

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05**

Date: **25 February 2020**

PRE-TRIAL CHAMBER II

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

SITUATION IN CENTRAL AFRICAN REPUBLIC I

Public

With one confidential annex

**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 specified activities
in the Central African Republic**

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

Counsel for the Defence

Legal Representative of Victims

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

The Office of Public Counsel for Victims

Ms Paolina Massidda

States Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims Participation and Reparations Section

Mr Philipp Ambach

Detention Section

Other

I. BACKGROUND AND PROCEDURAL HISTORY

1. In accordance with regulation 50 (a) of the Regulations of the Trust Fund for Victims (“TFV Regulations” and “Trust Fund”, respectively), the Board of Directors of the Trust Fund (“Board”) shall notify the relevant Chamber before undertaking specified activities it considers necessary to provide physical and psychological rehabilitation or material support for the benefit of victims and their families under its assistance mandate.

2. During its Sixth Annual Meeting held on June 2009, the Board concluded that there was a need to undertake specified activities it considered necessary to provide physical and psychological rehabilitation as well as material support for the benefit of victims and their families under the Trust Fund’s assistance mandate.

3. On 30 October 2009, the Trust Fund informed Pre-Trial Chamber II (“the Chamber”) of its intention to undertake activities in the Central African Republic (“CAR”).¹ The projects envisioned targeted specifically vulnerable victims with critical needs who have suffered from sexual violence.

4. On 16 November 2009, the Chamber issued a decision (“Decision of 16 November 2009”)² stating that the programme outline and the list of suggested activities to potential implementing partners contained in the Trust Fund’s submission did not represent a notification within the meaning of regulation 50 (a) of the Regulations which requires the Board’s conclusion to undertake specified activities.³ The Chamber also requested the Board to formally notify it, after completion of the selection of specific activities and projects, as well as all related necessary information.⁴

5. On 11 October 2012, the Board formally notified the Chamber, in accordance with regulation 50 (a) and the Decision of 16 November 2009.⁵ In particular, the Board provided the

¹ 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, With one public annex, 30 October 2009, [ICC-01/05-29](#).

² Decision on the Submission of the Trust Fund for Victims dated 30 October 2009, 16 November 2009, [ICC-01/05-30](#).

³ [Decision of 16 November 2009](#), para. 4.

⁴ [Decision of 16 November 2009](#), disposition.

⁵ 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, 11 October 2012, [ICC-01/05-39](#).

Chamber with all necessary information regarding the six specific projects proposed for implementation as well as the related activities.

6. On 23 October 2012, the Chamber considered that the information regarding the six specific projects proposed for implementation as well as the related activities “is of sufficient specificity”.⁶ The Chamber also considered that “the proposed projects or activities do not appear to pre-determine any issue to be determined by the Court, including jurisdiction or admissibility”.⁷ Therefore, the Chamber did not object to the implementation of the specified activities.

7. In March 2013, the Trust Fund was close to launching the assistance mandate programme in CAR focused on vulnerable victims with critical needs who have suffered from sexual violence, but activities were suspended and eventually cancelled due to the security situation. The Trust Fund continuously monitored the situation in order to determine the appropriate moment to launch a programme in CAR.

8. On 12 June 2018, the Board decided that it still considers it necessary to provide physical or psychological rehabilitation or material support for the benefit of victims and their families in the situation of the Central African Republic (“CAR I situation”), pursuant to regulation 50 (a) (i) of the TFV Regulations.

9. In its decision, the Board instructed the Trust Fund’s Secretariat (“Secretariat”) to urgently undertake an updated victim harm and needs assessment in the CAR I situation. In this regard, the Board also noted that many individuals who qualify as ‘victims’ in the CAR I situation pursuant to rules 85 and 98 (5) of the Rules of Procedure and Evidence had already provided information regarding the scope and types of harms that they suffered in the context of the case of *The Prosecutor v. Jean-Pierre Bemba* (“Bemba case”).

10. As such, the Board instructed the Secretariat to consider, first, the harms suffered by victims in the *Bemba* case and, second, harms suffered from additional sexual and gender based

⁶ 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", 23 October 2012, [ICC-01/05-41](#), para. 9.

⁷ 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", 23 October 2012, [ICC-01/05-41](#), para. 10.

violence arising in the CAR I situation as well as outside of the CAR I situation. The Board further directed the Secretariat to consult with the legal representatives of victims in the *Bemba* case, as well as the competent CAR government authorities, civil society and other international actors.

11. The Secretariat implemented the above-mentioned instructions between June 2018 and September 2019.

12. Based on information collected during the needs assessment and meetings held with stakeholders, civil society organisations and government officials, the Secretariat developed a programmatic framework for a pilot program to assist the most vulnerable victims prioritizing HIV+ victims and survivors of sexual violence in the context of the CAR I situation. The framework was submitted to the Board for approval on 26 July 2019.

13. In their meeting of August 2019, the Board approved the programmatic framework for the Trust Fund's pilot assistance programme in CAR for 200 vulnerable victims who have participated in the *Bemba* case and/or those who may not have participated in the case, but found themselves in life-threatening conditions, living with HIV/AIDS and survivors of sexual violence who suffered harm from crimes, under the jurisdiction of the Court, related to the CAR I situation. This programme is to be implemented pending the outcome of the fully fledged tender procedure for the TFV's comprehensive assistance programme in CAR.

14. The pilot program will be addressing the urgent needs of the victims within Bangui, pending the launch of the full assistance programme. To expedite the pilot programme, the Secretariat has directly identified an implementing partner through a sole source procedure, in application of the Court's Financial Rules and Regulations. This sole source procedure qualifies as an exception to formal solicitation and the ongoing tender procedure due to the exigency of the situation and the operational constraints.

15. On 24 January 2020, the Secretariat submitted the sole source justification with the required documentation to the Registry's Procurement Unit.

16. On 27 January 2020, the Procurement Unit submitted the documentation to the Procurement Review Committee (PRC).

17. On 30 January 2020, a meeting of the PRC took place. The Trust Fund's Executive Director and staff provided background information on the proposed activities and answered

questions about the development and interrelationship between both the pilot and full programmes, and informed the PRC members of the urgent situation of the numerous victims having participated in the *Bemba* case. The Head of the Procurement Unit, participating as an observer, confirmed that the documentary criteria were satisfied, as well as his Unit's understanding of the urgency criterion – the victims' dire situation - underlying the Trust Fund's sole source justification, which, according to the Court's relevant regulations, must be reviewed and decided upon by the Registrar.

18. On 6 February 2020, the PRC signed the minutes of the meetings and transmitted them to the Registry.

19. On 10 February 2020, the Registrar, having approved the sole source request, signed the PRC report.

20. On 17 February 2020, the Procurement Unit sent the Request for Proposal developed by the Trust Fund around the specified activities to be implemented to the vendor in order for it to present its technical and financial proposal. Considering the nature of the procedure, the Scope of Work transmitted as an annex to the Request for Proposal gives the vendor a precise programmatic framework not allowing for alteration of the specified activities.

II. NOTIFICATION OF PROPOSED SPECIFIED ACTIVITIES

21. The proposed specified activities for the pilot programme are set out in Annex I to this filing. This notification only relates to the pilot programme. The Trust Fund intends to notify the Chamber in due course, once the ongoing procurement process is over, about the specified activities it will intend to undertake within the fully fledged assistance programme in CAR.

III. NON DETERMINATION OF ANY ISSUES BEFORE THE COURT

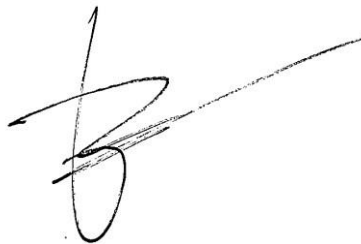
22. Regulation 50 (a) (ii) of the TFCV Regulations establishes that the Trust Fund shall be considered to be seized when, following the notification by the Trust Fund, the relevant Chamber of the Court "has responded and has not, [...] informed the Board in writing that a specific activity or project [...] would pre-determine any issue to be determined by the Court, including the determination of the 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”.

23. The Trust Fund respectfully submits to the Chamber that the selected specified activities do not pre-determine any issue to be determined by the Court as provided for in regulation 50 (a) (ii) of the TFV Regulations. The specific activities focus on injuries stemming from crimes committed in the CAR I situation in general and are not designed to relate in any way to national or international proceedings or investigations.

FOR THE FOREGOING REASONS

Considering the necessity to provide physical and psychological rehabilitation and material support for the benefit of 200 vulnerable victims, with critical needs who have suffered from sexual violence, in the form of the specified activities set out in detail in Annex I, the Board of Directors respectfully submits this notification pursuant to regulation 50 (a) of the Regulations of the Trust Fund for Victims.



Pieter W.I. de Baan
Executive Director, Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 25 February 2020

At The Hague, The Netherlands