



Original: English

**No. ICC-01/09
Date: 24 May 2022**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE REPUBLIC OF KENYA

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 further specified activities in the Republic of Kenya’

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

The Office of the Prosecutor
Mr Karim A. A. Khan

Counsel for the Defence

Legal Representatives of the Victims

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

The Office of Public Counsel for Victims
Ms Paolina Massidda

REGISTRY

Registrar
Mr Peter Lewis

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 further specified activities in the Republic of Kenya’ dated 29 April 2022 (the ‘Notification’).¹

1. On 29 April 2022, the Board of Directors of the Trust Fund filed the Notification, together with its Annex 1, proposing a project (TFV/KEN/2022/R1/001) 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 against humanity and war crimes allegedly committed in the Republic of Kenya 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 injuries stemming from crimes allegedly committed in the Republic of Kenya situation in general; and (iii) do not relate in any way to national or international proceedings or investigations.

2. 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.

3. 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; 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

¹ ICC-01/09-171 with public Annex 1 (ICC-01/09-171-Anx1).

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’.

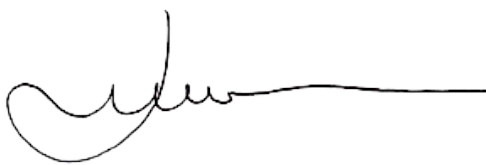
4. The Chamber considers that, at this stage, the information provided is of sufficient specificity in terms of, *inter alia*, the nature of the activities and their intended goal. Further, the Chamber notes that (i) the proposed activities and projects are all to be undertaken in relation to a situation for which the Court has already initiated an investigation (the Kenya situation); and (ii) the proposed activities appear unrelated to national or international proceeding related to the Kenya 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.

5. 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). Furthermore, any crimes referenced during the implementation of the proposed activities, as well as in any documents relating to such implementation whether already existing or forthcoming, shall be qualified as ‘alleged’ crimes.

FOR THESE REASONS, THE CHAMBER HEREBY

INFORMS the Board of the Trust Fund that the proposed activities described in Annex 1 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 5 above;

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



Judge Rosario Salvatore Aitala
Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Tuesday, 24 May 2022

At The Hague, The Netherlands