



Original: English

**No. ICC-01/05
Date: 8 April 2020**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC I

Public

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’

**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 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’ (the ‘Notification’).¹

I. PROCEDURAL BACKGROUND

1. On 25 February 2020, the Board of Directors of the Trust Fund filed the Notification, together with its Annex I, proposing a pilot project and corresponding specified activities to the benefit of ‘200 vulnerable victims who have participated in the *Bemba* case and/or those who may not have participated in the case, but found themselves in life-threatening conditions, living with HIV/AIDS and survivors of sexual violence who suffered harm from crimes, under the jurisdiction of the Court, related to the CAR I situation’.² The Trust Fund submitted that ‘the selected specified activities do not pre-determine any issue to be determined by the Court’, that they ‘focus on injuries stemming from crimes committed in the CAR I situation in general and are not designed to relate in any way to national or international proceedings or investigations’.³

2. On 1 April 2020, the Office of Public Counsel for the Defence (the ‘OPCD’) filed its observations on the Notification (the ‘OPCD Observations’)⁴ submitting that, whilst it ‘has no objection to the specified activities’, ‘defining the beneficiaries of the programme as those who suffered as a consequence of crimes committed by members of the *Mouvement de Libération du Congo* (“MLC”) would predetermine an issue to be determined by the Court’ and that, ‘[a]s Mr. Bemba has been acquitted in the CAR I Situation case, he and his name should not be associated with the mandate of assisting these victims’. Accordingly, the OPCD requests the Chamber to (i) direct the Trust Fund to ‘remove any references to the “MLC”, “troops of the MLC”, and references to ‘Mr. Jean-Pierre Bemba’ from the Notification and any material on the proposed programme, and ensure that they are not referred to when the programme is implemented’ (the ‘First Request’); (ii) direct the Trust Fund to ‘inform the Court if any beneficiary becomes a potential witness at the ICC so that the relevant defendant

¹ Trust Fund for Victims, 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, 25 February 2020, ICC-01/05-97 *with* confidential Annex I (ICC-01/05-97-Conf-AnxI).

² Notification, para. 13.

³ Notification, para. 23.

⁴ Office of Public Counsel for the Defence, OPCD Observations on the Notification under Regulation 50 of the Regulations of the Trust Fund for Victims, 1 April 2020, ICC-01/05-98-Conf (a public redacted version was notified on 3 April 2020, ICC-01/05-98-Red).

may be informed of this fact’ (the ‘Second Request’); and (iii) ‘consider inviting Mr. Bemba to make submissions on the Notification given the use of his name in these filings to date’ (the ‘Third Request’).

3. On 2 April 2020, the Office of Public Counsel for Victims (the ‘OPCV’) filed its observations on the Notification,⁵ submitting ‘that the activities proposed in the Notification – as detailed in its Annex – do not appear to pre-determine any issue to be ruled by the Court, nor to violate the presumption of innocence or to be prejudicial to or inconsistent with the rights of potential suspects and/or accused and a fair and impartial trial’ and, consequently, ‘request[ing] the Pre-Trial Chamber to promptly approve the proposed activities as contained in the Annex to the Notification’.

4. 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 Regulations of the Trust Fund for Victims (the ‘Trust Fund Regulations’).

5. 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;⁶ 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’.

⁵ Office of Public Counsel for Victims, Observations on behalf of 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”, 2 April 2020, ICC-01/05-99.

⁶ 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.

6. The Chamber notes that the proposed activities, as defined in the Notification and its Annex I, will focus on providing physical and psychological rehabilitation and material support to around 200 Bangui-based vulnerable persons who are survivors of sexual and gender based violence and suffer, in particular, from HIV/AIDS. The Chamber considers that the information provided is of sufficient specificity in terms of, *inter alia*, the nature of the specified 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 CAR I Situation); (ii) the proposed activities appear unrelated to national proceedings, to the proceedings concerning the investigation of the CAR I Situation, and (iii) proceedings in the *Bemba* case are now concluded by virtue of Mr Bemba's acquittal for all charges by the Appeals Chamber,⁷ as are the related reparation proceedings to the benefit of the case's victims. 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. However, the Chamber notes that, for the purposes of identifying the beneficiaries of the proposed activities, the Trust Fund makes reference to the *Bemba* case and to a specific group of alleged perpetrators. Mindful of the OPCD's observations on the matter,⁸ the Chamber is of the view that such references, to the extent that they refer to a case which ended with an acquittal or to other potential perpetrators of the relevant violence, may constitute a 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 Chamber recalls that, for these risks to be adequately neutralised, the proposed activities must be 'defined in a non-discriminatory manner, without reference to any identified suspect/accused or particular victim(s)'.⁹

8. Accordingly, the Chamber, while deeming it unnecessary to remove any such references from the Notification and its Annex I at this point in time, as suggested in the OPCD's First Request, (i) 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

⁷ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636-Conf (a public redacted version was notified on the same day, ICC-01/05-01/08-3636-Red).

⁸ See *supra* para. 2.

⁹ 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; see also 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.

the ‘*Bemba* case’, Mr. Bemba, the MLC and the ‘troops of the MLC’ be omitted during their implementation, as well as in any documents relating to such implementation whether already existing or forthcoming; and (ii) emphasises that the Trust Fund must ensure that its proposed activities target *all* persons in need of its assistance, with no consideration of or distinction based on either previous participation in the *Bemba* case or their status of victims during those proceedings.

9. As regards the OPCD’s Second Request, the Chamber finds it to be speculative and vague, in the absence of any active or prospective new case related to the CAR I Situation, and thus considers the requested measure as unnecessary at this stage, and possibly potentially defeating the very purpose of the proposed activities by deterring potential beneficiaries in need to come forward and request assistance. Additionally, the Chamber recalls that, ‘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’.¹⁰

10. Finally, the Chamber notes that, in light of the abovementioned conditions according to which the proposed activities shall be implemented,¹¹ the OPCD’s Third Request is moot.

¹⁰ 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.

¹¹ See *supra* para. 8.

FOR THESE REASONS, THE CHAMBER HEREBY

INFORMS the Board of the Trust Fund that the proposed activities described in 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 8 above;

PARTIALLY GRANTS the OPCD's First Request;

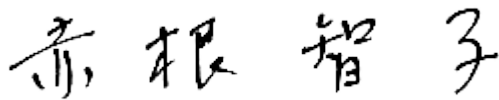
REJECTS the OPCD's Second and Third Requests; and

ORDERS the reclassification of the OPCD Observations as public.

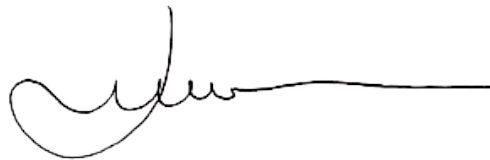
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Wednesday, 8 April 2020

At The Hague, The Netherlands