

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05
Date: 16 November 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

Public Document

Decision on the Submission of the Trust Fund for Victims dated 30 October 2009

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

The Office of the Prosecutor

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**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other
Trust Fund for Victims

THE JUDGES OF PRE-TRIAL CHAMBER II (the “ Chamber”) of the International Criminal Court are seized of a submission¹ of the Board of Directors of the Trust Fund of Victims (the “TFV”) by which it states to have “concluded the need for activities to be undertaken”² in the Central African Republic (the “CAR”).

1. The Chamber notes that the TFV has conducted a needs assessment in the CAR.³ “Within the needs assessment, the Board of Directors of the TFV affirms that the crimes falling within the qualification of sexual violence are a priority for providing assistance”.⁴ The TFV further informs the Chamber that “it would like to issue funding for projects” in the CAR and that it “will launch a public tender called a ‘Request for Proposals’” (the “RFP”) which “will be the basis used for organisations to submit proposals to the TFV”.⁵ The RFP has been shared with the Chamber,⁶ containing a Programme Description and its goal. To this end, the TFV indicated a non-exhaustive list of “illustrative activities”. The Chamber understands from various paragraphs in the filing that a selection of specified activities has not yet been made and that projects have not yet been awarded to implementing partners.⁷

2. Finally, the Board of Directors, by invoking regulation 50 of the Regulations of the Trust Fund, “hereby” notified the Chamber “of its conclusion to undertake the specified activities in the territory of the CAR, as outlined in this filing and covered by the RFP attached as a public annex”.

3. The Chamber notes article 79 of the Rome Statute, rule 98(5) of the Rules of Procedure and Evidence and regulation 50 of the Regulations of the Trust Fund for Victims⁸ (the “Regulations of the Trust Fund”), which provides in the relevant part:

¹ ICC-01/05-29.

² ICC-01/05-29, para. 4.

³ ICC-01/05-29, paras 19.

⁴ ICC-01/05-29, para. 26.

⁵ ICC-01/05-29, paras 41 and 42.

⁶ ICC-01/05-29-Anx.

⁷ See for example ICC-01/05-29, paras 48 and 56.

⁸ ICC-ASP/4/Res.3.

For the purposes of these regulations, the Trust Fund shall be considered to be seized when:

(a) (i) the Board of Directors considers it necessary to provide physical or psychological rehabilitation or material support for the benefit of victims and their families; and

(ii) the Board has formally notified the Court of its conclusion to undertake specified activities under (i) and the relevant Chamber of the Court has responded and has not, within a period of 45 days of receiving such notification, informed the Board in writing that a specific activity or project, pursuant to rule 98, sub-rule 5 of the Rules of Procedure and Evidence, would pre-determine any issue to be determined by the Court, including the determination of 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.

(iii) Should there be no response from the Chamber or should additional time be needed by the Chamber, consultations may be held with the Board to agree on an extension. In the absence of such an agreement, the extension shall be 30 days from the expiry of the period specified in sub-paragraph (a) (ii). After the expiry of the relevant time period, and unless the Chamber has given an indication to the contrary based on the criteria in sub-paragraph (a)(ii), the Board may proceed with the specified activities.

4. The Chamber observes that according to regulation 50(a)(ii) of the Regulations of the Trust Fund, the Board of Directors has to notify the Chamber of its conclusion to undertake *specified* activities. Hence, the Chamber holds that a programme outline and a list of suggested activities to potential implementing partners ("could include (but are not limited to)")⁹ cannot represent "such notification" within the meaning of regulation 50 of the Regulations of the Trust Fund. Only the notification of specific activities or projects would enable the Chamber to respond and to conclude that a particular activity or project would not pre-determine any issue to be determined by the Court. Bearing in mind the practice before this Chamber in another situation,¹⁰ the Chamber is of the view that the Board of Directors of the TFV should approach the Chamber again, once the selection of specific activities or projects has been

⁹ ICC-01/05-29-Anx, p. 5.

¹⁰ See the notification of Board of Directors of the Trust Fund for Victims in the situation in Uganda dated 25 January 2008, ICC-02/04-114 with confidential annex.

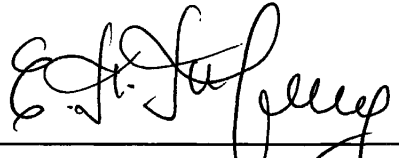
concluded. Together with all related necessary information, the specific activities or projects may be communicated to the Chamber in a confidential annex.

5. The Chamber emphasises that this decision does not represent a response within the meaning of regulation 50(a) of the Regulations of the Trust Fund. The timelimit foreseen in regulation 50(a) of the Regulations of the Trust Fund will commence as of the notification of specific activities or projects.

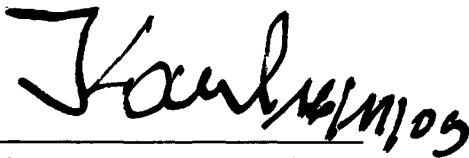
FOR THESE REASONS, THE CHAMBER

Decides that the Board of Directors of the Trust Fund for Victims formally notify Pre-Trial Chamber II of specific activities or projects in the Central African Republic and provide all related necessary information, once the selection of such activities or projects has been made.

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



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul
Judge



Judge Cuno Tarfusser
Judge

Dated this Monday, 16 November 2009

At The Hague, The Netherlands