period specified in regulation 50(a)(ii) shall apply; and that therefore the deadline for the Chamber to inform the Board in writing whether the activities or projects are not incompatible with the criteria in regulation 50(a)(ii) is 15 April 2008;

FOR THESE REASONS

REJECTS the OPCD’s request for additional information;

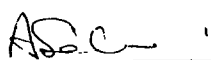
¹⁷ ICC-01/04-485, paras. 42-45.

¹⁸ ICC-01/04-473, p. 7; ICC-01/04-485, para. 44, fn. 61.

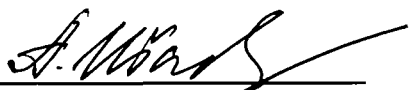
DECIDES to inform the Board that that the projects listed in Annex A to the Notification do not appear *per se* to pre-determine any issue to be determined by the Court, including the determination of jurisdiction, admissibility, or to violate the presumption of innocence, and do not appear to be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;

RECOMMENDS that, before resorting to any other activities or projects, the Board of the Trust Fund, in accordance with its obligations under regulation 56 of the Regulations of the Trust Fund, undertake a study evaluating and anticipating the resources which would be needed to execute in the cases pending before this Court an eventual reparation order pursuant to article 75 of the Statute.

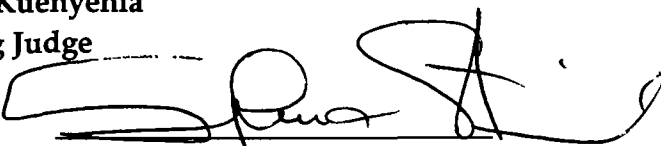
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Friday 11 April 2008

At The Hague, The Netherlands