

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR220**

Date: **5 October 2021**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Nbe Mindua, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF
THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD
NGAISSONA

Public with confidential annexes 1 to 3

**Application for Judicial Review of the Registry Decision issued on the 27
September 2021**

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

Mr. Karim Asad Ahmad Khan
Mr. James Stewart
Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri
Mr. Thomas Hannis
Mme Sabine Bayssat

Counsel for Mr. Ngaïssona

Mr. Geert-Jan Alexander Knoops
Me Richard Omissé-Namkeamaï
Me Marie-Hélène Proulx

Legal Representatives of Victims

Mr. Dmytro Suprun

Mr. Abdou Dangabo Moussa
Ms. Elisabeth Rabesandratana
Mr. Yaré Fall
Ms. Marie-Edith Douzima-Lawson
Ms. Paolina Massidda

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

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. In accordance with Rule 220 of the Regulations of the Registry the Defence of Mr Alfred Rombhot Yekatom ("Defence") hereby submits its application for judicial review of the Registrar's Decision issued on 27 September 2021.
2. The Defence respectfully requests the Presidency to order the Registry to support its project of fundraising campaign in the Central African Republic ("CAR") for the purpose of receiving donations to finance family visits.

PROCEDURAL BACKGROUND

3. The mandate of the Trust Funds for Family Visits ("TFFV") can be subsidized through voluntary donations of States and NGOs as well as civil society and individuals as described on the ICC website.¹
4. On 2 July 2021, the Yekatom Defence attended a meeting organised by the Registry, with other Defence counsel, concerning the funding of family visits for the detainees. The Registry explained that while a fundraising campaign had been organised, no donation had been made during the past two years. It also was indicated that the States Parties did not donate to the TFFV for 2020.
5. A memorandum was sent to all the Defence Counsel on 9 July 2021 informing that the TFFV has insufficient funds to finance large family visits for all detained persons entitled to benefit from the TFFV in 2021, due to a lack of contributions. The Registry additionally specified that "it is considered necessary to limit the number of beneficiaries of a funded family visit to a maximum of two persons per detained person".²

¹ See the [website page of the Trust Fund for Family Visits](#).

² Annex 1, Memorandum sent by the Director of the Division of Judicial Services on 9 July 2021, Ref. DS/2021/038/MD/mc.

6. Following this meeting, the Yekatom Defence proposed to the Registry an alternative source of financing in the form of a fundraising campaign, and provided potential examples of, *i.e.* posters to publicize the campaign in Bangui.³
7. On 5 July 2021, the Office of the Director of the Judicial Services informed the Yekatom Defence that the information was transmitted to the Public Information Outreach Section ("PIOS").⁴
8. The Yekatom Defence subsequently contacted the Registry on multiple occasions, seeking an update and to organise a meeting regarding this matter.⁵ It received no concrete response until 31 August 2021, when the Registry submitted questions to the Yekatom Defence concerning the organisation of the campaign. The Yekatom Defence's responses were communicated to the Division of External Operations ("DEO").⁶
9. On 6 September 2021, the Registry informed the Yekatom Defence that the campaign could not be supported by the Registry and that the Registry would continue its efforts with the States Parties and international organizations.⁷ No specific reasons for the Registry's inability to support the proposal were provided.
10. On 13 September 2021, the Defence for Mr Yekatom filed a complaint before the Registry requesting the latter to reconsider its decision.

³ Annex 3, see email sent by the Yekatom Defence on 2 July 2021 at 18:33.

⁴ Annex 3, see email sent by the Office of the Director DJS on 5 July 2021 at 09:40.

⁵ Annex 3, see emails sent on 28 July 2021, 25 August 2021 and 30 August 2021.

⁶ Annex 2, see email sent by the Office of the Director DJS on 31 August 2021 at 16:13.

⁷ Annex 2, see email sent by the Office on 6 September 2021 at 10:37.

11. On 27 September 2021, the Registry notified its *Decision on Mr Alfred Yekatom's Request for Review dated 13 September 2021* ("Impugned Decision"), rejecting the Defence request on the basis that it was not admissible.⁸

APPLICABLE LAW

Rule 220 (1) – Regulations of the Registry

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, subregulation 3, within 7 calendar days of its notification.

Jurisprudence – Standards for judicial review

The judicial review of decisions of the Registrar concerns the propriety of the procedure by which the latter reached a particular decision and the outcome of that decision. It 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.⁹

SUBMISSIONS

I. Mischaracterisation by the Registry of the matter raised by the Defence

12. In the Impugned Decision, the Registry claimed that "[w]hile the question of whether or not a detained person is accorded a funded family visit would be a matter concerning that person's detention, the fundraising for such visits is only indirectly related thereto."¹⁰

13. The Registry indicated to the Defence that the TFFV was particularly low in funds, thereby allowing only one visit with two family members per detainee. Under normal circumstances, each detained person would have had the opportunity to organise visits for more than two family members. These

⁸ Decision on Mr Alfred Yekatom's Request for Review dated 13 September 2021.

⁹ The Presidency, [Decision on the application to review the Registrar's Decision denying the admission of Mr Ernest Midagu Bahati to the list of counsel](#), 20 December 2005, ICC-Pres-RoC72-02-5, para.16.

¹⁰ Impugned Decision, para.8.

prevailing restrictions can only be interpreted as an effective, albeit partial, denial by the Registry to grant family visits for a detained person.

14. Considering that the Registry stated that it was not in a position to guarantee the funding of the TFFV through the participation of the relevant entities, and asserted that it did not expect any donation in the near future, the Defence decided to propose an alternative mean of financing family visits for Mr Yekatom, so as to ensure that his fundamental right of respect for private and family life be preserved.
15. Thus it is clear that this request goes to the heart of the detention conditions of Mr Yekatom.
16. Moreover, the fundraising campaign was proposed only because of the low level of the TFFV and the unavailability of funds to finance family visits. As the Presidency always ruled on complaints regarding the denial of a funded family visit, it is therefore implicitly recognizing the issue of lack of funds for family visits falls within the scope of Regulation 217.¹¹
17. The Registry's characterisation of the matter of fundraising as 'only indirectly related' to family visits, and thus to Mr Yekatom's detention, is without merit: the very reason for these restrictions to family visits is the lack of fundraising. The relationship between the lack of funding and the restrictions on family visits is one of a directly causal nature.
18. As such, contrary to the Impugned Decision, in light of existing funding limitations and their direct impact on family visits, the matter of fundraising

¹¹ See per example *Prosecutor v. Ntaganda*, [Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 \(ICC-RoR220-01/19-1-Conf-Exp\)"](#), 17 September 2019, [ICC-RoR220-01/19-2-Conf-Exp](#), ICC-RoR220-01/19-2-Red, 10 December 2019; [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.

for family visits falls squarely within the purview of matters concerning Mr Yekatom's detention.

19. The Defence therefore argues that the Registry failed to act with procedural fairness when determining that the implementation of a fundraising campaign to finance family visits cannot be considered as a matter of detention falling under regulation 217(1) of the RoR, and refusing to consider it through the complaint procedure.

20. Consequently, the Defence respectfully requests the Presidency to find that issues raised in relation to the funding of family visits to a detained person do in fact comprise matters pertaining to detention within the meaning of Regulation 217(1) of the RoR, and are thus susceptible to be the object of a complaint procedure.

II. The Registry erred in law by infringing upon the fundamental right of Mr Yekatom to family visits for indigent detainees

21. The right to family visits of a detained person is a fundamental right guaranteed by international human rights law, the European Court of Human Rights and the core texts of the international criminal jurisdictions and reaffirmed by their jurisprudence.¹²

22. In its Decision on Non Privileged Video-Conferencing at the Detention Centre, the Single Judge reiterated the Court's obligation to provide an effective right

¹² [United Nations Standard Minimum Rules for the Treatment of Prisoners](#), rule 58; [The Standards of the European Committee for the Prevention of Torture](#), para 51; ECHR, *Messina v Italy* (No 2), no 25498/94, [Judgment of 28 September 2000](#), para 61; ECHR, *Vlasov v. Russia*, no. 78146/01, [Judgment of 12 June 2008](#), para. 123; *Prosecutor v. Krajisnik*, [Decision on the Defence's Request for an Order Setting Aside, in Part, the Deputy Registrar's Decision of 3 February 2004](#), Case No. IT-00-39-T, 14 May 2004, para. 9; *Prosecutor v. Ndindiliyimana*, [The President's Decision on a Defence Motion to Reverse the Prosecutor's Request for Prohibition of Contact Pursuant to Rule 64](#), Case No. ICTR-2000-56-T, 25 November 2002, para. 10; *Prosecutor v. Katanga & Chui*, [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, paras. 28-29.

to family visits and the Registry's duty to give specific attention to visits by family of the detained person.¹³

23. The respect of this fundamental right for indigent detainees necessarily implies a positive obligation for the Court to finance family visits and make meaningful efforts to obtain the sufficient funds to fulfil this duty.

24. The Decision issued by the Presidency in the *Ngudjolo* case provided that

[the Registry] 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.¹⁴

25. It has been stated and recalled by the Presidency that the obligation to fund family visits for indigent detained persons implies the obligation to actively seek donations for the TFFV.¹⁵

26. The Presidency has also considered that in the case where there are no available funds in the TFFV the Registrar should explore whether there exist alternative feasible means to support family visits pending the provision of the TFFV. The low level of the funds cannot justify suspension of the Court's obligation to ensure the effectiveness of the right for indigent detainees to receive family visits.¹⁶

27. The Registry therefore erred in law by not considering the fundraising campaign for family visits as an alternative solution to the shortage of the

¹³ [ICC-01/14-01/18-869-Conf](#), para.10.

¹⁴ *Prosecutor v. Katanga & Chui*, [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. 41.

¹⁵ *Prosecutor v. Ntaganda*, [Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 \(ICC-RoR220-01/19-1-Conf-Exp\)"](#), 17 September 2019, [ICC-RoR220-01/19-2-Conf-Exp](#), ICC-RoR220-01/19-2-Red, 10 December 2019; [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"](#), 11 August 2016, ICC-RoR221-02/16-3-Red, para.42.

¹⁶ *Prosecutor v. Ntaganda*, [Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 \(ICC-RoR220-01/19-1-Conf-Exp\)"](#), 17 September 2019, [ICC-RoR220-01/19-2-Conf-Exp](#), [ICC-RoR220-01/19-2-Red](#), 10 December 2019, para. 26-27.

TFFV even though it is aware that this lack of funds is the exact cause of the family visits restriction and will lead him to deny again in the future visits for the detainees.

28. Its offhand refusal to discuss our proposal demonstrates its unwillingness to even explore whether alternative feasible means proposed by the Defence could be acceptable.

III. The Registry failed to take into consideration relevant circumstances brought to its attention in the complaint

A. The current depletion of the TFFV

29. The depletion of the funds in the TFFV is unfortunately not a new matter for the ICC detainees. The last sessions of the Assembly of States parties have emphasized that the TFFV was currently decreasing.¹⁷ In December 2019, the Presidency observed that, notwithstanding the efforts made by the Registrar, the availability of funds in the TFFV has been at a critically low level since 2016 and it accordingly urged the Registry to redouble its efforts to seek donations to the TFFV from States parties, other states, non-governmental organisation, civil society, individuals and other entities.¹⁸

30. The Defence notes with concern that concrete efforts directed toward civil society and individuals, which are the target of the Defence proposal, are omitted from the Registry's communication.

31. In this particular regard, the Defence respectfully stresses that while it does not question the Registry's good faith in relation to the efforts made, it nonetheless notes that the ICC webpage of the TFFV has not been updated

¹⁷ Report of the Court on Cooperation (2020) [ICC-ASP/19/25](#), para.17; Report of the Court on Cooperation (2019) [ICC-ASP/18/16](#), para.33.

¹⁸ *Prosecutor v. Ntaganda*, [Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 \(ICC-RoR220-01/19-1-Conf-Exp\)"](#), 17 September 2019, [ICC-RoR220-01/19-2-Conf-Exp](#), ICC-RoR220-01/19-2-Red, 10 December 2019, paras 26-27.

since 2017.¹³ This does raise questions as to whether additional efforts could not have been made regarding the attractiveness of the webpage, the advertising of the TFFV and its broad dissemination to the public to reach a greater number of people.

32. It is also impossible to ignore that much effort appears to be made by the Trust Fund for Victims (“TFV”), which despite the same difficulties resulting from the Covid-19 pandemic seems to be successful considering the latest voluntary contributions made by States parties and it is highly unfortunate that no such improvement could be made for the TFFV.¹⁹ For instance, in the most recent ‘TFV Management Brief’, the Defence notes the many references made to the Registry’s assistance as regards the TFV (in the period of 1 April to 30 June 2021 alone) – whether in relation to the TFV’s ‘close collaboration with the ICC Public Information and Outreach Section’ aimed at ‘rais[ing] awareness about the TFV’s activities; meetings with the ICC Registrar and TFV Board Members regarding visibility of the TFV; the TFV’s ‘regular coordinat[ion] with relevant Registry sections’ as regards the TFV website and social media, and specifically, ‘to inform of new TFV contents and to provide inputs for content on ICC’s social media accounts’; and several outreach activities in situation countries – including in the CAR – by the TFV ‘with the highly appreciated support of the Registry’s Country Offices’.²⁰

33. In the circumstances therefore, the Registry’s refusal to meaningfully consider the Defence’s fundraising proposal to reach out to the civil society and individuals, not only to international organisations and States, appears to demonstrate a highly unfortunate lack of due prioritisation and concern by the

¹⁹ See TFV [31 May 2021 announcement](#) of a 300.000AUD\$ contribution from Australia ; TFV [12 May 2021 announcement](#) of a 300.000 € contribution from Ireland ; TFV [22 December 2020 announcement](#) of a 18.600 \$ contribution from Nigeria. See also the [TFV information page](#) indicating that during the year 2020 it received over 2.7 million euros in contribution.

²⁰ See, ‘TFV Management Brief Q2/2021’, 1 April – 30 June 2021, available at <https://www.trustfundforvictims.org/en/reports>, pp 22-23, 26.

Registry in relation to the funding of the TFFV, and by extension, in relation to the Registry's own obligations to ensure the effectiveness of Mr Yekatom's rights to family visits.

B. The Defence's proposal

34. Under the circumstances described above, it is understandable that the Defence harbours a well-founded concern that Mr Yekatom's rights are not and will not be fully preserved in the future.

35. Notwithstanding the Registry assertion that a fundraising campaign is actively ongoing,²¹ in view of the critical situation of the TFFV the Defence had no choice but to seek and propose a solution in order to protect the rights of Mr Yekatom.

36. The Defence introduced its project before the Registry to assist in finding a concrete way to encourage individuals to contribute to the TFFV.

37. In this regard, it is noted that the TFFV receives funding from a wide range of sources and is specifically empowered to collect "contributions from States Parties, other States, non-governmental organizations, civil society, individuals and other entities".²²

38. The Defence thus offered to launch its own funding campaign in the Central African Republic to reach out to the civil society such as individuals and public and private entities could contribute to the financing of family visits for Mr Yekatom. The Defence requested the support of the Registry to (i) publicize the campaign in the CAR including on social media; (ii) use the logo of the Court on the banners to reassure potential donors; (iii) set up a Central African office number so people could be reassured of the veracity of the

²¹ Impugned Decision, para.10.

²² See the [Trust Fund for Family Visits information page](#) on the ICC website.

fundraising; and (iv) set up a bank account dedicated strictly to fund Mr Yekatom's family visits.

39. While the matter is not addressed in the impugned decision, the Registry initially dismissed the project stating that the "involvement of the Registry for the campaign cannot be supported"²³ without providing any reasons supporting the decision.

40. Noting that the Trust Fund for Victims uses the ICC logo, the Registry did not provide any valid reason why the Registry could not facilitate the same request for the Yekatom Defence. In addition, while the out-dated webpage for the TFFV encourages civil society donations, and provides an email address for any inquiries in relation thereto, the Registry likewise has not provided any valid reason why it could not have provided assistance with the aim of reassuring potential donors of the legitimacy of the fundraising campaign. As regards the bank account, it is submitted that the Registry could have, at the very least, provided an alternative solution whereby funds donated for Mr Yekatom's family visits could have been identified as such.

41. The Defence deeply regrets that no efforts have been made by the Registry to render this project concrete; and further, that no reasons or explanations have been communicated to the Defence regarding the Registry's apparent perfunctory dismissal of the project, which at the very least could have led to constructive discussions aimed towards finding a concrete solution to ensure that Mr Yekatom's rights are fully respected.

²³ Annex 2, see email sent by the Registry to the Yekatom Defence on 6 September 2021 at 10:37.

RELIEF SOUGHT

In light of the above, the Defence respectfully requests the Presidency to:

ORDER the Registry to support the Defence project for fundraising i.e. (i) to publicize the campaign in the CAR including on social media; (ii) use the logo of the Court on the banner; (iii) set up a Central African office number for information concerning the campaign; and (iv) set up a bank account dedicated strictly to fund Mr Yekatom's family visits.

Or in the alternative:

FIND that issues raised in relation to the funding of family visits to a detained person are matter pertaining to detention in the meaning of Regulation 217(1); and

ORDER the Registry to reconsider the Defence request and to liaise with the Defence to find appropriate funding solutions toward facilitating family visits for Mr. Yekatom.

RESPECTFULLY SUBMITTED ON THIS 5TH DAY OF OCTOBER 2021



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands