



Original: English

**No. ICC-02/11
Date: 8 September 2020**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

Public

Information to the Trust Fund for Victims on the ‘*Notification par le Conseil de direction du Fonds au profit des victimes de sa conclusion en vue d’entreprendre des activités spécifiques en République de Côte d’Ivoire conformément à la règle 50(a) du Règlement du Fonds au profit des victimes*’

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

The Office of the Prosecutor
Ms Fatou Bensouda

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims
Ms Paolina Massidda

The Office of Public Counsel for the Defence
Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**
Mr Philipp Ambach

Other

PRE-TRIAL CHAMBER II of the International Criminal Court hereby issues this Information to the Trust Fund for Victims (the ‘Trust Fund’) on the ‘*Notification par le Conseil de direction du Fonds au profit des victimes de sa conclusion en vue d’entreprendre des activités spécifiques en République de Côte d’Ivoire conformément à la règle 50(a) du Règlement du Fonds au profit des victimes*’ (the ‘Notification’).¹

1. On 27 July 2020, the Board of Directors of the Trust Fund filed the Notification, together with its Annex I, proposing three projects and corresponding specified activities with a view to providing physical and psychological rehabilitation, as well as material support, to the victims, and the members of their families, of crimes committed in Côte d’Ivoire since 19 September 2002 and falling within the jurisdiction of the Court. The Trust Fund submits that the selected specified activities (i) do not pre-determine any issue to be determined by the Court; (ii) focus on crimes committed in the Côte d’Ivoire situation; and (iii) do not relate to any national or international proceedings or investigations.

2. On 6 August 2020, the Chamber invited observations on the Notification from the Office of Public Counsel for the Defence (the ‘OPCD’), the Office of Public Counsel for the Victims (the ‘OPCV’) and the Prosecutor, extending the time limit for their submission to Friday, 4 September 2020.²

3. On 31 August 2020, the OPCD filed its observations on the Notification.³ While not making any ‘specific objection to the broadly outlined activities in the proposed programme’, the OPCD recommends the adoption of ‘certain safeguards in the manner of executing the assistance so as to not predetermine any issue to be determined by the Court or prejudice any right of defendants in any ongoing or future cases’. In particular, the OPCD requests the Chamber to direct the Trust Fund to ensure (i) ‘that specific groups or actors are not named in their work; specifically, that this will not be included in terms of reference for vendors or included in any training’ (the ‘OPCD First Request’); and (ii) ‘that it and implementing partners keep all information on beneficiaries and selected victims, as potentially subject to mandatory disclosure obligations under the Rome Statute in ongoing or future proceedings’, and that the Trust Fund shall ‘inform the Court if any beneficiary of the programme ever appears as a potential witness at the Court’ (the ‘OPCD Second Request’).

¹ Trust Fund for Victims, *Notification par le Conseil de direction du Fonds au profit des victimes de sa conclusion en vue d’entreprendre des activités spécifiques en République de Côte d’Ivoire conformément à la règle 50(a) du Règlement du Fonds au profit des victimes*, 27 July 2020, ICC-02/11-55 with public Annex I (ICC-02/11-55-AnxI).

² Email sent by Pre-Trial Chamber II at 10:01.

³ OPCD Observations on the TFV Regulation 50 Notification, ICC-02/11-56.

4. On 4 September 2020, the OPCV filed its observations on the Notification.⁴ Whilst considering that the proposed specified activities meet the requirements of regulation 50(a) of the Regulations of the Trust Fund for Victims (the ‘Trust Fund Regulations’), the OPCV finds that they are not described in sufficient detail. Additional information would be required in particular with regard to (i) the Trust Fund’s intention to include support for children and victims of sexual and gender-based crimes in the proposed projects; (ii) the extent of the geographical scope of activities included in projects TFV/CIV/2020/R1/001 and TFV/CIV/2020/R1/003, as well as the localities where they are to be implemented; (iii) with regard to projects TFV/CIV/2020/R1/002 and TFV/CIV/2020/R1/003, the reasons justifying the non-inclusion of, respectively, a psychological and medical component and a physical rehabilitation component. Accordingly, the OPCV requests the Chamber to either (i) invite the Trust Fund to submit additional information on those points; or (ii) underline the importance of planning specific activities as soon as possible in the city of Abidjan in order to avoid any discrimination among groups of victims, and invite the Trust Fund to include activities relating to children and victims of sexual and gender-based crimes in the proposed projects (the ‘OPCV Request’).

5. On the same day, the Prosecutor affirmed support for the activities proposed by the Trust Fund.⁵

6. Also on 4 September 2020, the Trust Fund filed a corrigendum of Annex I to the Notification,⁶ clarifying that the geographical scope of project TFV/CIV/2020/R1/003 would extend to the ‘*District des Lagunes et District autonome d’Abidjan*’. On 7 September 2020, the OPCV requested the Chamber to consider as moot its submissions regarding the non-inclusion of the city of Abidjan within the geographical scope of the proposed activities.

7. The Chamber notes that, in addition to its mandate provided for in article 79(2) of the Rome Statute (the ‘Statute’) and rules 98(1) to (4) of the Rules of Procedure and Evidence (the ‘Rules’), relating to resources collected pursuant to orders of the Court, the Trust Fund is entrusted with a further mandate to use ‘other resources [...] for the benefit of victims’ in accordance with article 79 of the Statute and rule 98(5) of the Rules. This ‘assistance mandate’ is also regulated by chapter II of the Trust Fund Regulations.

⁴ *Observations au nom des victimes sur la Notification du Fonds au Profit des Victimes de sa conclusion en vue d’entreprendre des activités spécifiques en Côte d’Ivoire*, ICC-02/11-57.

⁵ Email from the Prosecutor to the Chamber at 12:58.

⁶ *Corrigendum de l’Annexe I de la Notification par le Conseil de direction du Fonds au profit des victimes de sa conclusion en vue d’entreprendre des activités spécifiques en République de Côte d’Ivoire conformément à la règle 50 (a) du Règlement du Fonds*, ICC-02/11-55-AnxI-Corr with Annex (Explanatory Note, ICC-02/11-55-AnxI-Corr-Anx).

8. Pursuant to regulation 50(a)(ii) of the Trust Fund Regulations, the Chamber is vested with the power to scrutinise the activities and projects proposed by the Trust Fund under Chapter II of the Trust Fund Regulations. In so doing, the Chamber must be satisfied that the proposed activities or projects (i) are specific enough as to enable the Chamber to carry out its analysis, which excludes mere programme outlines or lists of suggested activities to potential implementing partners;⁷ and (ii) fulfil the criteria governing the Chamber's scrutiny as laid down in regulation 50(a)(ii) of the Trust Fund Regulations, which provides, *inter alia*, that the Chamber may 'inform the Board in writing that a specific activity or project, pursuant to rule 98, sub-rule 5 of the [Rules], would pre-determine any issue to be determined by the Court, including 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'.

9. The Chamber notes that the proposed activities, as defined in the Notification and its corrected Annex I, will focus on providing physical and psychological rehabilitation, as well as material support, to victims in various localities in Côte d'Ivoire. The first project (TFV/CIV/2020/R1/001) aims at increasing access to physical rehabilitation and healthcare, improving psychological well-being and social inclusion and enhancing economic opportunities for victims located in the '*Régions du Haut Sassandra et Guémon*'. The second project (TFV/CIV/2020/R1/002), focusing on victims located in the '*Région du Cavally*', serves the purpose of improving their socio-economic status and strengthening the peacebuilding and reconciliation process. The third project (TFV/CIV/2020/R1/003) will address psychosocial and economic rehabilitation, as well as social cohesion, in the *District des Lagunes* and *District autonome d'Abidjan*.

10. The Chamber considers that, at this stage and for the purposes of this decision, the information provided is of sufficient specificity in terms of, *inter alia*, the nature of the activities and their intended goal. Further, the Chamber notes that (i) the proposed activities and projects are all to be undertaken in relation to a situation for which the Court has already initiated an investigation (the Côte d'Ivoire situation); and (ii) the proposed activities appear unrelated to national or international proceeding related to the Côte d'Ivoire situation. The Chamber thus finds that the implementation of the proposed activities does not appear to be in contravention of the criteria set out in regulation 50(a)(ii) of the Trust Fund Regulations.

⁷ Pre-Trial Chamber II, Information to the Trust Fund for Victims on the 'Notification by the Board of Directors in accordance with regulation 50 (a) of the Regulations of the Trust Fund for Victims of its conclusion to undertake specified activities in the Central African Republic', 8 April 2020, ICC-01/05-100, para. 5 referring to Pre-Trial Chamber II, Decision on the Submission of the Trust Fund for Victims dated 30 October 2009, 16 November 2009, ICC-01/05-30, para. 4.

11. The Chamber emphasises that in order to neutralise any ‘risk of predetermining an issue to be determined by the Chamber and of violating the presumption of innocence as well as the principles governing a fair and impartial trial’, the proposed activities must be ‘defined in a non-discriminatory manner, without reference to any identified suspect/accused or particular victim(s)’,⁸ especially when such activities are connected to a situation in which an investigation and judicial proceedings are ongoing. Mindful of the arguments in support of the OPCD’s First Request, the Chamber finds that the proposed activities satisfy the relevant requirements as set out in regulation 50(a)(ii) of the Trust Fund Regulations provided that all references to any identified suspect/accused, group or actor identifiable in connection with situations and/or proceedings before the Court, and particular victims be omitted during their implementation, as well as in any documents relating to such implementation whether already existing or forthcoming.

12. With regard to the OPCD’s Second Request, the Chamber agrees that it is crucial to the integrity and fairness of the proceedings that the Trust Fund and its implementing partners be mindful of their obligation to retain and preserve all relevant information on the beneficiaries of the proposed activities, as these may prove relevant to ongoing or future proceedings before the Court. However, the Chamber considers that it is not necessary in the circumstances to also direct the Trust Fund to ‘inform the Court if any beneficiary of the programme ever appears as a potential witness at the Court’; as recently stated by this Chamber, ‘should any beneficiaries of the proposed activities ever appear as witnesses before the Court, the competent Chamber retains, pursuant to article 69 of the Statute, the authority to rule on the admissibility and probative value of their testimony’.⁹

13. Finally, whilst finding the proposed activities, as set out by the Trust Fund in the Notification and its corrected Annex I, sufficiently specific for the purposes of regulation 50(a) of the Trust Fund Regulations, by the same token the Chamber notes the concerns underlying the OPCV’s Request to the effect that (i) the proposed activities do not seem to be

⁸ Pre-Trial Chamber II, Information to the Trust Fund for Victims on the ‘Notification by the Board of Directors in accordance with regulation 50 (a) of the Regulations of the Trust Fund for Victims of its conclusion to undertake specified activities in the Central African Republic’, 8 April 2020, ICC-01/05-100, para. 7 *referring to* Pre Trial Chamber II, Decision on the “Notification by the Board of Directors in accordance with Regulation 50(a) of the regulations of the Trust Fund for Victims to undertake activities in the Central African Republic”, 23 October 2012, ICC-01/05-41, para. 10 and Pre-Trial Chamber II, *Situation in Uganda*, Decision on Notification of the Trust Fund for Victims and on its Request for Leave to respond to OPCD’s Observations on the Notification, 19 March 2008, ICC-02/04-126, p. 10.

⁹ Pre-Trial Chamber II, Information to the Trust Fund for Victims on the ‘Notification by the Board of Directors in accordance with regulation 50 (a) of the Regulations of the Trust Fund for Victims of its conclusion to undertake specified activities in the Central African Republic’, 8 April 2020, ICC-01/05-100, para. 9 *referring to* Pre-Trial Chamber I, *Situation in the Democratic Republic of the Congo*, 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, 11 April 2008, ICC-01/04-492, pp. 9-10.

addressed to children and victims of sexual and gender-based crimes; and (ii) not all the proposed projects include both a psychological and physical rehabilitation component. The Chamber recommends the Trust Fund to be mindful of these considerations in the context of the further finalisation and implementation of its projects.

FOR THESE REASONS, THE CHAMBER HEREBY

INFORMS the Board of the Trust Fund that the proposed activities described in the corrected version of Annex I to the Notification do not appear *per se* to pre-determine any issue to be determined by the Court, including the determination of jurisdiction and admissibility, to violate the presumption of innocence or to be prejudicial to, or inconsistent with, the rights of the accused and a fair and impartial trial, provided that they are implemented in compliance with the conditions set out in paragraph 11 above;

GRANTS the OPCD First Request;

PARTIALLY GRANTS the OPCD Second Request; and

GRANTS the OPCV Request and, accordingly, **RECOMMENDS** the Trust Fund to be mindful of the OPCV's observations in accordance with paragraph 13 above.

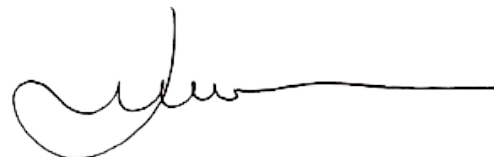
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Tuesday, 8 September 2020

At The Hague, The Netherlands