



Original : English

No.: ICC-01/04
Date: 22 February 2008

PRE-TRIAL CHAMBER I

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

Registrar: Mr Bruno Cathala

SITUATION OF DEMOCRATIC REPUBLIC OF THE CONGO

**Public
URGENT**

Board of Directors of the Trust Fund for Victims's application for leave to Respond to the "OPCD Observations on the Notification by the Board of Directors of the Trust Fund for Victims"

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial
Lawyer

Legal Representatives for 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

Office of Public Counsel for Defence

Mr Xavier-Jean Keïta

Office of Public Counsel for Victims

Ms Paolina Massidda

I. BACKGROUND

1. On 24 January 2008, in accordance with regulation 50 of the Regulations of the Trust Fund for Victims¹ (the "Regulations"), the Board of Directors of the Trust Fund ("Board of Directors" or the "Board") notified the Pre-Trial Chamber I (the "Chamber"), of its conclusion² to undertake specified activities (the "Notification") in the territory of the Democratic Republic of the Congo ("DRC"). The specified activities were listed in confidential annex³ only available to the Prosecutor, the Office of Public Counsel for Defence (the "OPCD") and the Office of Public Counsel for Victims (the "OPCV").

2. On 5 February 2008, the Chamber required the Board to submit additional information and ordered the Registry to notify the document ICC-01/04-439-Conf-Anx to the Legal Representatives of the Victims of the DRC Situation. The Chamber also decided that the Prosecution, the OPCD and the legal representatives of those who have been granted the procedural status of victim may file observations.⁴

3. On 7 February 2008, the Board filed additional information on the specified activities⁵.

4. On 20 February 2008, the OPCD⁶, Mr. Keta⁷ as Legal Representative⁸, the OPCV as Legal Representative⁹, the Prosecution¹⁰, and Mr. Daoud and Mr. Baudoin¹¹ as Legal Representative¹², all submitted observations on the Notification.

¹ The Regulations of the Trust Fund were adopted on 3 December 2005 by Resolution ICC-ASP/4/Res.3

² ICC-01/04-439.

³ ICC-01/04-439-Conf-Anx.

⁴ ICC-01/04-441.

⁵ ICC-01/04-445-Conf

⁶ ICC-01/04-458 and ICC-01/04-459-Conf.

⁷ Mr. Keta is the legal representative of the 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

⁸ ICC-01/04-461.

⁹ ICC-01/04-460.

¹⁰ ICC-01/04-462.

¹¹ Mr. Daoud and Mr. Baudoin are the Legal Representative of the Victims 'VPRS 1 a VPRS 6 et de a/0071/06'

¹² ICC-01/04-463.

5. Given the abovementioned Observations of the OPCD ("Observations"), the Board considers it important to address clarifications and explanations on the identified issues and hereby respectfully requests leave to file a response.

II. DISCUSSION

9. The Board of Directors is seeking leave to respond to the Observations pursuant to regulations 22, 24, 28 of the Regulations of the Court. The Board acknowledges that the participants in the proceedings, usually, are not obliged to file an application for leave to respond.

10. However, the Board of Directors should highlight that the Regulations of the Court do not establish any provision linked to the participation of the Board in the proceeding, as the regulation 24 states:

" 1. The Prosecutor and the Defence may file a response to any document filed by any participant in the case in accordance with the Statute, Rules, these Regulations and any order of the Chamber.

2. Victims or their legal representatives may file a response to any document when they are permitted to participate in the proceedings in accordance with article 68, paragraph 3, and rule 89, sub-rule 1, subject to any order of the Chamber.

3. States participating in the proceedings may file a response to any document, subject to any order of the Chamber."

11. The drafters of the Regulations of the Court could not foresee, during the *travaux préparatoires* of these Regulations, the necessity to add the Board to the list of those entitled to participate in proceedings; as the procedures concerning the Notification of the Board to undertake specified activities as stipulated in regulation

50(a) of the Regulations of the Trust Fund for Victims, was established after the adoption of the Regulations of the Court.

12. This omission should not lead to the conclusion that the Board does not have the status of participant. Indeed, the Board, in accordance with regulation 50(a) of the Regulations of Trust Fund for Victims, initiated this procedure of Notification to the Chamber and has a main interest to participate in the present proceeding, as the activities the Board intends to undertake are the subject of this proceeding.

13. More over, as the Chamber in its decision of 5 February 2008¹³ requested the Board to provide additional information to the Notification, applying regulation 28 of the Regulations of the Court which states:

" 1. A Chamber may order the participants to clarify or to provide additional details on any document within a time limit specified by the Chamber.

2. A Chamber may order the participants to address specific issues in their written or oral submissions within a time limit specified by the Chamber."

The Board respectfully concludes that the Chamber thus recognizes it as a participant in the present proceeding.

14. Given that the Chamber was notified of the conclusion of the Board to undertake specified activities, and hence, requested additional information and observations, *inter alia*, from the OPCD; the Board respectfully requests that by virtue of its application, it should be granted the status of "*participant in the situation*" for the confined purposes of this proceeding.

¹³ ICC-01/04-441.

15. The present application of the Board of Directors for leave to respond, in accordance with regulation 24 of the Regulations of the Court, to the Observations filed by OPCD is based on the reasons outlined below:

16. It is important to respond to the Observations put forward as these might be significant for the determination of the scope and mandate of the Trust Fund under rule 98(5) of the Rules of Procedure and Evidence (the "Rules") and regulation 50(a) of the Regulations of the Trust Fund for Victims.

17. Since this is the first time the Board has notified the Chamber of its conclusion to undertake specified activities, this response will provide explanations and clarifications on misinterpretations of the two mandates, and operational and program realities of the Trust Fund. In this regard, the Chamber has already granted leave to the Prosecutor to reply to observations "*considérant la nouveauté de la question de la participation des victimes au stade de l'enquête et le fait que pour la première fois, VPRS1 a VPRS 6 s'opposent a une requête du Procureur a ce stade*¹⁴". As the Chamber is dealing with new issues that have arisen from the Notification, the present proceeding has also produced a novelty which necessitates a leave to respond.

18. As the specified activities intend to benefit targeted groups of victims, the Board wishes to underline that this request to the Honourable Chamber, takes into account the needs of victims, stipulated in rule 86 of the Rules.

19. The Board respectfully submits to the Chamber that the requested response relates to issues put forward in Observations of the OPCD.

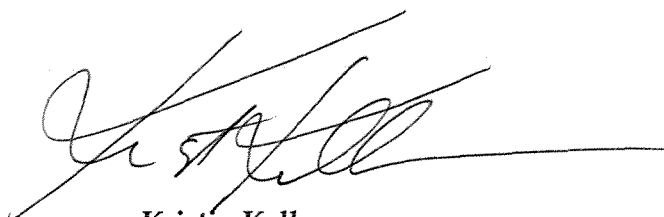
20. The Board of Directors shows its intention, if the Honourable Chamber grants leave, to respond quickly and with brevity.

¹⁴ ICC-01/04-110.

FOR THE FOREGOING REASONS

The Board of Directors hereby respectfully requests the Pre-Trial Chamber I to:

- (i) Consider that the Board of Directors has the status of participant in the present proceeding; and
- (ii) Grant leave to respond to the observations submitted by OPCD, by either written response or public hearing.



Kristin Kalla
Officer in Charge
Secretariat of the Trust Fund for Victims

Dated this 22 February 2008

At The Hague, The Netherlands