



Original: **English**

No.: **ICC-02/04**
Date: **4 February 2019**

PRE-TRIAL CHAMBER II

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

SITUATION IN UGANDA

PUBLIC

Decision 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 conclusions to undertake further activities in Uganda”

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Joseph Akwenyu Manoba

Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Paolina Massidda

**The Office of Public Counsel
for the Defence**

Xavier-Jean Keita

States Representatives

Trust Fund for Victims

Pieter W.I. de Baan

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Philipp Ambach

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”), issues this decision 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 further activities in Uganda” (the “Notification”)¹.

1. On 19 December 2018, the Board of Directors of the Trust Fund for Victims (the “Board of Directors” and the “Trust Fund” respectively) filed the Notification wherein six newly selected projects and corresponding specified activities were proposed for the benefit of victims and their families in Uganda.² The Trust Fund submits that “the selected specified activities will not pre-determine any issue to be determined by the Court” and that “[t]he specific activities will focus on injuries stemming from crimes committed in the situation of Uganda in general and are not related in any way to national or international proceedings or investigations”.³

2. On 24 December 2018, the Chamber issued a decision inviting the Office of Public Counsel for the Defence (the “OPCD”), the Defence for Dominic Ongwen, the Office of Public Counsel for the Victims (the “OPCV”), the legal representatives of victims in the case of the *Prosecutor v Dominic Ongwen* (the “Ongwen case”) and the Prosecutor to submit their observations on the Notification by 25 January 2019.⁴

3. On 17 January 2019, the Prosecutor filed observations on the Notification and observed that “[t]he projects are aimed at benefitting general groups of victims and not specific victims participating in the case of the *Prosecutor v Dominic Ongwen*”.⁵ In the Prosecutor's view, “[t]he projects would not pre-determine any issue to be decided by the Court, or be prejudicial to or inconsistent with the rights of Mr Ongwen and/or a fair and impartial trial”.⁶ On 25 January 2019, the OPCV filed its observations and noted that it too had no objections to the proposed projects and activities of the Trust Fund.⁷

4. On 25 January 2019, the OPCD filed its observations on the Notification. In this regard the Chamber notes that while the OPCD does not raise any objections to the actual proposed projects and activities of the Trust Fund, it does however make a number of observations on *inter alia*, the use by the Trust Fund of potentially prejudicial language in the Notification,

¹ ICC-02/04-229 with one confidential annex.

² Notification, ICC-02/04-229, paras 14 and 16 and ICC-02/04-229-Anx1.

³ Notification, ICC-02/04-229, para. 16.

⁴ Pre-Trial Chamber II, Decision requesting observations, ICC-02/04-230.

⁵ ICC-02/04-232, para. 4.

⁶ ICC-02/04-232, para. 4.

⁷ ICC-02/04-233.

which in its view may have an impact on the rights of the suspects.⁸ In particular, the OPCD submits that in relation to the goals of three specified activities, the language used in this respect appears to assign culpability to the Lord's Resistance Army (the "LRA") which "detrimentally impacts the work of the [Court] as a criminal court in that it plainly presupposes that crimes – especially crimes against specific [Trust Fund Victim] beneficiaries – have been committed by the LRA".⁹ In similar vein, the OPCD submits that the language used "has become more specific, thus lending to a greater danger of encroaching upon those matters that should be reserved for judicial determination".¹⁰

5. In addition, the OPCD makes further observations and consequent requests to:

- a. Direct the [Trust Fund] to provide, on a confidential basis, an outline of measures it will take to ensure 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;
- b. Direct the [Trust Fund] to ensure 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 future proceedings;
- c. Allow for a reservation of rights of future assigned Counsel for Messrs. Kony and/or Otti and/or any other suspect or accused in the Situation to make observations on the ongoing assistance mandate;
- d. Monitor the progress reports of the [Trust Fund] to ensure that the definitions and/or activities do not derogate from any permissive Order.
- e. Grant the OPCD confidential access to filings relating to the assistance mandate in the Kony and Otti cases to further ensure ability of submission on suspects' rights in this work.¹¹

6. The Chamber notes article 79(2) of the Rome Statute (the "Statute") read with rule 98(1) to (5) of the Rules of Procedure and Evidence (the "Rules") and chapter II of the Regulations of the Trust Fund for Victims (the "Trust Fund Regulations").

7. The Chamber recalls that the power of the Chamber to scrutinize activities and projects of the Trust Fund under chapter II of the Trust Fund Regulations is in principle governed by the criteria laid down in regulation 50(a)(ii) of the Trust Fund Regulations which provides, *inter alia*, that the relevant 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

⁸ ICC-02/04-234-Red, paras 19-25.

⁹ ICC-02/04-234-Red, paras 19-22.

¹⁰ ICC-02/04-234-Red, para. 23.

¹¹ ICC-02/04-234-Red, pp. 14-15.

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”.

8. The Chamber notes that the proposed activities, as defined in the Notification, will focus on providing support to victims who have suffered injuries stemming from crimes committed in the situation of Uganda in general. Moreover, the Chamber finds that the specific activities and projects proposed pursuant to rule 98, sub-rule 5 of the Rules, would not pre-determine any issue to be determined by the Court, including jurisdiction pursuant to article 19 of the Statute, admissibility pursuant to articles 17 and 18 of the Statute, or violate the presumption of innocence pursuant to article 66 of the Statute, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

9. As to the observations of the OPCD relating to the use of potential prejudicial language in defining the proposed activities in the Notification, the Chamber is not persuaded by the contention that references to the LRA in relation to beneficiaries of Trust Fund activities presupposes that the LRA actually committed crimes within the jurisdiction of the Court. In the Chamber’s view these arguments are unfounded and at best speculative. Similarly, the Chamber rejects the OPCD’s further requests for either being outside the scope of this present decision or irrelevant to the issues at hand.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **DECIDES** to approve the proposed projects and specified activities as mentioned in the Notification, and
- b) **REJECTS** the OPCD's requests in their entirety.

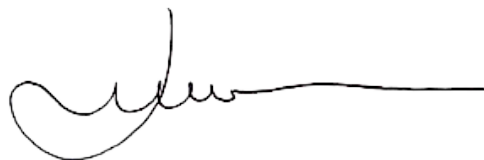
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Monday, 4 February 2019

At The Hague, The Netherlands