

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR220-02/22**

Date: **9 September 2022**

THE PRESIDENCY

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR V. ALFRED YEKATOM AND PATRICE-EDOUARD NGAÏSSONA**

Public

**Decision on the ‘Application for Judicial Review of the Registry Decision
issued on the 17 June 2022’ (ICC-RoR220-02/22-1)**

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

The Office of the Prosecutor

Counsel for Mr Yekatom

Ms Mylène Dimitri

Mr Thomas Hannis

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section**

Other

The Presidency of the International Criminal Court (the ‘Court’) has before it the application filed by Mr Alfred Yekatom (‘Mr Yekatom’) on 27 June 2022, seeking judicial review pursuant to regulation 220 of the Regulations of the Registry (the ‘Regulations’) of a decision of the Registrar issued on 17 June 2022, and requesting the Presidency to order the Registry to support a campaign to raise funds to finance Mr Yekatom’s family visits (the ‘Application’).¹

I. PROCEDURAL HISTORY

1. On 2 July 2021, following a meeting between the Registry and Defence counsel for various detained persons regarding the funding of family visits, the Defence for Mr Yekatom sent an email to the Director of the Registry’s Division of Judicial Services providing information about a campaign that it proposed be conducted in the Central African Republic (the ‘CAR’) in order to raise funds for Mr Yekatom’s family to visit him (the ‘Fundraising Campaign’).²
2. On 9 July 2021, the Registry sent a memorandum to all Defence teams stating that the Trust Fund for Family Visits had insufficient funds to finance large family visits for all detained persons entitled to benefit from it in 2021, due to a lack of contributions, and 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.³
3. On 6 September 2021, the Registry informed Mr Yekatom that the proposed Fundraising Campaign could not be supported by the Registry and that the Registry would continue its fundraising efforts with States Parties and international organisations (the ‘Registry Decision’).⁴

¹ Defence for Mr Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Application for Judicial Review of the Registry Decision issued on the 17 June 2022](#), 27 June 2022, ICC-RoR220-02/22-1, para. 31.

² Email from the Defence, 2 July 2021, at 18:33, ICC-RoR220-06/21-1-Conf-Anx3, pp 5-6, *annexed to* Defence for Mr Yekatom, [Application for Judicial Review of the Registry Decision issued on the 27 September 2021](#), 5 October 2021, ICC-RoR220-06/21-1, paras 4, 6 (the ‘Initial Application for Review’).

³ Memorandum of the Registry, 9 July 2021, ICC-RoR220-06/21-1-Conf-Anx1, *annexed to* the [Initial Application for Review](#), ICC-RoR220-06/21-1.

⁴ Email from the Registry to the Defence, 6 September 2021, at 10:37, ICC-RoR220-06/21-1-Conf-Anx2, p. 2, *annexed to* the [Initial Application for Review](#), ICC-RoR220-06/21-1 and ICC-RoR220-06/21-2-Conf-Exp-AnxI, p. 2, *annexed to* Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Transmission pursuant to Regulation 220\(3\) of the Regulations of the Registry](#), 7 October 2021, ICC-RoR220-06/21-2 (the ‘Registry Transmission of 7 October 2021’).

4. On 13 September 2021, Mr Yekatom made a complaint to the Registrar pursuant to regulation 218(1) of the Regulations, requesting among other relief that the Registry reconsider the Registry Decision (the ‘Complaint’).⁵ On 27 September 2021, the Registrar issued a decision dismissing the Complaint as inadmissible (the ‘Registrar’s Decision’).⁶ On 5 October 2021, Mr Yekatom filed an application for review of the Registrar’s Decision by the Presidency (the ‘Initial Application for Review’).⁷ On 31 March 2022, the Presidency issued a decision granting the Initial Application for Review, in part, reversing the Registrar’s Decision and remitting the matter to the Registrar for consideration of the Complaint on its merits (the ‘Presidency Decision’).⁸
5. On 17 June 2022, the Registrar issued a decision upon remittal, rejecting the Complaint based on a full consideration of the merits of the Complaint (the ‘Impugned Decision’).⁹
6. On 27 June 2022, Mr Yekatom submitted the present Application for review of the Impugned Decision, requesting that the Presidency order the Registrar to support the Fundraising Campaign by: (i) publicising the campaign in the CAR, including social media; (ii) authorising the use the logo of the Court on the banner; (iii) setting up a Central African office number for information concerning the campaign; and (iv) setting up a bank account dedicated strictly to fund Mr Yekatom’s family visits.¹⁰
7. On 30 June 2022, the Registrar transmitted the supporting documents to the Presidency in accordance with regulation 220(3) of the Regulations (the ‘Registry Transmission’).¹¹

⁵ Complaint of 13 September 2021, ICC-RoR220-06/21-2-Conf-Exp-AnxII, *annexed to the [Registry Transmission of 7 October 2021](#)*, ICC-RoR220-06/21-2.

⁶ Registrar, Decision on Mr Alfred Yekatom’s Request for Review dated 13 September 2021, 27 September 2021, ICC-RoR220-06/21-2-Conf-Exp-AnxIII, *annexed to the [Registry Transmission of 7 October 2021](#)*, ICC-RoR220-06/21-2.

⁷ [Initial Application for Review](#), ICC-RoR220-06/21-1.

⁸ Presidency, *The Prosecutor v. Alfred Yekatom*, [Decision on the ‘Application for Judicial Review of the Registry Decision issued on 27 September 2021’, dated 5 October 2021 \(ICC-RoR220-06/21-1\)](#), 31 March 2022, ICC-RoR220-06/21-3.

⁹ Registrar, Decision on Remittal on the Request for Review to the Registrar by Mr Alfred Yekatom concerning a fund-raising campaign, dated 17 June 2022, 30 June 2022, ICC-RoR220-02/22-2-Conf-Exp-Anx, paras 3, 16, 24, *annexed to Registrar, The Prosecutor v. Alfred Yekatom*, Transmission pursuant to Regulation 220(3) of the Regulations of the Registry, 30 June 2022, ICC-RoR220-02/22-2-Conf-Exp.

¹⁰ [Application](#), ICC-RoR220-02/22-1, para. 31.

¹¹ Registry Transmission, ICC-RoR220-02/22-2-Conf-Exp. The Registrar transmitted the Impugned Decision as an annex to the Registry Transmission and explained that all other relevant documents have been filed before the Presidency in relation to the Initial Application for Review as annexes to the [Registry Transmission of 7 October 2021](#), ICC-RoR220-06/21-2. See Registry Transmission, ICC-RoR220-02/22-2-Conf-Exp, para. 10.

On 5 July 2022, the Registrar filed his observations pursuant to regulation 220(4) of the Regulations (the ‘Registrar’s Observations’).¹²

8. On 8 July 2022, Mr Yekatom submitted a request for leave to reply to the Registrar’s Observations (the ‘Request for Leave to Reply’).¹³

II. IMPUGNED DECISION

9. The Impugned Decision rejects Mr Yekatom’s Complaint, indicating that the Registry is not in a position to support the Fundraising Campaign and that the forms of support by the Court requested raise legal and policy issues.¹⁴
10. The Impugned Decision considers that the creation of a bank account for the purposes described by Mr Yekatom would have to conform with the Administrative Instruction on the Establishment of Trust Funds by the Registrar (the ‘Administrative Instruction on Trust Funds’).¹⁵ Paragraph 2.2 of the Administrative Instruction on Trust Funds requires that individual donations be referred to an *ad hoc* screening committee to evaluate any potential implications of the proposed donation on the Court’s reputation.¹⁶ The Registrar argues that the screening process was conceived for large amounts of voluntary contributions and that applying this process for small individual donations would result in a ‘heavy and unmanageable administrative process’ that may also run contrary to Mr Yekatom’s interests.¹⁷ He further explains that the screening committee is composed of, *inter alia*, members of the Office of the Prosecutor (the ‘Prosecution’) and that it might be problematic for the latter to become privy to information of private donors supporting Mr Yekatom.¹⁸ Furthermore, detention matters, such as family visits, are considered to

¹² Registrar, *The Prosecutor v. Alfred Yekatom*, Registry Observations pursuant to Regulation 220(4) of the Regulations of the Registry, 5 July 2022, ICC-RoR220-02/22-3-Conf-Exp.

¹³ Defence for Mr Yekatom, *The Prosecutor v. Alfred Yekatom*, Request for leave to reply to the “Registry Observations pursuant to Regulation 220(4) of the Regulations of the Registry”, 8 July 2022, ICC-RoR220-02/22-4-Conf-Exp.

¹⁴ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, paras 3, 16, 24.

¹⁵ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 17, referring to ICC, [Administrative Instruction on the Establishment of Trust Funds by the Registrar](#), 4 November 2004, AI/2004/005.

¹⁶ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 17.

¹⁷ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 18.

¹⁸ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 18.

be part of a detained person's right to privacy and hence treated as confidential *ex parte vis-à-vis* the Prosecution.¹⁹

11. The Impugned Decision considers that, from a policy standpoint, Court support for a fundraising campaign by a specific detained person may have a negative impact on the Court's image.²⁰ First, by allowing Mr Yekatom to use the Court's logo for the purpose of his own Fundraising Campaign, the latter would be perceived as a Court campaign, without the Court having any control over messages and visual elements of said campaign.²¹ Second, the Impugned Decision sees the Registry's neutral role at risk if different support is provided to different detained persons²² Even if the Court were to support fundraising campaigns for all indigent detained persons, some campaigns may be more successful than others, which would lead to the creation of a potential discriminatory situation.²³ It is therefore deemed more appropriate for the Registry to focus its efforts in replenishing the Trust Fund for Family Visits through diplomatic efforts.²⁴ The Impugned Decision emphasises that the Registry is regularly engaged in and will continue to actively pursue its diplomatic efforts to seek donations from States and to diversify sources of funding in approaching also other entities such as international organisations, and that a recent family visit to Mr Yekatom was partly funded by such funds.²⁵

III. SUBMISSIONS

A. The Application

12. Mr Yekatom submits that his request to support the Fundraising Campaign should have been granted in view of the Court's failure to fulfil its obligation to enable family visits and that the arguments advanced in the Impugned Decision are without merit.²⁶ Recalling the fundamental nature of the right to family visits and the positive obligation of the Court to finance family visits and actively seek donations,²⁷ Mr Yekatom submits that the

¹⁹ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 19.

²⁰ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, paras 20, 23.

²¹ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 21.

²² Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, paras 22-23.

²³ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 22.

²⁴ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 22.

²⁵ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, paras 14, 24.

²⁶ [Application](#), ICC-RoR220-02/22-1, para. 12.

²⁷ [Application](#), ICC-RoR220-02/22-1, paras 14-16.

efforts made by the Registry to replenish the Trust Fund for Family Visits are not sufficient.²⁸ The depletion of the Trust Fund for Family Visits is not a new matter and the Registry was aware of decreasing funds since 2016.²⁹ The establishment of a Fundraising Campaign is Mr Yekatom's attempt to propose a solution and ensure respect for his rights.³⁰

13. As regards the arguments advanced in the Impugned Decision, Mr Yekatom observes, first, that the Administrative Instruction on Trust Funds imposes the creation of a screening committee only *where necessary*.³¹ Further, 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 Trust Fund for Family Visits to receive individual donations.³² Second, as to the Registrar's argument that the Court should have control over the messaging and visual elements of the campaign to protect its credibility and image, Mr Yekatom proposes discussions with the Registry on said elements.³³ Third, Mr Yekatom submits that there is no discrimination if the same possibilities for fundraising support are offered to all detained persons.³⁴ Fourth, Mr Yekatom submits in response to the Registry's argument that the requested support could jeopardise the Registry's neutral role, that the Court seems to act more favourably towards the Trust Funds for Victims than towards the Trust Fund for Family Visits, thereby violating its duty of independence.³⁵ In this respect, he notes that the Trust Fund for Victims does not seem to experience any depletion of its funds and that the Trust Fund for Victims has a far more detailed and updated website which allows for a simpler donation process.³⁶

B. The Registrar's Observations

14. In response to Mr Yekatom's contention that the Court failed to take sufficient measures to ensure funding for family visits, the Registrar provides an overview of the Registry's efforts in proactively seeking donations for the Trust Fund for Family Visits.³⁷ He

²⁸ [Application](#), ICC-RoR220-02/22-1, para. 13.

²⁹ [Application](#), ICC-RoR220-02/22-1, paras 13, 18.

³⁰ [Application](#), ICC-RoR220-02/22-1, para. 19.

³¹ [Application](#), ICC-RoR220-02/22-1, para. 22.

³² [Application](#), ICC-RoR220-02/22-1, para. 22.

³³ [Application](#), ICC-RoR220-02/22-1, para. 24.

³⁴ [Application](#), ICC-RoR220-02/22-1, para. 26.

³⁵ [Application](#), ICC-RoR220-02/22-1, paras 28-29.

³⁶ [Application](#), ICC-RoR220-02/22-1, paras 28-29.

³⁷ Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, paras 5-7.

explains that Registry staff in Headquarters and the Country Offices have been regularly and continuously engaged in diplomatic efforts to secure donations from States and various other sources, which has borne fruit.³⁸ The Registrar further submits that the financial situation of the Trust Fund for Family Visits has not prevented Mr Yekatom from receiving family visits and that he regularly received self-paid visits by one family member.³⁹ Furthermore, Mr Yekatom is free to engage, with the assistance of his counsel, in a fundraising campaign of his own initiative.⁴⁰

15. In addition, the Registrar elaborates why he considers that a screening process would be necessary for donations received as part of the proposed Fundraising Campaign.⁴¹ First, given that the purpose of the Trust Fund for Family Visits is to ‘collectively help it meet its obligation towards indigent detained persons’, donations cannot be earmarked for a specific detained person.⁴² Accordingly, any fundraising campaign to finance family visits for Mr Yekatom would require the establishment of a separate trust fund under the Administrative Instruction on Trust Funds.⁴³ Second, it is likely that most, if not all, individual donations received as a result of the proposed Fundraising Campaign would necessitate the use of a screening process to protect the Court against potential reputational harm, considering that Mr Yekatom intends to reach unknown individual donors, both the identity of such donors and provenance of the funds in question would likely need to be examined.⁴⁴ The Registrar recalls that such a screening procedure is onerous and a substantial administrative burden on the Court and would require the involvement of the Prosecution, which may jeopardise Mr Yekatom’s right to privacy.⁴⁵

16. Finally, the Registrar emphasises that the Registry has acted in a neutral manner towards the Trust Fund for Family Visits and rejects any arguments of favouritism towards the Trust Fund for Victims.⁴⁶ He explains that the Administrative Instruction on Trust Funds does not apply to the Trust Fund for Victims as the latter was not set up by the Registrar, noting that the two trust funds cannot be compared in terms of their capacity to mobilise

³⁸ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 7.

³⁹ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 8.

⁴⁰ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 9.

⁴¹ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 11.

⁴² Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 11.

⁴³ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 12.

⁴⁴ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 13.

⁴⁵ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 13.

⁴⁶ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, paras 15-18.

funds.⁴⁷ The Trust Fund for Victims has its own operational and managerial structure separate from the Registry with a Board of Directors, an Executive Director and Secretariat, while the Trust Fund for Family Visits is a means to administer the provision of funding for family visits.⁴⁸ The Trust Fund for Victims also has a more expansive and complex mandate and is a larger body.⁴⁹ The fact that the Trust Fund for Victims has more funds at its disposal is not due to any favouritism of the Registry, but rather the result of greater willingness of States and other entities to make voluntary contributions to the Trust Fund for Victims.⁵⁰

IV. DETERMINATION OF THE PRESIDENCY

A. Request for Leave to Reply

17. Mr Yekatom submits that the Registrar incorrectly asserted that the financial situation of the Trust Fund for Family Visits has not prevented Mr Yekatom from receiving family visits and that Mr Yekatom received regularly self-paid visits by one family member.⁵¹ Mr Yekatom argues that these are new issues, which he could not have reasonably anticipated, and seeks leave to reply pursuant to regulation 24(5) of the Regulations of the Court.⁵²
18. The Presidency recalls that regulation 24 of the Regulations of the Court may potentially be applied before the Presidency in certain circumstances.⁵³ In the present case however, the issues to which Mr Yekatom seeks to reply are not of direct relevance to the matters to be decided by the Presidency, as set forth in the analysis below. The Presidency therefore decides that receiving further submissions on the issues raised would not assist it in assessing the merits of the Application and denies the Request for Leave to Reply.

⁴⁷ Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, paras 14, 16.

⁴⁸ Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 16.

⁴⁹ Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 16.

⁵⁰ Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 17.

⁵¹ Request for Leave to Reply, ICC-RoR220-02/22-4-Conf-Exp, paras 6, 9.

⁵² Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, paras 1-2, 10, 13, 15.

⁵³ Presidency, *The Prosecutor v. Germain Katanga*, [Decision on 'Defence Application for Reconsideration of the "Presidency Decision pursuant to article 108\(1\) of the Rome Statute"' \(ICC-01/04-01/07-3821-Red\)](#), 26 June 2019, ICC-01/04-01/07-3833, para. 20.

B. Standard for judicial review

19. The Presidency recalls that 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 reasonable person who has properly applied his or her mind to the issue could have reached.⁵⁴

C. Merits

20. The Presidency considers in the following Mr Yekatom's arguments on (i) the Registrar's alleged error in applying the Administrative Instruction on Trust Funds; (ii) the use of the Court's logo and other visual elements; (iii) the Registrar's position that supporting a Fundraising Campaign for Mr Yekatom would lead to the creation of a potential discriminatory situation regarding other detained persons; (iv) an alleged lack of support for the Trust Fund for Family Visits in comparison with the Trust Fund for Victims; and (v) the alleged insufficiency of the efforts made by the Registry to replenish the Trust Fund for Family Visits, in view of ensuring respect for his right to family visits.⁵⁵

I. Alleged error in the application of the Administrative Instruction on Trust Funds

21. In the Impugned Decision, the Registrar explains that the Registry is not in a position to support the Fundraising Campaign because it would require the Court to comply with an elaborate screening process set forth in the Administrative Instruction on Trust Funds.⁵⁶

22. Mr Yekatom argues in essence that the Registrar erred in his interpretation of the Administrative Instruction on Trust Funds, noting in particular that the establishment of

⁵⁴ The standard of judicial review was defined by the Presidency in its [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-RoC72-02/05, para. 16; and supplemented in its Decision on the application to review the decision of the Registrar denying [REDACTED] privileged visits with Mr Lubanga Dyilo, under regulation 221 of the Regulations of the Registry, 27 November 2006, ICC-01/04-01/06-731-Conf, para. 24. *See also* Presidency, [Reasons for the 'Decision on the "Application for Review of Decision of the Registrar's Division of Victims and Counsel dated 2 January 2008 not to Admit Prof. Dr. Sluiter to the List of Counsel"'](#), 10 July 2008, ICC-RoC72-01/08-10, para. 20; Presidency, [Decision on the application to review the decision of the Registrar denying the admission of Ms Magdalena Ayoade to the list of experts](#), 6 August 2009, ICC-RoR56-01/09-2, para. 11.

⁵⁵ [Application](#), ICC-RoR220-02/22-1, para. 13.

⁵⁶ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp, paras 17-18.

a screening committee to assess donations to a trust fund is only required *where necessary*.⁵⁷ He thereby appears to imply that the establishment of a screening committee is a discretionary decision of the Registrar.

23. The Administrative Instruction on Trust Funds provides that for individual donations the Registrar shall ‘where necessary, in consultation with the Prosecutor and the President’, refer the proposed voluntary contribution to an *ad hoc* screening committee that ‘shall evaluate any potential implications of the proposed donation on the reputation of the Court’.⁵⁸ This shows that the purpose of the screening committee is to examine whether a donation can cause a potential reputational harm to the Court. The arguments of the Registrar as to why this would be necessary in the present scenario are reasonable and convincing.⁵⁹ Notably, he explains that the likelihood of potential reputational harm is high when dealing with donations from unknown individual donors, the type of donors that Mr Yekatom is seeking to reach.⁶⁰ In addition, the Presidency takes note of the Registrar’s assessment that a screening process for individual donations is administratively burdensome and of his clarification that earmarking of specific donations is not compatible with the purpose of the pre-existing Trust Fund for Family Visits purpose.⁶¹ The Presidency can discern no legal error or unreasonableness in the Registrar’s assessment that a screening process would be necessary for any donations received as a result of the proposed Fundraising Campaign and that such a process would represent a disproportionate administrative burden.

24. In light of the above, the Presidency finds that Mr Yekatom fails to demonstrate a legal error as regards the application of the Administrative Instruction on Trust Funds by the Registrar or that the Registrar otherwise erred in this regard.

II. Use of the Court’s logo and other visual elements

25. In rejecting Mr Yekatom’s request to support the Fundraising Campaign by allowing the use of the Court’s logo and other visual elements, the Impugned Decision indicates that

⁵⁷ [Application](#), ICC-RoR220-02/22-1, para. 22.

⁵⁸ Administrative Instruction on Trust Funds, ICC/AI/2004/005, 4 November 2004, para. 2.2.

⁵⁹ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 11.

⁶⁰ Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 13.

⁶¹ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp, para. 18; Registrar’s Observations, ICC-RoR220-02/22-3-Conf-Exp, paras 11, 13.

such usage may have a negative impact on the Court's image, including because the Court would have no control over messages and visual elements of said campaign.⁶²

26. The Application does not develop any argument seeking to demonstrate an error in the Impugned Decision regarding the Registrar's concerns on messaging and the use of the Court's visual elements. Mr Yekatom limits his submissions to observing that nothing prevents the Registry from having 'a productive discussion with the Defence on the messages and visual elements' for the Fundraising Campaign.⁶³ These submissions do not in any way seek to submit a legal error which has occurred for the Presidency's consideration and are summarily dismissed.

III. Potential discriminatory situation

27. In the Impugned Decision, the Registrar explained that he cannot support a Fundraising Campaign dedicated only to Mr Yekatom, noting, *inter alia*, that this could lead to the creation of a potential discriminatory situation among indigent detained persons as regards access to family visits.⁶⁴ Even if the Court were to support fundraising campaigns for all indigent detained persons, some campaigns may be more successful than others.⁶⁵
28. Mr Yekatom simply argues that there is no discrimination if the same possibility of setting up a Fundraising Campaign is offered to all detained persons.⁶⁶
29. The Application fails to demonstrate any error in the Registrar's assessment that harmful results may be forthcoming due to the risk that individual fundraising campaigns may be more successful for some detained persons than for others. Dependent on the outcome of the respective fundraising campaigns, some detained persons would necessarily be in the position to receive more funded family visits than other detained persons, which subsequently would create an unequal treatment among detained persons. Such situation could be perceived as challenging the neutral role of the Registry in certain circumstances. The establishment of a multiple individual campaigns may foreseeably make it even more difficult to obtain support from States Parties and other actors to contribute to the Trust Fund for Family Visits. Accordingly, the Registry's intention to prevent the creation of a system of actively and systematically supporting individual

⁶² Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, paras 20-21, 23.

⁶³ [Application](#), ICC-RoR220-02/22-1, para. 24.

⁶⁴ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 22.

⁶⁵ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 22.

⁶⁶ [Application](#), ICC-RoR220-02/22-1, para. 26.

fundraising campaigns of detained persons, which would likely lead to unequal treatment and could be detrimental for the Court's reputation and image,⁶⁷ appears reasonable.

30. In addition, the Presidency can discern no unreasonableness in the Registrar's conclusion that it is deemed more appropriate for the Registry to focus its efforts in replenishing the Trust Fund for Family Visits on diplomatic efforts destined to serve all indigent detained persons.⁶⁸

31. Accordingly, the Presidency finds that the risk of unequal treatment and the overall detriment to the Court's image and neutrality, as described by the Registrar, are entirely reasonable and Mr Yekatom's simplistic assertion does not demonstrate any legal error by the Registrar.

IV. Comparison to the Trust Fund for Victims

32. Mr Yekatom submits that the Registry seems to prioritise the Trust Funds for Victims over the Trust Fund for Family Visits and submits that it thereby violates its duty of independence, noting that the Trust Fund for Victims does not experience any depletion of its funds and its website allows for a simpler donation process.⁶⁹

33. As correctly pointed out by the Registrar,⁷⁰ the Trust Fund for Family Visits and the Trust Fund for Victims are not subject to the same legal regime and a comparison is neither helpful nor appropriate. The Trust Fund for Victims was established by the Assembly of States Parties pursuant to article 79 of the Rome Statute with its own separate operational and managerial structure, including a Board of Directors, a Secretariat and an Executive Director.⁷¹ It has a much broader mandate aimed at the implementation of reparation orders and providing support to victims and their families,⁷² whereas the Trust Fund for Family Visits is a means of administering the provision of funds for the benefit of the detained persons' family members travelling to the Court's Detention Centre.⁷³ In comparing the Trust Fund for Family Visits to the Trust Fund for Victims, the

⁶⁷ See Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 22.

⁶⁸ Impugned Decision, ICC-RoR220-02/22-2-Conf-Exp-Anx, para. 22.

⁶⁹ [Application](#), ICC-RoR220-02/22-1, paras 28-29.

⁷⁰ See Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 16.

⁷¹ Assembly of States Parties, Resolution on the Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, 9 September 2002, ICC-ASP/1/Res.6, annex to resolution, para. 1; *see also* Assembly of States Parties, Annex to the Regulations of the Trust Fund for Victims, 3 December 2005, ICC-ASP/4/Res. 3.

⁷² See articles 75(2), 79 of the Rome Statute.

⁷³ See Registrar's Observations, ICC-RoR220-02/22-3-Conf-Exp, para. 16.

Application distorts the Registrar's limited responsibilities in relation to the Trust Fund for Victims.

34. The Presidency concludes that the Application fails to demonstrate the relevance of any comparison between the Trust Fund for Victims and the Trust Fund for Family Visits. Furthermore, it is not clear how this argument would be capable of demonstrating an error in the Impugned Decision. Accordingly, Mr Yekatom's arguments on an alleged lack of independence or favouritism by the Registry are dismissed as unfounded.

V. Efforts to replenish the Trust Fund for Family Visits

35. Finally, the Presidency would like to address Mr Yekatom's overarching argument that the request for Court support of the Fundraising Campaign should have been granted because the efforts made by the Registry to replenish the Trust Fund for Family Visits are not sufficient in view of ensuring respect for his right to family visits.⁷⁴
36. The Presidency observes that these allegations go beyond the matter under review before the Presidency. While the generic arguments made in this regard were also part of the Complaint to the Registrar, the requested relief was limited to seeking Court support for the Fundraising Campaign and it did not allege any violation of the right to family life.⁷⁵ This notwithstanding and recalling the importance of the matter, the Presidency seizes this opportunity to reiterate its encouragement to the Registrar to redouble the efforts to seek further donations for the Trust Fund for Family Visits from States Parties, other States, non-governmental organisations, civil society, individuals and other entities.⁷⁶

V. CLASSIFICATION

37. Considering that Mr Yekatom submitted his Application publicly and the public classification of the present decision, the Presidency notes that the Registrar may reclassify his Observations as public, or issue a public redacted version thereof, if he considers appropriate.

⁷⁴ [Application](#), ICC-RoR220-02/22-1, para. 13.

⁷⁵ Complaint, ICC-RoR220-06/21-2-Conf-Exp-AnxII, pp. 1, 3.

⁷⁶ Presidency, *The Prosecutor v. Bosco 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, 10 December 2019, ICC-RoR220-01/19-2-Red, para. 27.

In light of the above, the Presidency hereby:

CONFIRMS the Impugned Decision; and

DENIES the Request for Leave to Reply.

Done in both English and French, the English version being authoritative.



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 9 September 2022

At The Hague, The Netherlands