

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-01/15**

Date: **25 May 2022**

PRE-TRIAL CHAMBER I

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

SITUATION IN GEORGIA

Public

OPCD Observations on the TFCV Regulation 50 Notification

Source: Office of Public Counsel for the Defence

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

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I. INTRODUCTION

1. As invited by Pre-Trial Chamber I (“PTC I”), the Office of Public Counsel for the Defence (“OPCD”) submits observations 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 assistance activities in Georgia (“TFV Notification”).¹ The OPCD makes no specific objection to the broadly outlined activities in the proposed programme, but requests certain safeguards in the manner of executing the assistance so as to not predetermine any issue to be determined by the Court or prejudice any right of defendants in any ongoing or future cases.

II. RELEVANT PROCEDURAL HISTORY

2. On 27 January 2016, the Prosecutor was authorized to proceed with an investigation of crimes within the jurisdiction of the Court committed in and around South Ossetia, Georgia, between 1 July and 10 October 2008.²
3. On 10 March 2022, the Office of the Prosecutor filed a public redacted version of an application pursuant to Article 58 for warrants of arrest against three identified individuals.³ These three individuals are not in the ICC custody at the time of this filing.
4. On 29 April 2022, the Board of Directors submitted a TFV Notification pursuant to Regulation 50(a) of the Regulations of the TFV proposing “two

¹ *Situation in Georgia*, 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, 29 April 2022, [ICC-01/15-35](#).

² Decision on the Prosecutor’s request for authorization of an investigation, 27 January 2016, [ICC-01/15-12](#).

³ Public redacted version of “Prosecutor’s application pursuant to article 58 for warrants of arrest against Mikhail MINDZAEV, Gamlet GUCHMAZOV and David SANAKOEV”, 10 March 2022, ICC-01/15-34-Conf-Exp, 10 March 2022, [ICC-01/15-34-Red](#).

projects aiming to provide physical and psychological rehabilitation, as well as material support to the victims and their families in Georgia”.⁴

5. On 6 May 2022, Pre-Trial Chamber I requested observations of the OPCD, the Office of Public Counsel for the Victims (“OPCV”), and the Prosecution on the Notification by 13 May.⁵ On 9 May, the Chamber granted a request of the OPCV, supported by the OPCD, for an extension of time for these submissions until 25 May.⁶

III. OPCD MANDATE - REGULATION OF THE COURT (“RoC”) 77

6. As the following observations would apply equally to the general Defence interests of any unrepresented actual or potential suspects in the Situation of Georgia, they are submitted pursuant to RoC 77(4)(a) *“on the instruction or with the leave of the chamber, mak[ing] submissions concerning the needs of the defence in ongoing proceedings”*.⁷ These submissions should not cause prejudice to defendants themselves, who may reserve the right to assert additional or, even, contrary submissions based on their own assessment and interest.

IV. OBSERVATIONS

7. As the OPCD has expressed in previous filings, Rule 98(5) plays an important role in enabling the TFV to provide resources for the benefit of a person adjudicated to be a victim in the absence of a conviction.⁸ This provision

⁴ [TFV Notification](#), para. 7.

⁵ Order issued via email.

⁶ Decision issued via email.

⁷ RoC 77 was originally adopted by the Judges of the Court on 26 May 2004. It was subsequently amended by the Judges on 2 November 2011, with entry into force on 29 June 2012.

⁸ See e.g. *Situation in Uganda*, OPCD observations on the Notification under Regulation 50 of the Regulations of the Trust Fund for Victims, 12 March 2008, [ICC-02/04-122](#), paras 12-13; *Situation in Uganda*, Public Redacted Version of the “Observations on the Notification of the TFV”, 30 January 2019, [ICC-02/04-234-Red](#), paras 13-14; *Situation in the Central African Republic*, Public Redacted Version of “OPCD Observations on the Notification under Regulation 50 of the Regulations of the Trust Fund for Victims”, 3 April 2020, [ICC-01/05-98-Red](#), para. 7.

allows the needs of victims in Situation countries to be addressed without creating expectation or urgency for a certain outcome in any specific case.

8. At the same time, the OPCD highlights the need to ensure that 1) implementation activities do not develop in such a way so as to create prejudice; and 2) that information on beneficiaries and selected victims are kept to a judicial standard to ensure that such information can be fully disclosable at the time of any further proceedings. On these points, the OPCD reincorporates by reference its previous submissions that the language to be used in the programming and reports should be perpetrator-neutral and refrain from making any predeterminations that should be left for the ultimate finder of fact.⁹ These safeguards are especially important when the “activities are connected to a situation in which an investigation and judicial proceedings are ongoing”.¹⁰
9. While the language of the current TFV Notification appears largely neutral, it defines only the broad parameters of the projects envisaged. Therefore, the OPCD seeks concrete assurances that no violation of the rights of named or yet-unknown suspects occurs in the process of undertaking these outlined activities. Specifically, the OPCD respectfully requests that the Pre-Trial Chamber issue reminders, in line with those that have been previously given in other Situations, namely:
 - a. “that all references to any identified suspect/accused, group or actor identifiable in connection with situations and/or proceedings before the

⁹ See *Situation in Uganda*, OPCD observations on the Notification under Regulation 50 of the Regulations of the Trust Fund for Victims, 12 March 2008, [ICC-02/04-122](#), para. 6; *Situation in Uganda*, Public Redacted Version of the “Observations on the Notification of the TFV”, 30 January 2019, [ICC-02/04-234-Red](#), paras 17-18.

¹⁰ *Situation in CAR I*, 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 further specified activities in the Central African Republic’, 8 October 2020, [ICC-01/05-104](#) [“CAR I Information”], para. 9; *Situation in CAR II*, 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 further specified activities in the Central African Republic’, 8 October 2020, [ICC-01/14-131](#) [“CAR II Information”], para. 9.

Court, and particular victims be omitted during their implementation, as well as in any documents relating to such implementation whether already existing or forthcoming”;¹¹

- b. “that the Trust Fund and its implementing partners be mindful of their obligation to retain and preserve all relevant information on the beneficiaries of the proposed activities, as these may prove relevant to ongoing or future proceedings before the Court”.¹²

V. RELIEF REQUESTED

10. For the foregoing, the OPCD respectfully requests the Pre-Trial Chamber to accept these observations pursuant to RoC 77(4)(a) and:

- Reserve the rights of any future assigned Counsel for any suspect or accused in the Situation to make observations on any permitted assistance activities; and,
- Provide directions to the TFV as outlined in paragraph 9, above.



Xavier-Jean Keïta
Principal Counsel of the OPCD

Dated this, 25th Day of May 2022
At Dakar, Senegal

¹¹ CAR I Information, para. 9; CAR II Information, para. 9.

¹² CAR I Information, para. 10; CAR II Information, para. 10.