

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-RoR220**

Date: **27 June 2022**

**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**

**Application for Judicial Review of the Registry Decision issued on the 17  
June 2022**

**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 Kweku Vanderpuye

**Counsel for Mr. Yekatom**

Ms Mylène Dimitri  
Mr Thomas Hannis  
Ms Anta Guissé

**Counsel for Mr. Ngaissona**

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**

Mr 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 17 June 2022.
2. The Defence respectfully requests the Presidency to order the Registry to support its project of fundraising campaign in the Central African Republic (“CAR”) to receive donations to finance family visits due to the lack of available funds in the Trust Fund for Family Visits (“TFFV”).

## PROCEDURAL BACKGROUND

3. On 2 July 2021, a meeting was held by the Registry with Defence counsel for various detained persons regarding the funding of family visits. The Registry explained that while a fundraising campaign had been organised for the past two years, no donations were yet collected. It also indicated that the States Parties would not donate to the TFFV.
4. On 9 July 2021, a memorandum was sent to all the Defence Counsel stating that the TFFV had 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 added that it was “considered necessary to limit the number of beneficiaries of a funded family visit to a maximum of two persons per detained person”.<sup>1</sup>
5. Following this meeting, the Defence for Mr Yekatom proposed a pragmatic solution to counter the lack of financing in the form of a targeted fundraising campaign in order to protect the rights of Mr Yekatom. The Defence requested authorisation to publicize this fundraising in CAR, use the Court’s logo, set up

---

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

a Central African office number for information related to the campaign, and set up a bank account dedicated to receiving funds for Mr Yekatom's family visits (together, "Campaign").<sup>2</sup>

6. On 6 September 2021, the Registry issued its decision refusing to support the campaign proposed by the Defence without providing any reasons supporting the decision.<sup>3</sup>
7. On 13 September 2021, the Defence filed a complaint before the Registry requesting that the Registry reconsider its decision (the "Complaint").<sup>4</sup>
8. On 27 September 2021, the Registry notified a decision dismissing the Complaint as inadmissible on the basis that it did not deal with a matter concerning Mr Yekatom's detention.<sup>5</sup>
9. On 5 October 2021, the Defence filed with the Presidency an application for judicial review of the Registry decision.<sup>6</sup>
10. On 31 March 2022, the Presidency reversed the Registry's Decision and remitted the matter to the Registrar for reconsideration of the Request for Review on its merits.<sup>7</sup>
11. On 17 June 2022, the Registry rejected the Request for Review, by refusing to support the campaign as requested by the Defence (the "Impugned Decision"). Instead, the Registry agreed to continue its diplomatic efforts aiming to replenish the TFFV.<sup>8</sup>

---

<sup>2</sup> Email sent by the Yekatom Defence to the Registry on 2 July 2021 at 18:33.

<sup>3</sup> Email sent by the Office on 6 September 2021 to the Defence at 10:37.

<sup>4</sup> ICC-RoR220-06/21-2-Conf-Exp-AnxII, annexed to the Registry Transmission, ICC-RoR220-06/21-2.

<sup>5</sup> Decision on Mr Alfred Yekatom's Request for Review dated 13 September 2021.

<sup>6</sup> Application, ICC-RoR220-06/21-1.

<sup>7</sup> *The Presidency*, "Decision on the 'Application for Judicial Review issued on the 27 September 2021'", 31 March 2022, ICC-RoR220-06/21-3, p. 10.

<sup>8</sup> Decision on Remittal on the Request for Review to the Registrar by Mr Alfred Yekatom concerning a fund-raising campaign dated 17 June 2022.

## APPLICABLE LAW

### **Preamble – Rome Statute**

Determined to these ends and for the sake of present and future generations, to establish an *independent* permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole; [Emphasis added]

### **Article 66 (1) – Rome Statute**

Everyone shall be presumed innocent until proved guilty before the Court in accordance with the 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.

### **Paragraph 2.2 – Administrative instruction ICC/AI/2004/005 for the “Establishment of trust funds by the Registrar” (“AI/2004/005”)**

2.2. In cases where the donor is a corporation or an individual, the Originating Office shall notify the Registrar, who shall *where necessary*, in consultation with the Prosecutor and the President, refer the proposed Voluntary Contribution to an *ad hoc* committee (the "Screening Committee"). The Screening Committee shall consist of one representative from each of the Presidency, Office of the Prosecutor and the Registry (each appointed by their respective Organs) and shall evaluate any potential implications of the proposed donation on the reputation of the Court. Where a Screening Committee has been established, the proposal forwarded to the Controller shall also include the unanimous endorsement by the Screening Committee. [Emphasis added]

## SUBMISSIONS

12. In the Impugned Decision, the Registry claims that the Defence’s request to conduct the Campaign raises legal and policy issues.<sup>9</sup> The Defence submits that the Registry should have granted its request in view of the Court’s failure to fulfill its obligation to enable family visits (I). In this context, the Registry’s arguments to reject the Defence request are without merit (II).

---

<sup>9</sup> Impugned Decision, par. 16.

**I. The Defence request has been made in the context of the Court’s failure to fulfill its obligation to finance family visits and make meaningful efforts to obtain funds**

13. Although it does not question the many efforts made by the Registry to replenish the TFFV, the Defence submits these are not sufficient. The depletion of the funds in the TFFV is unfortunately not a new matter and directly affects ICC detainees. The Assembly of State parties has pointed out in previous sessions that the TFFV was currently decreasing.<sup>10</sup> 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.<sup>11</sup>
14. 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.<sup>12</sup>
15. 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

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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 the family of the detained person.<sup>13</sup>

16. The undebatable importance of the right to family visits of a detained person in fundamental texts necessarily implies a positive obligation for the Court to finance family visits and to not only make meaningful efforts to obtain sufficient funds, but to actively seek donations for the TFFV.<sup>14</sup>
17. The Presidency has also upheld that in the case where there are no available funds in the TFFV, the Registrar should explore whether alternative feasible means to support family visits exist 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.<sup>15</sup>
18. In light of the above, it is natural that the Defence considers this matter to be one of imperative nature. The Registry itself acknowledges the importance of the TFFV fund as visits with family members contribute significantly to the physical and mental health of detained persons which in turn ensures a fair and efficient judicial process. The Registry adds that psychological and sociological research have proven the benefits of visits for detained persons which in turn maintain "the dignity of defendants and uphold the Court's objective to influence positively the societies within which it operates".<sup>16</sup> Yet, the Defence respectfully contends that few concrete efforts have since been taken by the Registry to increase the availability of funds in the TFFV especially considering it has been aware of decreasing funds since 2016.

---

<sup>13</sup> ICC-01/14-01/18-869-Conf, para.10.

<sup>14</sup> *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.

<sup>15</sup> *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.

<sup>16</sup> See the Trust Fund for Family Visits brochure on the ICC website.

19. In view of the critical situation, the Defence's well-founded concern for the respect of Mr Yekatom's rights left it no choice but to seek and propose a solution. Although the Registry claims to welcome entities to make proposals on how to ensure the sustainability of the TFFV<sup>17</sup>, no constructive discussion has ensued between the Defence and the Registry to attempt to find common ground.

**II. The Registry arguments to reject the Defence request are without merit under the circumstances**

20. The Registry relies on several arguments to reject the Defence's request that are all without merit as they do not consider the real issue at stake which are the rights of the Mr Yekatom, and the role of the Registry to enforce them.

*a. The concerns about the administrative process*

21. As to the requested Court's provision of a bank account, the Registry expressed concern over the handling of the funds that would allegedly require a screening process which the Registry qualified as a "heavy and unmanageable administrative process [that] may also run contrary to the defence's interests". To support this argument, the Registry argued that Paragraph 2.2 of AI/2004/005 imposes a verification process involving a screening committee composed of representatives of the Office of the Prosecutor when the donor is a corporation or an individual. According to the Registry, this raises an additional issue since the Prosecution would be privy to information relating to the identity of private donors supporting Mr Yekatom.<sup>18</sup>
22. Although the Defence agrees with the Registry that detention matters are considered to be part of a detained person's right to privacy, the Defence

---

<sup>17</sup> See the [Trust Fund for Family Visits brochure](#) on the ICC website.

<sup>18</sup> Impugned Decision, par. 18.



respectfully submits that Paragraph 2.2 of AI/2004/005 only imposes the creation of a screening committee *where necessary*.<sup>19</sup> Further, the Defence raises a contradiction with the Trust Fund for Family Visits brochure which invites entities interested in donating, even a smaller individual one, to contact the Registry.<sup>20</sup> Nowhere in the brochure or the ICC webpage for the TFFV does it mention the existence of a screening process to evaluate any potential implications of a proposed donation, thus eliminating concerns about the Prosecution's involvement. The reference by the Registry to the screening process appears to completely abolish the possibility of individual donations and/or negatively impact the effectiveness of the TFFV to receive individual donations.

*b. The concerns about the messages and the visual elements of the Campaign*

23. The Registry also contends that should the Court support the Campaign, the latter would be perceived as the Court's initiative and that it should therefore have the authority to decide on the messages and visual elements of the Campaign, without which the Court cannot protect its credibility and image.<sup>21</sup>
24. In that regard, nothing precludes the Registry to have a productive discussion with the Defence on the messages and visual elements as it serves the purpose of enabling the exercise of the detainee's right to maintain his family links as recognized by the law.<sup>22</sup>

*c. The alleged potential discriminatory situation*

---

<sup>19</sup> Para 2.2 AI/2004/005.

<sup>20</sup> See the Trust Fund for Family Visits brochure on the ICC website.

<sup>21</sup> Impugned Decision, par. 21.

<sup>22</sup> See supra par. 14.

25. In this regard, the Registry adds that the Court's involvement in the Campaign may create a potential discriminatory situation among indigent detained persons by endorsing a fund-raising effort benefiting Mr Yekatom while others are limited to the two-person maximum imposed by the Registry.<sup>23</sup>
26. The Defence submits that there is no discrimination if the same possibility is offered to all the detainees, that they can use or not according to their wishes, bearing in mind that the status quo that the Registry offering is detrimental to all.

*d. The alleged risk of jeopardizing the Registry's neutral role*

27. Respectfully, the Defence disagrees with the Registry's argument that by providing the support sought by the Defence, the Court risks jeopardizing its neutral role. On the contrary, the Defence submits that the Court's lack of due prioritisation and concern towards the matter is a breach of its duty as an independent institution as enshrined in the preamble of the Rome Statute. The very reason why the Defence is proactive in bringing solutions is the limitations decided because the TFFV is insufficiently founded in comparison to the Trust Fund for Victims ("TFV").
28. Indeed, the Defence notes the attention which appears to be given to the TFV which does not seem to experience any depletion of its funds despite the same difficulties succeeding the Covid-19 pandemic. In the most recent "TFV Management Brief" for example, the Defence finds many references made to the Registry's active involvement in the TFV.<sup>24</sup> Further, it is impossible to ignore the attractiveness of the TFV website in comparison to that of the TFFV. The latter offers limited information on the TFFV and has only last been updated in

---

<sup>23</sup> Impugned Decision, par. 22.

<sup>24</sup> See, 'TFV Management Brief Q2/2021', 1 April – 30 June 2021, available at <https://www.trustfundforvictims.org/en/reports>, pp 22-23, 26.

2017. Not only does the TFV have its own separate website, it is also far more detailed, providing information notably on its mandate and the impact of donations. Additionally, the donation process is far simpler on the TFV website which allows donations through one click. Potential donators to the TFFV have to go through a much more complex and lengthy process which begins with sending an email to the Registry.<sup>25</sup>

29. Thus, the Defence submits that the outdated and sparse TFFV website reflects the lack of attention given to the TFFV by the Registry, in turn discouraging donations which explains the TFFV's current predicament. The Defence respectfully stresses that while it does not question the Registry's and Court's good faith, it nonetheless advances that the aforementioned circumstances suggest the Court seems to be more favourable towards the TFV than the TFFV, violating its duty of independence.
30. In this regard, the Defence contends that the current circumstances pose a threat to the presumption of innocence enshrined in the Rome Statute. It is critical to remember that Mr Yekatom is not yet proven guilty and has been placed in provisional detention which the Defence deems necessary to remind especially given the Registry's assertion that the fundraising campaign would send a confusing message among the victim's communities. Therefore, it is even more imperious to protect the right to family visits at this stage of the proceedings.

### **RELIEF SOUGHT**

31. 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

---

<sup>25</sup> See the [Trust Fund for Family Visits information page](#) on the ICC website.

for information concerning the campaign; and (iv) set up a bank account dedicated strictly to fund Mr Yekatom's family visits.

**RESPECTFULLY SUBMITTED ON THIS 27<sup>TH</sup> DAY OF JUNE 2022<sup>26</sup>**



Me Mylène Dimitri

Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

---

<sup>26</sup> The Defence thanks Legal Intern Mr. Alexandra Baer for her precious assistance in the drafting of this filing.