

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/15**  
Date: **25 May 2022**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Reine Alapini-Gansou  
Judge María del Socorro Flores Liera

**SITUATION IN GEORGIA**

**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 Georgia"**

**Source:** Office of Public Counsel for Victims

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

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Ms Nazhat Shameen Khan  
Mr Anton Steynberg

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

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**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**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. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”), hereby files her observations on the Trust Fund for Victims’ Notification dated 29 April 2022 on specified activities to be undertaken in Georgia (the “Notification”).<sup>1</sup>

2. The Principal Counsel submits that the proposed activities – as detailed in Annex I - do not pre-determine any issue to be ruled upon by the Court, nor violate the presumption of innocence or are prejudicial to, or inconsistent with, the rights of potential suspects and/or accused and a fair and impartial trial. Accordingly, the Pre-Trial Chamber may endorse the undertaking of such activities so to allow their prompt implementation by the Trust Fund for Victims (the “TFV” or the “Fund”).

3. Lastly, while commending the Fund’s efforts and readiness to provide assistance to Victims in Georgia, the Principal Counsel wishes to underline the need for the Fund to develop a more comprehensive assistance programme for the benefit of a greater number of victims and their families.

## II. PROCEDURAL HISTORY

4. On 29 April 2022, the TFV filed the Notification.<sup>2</sup>

5. On 6 May 2022, Pre-Trial Chamber I (the “Chamber”) instructed by e-mail the Prosecution, the OPCV and the Office of Public Counsel for the Defence to file observations on the Notification by 13 May 2022.<sup>3</sup>

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<sup>1</sup> 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 Georgia” and its Annex 1, [No. ICC-01/15-35](#) and [No. ICC-01/05-35-Anx1](#), 29 April 2022 (the “Notification” and the “Annex”).

<sup>2</sup> *Ibid.*

<sup>3</sup> See the e-mail from the Chamber dated 6 May 2022 at 17:41.

6. On 9 May 2022, the Principal Counsel requested and extension of the deadline to file observations until 25 May 2022,<sup>4</sup> which was granted by the Chamber on the same day.<sup>5</sup>

### III. SUBMISSIONS

#### **Assessment of the criteria under regulation 50 of the Regulations of the Trust Fund for the implementation of the proposed activities**

7. At the outset, the Principal Counsel recalls the relevant 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”*.<sup>6</sup> In this regard, the Principal Counsel welcomes the decision of the Board of Directors to start an assistance programme in Georgia.

8. The Principal Counsel further recalls that the Chamber’s scrutiny of the activities within 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 (the “Regulations”). In turn, the Fund has discretion in interpreting its Regulations, applying the principle of good faith, and 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.<sup>7</sup> In fact, because of its expertise in the area of humanitarian assistance and development, the

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<sup>4</sup> See the e-mail from the Principal Counsel of the OPCV dated 9 May 2022 at 09:32.

<sup>5</sup> See the e-mail from the Chamber dated 9 May 2022 at 11:57.

<sup>6</sup> See, *inter alia*, 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; and 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.

<sup>7</sup> 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](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

Fund is best placed to define its own methodology when assessing relevant needs in the field; the type of assistance to be provided, and the adequacy of the suggested activities. The Chamber's assessment rests strictly in the judicial domain. Accordingly, the scrutiny of the Chamber under regulation 50(a)(ii) of the Regulations should be limited to verify whether the Fund abused its discretion. Thus, activities under Chapter II of said Regulations require a tacit or explicit determination by the Chamber prior to their implementation.<sup>8</sup>

9. The activities proposed in Annex I include the *“provision of psychological and medical rehabilitation services to 250 victims of the 2008 events in IDP and village communities affected by the conflict.”*<sup>9</sup> Concerning the geographical scope of the proposed activities, the Principal Counsel notes that the projects will be undertaken in the areas where the victims of the 2008 events are largely residing. In particular, project R1/001 will focus on the Shida Kartli area; while project R1/002 on the Mtsketa-Mitaneti region. The Principal Counsel further notes that the affected population resides also in other villages not mentioned in the two projects, but belonging to the same areas/regions. Accordingly, the Principal Counsel understands the list of locations in the Annex as not being exhaustive.

10. Both projects endorse an holistic approach since they foresee mental health and psychological support, medical services or rehabilitation and socio-economic support. The Principal Counsel shares the 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 humanitarian assistance and corresponds to the Victims' realities, which are made of an array of interconnected harms. The Principal Counsel also commends the TFV for taking into account the gender dimension in project R1/001, providing empowerment to women leaders and employment and livelihood

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<sup>8</sup> 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 6, p. 4.

<sup>9</sup> See the Annex, *supra* note 1.

opportunities for women. However, she posits that the same approach should equally be adopted in project R1/002.

11. Moreover, the Principal Counsel notes the community mobilization and advocacy components in project R1/002. Empowering communities in urgent need of assistance is of the utmost importance to ensure the sustainability of future more comprehensive assistance programmes and their impacts.<sup>10</sup> In fact, alleviating the harm suffered by victims and their families while strengthening community based services will generate in turn further resilience in the affected communities and facilitate a long-term improvement of Victims' daily life. 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 once the TFV assistance programme will reach an end.

12. 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. The activities are defined without reference to any specific crime or location, alleged perpetrator or victim. Moreover, the proposed activities do not pre-determine any other issue on which the Chamber could rule in the context of the Situation in Georgia. The activities are in fact unrelated to national proceedings or to proceedings concerning ongoing investigations in the Situation, or to any case potentially arising from such investigations.

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<sup>10</sup> 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>.

13. In addition, Annex I contains a detailed presentation of the projects, identifying the foreseen activities and their related goals - thereby providing specific enough information at this stage.<sup>11</sup> Accordingly, the information available before the Chamber is sufficient to make a determination on the proposed activities and to endorse them.

14. Nonetheless, the Principal Counsel notes that the fact that only 250 victims will benefit from the two assistance projects has raised some concerns amongst Victims. In fact, a much higher number of individuals were victimised by the events of 2008 and are in need of assistance.

15. According to the information provided by Victims and stakeholders in Georgia, 9,056 families (around 26,000 individuals) are displaced from the Tskhinvali Region (South Ossetia) as a result of the August 2008 war. The largest number of IDPs - 16,811 individuals - reside in the Shida Kartli region, while the rest is scattered mostly in the eastern part of the country, Kvemo Kartli, Kakheti and Dusheti regions. In addition, around 33,965 individuals affected by the conflict reside in 40 villages along the "Administrative Boundary Line" with the Tskhinvali Region (South Ossetia).<sup>12</sup>

16. Consequently, Victims strongly advocate for a much broader scope of the Fund's assistance. They indicated that the Fund's activities should aim at supporting as many victims as possible, in a manner which recognizes the multiple harms suffered by each of them and their cascading effects in their lives. In this regard, Victims also indicated that improving access to healthcare and medical services is essential, because

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<sup>11</sup> 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"" (Pre-Trial Chamber II), [No. ICC-01/05-101](#), 15 September 2020, paras. 8 and 9.

<sup>12</sup> See the official statistics Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (in Georgian), available at <https://www.moh.gov.ge/uploads/files/2019/Failebi/27.03.2019-51.pdf>; also quoted in the UNICEF Report "Georgia Social Protection System Readiness Assessment", May 2020, p. 9 accessible at [https://www.unicef.org/georgia/media/4896/file/social\\_protection\\_system\\_Readiness.pdf](https://www.unicef.org/georgia/media/4896/file/social_protection_system_Readiness.pdf) (last accessed on 24/05/2022). See also, UNHCR, Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons (follow up Mission to Georgia 10-14 June 2013), 4 June 2014, para. 37, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/047/69/PDF/G1404769.pdf?OpenElement> (last accessed on 24/05/2022).

of lack of qualified staff and modern medical infrastructure. In addition, they further explained that harms persist amongst the conflict-affected population in the areas targeted by the proposed activities, which are in turn amplified by the poor social-economic conditions in displacement.<sup>13</sup>

17. Furthermore, Victims underlined the need for socio-economic support because of the widespread destruction of their properties during the 2008 events and the lost access to the agricultural land, which was their main source of income. The Shida Kartli area is regarded as the poorest part of the country with 59% of the population living below the poverty line.<sup>14</sup>

18. Finally, Victims also indicated that the projects should - as much as possible - ensure that beneficiaries have full participation in the design and implementation of the proposed activities.

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<sup>13</sup> See in this regard, the “Mental Disorders and Their Association with Disability among Internally Displaced Persons and Returnees in Georgia”, *Journal of Traumatic Stress*, October 2014, 27, 509–518, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4496794/> (last accessed on 24/05/2022). See also, the Report “Supporting the livelihoods of Internally Displaced Persons in Georgia”, the World Bank, May 2013, p. 31-32, available at <http://documents.worldbank.org/curated/en/859881468236363043/pdf/791740WP0Georg0Box0377356B00PUBLIC0.pdf> (last accessed on 24/05/2022); and the Report “Needs and Priorities of IDP and Conflict-Affected Women and Girls in Georgia”, 2014, UN Women/Association DEA/Institute for Policy Studies, 2014, p. 20, available at <https://georgia.unwomen.org/en/digital-library/publications/2014/01/needs-and-priorities-of-idp-and-conflict-affected> (last accessed on 24/05/2022).

<sup>14</sup> See the World Bank Document “Disaster Risk Finance Country Note: Georgia”, May 2017, p. 8, available at <https://documents1.worldbank.org/curated/en/929561510329276686/pdf/121242-WP-P155421-PUBLIC-32p-DRFIGeorgiaDiagnosticWeb.pdf> (last accessed 24/05/2022); and World Bank Document “Georgia From Reformer to Performer”, 2018, available at <https://documents1.worldbank.org/curated/en/496731525097717444/pdf/GEO-SCD-04-24-04272018.pdf> (last accessed on 24/05/2022).



Respectfully submitted.

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 25<sup>th</sup> day of May 2022

At The Hague, The Netherlands