

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05

Date: 23 October 2012

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

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 to undertake 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

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**

Xavier –Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pieter de Baan, Trust Fund for Victims

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) renders 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 to undertake activities in the Central African Republic” (the “2012 Notification”).¹

I. PROCEDURAL HISTORY

1. On 30 October 2009, the Chamber received the “NOTIFICATION FROM THE BOARD OF DIRECTORS OF THE TRUST FUND FOR VICTIMS IN ACCORDANCE WITH REGULATION 50 OF THE REGULATIONS OF THE TRUST FUND FOR VICTIMS” (the “2009 Notification”),² in which the Board of Directors of the Trust Fund for Victims (the “Board of Directors”) notified the Chamber of its conclusion to undertake certain specified activities in the territory of the Central African Republic (the “CAR”).³

2. On 16 November 2009, the Chamber issued the “Decision on the Submission of the Trust Fund for Victims dated 30 October 2009” (the “16 November 2009 Decision”),⁴ in which it considered that the 2009 Notification did not amount to a notification within the meaning of regulation 50 (a)(ii) of the Regulations of the Trust Fund for Victims (the “Regulations of the TFV”), due to the lack of proposed ‘specified activities’ on the part of the TFV.⁵ Moreover, the Chamber decided that the Board of Directors should “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”.⁶

3. On 11 October 2012, as a follow-up to the 16 November 2009 Decision, the Board of Directors filed the 2012 Notification, to which it appended a list of approved

¹ ICC-01/05-39 and its annexes.

² ICC-01/05-29 and its annex.

³ ICC-01/05-29, para. 57.

⁴ Pre-Trial Chamber II, ICC-01/05-30.

⁵ Pre-Trial Chamber II, ICC-01/05-30, paras 1, 4.

⁶ Pre-Trial Chamber II, ICC-01/05-30, p. 5.

specified activities to be carried out with respect to victims of sexual and gender based crimes in the CAR, for the Chamber's assessment in view of its mandate provided by Court's statutory documents as well as the Regulations of the TFV.⁷

4. On 19 October 2012, the Office of Public Counsel for the defence (the "OPCD") filed the «REQUETE AUX FINS D'AUTORISATION DE SOUMETTRE DES OBSERVATIONS SUR LA NOTIFICATION DU CONSEIL DES DIRECTEURS DU FONDS AU PROFIT DES VICTIMES DU 11 OCTOBRE 2012 ET AUX FINS DE COMMUNICATION D'INFORMATIONS ADDITIONNELLES SUR LES ACTIVITES SPECIFIQUES PROPOSEES ».⁸ In its filing, the OPCD puts forward two requests: first, an application to authorize the submission of observations on the 2012 Notification; and second, that the Chamber orders the Board of Directors to provide additional information regarding the proposed activities ("the OPCD's Requests").⁹

II. APPLICABLE LAW

5. The Chamber notes articles 21(1)(a), (3) and 79 of the Rome Statute (the "Statute"), rule 98(5) of the Rules of Procedure and Evidence (the "Rules") and regulation 50 of the Regulations of the TFV.

III. DETERMINATION BY THE CHAMBER

6. The Chamber notes that according to article 79 of the Statute in conjunction with rule 98(5) of the Rules, the TFV has an additional mandate to that provided for in article 79(2) of the Statute and rule 98(1)-(4) of the Rules, namely a mandate to use other resources for the benefit of victims. This particular mandate is further regulated by the Regulations of the TFV.

7. In particular, according to regulation 50 of the Regulations of the TFV, the TFV shall be considered to be seized when:

⁷ ICC-01/05-39, paras 16-17, 20-21, 24; ICC-01/05-39-Anx III.

⁸ ICC-01/05-40.

⁹ ICC-01/05-40, paras 1-2, 15, 23, 26.

(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.

8. In the 16 November 2009 Decision, the Chamber's main concern in relation to the proposed activities was the lack of specificity in the 2009 Notification. As the Chamber made clear that, in compliance with the regulation 50 of the Regulations of the TFV, "[o]nly the notification of *specific* activities and projects would enable [...]it] to respond and to conclude that a particular activity or project would not pre-determine any issue to be determined by the Court" (emphasis added).¹⁰

9. Having examined the 2012 Notification and the annexes appended thereto, in particular annex III, the Chamber considers that the information provided therein with respect to the six identified projects is of sufficient specificity in terms of, *inter alia*, the nature of the specified activity and its intended goal.

10. Turning to the next question as to whether any of these projects or activities "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", the Chamber notes that the six proposed projects are aimed at supporting victims of sexual and gender based crimes falling within the jurisdiction of the Court, in different locations in the CAR. Furthermore, these proposed projects or activities are defined in a non-discriminatory manner, without reference to any identified

¹⁰ Pre-Trial Chamber II, ICC-01/05-30, para. 4.

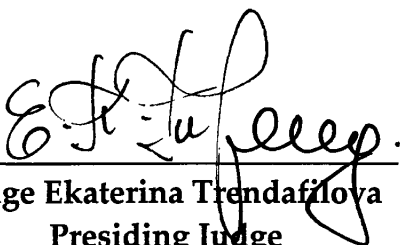
suspect/accused or particular victim(s). As such, the proposed projects or activities do not appear to pre-determine any issue to be determined by the Court, including jurisdiction or admissibility. Said projects and activities also do not appear to violate the presumption of innocence, or to be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Thus, the Chamber holds that the implementation of any of these activities does not appear to impinge upon the criteria set out in regulation 50 (a)(ii) of the Regulations of TFV. It also follows that the Chamber does not deem it necessary to receive observations from the OPCD, or to request further information from the Board of Directors on the proposed projects or activities.

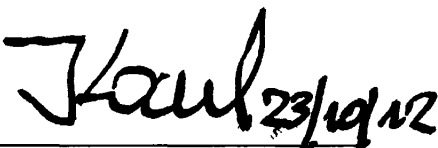
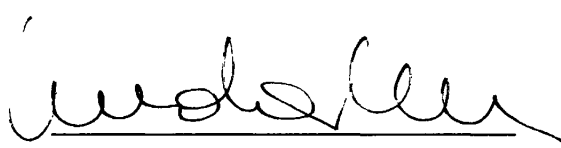
FOR THESE REASONS, THE CHAMBER, HEREBY

a) rejects the OPCD's Requests;

b) does not object that the Board of Directors proceed with the specified activities set out in document ICC-01/05-39-AnxIII.

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


Judge Ekaterina Trendafilova
Presiding Judge

 
Judge Hans-Peter Kaul Judge Cuno Tarfusser
Judge Judge

Dated this Tuesday, 23 October 2012

At The Hague, The Netherlands