

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05
Date: 30 October 2009

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

Public Document

**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**

Source: THE TRUST FUND FOR VICTIMS

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Petra Kneuer

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

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

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Mr Esteban Peralta-Losilla

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria-Luisa Martinod

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

I- BACKGROUND

1. In accordance with Regulation 50 of the Regulations of the Trust Fund for Victims¹ (hereafter the "Regulations"), the Board of Directors of the Trust Fund for Victims (hereafter the "Board of Directors" or the "Board") shall notify the relevant Chamber before undertaking activities for using voluntary contributions to support the rehabilitation of victims under the jurisdiction of the International Criminal Court (hereafter the "ICC" or the "Court").

2. In particular, Regulation 50 of the Regulations provides that:

"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 specified 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

¹ Regulations of the Trust Fund for Victims (3 December 2005) ICC-ASP/4/Res.3.

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."

3. In accordance with Regulation 49 of the Trust Fund for Victims² (hereafter the "TFV"), the Board of Directors *"may consult victims as defined in rule 85 of the Rules of Procedure and Evidence and, where natural persons are concerned, their families as well as their legal representatives and may consult any competent expert or any expert organisation in conducting its activities and projects."*

4. The Board of Directors having assessed and evaluated the situation of the victims in the territory of Central African Republic (hereafter the "CAR"), concluded the need for activities to be undertaken and hereby files the present notification to the relevant Chamber.

II- MANDATE OF THE TRUST FUND FOR VICTIMS

5. The Rome Statute established a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and their families in Article 79 (3).³ The Assembly of States Parties (hereafter the "ASP") subsequently created the Trust Fund for Victims with Resolution ICC-ASP/1/Res.6, ASP, dated 9th September 2002.⁴

6. In accordance with Rule 98 of the Rules of Procedure and Evidence (hereafter the "Rules"), the Trust Fund for Victims fulfils two main mandates:

² Regulations of the Trust Fund for Victims (3 December 2005) ICC-ASP/4/Res.3.

³ Article 79 (1) Rome Statute of the International Criminal Court.

⁴ Resolution ICC-ASP/1/Res.6, ASP, 9th September 2002, Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, Assembly of States Parties to the Rome Statute of the International Criminal Court, First session New York, 3-10 September 2002.

- to implement awards for reparations ordered by the Court against a convicted person;⁵ and
- to use *"resources other than those collected from awards for reparations, fines and forfeitures"* for the benefit of victims subject to the provisions of Article 79 of the Rome Statute.⁶

7. The first mandate is connected to trial proceedings. Resources are collected through fines or forfeiture and awards for reparations⁷ and shall be complemented with the *"other resources of the Trust Fund"* if the Board of Directors so determines.⁸

8. The second mandate is implemented in accordance with Regulation 48, to benefit *"victims of crimes as defined in rule 85 of the Rules of Procedure and Evidence, and, where, natural persons are concerned, their families, who have suffered physical, psychological and/or material harm as a result of these crimes."*

9. The draft Regulations contained various alternatives to describe the use of *"other resources"*, which all refer to situations other than Court-ordered reparations against a convicted person connected to specific trial proceedings. In particular, the draft stated:

*"(b) To provide for physical or psychological rehabilitation or material support where the Pre-Trial Chamber has authorized the commencement of an investigation in accordance with article 15, paragraph 3, and article 53 of the Statute, or where a situation has been referred to the Prosecutor by a State Party or the Security Council and the Prosecutor decides to initiate an investigation in accordance with article 53 of the Statute. The Board of Directors will determine the applicability of this provision."*⁹

⁵ Rule 98 (2) (3) (4) of the Rules of Procedure and Evidence.

⁶ Rule 98 (5) of the Rules of Procedure and Evidence.

⁷ Regulations 43 to 46 of the Regulations of the Trust Fund for Victims.

⁸ Regulation 56 of the Regulations of the Trust Fund for Victims.

⁹ Draft Regulation 51 (b), Draft Regulations of the Trust Fund for Victims, ICC-ASP/4/29.

“(c) To provide for physical or psychological rehabilitation or material support, in exceptional circumstances, where the situation or the case is not being investigated or prosecuted by the Court because it is or has been investigated or prosecuted by a State which has jurisdiction over it in accordance with article 17 of the Statute or when a situation or case is not being investigated or prosecuted for reasons described in articles 53, paragraph 1(c) or 2(c).”¹⁰

10. Consequently, upon drafting the final text of the Regulations of the Trust Fund,¹¹ when discussing the use of *“other resources”* any reference to the word *“reparations”* was abandoned due to the confirmation of the second mandate. Hence, Rule 98 (5) of the Rules states: *“other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79”*.

11. Pre-Trial Chambers I and II also determined and acknowledged that there was a distinction between this secondary mandate of the TFV and that for ensuring it is complementary to Court-ordered reparations.¹²

12. Pre-Trial Chamber I in their notification in the situation in the Democratic Republic of Congo (hereafter the *“DRC”*), stated in its decision of 18th April 2008 that, *“the Trust Fund has a further mandate, which relates to “other resources” to be used for the benefit of victims under Rule 98 (5) of the Rules and chapter II of the Regulations of the Trust Fund; and that the implementation of activities and projects in execution of this further mandate [...] is [...] unrelated to Court-ordered reparations [...]”*¹³

¹⁰ Draft Regulation 51 (c), Draft Regulations of the Trust Fund for Victims, ICC-ASP/4/29.

¹¹ Regulations of the Trust Fund for Victims (3 December 2005) ICC-ASP/4/Res.3.

¹² Pre-Trial Chamber I, *Situation in the Democratic Republic of Congo, Decision on 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*, ICC-01/04-492, (11 April 2008); and Pre-Trial Chamber II, *Situation in Uganda, Decision on Notification of the Trust Fund and on its Request for Leave to respond to OPCD’s Observations on the Notification*, ICC-02/04-126 (19 March 2008).

¹³ Pre-Trial Chamber I, ICC-01/04-492 (11 April 2008) 7.

13. Pre-Trial Chamber II in their notification in the situation in Uganda stipulated that *"in addition to the mandate provided for in Article 79 (2) of the Statute and Rule 98 (1) to (4) of the Rules of Procedure and Evidence [...] related to resources pursuant to orders of the Court, the TFV has a further mandate under Rule 98 (5) of the Rules and chapter II of the Regulations of the Trust Fund for Victims [...], related to other resources to be used for the benefit of victims."*¹⁴

14. The Pre-Trial Chamber decisions confirmed the existence of the second mandate and allowed the TFV to implement projects in both situations, namely in the DRC and northern Uganda.

15. In accordance to Regulation 50 (a) of the Regulations and based on the existing jurisprudence and a needs assessment,¹⁵ the Board of Directors hereby files the present Notification to the relevant Chamber to undertake specific activities in the situation of the Central African Republic for the benefit of victims of crimes within the jurisdiction of the Court.

III- NECESSITY TO PROVIDE PHYSICAL AND PSYCHOLOGICAL REHABILITATION AND MATERIAL SUPPORT TO GROUPS OF VICTIMS

16. The Board of Directors decision to commence activities in the CAR follows the announcement of the Office of the Presidency to open the situation there to assess crimes committed in the territory since 1st July 2002.¹⁶ Once the Court establishes a

¹⁴ Pre-Trial Chamber II, ICC-02/04-126 (19 March 2008) 3-4.

¹⁵ See Regulation 49 of the Regulation of the Trust Fund for Victims.

¹⁶ The Court was seized by a letter of 21 December 2004 from the Central African Republic addressed to the Office of the Prosecutor, referring the situation to the Court. By a Decision of 19 January 2005, the Presidency officially opened the "Situation in the Central African Republic", assigning it to Pre-Trial Chamber III on 19 January 2005 (ICC-01/05). As Pre-Trial Chamber III was dissolved on 19 March 2009, the Presidency assigned the Situation in the Central African Republic to Pre-Trial Chamber II. The Court's jurisdiction in the Central African Republic commences from 1 July 2002 and extends throughout the country.

situation, the TFV can begin to undertake specific activities after the filing of a notification and if in compliance with Regulation 50 of the Regulation of the Trust Fund for Victims.

17. As confirmed by Pre-Trial Chamber I, the Board of Directors can submit a Notification *"in relation to a situation for which the Court has already initiated an investigation."*¹⁷

18. During its Sixth Annual Meeting held on 3rd June 2009, the Board of Directors reviewed the situation of the victims of crimes within the jurisdiction of the Court in CAR following an assessment mission conducted by the TFV. The Board of Directors concluded that a number of needs were identified within the framework of its second mandate to use "other resources" to support and rehabilitate victims and their families.¹⁸

Needs assessment conducted in the Central African Republic

19. The TFV conducted a needs assessment in the territory of the CAR.¹⁹ The TFV Secretariat travelled into Bangui in February 2009²⁰ in order to identify the physical and psychological rehabilitation and material support needs of the victims of crimes and their families within the jurisdiction of the Court as defined by the Regulation 50 (a) (i) of the Regulations of the TFV.

¹⁷ Pre-Trial Chamber I, ICC-01/04-492 (11 April 2008) 9.

¹⁸ See the draft minutes of the sixth Annual Meeting of the Board of Directors of the TFV (3 June 2009).

¹⁹ The jurisdiction of the ICC and the Trust Fund for Victims covers the whole territory of the CAR.

²⁰ The Secretariat of the TFV carried out an assessment in the Central African Republic in February 2009 to: 1) Identify the key areas/communities and types of victims that fall under the ICC jurisdiction, 2) Identify the vulnerability and rehabilitation needs (including reviewing recent reports and assessment studies) with a special attention to gender issues and sexual violence concerns, 3) Meet with the key stakeholders and potential partners (obtain information related to organisational capacity/expertise and current project portfolio) and 4) Identify donor support and gaps for supporting the victims that fall under the ICC jurisdiction.

Assessment Methodology

20. When carrying out this assessment, the TFV met with a wide range of stakeholders on a one-on-one basis and through larger consultative meetings in the CAR to better understand the overall situation in the country, focusing specifically on the situation of the victims, and identifying their needs. This approach derives from best practice in the development and humanitarian field where emphasis is placed on consultation with experts, local and international non-governmental organisations, faith-based organisations, women's groups, associations, representatives of the victims, donors, local authorities, and victims themselves.

21. The consultation was as participatory as possible allowing victims to describe their needs based on the crimes committed under the jurisdiction of the Court. NGOs representing victims and their families were also consulted to assess the needs for assistance.²¹

22. Through the field assessment, the TFV conducted a secondary review of all information gathered and a confidential assessment report was drafted with recommendations for the Board of Directors' consideration.²²

Assessment Findings and Recommendations

23. States, international organisations and non-governmental organisations have reported patterns of rape and other forms of sexual violence, torture, lootings, forced displacements, and attacks against civilians in the CAR committed after 1st July 2002.²³

²¹ Regulation 49 of the Regulations of the Trust Fund for Victims states that 'the Board of Directors may consult victims as defined in rule 85 of the Rules of Procedure and Evidence and, where natural persons are concerned, their families as well as their legal representatives [...] in conducting its activities and projects.'

²² The analysis of information was made through a desk review of formal surveys, donor reports, humanitarian assessments, one-on-one interviews, focus groups with communities, and observation.

²³ See, inter alia: FIDH, 'Crimes de Guerre en République Centrafricaine' (No 355, Février 2003) <<http://www.fidh.org/Crimes-de-Guerre-en-Republique,1091>>; Amnesty International, 'République Centrafricaine: cinq mois de guerre contre les femmes' (Novembre 2004) <<http://www.amnesty.org/en/library/info/AFR19/001/2004/fr>>; FIDH, 'République Centrafricaine :

*"The civilian population found itself caught in the cross-fire between militant groups, government troops, and armed criminal gang."*²⁴

24. Furthermore, the needs assessment undertaken in 2009 exposes the dire humanitarian situation of the civilian population due to the conflict.²⁵ The international community underlines the direct link between the degradation of the humanitarian situation and the commission of those crimes, and highlights *"the needs for protection and life-saving humanitarian assistance of the one million Central Africans affected by violent conflict and forced displacement."*²⁶

25. Even though the needs of the population in the CAR are substantial, the TFV does not fulfil the role of a donor of comprehensive humanitarian assistance. It can only address the specific physical, psychological and material needs of victims of crimes within the jurisdiction of the Court. The TFV solely focuses on the specific physical, psychological and material needs linked to the crimes inflicted upon individuals and their families.

26. 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 and were found to be under-funded by other organisations supporting operations in the CAR.

27. The TFV considers it important to target crimes of sexual violence as key steps in achieving its mission of addressing the harm resulting from crimes under the jurisdiction of the ICC; and to supporting progress towards achieving the United Nations Security Council Resolutions 1325,²⁷ 1820,²⁸ and 1889.²⁹

oubliées, stigmatisées: la double peine des victimes de crimes internationaux' (No 457, Octobre 2006) <<http://www.fidh.org/Oubliees-stigmatisees-la-double>.

²⁴ OCHA 'Consolidated Appeal for the Central African Republic 2008' (10 December 2007) 15.

²⁵ CAP 2009, Summary, Coordinated Aid Programme, Central African Republic, HDPT CAR, 7.

²⁶ OCHA 'Consolidated Appeal for the Central African Republic 2008' (10 December 2007) 9.

²⁷ UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325.

28. In 2000, the Security Council (hereafter the "Council"), unanimously passed Resolution 1325 recognising, for the first time, the disproportionate and unique impact of armed conflict on women. The Resolution highlighted the under-valued and under-utilised contributions that women make to conflict prevention, peacekeeping, conflict resolution and peace-building; and stressed the necessity of women's equal and full participation throughout all of these processes.³⁰

29. In 2008, the Council unanimously recognised that one of the most serious impediments to Resolution 1325's successful implementation was the systematic use of rape as a 'weapon of war'. Resolution 1820 recognised that rape and other forms of sexual violence have reached "appalling levels of brutality," and are used "to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group."

30. The Council also recognised the role sexual violence plays in exacerbating armed conflict: destroying social safety nets, preventing victims' – especially women's and girls' – full integration and participation in public life, and impeding the restoration of peace and security.³¹

31. In October 2009, the Council again reaffirmed the key role women play in rebuilding war-torn societies with the unanimous adoption of Resolution 1889, calling on UN bodies, donors and civil society to focus on women's empowerment and protection during post-conflict needs assessments, planning, and programming.

²⁸ UNSC Res 1829 (19 June 2008) UN Doc S/RES/1820.

²⁹ UNSC Res 1889 (5 October 2009) UN Doc S/RES/1889.

³⁰ UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325.

³¹ UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325.

32. In the CAR, the United Nations established that *"gender-based violence (GBV), particularly rape and other forms of sexual violence, is increasingly a part of life for up to one quarter of women."*³²

33. In May 2006, the UNFPA conducted a survey³³ on gender-based violence in the areas affected by the conflict between 2002 and 2004, and concluded a high prevalence of sexual violence.³⁴ However, *"the stigmatisation and discrimination prevented the majority of survivors from seeking assistance therefore the report concluded that cases must be higher than expected."*³⁵ Often when the victims reported that they were victims of sexual violence, they requested not to have their identity disclosed.³⁶

34. Men and children were also victims of sexual violence in the CAR.³⁷ The UNFPA report previously quoted, underlines that *"sexual violence affected both sexes."*³⁸ Amnesty International also reported that *"even though the risks of being injured, killed or tortured, men in some situations have been victims of sexual violence."*³⁹

³² OCHA 'Consolidated Appeal for the Central African Republic 2008' (10 December 2007) 33.

³³ UNFPA, Violence sexuelles en situation de conflit: Identifier et faire parler les victimes en RCA, International Symposium on Sexual Violence in Conflict and beyond (Brussels, 21-23 June 2006) < <http://www.unfpa.org/emergencies/symposium06/docs/centralafricanrepublicdaytwosessionfivec.ppt#560,16,Résultats> (1).

³⁴ See also Humanitarian and Development Partnership Team Central African Republic, Working Group: Gender and Gender Based Violence (Draft, 21 mars 2007). The terms of reference indicates that out of 1596 women interviewed, 614 were recognised to be survivors of sexual violence.

³⁵ Unofficial translation. Original in French in Humanitarian and Development Partnership Team Central African Republic, Working Group: Gender and Gender Based Violence 'Terms de reference pour le groupe de travail de prevention et de réponse à la violence base sur le genre' (Draft, 21 mars 2007) 1.

³⁶ See Amnesty International, 'République Centrafricaine : cinq mois de guerre contre les femmes' (Novembre 2004) 11.

³⁷ While this issue was confirmed through the assessment consultations, it was very difficult to obtain surveillance data because of the reporting challenges in these groups.

³⁸ Unofficial translation. Original in French in <http://www.unfpa.org/emergencies/symposium06/docs/centralafricanrepublicdaytwosessionfivec.ppt#560,16,Résultats> (1).

³⁹ Unofficial translation. Original in French in Amnesty International, 'République Centrafricaine : cinq mois de guerre contre les femmes' (Novembre 2004) 11.

35. Children conceived as a result of rape are also victims, often rejected by their families and the community, infected with HIV, abandoned or killed at birth.⁴⁰

36. A recent United Nations Security Council report on the situation in the Central African Republic (CAR) stated that there were *"worrisome trends of rape and other grave sexual violence perpetrated [...] throughout the territory."*⁴¹ The UNFPA also established a list of different types of sexual violence: *"individual or collective rape by one or more perpetrators; a victim raped witnessed by third party (parents), forced incest, repeated rape in detention, cruel violence: penetration with objects."*⁴²

37. The TFV identified those victims of sexual violence as those who have the most pressing needs.⁴³ These needs are particularly acute since there is a lack of access to social services and to medical resources in the CAR⁴⁴ leading to a situation where the needs of the victims are indeed physical,⁴⁵ psychological⁴⁶ and material.⁴⁷

⁴⁰ D McKenzie, 'Even where fighting has ended, sexual violence scars children and women in DR Congo' in UNICEF Report <http://www.unicef.org/infobycountry/drcongo_35223.html>.

⁴¹ UNSC 'Report of the Secretary-General on children and armed conflict in the Central African Republic' (3 February 2009) S/2009/66, 1.

⁴² Unofficial translation. Original in French in UNFPA, Violence sexuelles en situation de conflit: Identifier et faire parler les victimes en RCA (International Symposium on sexual violence in conflict and beyond (Brussels, 21-23 June 2006) <<http://www.unfpa.org/emergencies/symposium06/docs/centralafricanrepublicdaytwosessionfivec.ppt#560,16>, Résultats (1) slide 17.

⁴³ See FIDH, 'Résumé exécutif: République Centrafricaine : oubliées, stigmatisées: la double peine des victimes de crimes internationaux' (12 Octobre 2006) 2.

⁴⁴ N Snauwaert, OCHA 'Over 15 percent of women and girls subjected to sexual violence in CAR's crisis zones' (22 February 2008) <<http://hdptcar.net/blog/2008/02/22/over-15-percent-of-women-and-girls-subjected-to-sexual-violence-in-cars-crisis-zones/>>, quoted Toby Lanzer (United Nations Humanitarian Coordinator in the Central African Republic) who stated that *"There is a dire need to expand the programmes that support the survivors of sexual violence and help communities to prevent it in the future"*.

⁴⁵ See Humanitarian and Development Partnership Team Central African Republic, Working Group: Gender and Gender Based Violence 'Termes de références pour le groupe de travail de prévention et de réponse à la violence base sur le genre' (Draft, 21 mars 2007) 1.

⁴⁶ See Amnesty International, 'République Centrafricaine : cinq mois de guerre contre les femmes' (Novembre 2004) 16.

⁴⁷ The socio-economic difficulties faced by the majority of the CAR population are reinforced when parts of the population become victims. Indeed the trauma which is a direct consequence of the violence and the stigmatisation and the rejections that they can endure have economic and social consequences.

38. Evaluations conducted by international organisations working in the CAR revealed that *“no formal medical treatment was available in any of the village[s] attacked [or] to any of the rape survivor[s] released. It is of utmost concern that abducted young girls – if ever released – will not receive any medical treatment in the attacked villages and will be exposed to grave health risk[s] from physical injuries and psychological trauma.”*⁴⁸

39. The Rome Statute embodies explicitly that rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity amount to crimes within the jurisdiction of the Court⁴⁹ as defined in the Rome Statute. Numerous reports⁵⁰ concluded that sexual violence committed after 1st July 2002 could be qualified as crimes within the jurisdiction of the Court. Therefore, victims of such violations and their families fall within the mandate of the TFV when their physical, psychological and material needs result directly from the commission of those crimes. Hence the TFV considers its assistance to victims of sexual and other forms of gender-based violence (SGBV) a key step towards ending impunity and establishing durable peace and reconciliation in conflict settings.

40. Considering that the identified needs are directly linked to the situation of the CAR as referred to the Court by the Central African authorities⁵¹ on 22nd December 2004, the Board of Directors concluded that these needs fall under the second mandate of the Trust Fund. This allows the TFV to address the needs of the victims through specified activities in the situation.

⁴⁸ United Nations 'Field Assessment Report: Abductions, lootings, rapes and unlawful use of child soldiers following armed attacks against civilians in the south-eastern Central African Republic,' (22-25 March 2008) 5. On file at the Trust Fund for Victims.

⁴⁹ See article 7 Rome Statute of the International Criminal Court.

⁵⁰ See inter alia, the reports cited supra in 23.

⁵¹ See footnote 16.

IV- PROPOSED SPECIFIED ACTIVITIES

41. To respond to the identified needs of the victims of crimes within the jurisdiction of the Court and their families, the Board of Directors would like to issue funding for projects in the Central African Republic.

42. In order to ensure an open and transparent process for issuing this support, the Board of Directors will launch a public tender⁵² called a "Request for Proposals" (hereafter the "RFP").⁵³ The CAR TFV programme⁵⁴ is outlined in the RFP in detail as specified in the public annex; and will be the basis used for organisations to submit proposals to the TFV.⁵⁵

43. To be selected, proposals must contain specified activities emphasising one or more of the three components: physical rehabilitation, psychological rehabilitation and material support.⁵⁶ Specific to this RFP is the emphasis on projects dealing with sexual violence and the multiple consequences of rape and other forms of sexual violence. To do so will ensure that those who suffered harm can attain stability as survivors and thus become active citizens in their communities.

44. The specified activities aim to benefit "*victims of crimes as defined in rule 85 of the Rules of Procedure and Evidence⁵⁷, and where natural persons are concerned, their families, who have suffered physical, psychological and/or material harm.*"⁵⁸

⁵² This new procedure is implemented following requests from donors, civil society and the external auditors to manage an open tendering process for issuing grants. Although, this process will not necessarily be used for all TFV projects, the Board of Directors will, as much as possible, apply this approach within the Financial Rules and Regulations of the ICC.

⁵³ See Public Annex I.

⁵⁴ Within this context a 'programme' can be defined as a coordinated effort amongst several organisations to implement a variety of strategies to meet the needs of a target group.

⁵⁵ The procurement criteria will be added to the RFP once it is released.

⁵⁶ See the RFP in the Public Annex.

⁵⁷ Rule 85 of the Rules defines victims as '*natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court*' or '*organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or*

45. In order to fulfil its mandate in such a way that a maximum number of persons could benefit from its assistance, the specified activities should benefit groups of victims, hence the assistance is provided in a collective manner.

46. Furthermore, the decision of the Board of Directors to rehabilitate or support groups of victims rather than individually identified victims is linked to the responsibility of the Court to protect the safety and the security of the victims.⁵⁹

47. Consequently, the Board of Directors decided that the projects will target groups of victims and their families who have suffered harm as a result of crimes of sexual violence falling within the jurisdiction of the Court, committed on the territory of the CAR after 1st July 2002.⁶⁰

V- THE NON DETERMINATION OF ANY ISSUE BEFORE THE COURT

48. As outlined by Regulation 50 (a) (ii) of the Regulations, the specified activities to be implemented through the projects awarded under the RFP do not pre-determine any issue to be determined by the Court, including the determination of the admissibility of a case or the jurisdiction of the Court. Nor do the activities violate the presumption of innocence or cause prejudice to the rights of the accused and a fair and impartial trial.⁶¹ All activities are defined in general and non-discriminatory terms.⁶²

charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.'

⁵⁸ Regulation 48 of the Regulations of the Trust Fund for Victims.

⁵⁹ Article 68 (1) of the Rome Statute of the International Criminal Court states: "*the Court shall take appropriate measures to protect the safety, physical and psychological well being, dignity and privacy of victims*".

⁶⁰ As intermediaries will carry on the specified activities, the TFV will monitor that the beneficiaries are properly identified.

⁶¹ Regulation 50 (a) (i) of the Regulation of the Trust Fund for Victims.

⁶² Pre-Trial Chamber II, ICC-02/04-126 (19 March 2008) 5.

49. Firstly, the Board of Directors notes that its specified activities focus on the crimes committed in the situation of CAR and not on the crimes allegedly committed by identified persons.⁶³ The decisions in the DRC and Uganda notifications confirmed that the projects in the respective countries did not pre-determine any issue to be determined by the Court.⁶⁴

50. The Pre-Trial Chamber II in the Uganda situation concluded that the projects are compatible with the criteria of Regulation 50 (a) (ii) of the Regulation of the TFV as *"the proposed activities [...] concern Northern Uganda and [...] are defined in general and non-discriminatory terms, without reference to any identified alleged perpetrator, specific crime or location."*⁶⁵

51. Concerning the projects notified in the DRC situation, Pre-Trial Chamber I concluded that: *"the proposed activities and projects are all undertaken in relation to a situation [...] the proposed activities appear unrelated to national proceedings, to the proceedings concerning the investigation of the DRC situation, or to any case arising out of such investigation."*⁶⁶

52. As the specified activities currently notified will be implemented within the CAR situation, the Board of Directors considers that there is no incompatibility with the criteria of Regulation 50 (a) (ii).

53. Secondly, the Board's decision to target groups of victims avoids the pre-determination of any issue to be determined by the Court, including the

⁶³ This decision of the Board of Directors is in line with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which states that *"a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted"* in UNGA 'Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power' (29 November 1985) A/RES/40/34, annex, paragraph 2.

⁶⁴ Pre-Trial Chamber II, ICC-02/04-126 (19 March 2008) and Pre-Trial Chamber I, ICC-01/04-492 (11 April 2008).

⁶⁵ Pre-Trial Chamber II, ICC-02/04-126 (19 March 2008) 5.

⁶⁶ Pre-Trial Chamber I, ICC-01/04-492 (11 April 2008) 9.

determination of the status of victims who participate in the situation. Despite the specified activities, this determination remains within the competence *proprio motu* of the relevant Chamber.⁶⁷

54. As it was underlined by Thordis Ingadottir, *"the Trust Fund and the Court pursue complementary, but profoundly different objectives. The interests and motivations of victims and their families using the Trust Fund are different from victims participating in criminal trials and eventual reparations proceedings. Moreover, because the Trust Fund does not have a judicial nature, the broader definition of its beneficiaries will not have any effect on the Court's work."*⁶⁸

55. Pre-Trial Chamber II agreed with this rationale when it ruled that *"the proposed activities [...] are aimed at providing physical and psychological rehabilitation and material support [...] to groups of victims who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court [and] [...] are defined [...] without reference to [...] individually identified victims [...]"*⁶⁹

56. As the specified activities in the CAR situation will be planned and programmed following the same approaches used in northern Uganda and the DRC, the Board of Directors believes that the projects will not be in conflict with the criteria established by Regulation 50 (a) (ii) of the Regulation of the Trust Fund for Victims.

⁶⁷ To participate in the situation, a victim has to meet some criteria which are linked to the judiciary process. The fact that a victim, as part of a group, would benefit from the specified activities of the TFV does not lead to the automatic conclusion that she/he is recognised as a victim within the judicial process.

⁶⁸ T Ingadottir, *The International Criminal Court, "The Trust Fund for victims"* (Article 79 of the Rome Statute) (A discussion Paper, ICC Discussion paper 3, PICT, February 2001) 9.

⁶⁹ Pre-Trial Chamber II, ICC-02/04-126 (19 March 2008) 5.

FOR THE FOREGOING REASONS,

57. The Board of Directors, having assessed the needs of rehabilitation and support of groups of victims in the territory of the Central African Republic, hereby notify Pre-Trial Chamber II of its conclusion to undertake the specified activities in the territory of the CAR, as are outlined in this filing and covered by the RFP attached as a public annex.

A handwritten signature in black ink, appearing to read 'Kristin Kalla', is written over a horizontal line.

Kristin Kalla
Officer-in-Charge
Secretariat of the Trust Fund for Victims
on behalf of the Board of Directors

Dated this Friday 30 October 2009

At The Hague, The Netherlands