

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04

Date: 20 February 2008

PRE-TRIAL CHAMBER I

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

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public

Prosecution's observations on the "Notification of 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

Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta, Principal Counsel

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Patrick Baudoin
Mr Sylvestre Bisimwa
Mr Emmanuel Daoud
Mr Joseph Keta
Mr Franck Mulenda
Mr Michel Shebele
Mr Michael Verhaeghe
Mr Luc Walley

Office of Public Counsel for Victims

Ms Paolina Massidda, Principal Counsel

Background

1. On 24 January 2008, the Board of Directors of the Trust Fund for Victims (the "Board of Directors") notified the Chamber, in accordance with Regulation 50 of the Regulations of the Trust Fund for Victims,¹ that the Board of Directors had assessed and evaluated the needs for activities to be undertaken in the Democratic Republic of the Congo (the "DRC") for the benefit of victims and their families.²
2. On 5 February 2008, the Chamber issued its "Decision on the time limit for the filing of observations on the Notification by the Board of Directors of the Trust Fund for Victims",³ in which the Chamber requested additional information from the Board of Directors by 7 February 2008, including: "the specific places the activities will be pursued, the types of victims the activities are intended to benefit, and the particular crimes allegedly falling within the Court's jurisdiction that the activities are intended to address."⁴ The Chamber further invited the Prosecution, Defence and the Legal Representatives to file observations on the Notification by 20 February 2008.⁵
3. On 7 February 2008, the Board of Directors of the Trust Fund for victims re-submitted the confidential annex including the additional information requested by the Chamber on 5 February 2008.⁶

¹ "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" (hereinafter the "Notification"), public with a confidential annex, 24 January 2008, ICC-01/04-439.

² According to Regulation 50 of the Regulations of the Trust Fund for Victims, the Board of Directors of the Trust Fund shall notify the relevant Chamber before undertaking activities which imply the use of "resources other than those collected from awards for reparations, fines and forfeitures" (see paragraph 1 of the Notification, as well as Regulation 47 of the Regulations of the Trust Fund for Victims).

³ ICC-01/04-441.

⁴ ICC-01/04-441, at pages 2 and 3.

⁵ ICC-01/04-441, at page 4.

⁶ ICC-01/04-445.

Prosecution's submissions

4. The Prosecution recognizes the important role of the Trust Fund for Victims within the unique system established by the Rome Statute frame-work enabling victims, who suffered harm from crimes falling under the jurisdiction of the Court, for the first time to seek reparations or secure other forms of assistance.⁷ The mandate of the Trust Fund for Victims, which is overseen by its Board of Directors, includes the designing of projects with the aim of benefiting larger groups of victims and their families by means of the Trust Fund's "other resources".⁸
5. The Prosecution notes that the discretion of the Board of Directors of the Trust Fund for Victims in selecting projects benefiting victims and their families⁹ using "other resources" of the Trust Fund is limited only in that a project may not "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."¹⁰ The fair conduct of the trial proceedings is of paramount importance to the Prosecution. The Prosecution limits its subsequent comments on the projects proposed by the Board of Directors to this aspect.

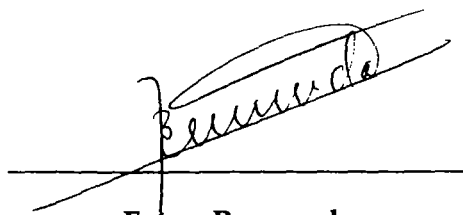
⁷ See Articles 75 and 79 of the Rome Statute; Rules 94 to 98 of the Rules of Procedure and Evidence and the Regulations of the Trust Fund for Victims.

⁸ See Regulation 47 and 48 of the Regulations of the Trust Fund for Victims.

⁹ Regulation 50 (a) (i) of the Regulations of the Trust Fund for Victims specifies that assistance to the victims be comprised of "physical or psychological rehabilitation or material support for the benefit of victims".

¹⁰ See Regulation 50 (a) (ii) of the Regulations of the Trust Fund for Victims.

6. The projects presented in the confidential annex to the Notification are outlined in rather broad and general terms, targeting groups of individuals who were identified by the Board of Directors of the Trust Fund for Victims as having suffered harm as a result of the commission of any crime within the jurisdiction of the Court, thereby meeting the definition of victims established by Rule 85 of the Rules of Procedure and Evidence. None of the projects on their face target specific victims, such as those participating in the case against Thomas LUBANGA DYILO, or those victim applicants aiming to participate in the proceedings.
7. The Prosecution submits that, since the projects are aimed at benefiting general groups of victims and not specific individuals participating in the proceedings of the case, the analysis of the information does not suggest that the projects envisaged by the Board of Directors of the Trust Fund for Victims could pre-determine any issue to be determined by the court, violate the presumption of innocence or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.



Fatou Bensouda
Deputy Prosecutor

Dated this 20th day of February 2008
At The Hague, The Netherlands