

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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PRE-TRIAL CHAMBER II

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

SITUATION IN CENTRAL AFRICAN REPUBLIC II

Public Document

**Observations on behalf of victims on the "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 further specified activities
in the Central African Republic"**

Source: Office of Public Counsel 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 Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
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**The Office of Public Counsel for the
Defence**

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States' Representatives

Amicus Curiae

REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Trust Fund for Victims
Mr Pieter de Baan

I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims (the “OPCV”) representing Victims in proceedings related to the Situations in the Central African Republic I and II (“the CAR situations”) file their observations on the Trust Fund for Victims’ Notification dated 15 September 2020 (the “Notification”) and related to the assistance programme to be implemented in CAR.¹

2. Counsel submit that the activities proposed in the Notification – as detailed in its Annex - do not appear to pre-determine any issue to be ruled by the Court, nor to violate the presumption of innocence or to be prejudicial to or inconsistent with the rights of potential accused and a fair and impartial trial. In this regard, the proposed projects aim at addressing the relevant harm of all Victims of crimes falling within the jurisdiction of the Court committed in the Central African Republic since 2002.²

3. Counsel consequently posit that the Chamber should approve the proposed activities as described in the Annex to the Notification without delay to allow their prompt implementation by the Trust Fund for Victims (the “TFV” or the “Fund”). Indeed, Counsel underline the urgency of the situation in the country and the necessity of the implementation of the assistance programme as soon as possible for the benefit of the Victims and their families.

4. Counsel also recall that a great number of Victims are currently displaced outside CAR in neighbouring countries (mainly Chad and Cameroon) and take this opportunity to invite the Fund to evaluate how the implementation of its broad

¹ See the “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 further specified activities in the Central African Republic” and its Confidential Annex I, [No. ICC-01/05-101](#) and [No. ICC-01/05-101-Conf-AnxI](#), 15 September 2020 (respectively the “Notification” and the “Annex”).

² See the Notification, *supra* note 1, para. 18.

assistance programme in CAR may also have an impact on them and eventually facilitate their return to the country.

II. PROCEDURAL HISTORY

5. On 8 April 2020, Pre-Trial Chamber II (the “Chamber”) issued the “Information to the Trust Fund for Victims on the ‘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’ (the “8 April 2020 Information”),³ notifying the Fund that its proposed activities related to a Pilot Project⁴ did not appear *per se* to pre-determine any issue to be determined by the Court, including the determination of jurisdiction and admissibility, 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.⁵

6. On 15 September 2020, the TFV filed the Notification.⁶

7. On 17 September 2020, the Chamber informed the Prosecution, the OPCV and the Office of Public Counsel for the Defence (the “OPCD”) that observations on the Notification should be filed by 2 October 2020.⁷

³ See the “Information to the Trust Fund for Victims on the ‘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’ (Pre-Trial Chamber II), [No. ICC-01/05-100](#), 8 April 2020 (the “8 April 2020 Information”).

⁴ See the “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” and its Confidential Annex I, [No. ICC-01/05-97](#) and [No. ICC-01/05-97-Conf-AnxI](#), 25 February 2020.

⁵ See the 8 April 2020 Information, *supra* note 3, p. 7.

⁶ See *supra* note 1.

⁷ See the email sent by the Legal Officer on behalf of Pre-Trial Chamber II on 17 September 2020, at 9:38.

III. OBSERVATIONS ON BEHALF OF VICTIMS

8. Preliminarily, Counsel recall the jurisprudence of the Pre-Trial Chambers according to which, *“in addition to the mandate provided for in article 79(2) of the Rome 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 (the “TFV Regulations”), related to other resources to be used for the benefit of victims”*.⁸

9. Counsel further recall that the power of the relevant Chamber to scrutinize activities related to the assistance mandate of the TFV is governed by the criteria laid down in Regulation 50(a)(ii) of the Regulations of the Trust Fund. As such, Counsel submit that the Fund enjoys discretion in interpreting its Regulations, applying the principle of good faith, taking into account the object and purpose of said provisions in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties.⁹ Indeed, the Fund is best placed - having a specialised expertise in the area of humanitarian assistance and development - when it comes to defining its own methodology for assessing needs in the field; the adequacy of the suggested activities; as well as the type of assistance to be provided. The Chamber’s assessment remains strictly in the judicial domain. Accordingly, Counsel contend that the scrutiny of the Chamber under Regulation 50(a)(i) of the Regulations of the Trust Fund is limited to verifying whether the Fund abused its discretion in interpreting the relevant provisions. Therefore, activities under chapter II of said Regulations

⁸ See the “Decision on Notification of the Trust Fund for Victims and on its Request for Leave to respond to OPCD’s Observations on the Notification” (Pre-Trial Chamber II), [No. ICC-02/04-126](#), 19 March 2008, pp. 3-4.

⁹ See Article 31(1) of the Vienna Convention on the Law of Treaties: *“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”* Document available on the following website: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

require a tacit or explicit determination by the Chamber prior to their implementation.¹⁰

10. Counsel note that the Fund proposes five projects for the benefit of all Victims and members of their family having suffered prejudice in both situations currently opened before the Court, namely CAR I and CAR II.¹¹ In this regard, they posit that this course of action is appropriate and necessary to meaningfully respond to the needs of Victims who have suffered multiple harms over the years and have been re-victimised several times; as well as to avoid discrimination and/or stigmatisation.

11. Counsel further observe that the activities proposed in the Annex to the Notification correspond to a comprehensive assistance programme, covering not only the Bangui area but also other locations in the country where crimes were committed.¹²

12. Counsel underline and share the holistic approach taken by the Fund in proposing integrated services for the benefit of the Victims concerned. Said approach is consistent with the best practices in the area of assistance and corresponds to the Victims' realities, which are made of an array of interconnected sufferings. They also emphasise that said approach responds to some concerns expressed by Victims in relation to the need of addressing the multi-dimensional and long-term consequences of the harms they suffered from.¹³ However, another concern – housing affordability – is not addressed in the Notification. Indeed, the high cost of building materials, low

¹⁰ See the "Decision on Notification of the Trust Fund for Victims and on its Request for Leave to respond to OPCD's Observations on the Notification" (Pre-Trial Chamber II), [No. ICC-02/04-126](#), 19 March 2008, p. 4. See also, the "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" (Pre-Trial Chamber I), [No. ICC-01/04-492](#), 11 April 2008, p. 7.

¹¹ See the Notification, *supra* note 1, paras. 18-19.

¹² Counsel recall the concerns previously expressed by Victims about the need to implement activities throughout the CAR territory. See the "Observations on behalf of victims on the "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", [No. ICC-01/05-99](#), 2 April 2020, para. 31 (the "OPCV previous observations").

¹³ *Idem*, paras. 26-27.

incomes of Central Africans and the general political and economic volatility are barriers to home-ownership and rental is very expensive. Therefore, Counsel invite the TFV to take into account said concern in implementing its proposed activities.

13. In line with the Court's jurisprudence, Counsel further submit that the proposed activities are defined in general and non-discriminatory terms, in conformity with the letter and spirit of Regulation 48 of the Regulations of the Trust Fund.

14. Moreover, the proposed activities are defined without reference to any specific crime or location, or individually identified alleged perpetrator or victim *per se* and do not pre-determine any other issue on which the Chamber could rule in the context of the Situation in CAR I or II, in as much as they appear unrelated to national proceedings or to proceedings concerning ongoing investigation(s) in the CAR Situations, or to any case eventually arising from such investigation(s).

15. Counsel further posit that the information available to the Chamber is sufficient to make its determination on the proposed activities and approve them. Indeed, the Annex to the Notification contains the presentation of the different projects per locations, identifying the foreseen activities and their related goals, thereby providing specific enough information at this stage.¹⁴

16. As a consequence, Counsel conclude that the Notification complies with the criteria laid down in Regulation 50(a)(ii) of the Regulations of the Trust Fund.¹⁵

17. Lastly, Counsel wish to indicate that Victims have expressed relief in knowing about the further Notification of the Fund and the launch of a comprehensive assistance programme. They reiterated their views already expressed at the time of

¹⁴ See the Annex, *supra* note 1.

¹⁵ See the "Decision on Notification of the Trust Fund for Victims and on its Request for Leave to respond to OPCD's Observations on the Notification", *supra* note 8, p. 5.

the notification about the Pilot Project according to which the assistance shall take into account the specific aspects related to the local culture and it must be victim-centred, non-discriminatory, supportive, respectful, free of cost, confidential, specific and cater for specific needs in different age groups, empowering and holistic. The assistance programme should also - as much as possible - ensure that beneficiaries have full participation in the design and implementation of the projects.¹⁶

18. Finally, Counsel recall that a great number of Victims are currently displaced outside CAR in neighbouring countries (mainly Chad and Cameroon) and take this opportunity to invite the Fund to evaluate how the implementation of its broad assistance programme in CAR may have an impact on them and could eventually facilitate their return to the country. In this regard, the proposed activities, in facilitating Victims' recovery at a family level and reconciliation amongst communities, could also be a way of encouraging other members of the family to return to their original place of residence.

¹⁶ See the OPCV previous observations, *supra* note 12, paras. 23-24.

FOR THE FOREGOING REASONS, Counsel respectfully request the Pre-Trial Chamber to promptly approve the proposed activities as contained in the Annex to the Notification of the Trust Fund for Victims.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', written in a cursive style.

Dmytro Suprun

Dated this 2nd day of October 2020

At The Hague, The Netherlands