



Original : English

No.: ICC-02/04-01/05

Date: 5 March 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Ekaterina Trendafilova

Registrar: Mr Bruno Cathala

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR *v.* JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO,
DOMINIC ONGWEN**

Public Document

**Decision on Observations on the Notification under Regulation 50 of the
Regulations of the Trust Fund for Victims**

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Eric MacDonald, Trial Lawyer

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

Office of Public Counsel for Victims
Ms Paolina Massidda

**Legal Representative of Victims a/0101/06
and a/0119/06**
Ms Paolina Massidda

**Legal Representative of Victims a/0090/06,
a/0098/06, a/0112/06, a/0118/06 and a/0122/06**
Ms Adesola Adeboyejo

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”);

NOTING 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 for Victims with Confidential annexes” (the “Notification”), filed by the Board of Directors (“the Board”) of the Trust Fund for Victims (the “TFV”) in the record of the situation in Uganda (the “Situation”) on 28 January 2008, indicating the intention to undertake specific activities in Uganda (the “proposed activities”);¹

NOTING the “Request for leave to file observations in relation to 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 for Victims with Confidential annex’”, filed by the Office of Public Counsel for the Defence (the “OPCD”) in the record of the Situation on 6 February 2008;²

NOTING the “Request for Leave to file Observations in relation to 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 for Victims with Confidential annex”, filed by the Office of Public Counsel for Victims (the “OPCV”) in the record of the Situation on 12 February 2008 (the “OPCV’s Request”);³

NOTING the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06” (the “Decision on legal representation”), filed in the record of the Situation and in the record of the case of

¹ ICC-02/04-114-and and ICC-02/04-114-Conf-Anx.

² ICC-02/04-115.

³ ICC-02/04-116.

The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen on 15 February 2008 (the “Case”);⁴

NOTING the “Observations du représentant légal des victimes a/0101/06 et a/0119/06 suite à la notification du Conseil de direction du Fonds au profit des victimes conformément à la règle 50 du Règlement du Fonds”, filed in the record of the Situation on 18 February 2008 (the “Observations of the legal representative of victims a/0101/06 and a/0119/06”);⁵

NOTING the “Prosecution’s Observations on the ‘Notification of the Board of Directors of the Trust Fund for Victims’” (the “Prosecution’s Observations”), filed in the record of the Situation on 19 February 2008;⁶

NOTING the “Corrigendum to Prosecution’s Observations on the ‘Notification of the Board of Directors of the Trust Fund for Victims’” (the “Corrigendum”), filed in the record of the Situation on 19 February 2008;⁷

NOTING articles 21 (3), 54 (1)(b) and (3)(f), 57 (3)(c) and 68 (1) and (3) of the Rome Statute (the “Statute”), rules 85 (a) and 93 of the Rules of Procedure and Evidence (the “Rules”), regulations 24 (2), 77 (2), 81 (2) and (4) of the Regulations of the Court (the “Regulations”) and regulation 50 of the Regulations of the TFV;

CONSIDERING further that the general component of fairness, which extends to the pre-trial proceedings,⁸ requires those concerned by the Notification to be accorded equal procedural treatment;⁹

⁴ ICC-02/04-117 ; ICC-02/04-01/05-267.

⁵ ICC-02/04-118.

⁶ ICC-02/04-119.

⁷ ICC-02/04-119-Corr.

⁸ ICC-02/04-112, para. 28.

⁹ ICC-02/04-01/05-90, para. 24; See also European Court of Human Rights (ECHR), *Rowe and Davis v. the United Kingdom* ([GC], no. 28901/95, para. 60, ECHR 2000-II); *Jussi Uoti v. Finland* (no. 20388/02,

NOTING that pursuant to regulation 50 (a)(ii) of the Regulations of the TFV the Chamber may respond to the Notification and assess whether the proposed activities “pre-determine any issue to be determined by the Court, including jurisdiction and admissibility, or violate the presumption of innocence, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”;

CONSIDERING that the proposed activities might have an impact on crucial issues before the Chamber including the issues expressly indicated in regulation 50 (a)(ii) of the Regulations of the TFV as well as the protection and privacy of victims;

CONSIDERING that in order to determine the potential impact, if any, of the proposed activities on issues before the Chamber and to ensure the proper conduct of the proceedings, it is appropriate for the Chamber to receive the views of those who are allegedly concerned by the Notification;

CONSIDERING that victims, who have been permitted to participate in the proceedings, should be allowed to submit observations on the proposed activities by the TFV;

CONSIDERING that the OPCV’s Request, which had been submitted at a time when the victims had no legal representatives, has become moot as a result of the subsequent Decision on legal representation, which appointed legal representatives to them;

CONSIDERING that, at the present stage of the proceedings, it is adequate and sufficient for the general interests of the Defence to be represented by the OPCD;

para. 32; 23 October 2007); *Öcalan v. Turkey* ([GC], no. 46221/99, para. 146 ECHR 2005-IV); and *Brandstetter v. Austria* judgment of 28 August 1991, Series A no. 211, paras. 66-67.

FOR THESE REASONS,

ADMITS the Observations of the legal representative of victims a/0101/06 and a/0119/06;


REQUESTS the legal representative of victims a/0090/06, a/0098/06, a/0112/06, a/0118/06 and a/0122/06 to submit to the Chamber by Wednesday 12 March 2008 observations on the Notification;

REJECTS the OPCV's Request;

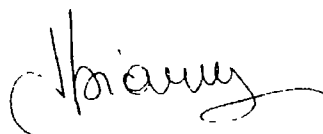
ADMITS the Prosecution's Observations, as amended by the Corrigendum; and

GRANTS the OPCD until Wednesday 12 March 2008 to file their observations on the Notification.

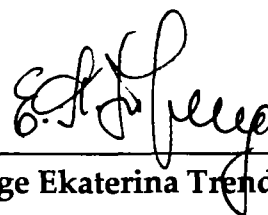
Done in English and French, the English version being authoritative.



Judge Mauro Politi
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Ekaterina Trendafilova

Dated this Wednesday, 5 March 2008

At The Hague, The Netherlands