

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05**
Date: **2 April 2020**

PRE-TRIAL CHAMBER II

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

SITUATION IN IN CENTRAL AFRICAN REPUBLIC I

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 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)**

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**Victims Participation and Reparations
Section**

Trust Fund for Victims
Mr Pieter de Baan

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims, in her capacity of Legal Representative of victims in proceedings related to the Situation in the Central African Republic (“CAR”) files her observations on the Trust Fund for Victims’ Notification dated 25 February 2020 (the “Notification”) and related to activities to be implemented in CAR.¹

2. The Principal Counsel submits 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 suspects and/or accused and a fair and impartial trial.

3. The Principal Counsel consequently posits that the Chamber should approve the Pilot Project as described in the Annex to the Notification without delay to allow its prompt implementation by the Trust Fund for Victims (the “TFV” or the “Fund”).

4. Furthermore, the Principal Counsel, while commending the Fund’s efforts and willingness to provide assistance to as many victims as possible in CAR, wishes to underline the urgency of the situation in the country and the necessity of the implementation of the Pilot Project as soon as possible, and at the latest in August 2020, as noted by the TFV; as well as the need to develop a more comprehensive assistance programme to be implemented possibly in the current year for the benefit of the victims and their families.

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 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 (the “Notification” and the “Annex”).

II. PROCEDURAL HISTORY

5. On 16 November 2009, the then Pre-Trial Chamber II issued the “Decision on the Submission of the Trust Fund for Victims dated 30 October 2009”,² postponing its response to said Submission (which covered mainly needs related to gender based crimes)³ and inviting the Board of Directors of the TFV to provide further information once the selection of specific activities will have been concluded.⁴

6. Having received said information, on 23 October 2012, the then Pre-Trial Chamber II issued its “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””.⁵ The Chamber did not object to the implementation of the six proposed projects identified in Annex III to that Notification,⁶ which aimed at supporting victims of gender based crimes in different locations in CAR. However, when said projects were about to be launched, activities had to be suspended and eventually cancelled due to the security situation prevailing in the country.

7. On 13 June 2018, the Board of Directors of the TFV communicated to the Assembly of States Parties (the “ASP”) its unanimous decision, taken on 12 June 2018

² See the “Decision on the Submission of the Trust Fund for Victims dated 30 October 2009” (Pre-Trial Chamber II), [No. ICC-01/05-30](#), 16 November 2009.

³ See 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” and its Annex, [No. ICC-01/05-29](#) and [No. ICC-01/05-29-Anx](#), 30 October 2009 (the “2009 Notification”).

⁴ See the “Decision on the Submission of the Trust Fund for Victims dated 30 October 2009”, *supra* note 2, para. 4: “[...] the Chamber holds that a programme outline and a list of suggested activities to potential implementing partners (“could include (but are not limited to)”) cannot represent “such notification” within the meaning of regulation 50 of the Regulations of the Trust Fund”.

⁵ See the “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”” (Pre-Trial Chamber II), [No. ICC-01/05-41](#), 23 October 2012.

⁶ See 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” and its three Annexes, [No. ICC-01/05-39](#) and [No. ICC-01/05-39-AnxI](#), [AnxII](#) and [AnxIII](#), 11 October 2012 (the “2012 Notification”).

following the acquittal judgement on appeal in the *Bemba* case, to accelerate the launch of an assistance programme for the benefit of victims and their families in CAR.⁷ The Board instructed the Secretariat to consider, first, information related to the scope and types of harms suffered by victims and their families in the context of the *Bemba* case; and, second, its previous assessments of the needs in CAR. The Board also informed the ASP of the existence of a starting capital of 1 million euros for said assistance programme, to be used pending further determinations based on the outcome of the assessment, as well as on the review by the relevant Pre-Trial Chamber in accordance with Regulation 50(a)(ii) and (iii) of the Regulations of the Trust Fund.

8. As a result, the Fund engaged in extensive consultations, notably with the legal representatives of victims in proceedings related to the situation in CAR. The Fund also undertook joint missions with both legal representatives of victims' teams in order to explain its mandate and seek the victims' consent for the transmission of their personal information to the Fund.

9. On 25 February 2020, the TFV filed the Notification.⁸

10. On 4 March 2020, Pre-Trial Chamber II extended the time limit to file observations on the Notification until 3 April 2020.⁹

⁷ See the letter dated 13 June 2018 addressed by Mr Motoo Noguchi, Chair of the Board of Directors of the Trust Fund for Victims to Mr O-Gon Kwon, President of the Assembly of States Parties, available on the following website: https://www.icc-cpi.int/iccdocs/TFV/180603_TFV_letter.pdf. See also, the Statement from the Trust Fund for Victims' Board of Directors, "Following Mr Bemba's acquittal, Trust Fund for Victims at the ICC decides to accelerate launch of assistance programme in Central African Republic", Press Release, 13 June 2018, available on the following website: <https://www.icc-cpi.int/Pages/item.aspx?name=180613-TFVPR>.

⁸ See *supra* note 1.

⁹ See the email sent by the Legal Officer on behalf of Pre-Trial Chamber II on 4 March 2020, at 14:56.

III. SUBMISSIONS

1. Assessment of the criteria under Regulation 50 of the Regulations of the Trust Fund for the implementation of the proposed activities

11. Preliminarily, the Principal Counsel refers to the jurisprudence of the Pre-Trial Chambers of the Court 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”*.¹⁰ In this regard, since reparations proceedings were terminated following Mr Bemba’s acquittal, the Principal Counsel welcomes the Decision of the Board of Directors to re-allocate half of the provisional 1 million euros (originally reserved for reparations in said case) to an assistance programme in CAR.¹¹

12. However, much more is needed to meaningfully help victims who have suffered multiple harms over the years and have been re-victimized several times. Victims have heard about the TFV intervention for more than 10 years now and are yet to see any form of support. The level of expectations and disappointments are high and certainly proportional to the level of needs. Since 2002 and with multiple layers of sufferings since, the victims are waiting for a chance to pass from victimhood to some stability as survivors – as rightly underlined by the TFV itself in its previous notification.¹²

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, pp. 3-4. 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 *supra* note 7. The Board also allocated an additional €500,000 from the Fund’s assistance mandate reserve.

¹² See the 2012 Notification, *supra* note 6, Annex I, p. 3, 4th paragraph.

13. The Principal Counsel further recalls that the power of the 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, the Principal Counsel submits 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.¹³ 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, the Principal Counsel contends 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 require a tacit or explicit determination by the Chamber prior to their implementation.¹⁴

14. The Principal Counsel observes that the activities proposed in the Annex to the Notification correspond to a Pilot Project, restricted in scope and conceived as a first response, to be followed by a more comprehensive assistance programme, for which the TFV will provide a further notice to the Chamber.

15. In particular, said Project aims at responding to urgent needs of *circa* 200 victims based in Bangui, survivors of rape and sexual violence.¹⁵ The activities proposed target the improvement of mental health and psychosocial resilience of the

¹³ 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.

¹⁴ 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 10, p. 4.

¹⁵ See the Annex to the Notification, *supra* note 1.

beneficiaries; the physical rehabilitation of 120 survivors of rape and sexual violence suffering from HIV/Aids; the improvement of revenue from income-generating capacities, leading to increased self-reliance of the beneficiaries and their dependents; the improvement of and sustainability of education and training benefits for the beneficiaries and their dependents; the provision of support for the education of children of rape and sexual violence survivors who are HIV-positive - as a result of the commission of any crime within the jurisdiction of the Court, as foreseen by Regulation 50(a)(i) of the Regulations of the Trust Fund.¹⁶

16. In relation to the beneficiaries, the Principal Counsel notes that, while the Fund indicates that the Project will target 200 survivors of rape and sexual violence suffering from HIV/Aids, the Annex only refers to 120 persons for physical rehabilitation support.¹⁷ While it may be that not all the victims are suffering from HIV/Aids, all of them have surely suffered from physical harm. Therefore, the Project should not only encompass a response and accompaniment to victims suffering from HIV/Aids, but also physical support for other sexually transmitted diseases and other physical harm, notably traumatic fistula.¹⁸

17. The Principal Counsel underlines and shares 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.

¹⁶ 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 10, p. 5.

¹⁷ See the Annex to the Notification, *supra* note 1.

¹⁸ See the 2012 Notification, *supra* note 6, Annex I, p. 2, paragraph 4 and p. 4. The provision of health support should include transportations and proper access by victims to treatments and medical centres, in a way avoiding stigmatisation and furthering equality and non-discrimination; ensuring daily access to drinkable water and food (which appears to be partially covered by the Pilot Project); basic hygiene and sanitation in order to guarantee the appropriateness and efficiency of the treatments and medical measures made available; and access to free appropriate treatments, both physical and psychological, beyond HIV/AIDS pathology.

18. In line with the Court's jurisprudence, the Principal Counsel further submits 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.

19. The Principal Counsel also submits that the proposed activities are defined without reference to any specific crime or location, or individually identified alleged perpetrator or victim *per se*.¹⁹ In this regard, victims of the former *Bemba* proceedings remain victims of crimes within the scope of the Situation, beyond the fate of said proceedings. Moreover, the proposed activities, as contained in the Annex to the Notification, do not pre-determine any other issue on which the Pre-Trial Chamber could rule in the context of the Situation in CAR, in as much as they appear unrelated to national proceedings or to proceedings concerning ongoing investigation(s) in the Situation, or to any case eventually arising from such investigation(s).

20. The Principal Counsel further posits 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 a detailed presentation of the Project, notably identifying the foreseen activities and their related goals, thereby providing specific enough information at this stage.²⁰

21. As a consequence, the Principal Counsel concludes that the Project is compatible with the criteria laid down in Regulation 50(a)(ii) of the Regulations of the Trust Fund.²¹

¹⁹ Reference is to the fact that the category of beneficiaries concerned by the Pilot Project is defined in broad terms. See the Annex to the Notification, *supra* note 1.

²⁰ See, in this regard, the "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"", *supra* note 5, paras. 8 and 9.

²¹ 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 10, p. 5.

2. Specific views and concerns expressed by the victims

22. While indicating that the Chamber is in a position to approve the Project, the Principal Counsel wishes to present some views and concerns expressed by victims in relation to the activities to be undertaken by the TFV.

23. Victims indicated that the Pilot Project has to comply with the best practices in the field,²² especially in response to gender based crimes. In particular, the assistance must be victim-centred, non-discriminatory, supportive, respectful, free of cost, confidential, specific and cater for specific needs in different age groups,²³ empowering and holistic. The Project should also - as much as possible - ensure that beneficiaries have full participation in the design and implementation of the activities.²⁴ With regards to empowerment, the project shall advance the status of women and girls in CAR society, and include a psychosocial aspect accompanying families due to the high stigmatization faced by victims of these specific crimes and their multiple impacts on families.²⁵

24. Victims have also indicated that the activities have to take into account the specific aspects related to the local cultures, notably the cultural meaning and taboos attached to the crime of rape, the roles of mothers and fathers and the social dynamics of families in the specific context of CAR.

²² See the 2012 Notification, *supra* note 6, Annex I, p. 4.

²³ *Idem*, p. 3, paragraph 4. The following aspects should be considered when formulating and implementing the Project: the age and the physical condition of the victim when she or he was raped (young, old, virgin, pregnant, sick, injured); the gender and role of the victim (boy or girl, man or woman, father/mother figure, family or community leader, public figure, *etc.*); the circumstances of the rape (number of times the person was raped, number of perpetrators, surroundings and persons present during the rape, other violent acts and assaults suffered during and in addition to the rape).

²⁴ See the 2009 Notification, *supra* note 3, Annex, p. 4.

²⁵ See the 2012 Notification, *supra* note 6, Annex I, p. 2, 5th paragraph and p. 4.

25. Furthermore, victims considered that the Project must include boys and men who were also victims of gender based crimes;²⁶ and welcomed the Fund's choice of generally targeting "beneficiaries", understanding said term as encompassing both girls and boys, and women and men.

26. Victims also stressed the multi-dimensional²⁷ and long-term consequences of the gender based crimes upon them, their families and their communities, requiring specialized, integrated, and multidisciplinary support approaches, as proposed. Indeed, it appears that a vast majority of the needs identified in 2009,²⁸ 2012 and 2018 still exist today, and in fact, have aggravated. Moreover, new critical issues have arisen since then and said issues could be usefully addressed by the Fund at this juncture. With the lapse of time, most of the victims have reported that their situation is deteriorating. Indeed, inevitably, their needs deriving from harms (physical injuries, psychological distresses and economic harm) which were never addressed could only worsen. In addition, the already deficient infrastructures and local capacities have faced further pressing requests in the course of the years, rendering access to medical support, social services and economic activities even more difficult, if not almost impossible, for the vast majority of the victims.

27. Therefore, victims strongly indicated that the Fund's activities should aim at supporting as many victims as possible, in a manner which recognizes the multiple

²⁶ See the 2009 Notification, *supra* note 3, para. 34. See also, the 2012 Notification, *supra* note 6, Annex I, p. 2, 3rd paragraph and p. 4.

²⁷ Victims referred to physical and psychological consequences such as undesired pregnancies, miscarriages, children born out of rape, HIV/AIDS, other STD, infections, fistulas' and other injuries, sexual dysfunctions, stigmatisation, shame, guilt, anger, powerlessness, purposelessness, self-hate, suicidal thoughts and related attempts, revenge thoughts and related actions. Victims also referred to social and economic consequences such as loss of educational and professional opportunities, rejection and lack of support, disintegration of couples and families, exclusion, humiliation, mockeries, forced isolation, misery and poverty, lack of appropriate treatments.

²⁸ See the 2009 Notification, *supra* note 3, para. 24: "*the needs assessment undertaken exposes the dire humanitarian situation of the civilian population due to the conflict*". See also, paras. 37 and 38: "*The TFV identified those victims of sexual violence as those who have the most pressing needs. These needs are particularly acute since there is a lack of access to social services and to medical resources in the CAR leading to a situation where the needs of the victims are indeed physical, psychological and material*".

harms suffered by each of them and their cascading effects in their lives. In this regard, the Principal Counsel notes that the approach taken by the Fund in 2012 is still valid and could be used to speed up the design and implementation of a more comprehensive assistance programme for the benefit of a larger number of victims and their families.

28. Furthermore, due to the transgenerational impacts of many of the harms suffered, many more victims are in need of support compared to the situation prevailing in 2009, 2012 and 2018. In this regard, victims also welcomed the fact that the Project includes support for the children born from rapes and for their dependents.²⁹ This dimension is a key factor to be taken into consideration in any effort aiming at supporting victims of gender based crimes, their families and their communities.

29. Moreover, the Principal Counsel notes that empowering communities in urgent need of assistance is of the utmost importance in order to ensure the sustainability of the future more comprehensive assistance programme and its impacts.³⁰ In fact, alleviating the harm suffered by victims and their families and strengthening community based services would in turn generate further resilience amongst the affected communities and facilitate a long-term improvement of victims' daily lives. Such an approach would create an appropriate basis for essential services that could be developed in the future, and avoid the misfortune of the communities having to start from scratch again every other years, when the broad TFV assistance programme will reach an end.

²⁹ See the Annex to the Notification, *supra* note 1. See also the 2009 Notification, *supra* note 3, para. 35 and the 2012 Notification, *supra* note 6, Annex I, p. 5. Victims referred to the loss of family structure and support, the loss of sense of security and affection, the transmitted guilt and shame, the transmitted diseases – which not only impact the children born of rapes but possibly all the children and relatives of the family.

³⁰ See the Programming guiding principles of the TFV and in particular principles 5 (Ensure capacity building to strengthen quality and sustainability) and 7 (Facilitate action learning through participatory approach). The Principles are available on the following website: <https://trustfundforvictims.org/en/what-we-do/programming-guiding-principles>.

30. Additionally, victims are aware that the Pilot Project will target only a very limited number of survivors of rape and sexual violence suffering from HIV/Aids, compared to the high number of survivors in need; and it will only cover Bangui, while victims with identical needs are currently residing everywhere in CAR.³¹

31. This aspect is of particular concern for the victims who stressed a need for similar activities to be implemented throughout the CAR territory and in places as geographically close as possible to the affected victims and communities because beneficiaries do not have the financial means, nor the possibility (either logistically or physically) to travel long distances in order to access and benefit from the assistance projects.

32. Furthermore, some victims raised concerns with regard to their security and protection, an aspect which the Principal Counsel notes is not mentioned in the Notification. Victims stressed the importance of the implementation of good practices for the protection of individuals benefiting from the Project, not only in light of the volatile security situation in Bangui (and more generally in the entire CAR territory), but also in relation to the attached stigma still very much prevalent in the country in relation to harm suffered as a result of gender based crimes.

33. Lastly, victims strongly advocated for a prompt development and implementation of a broader and comprehensive assistance programme which will finally fully acknowledge the extent of their victimisation and help them turning the page of their painful experiences and re-build as much as possible their lives.

³¹ See the Annex to the Notification, *supra* note 1.

FOR THE FOREGOING REASONS, the Principal Counsel respectfully requests 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, reading "Paolina Massidda". The signature is written in a cursive style and is underlined.

Paolina Massidda
Principal Counsel

Dated this 2nd day of April 2020

At The Hague, The Netherlands