

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR220**

Date: **18 November 2019**

PRESIDENCY

Before: Judge Chile Eboe Osuji, President
Judge Robert Fremer, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

Public with Confidential Annexes A to H

Yekatom Defence Request for Review of Registrar's Family Visit Decision

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Counsel for Mr. Yekatom

Me Mylène Dimitri

Mr. Peter Robinson

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Division of Judicial Support Services
Mr. Marc Dubuisson

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully request, pursuant to Regulations 179(1)¹ and 220(1)² of the Regulations of the Registry, that the Presidency review and reverse the decision of the Registry refusing to fund the visit of Mr. Yekatom’s wife and two children. The Defence contends that the Registry abused its discretion when declining to fund the family visit on a temporary basis, pending the provision of funds from the Trust Fund for Family Visits (TFFV).

RELEVANT PROCEDURAL HISTORY

2. Mr. Yekatom has been detained in the custody of the ICC since 17 November 2018³ and has been declared indigent by the Registry.

3. In April 2019, he requested a funded family visit for his wife and eleven children. At that time, the Registry advised that there were no funds currently available, but efforts were being made to solicit voluntary contributions to the TFFV.

4. After waiting six months with no results, Mr. Yekatom filed a formal request for a funded family visit on 3 October 2019. Taking into account the financial constraints on the Registry, Mr. Yekatom reduced the number of children visiting to two.⁴

5. On 15 October 2019, the Registry responded that the funds in the TFFV are still depleted, that they are pursuing alternative feasible solutions, and that such efforts will continue in the subsequent weeks.⁵

¹ The Registrar shall give specific attention to visits by family of the detained persons with a view to maintaining such links.

² The detained person may apply to the Presidency for judicial review of a decision of the Registrar taken under either regulation 218, sub-regulation 5 or regulation 219, sub-regulation 3, within 7 calendar days of its notification.

³ [ICC-01/14-01/18-17-US-Exp-Red](#), para. 19.

⁴ A copy of this request is Confidential Annex A.

⁵ A copy of this e-mail exchange is Confidential Annex B.

6. On 16 October 2019, to assist the Registry in finding an alternative feasible solution, the Defence proposed that the Registry temporarily advance unused funds from the Defence team expense account.⁶ The Registry rejected this suggestion on 18 October 2019⁷ and orally advised Counsel that it was actively pursuing voluntary contributions to fund the visit.

7. On 8 November 2019,⁸ the Defence requested an update on the availability of funds as Mr. Yekatom was hoping to receive the visit of his children for Christmas. On 11 November 2019, the Registry advised that there were still no additional funds in the TFFV.⁹ On 13 November 2019, the Defence requested to be advised “whether the Registry considers that there are no alternative means to support the family visit on a temporary visit pending the donation of funds to the TFFV”.¹⁰ On 14 November 2019, the Registry advised that there are currently no alternative means to support the family visit on a temporary basis pending the donation of funds.¹¹

STANDARD OF REVIEW

8. The standard of review of a decision of the Registrar:

involves a consideration of whether the Registrar has: acted without jurisdiction, committed an error of law, failed to act with procedural fairness, acted in a disproportionate manner, taken into account irrelevant factors, failed to take into account relevant factors, or reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.¹²

ARGUMENT

⁶ A copy of this request is Confidential Annex C.

⁷ A copy of this e-mail exchange is Confidential Annex D.

⁸ A copy of this request is Confidential Annex E.

⁹ A copy of this e-mail exchange is Confidential Annex F.

¹⁰ A copy of this request is Confidential Annex G.

¹¹ A copy of the e-mail exchange is Confidential Annex H.

¹² *Prosecutor v. Katanga & Ngudjolo*, [Decision on “Mr Mathieu Ngudjolo’s Complaint Under Regulation 221\(1\) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008”](#), ICC-RoR217-02/08-8, 10 March 2009, para. 24.

9. The Registrar committed an error of law in refusing to temporarily fund the family visit.

10. Alfred Yekatom has been imprisoned in the Detention Centre for one year. He has not seen his 12 year-old son, and his 14 year-old daughter for that entire period.¹³ The estimated cost of their visit, € 3.500, is less than the monthly salary of a P-1, step 1 employee.¹⁴

11. The Defence agrees that the family visits cannot be funded at this time by the TFFV due to insufficient voluntary contributions from member States. However, the jurisprudence of this Court requires that in such a case, the Registrar must fund the family visit on a temporary basis from his budget. Simply delaying the start date of a newly hired P-1 employee for one month, for example, would be sufficient to generate the funds needed for the family visit. The Registrar erred in law when he refused to fund the family visit from his budget as required by the jurisprudence of this Court.

12. The Presidency first addressed the issue of family visits in 2009 in the *Katanga & Ngudjolo* case.¹⁵ It held squarely that:

[G]iven that the decision of the Registrar to fund family visits is not properly regarded as discretionary, the latter should ensure that provision is made for the funding of family visits to indigent detained persons in the budget of the Court. Although funding through the budget may be supplemented by funding from alternative sources if available, the primary responsibility for funding lies with the Court.¹⁶

¹³ Mr. Yekatom would like to have all his children visit, but has limited his request to two of the children to keep the cost to the Court reasonable.

¹⁴ [ICC Information Circular](#), ICC/INF/2016/010, Annex (ii).

¹⁵ *Prosecutor v. Katanga & Ngudjolo*, [Decision on “Mr Mathieu Ngudjolo’s Complaint Under Regulation 221\(1\) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008”](#), ICC-RoR217-02/08-8, 10 March 2009.

¹⁶ *Id.*, para. 41.

13. The Presidency reaffirmed in 2016 that “there is a positive obligation upon the Court to render the right to family visits effective by funding such visits.”¹⁷

14. In the *Katanga & Ngudjolo* case, the detainee requested a funded visit for his wife and six children.¹⁸ The Registrar allowed two visits of three members of his family or three visits of two members of his family in the forthcoming year.¹⁹ The detainee appealed to the Presidency, contending that his right to maintain family ties while in detention was being unreasonably restricted.²⁰

15. The Presidency, in a detailed decision, first established that a detainee of this Court had a right to receive family visits.²¹ It then established that the right to receive family visits required the Court to fund such visits since this is the only mechanism by which the right may be rendered effective in for an indigent detainee held far away from his family.²²

16. The Presidency recognised the importance of family visits:

The right to receive family visits fundamentally affects the well-being of the detained person; his connection to his family being a central component of his identity. The Presidency has recognised, in a previous decision, the importance of maintaining family ties for the well-being of the detained person and that the lack of family visits may cause a degree of emotional hardship for the detained person and affect his morale. The maintenance of family ties through family visits facilitates a detained person's re-integration into society in the event of an acquittal or his social rehabilitation upon release in the event of conviction. The maintenance of family contact also assumes particular importance in the context of detention, bearing in mind the cultural isolation which might be experienced by detained persons who are transferred long distances to a new environment entailing differences in cuisine, language, religion and custom. The detained person's right correlates with the interests of other affected individuals such as those of his children of minority age who wish to have contact with their detained parent.

¹⁷ [Public redacted version of “Decision on the ‘Application to review the ‘Decision on Complaint to the Registrar by \[REDACTED\] concerning Supported Family Visit’ dated \[REDACTED\] 2016”](#), ICC-RoR221-02/16-3-Red, 11 August 2016, para. 42.

¹⁸ *Prosecutor v. Katanga & Ngudjolo*, [Decision on “Mr Mathieu Ngudjolo’s Complaint Under Regulation 221\(1\) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008”](#), ICC-RoR217-02/08-8, 10 March 2009, para. 1.

¹⁹ *Id.*, para. 2.

²⁰ *Id.*, para. 16.

²¹ *Id.*, para. 29.

²² *Id.*, para. 31.

It further coincides with the obligation upon the Registrar to fulfill her duty of care to maintain the physical and psychological well-being of detained persons.²³

17. The Presidency reversed the Registrar's decision, finding that he erred in law by determining that there was no positive obligation to fund family visits,²⁴ and finding that he abused his discretion when his allocated number of persons and visits "would not even allow the detainee to see all of his family members in one year".²⁵ It remitted the matter to the Registrar for a decision that took into account the Presidency's findings.²⁶

18. The need for funding of a family visit for Mr. Yekatom is even more compelling than in the *Katanga & Ngudjolo* decision. While the Registrar agreed to fund two family visits for three members of Mr. Ngudjolo's family in a year, in Mr. Yekatom's case, the Registrar is unwilling to fund even a single visit of any family members. Mr. Yekatom has been in detention for one year without seeing nine of his eleven children, including his one-year-old son whom he never met as he was born a month after Mr. Yekatom's transfer at the seat of the Court.²⁷

19. More importantly, the Registrar has ignored the principle set forth in the *Katanga & Ngudjolo* decision that the lack of voluntary contributions is no reason to deprive a detainee of funded family visits. The Presidency has made it clear that the Registrar lacks the discretion to deny such visits and must ensure that funding for such visits is made available. Yet the Registry has flatly stated that there are no alternative means available. This amounts to a concrete temporary suspension of the Registry's obligation to ensure the effectiveness of the right of Mr. Yekatom to receive family visits. This is an error.

CONCLUSION

²³ *Id.*, para. 35.

²⁴ *Id.*, para. 37.

²⁵ *Id.*, para. 52.

²⁶ *Id.*, para. 53.

²⁷ Two of Mr. Yekatom's children visited in September 2019 in a visit that is not funded by the Court.

20. For all of the above reasons, the Presidency should reverse the Impugned Decision and order the Registrar to fund a family visit for Mr. Yekatom's wife and two children forthwith.

RESPECTFULLY SUBMITTED ON THIS 18TH DAY OF SEPTEMBER 2019²⁸



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²⁸ The assistance of Legal Intern Eva Daniel of France to the research for this request for review is gratefully acknowledged.