

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-RoR220-02/22

Date: 30 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 CENTRAL AFRICAN REPUBLIC II

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

Public

**Public Redacted Version of Registry Observations pursuant to Regulation 220(4)
of the Regulations of the Registry, 5 July 2022, ICC-RoR220-02/22-3-Conf-Exp**

Source: Registry

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

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Unrepresented Victims

**Unrepresented Applicants
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REGISTRY

Registrar

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**Victims Participation and Reparations
Section**

Other

I - Introduction

1. Following the “Application for Judicial Review of the Registry Decision issued on the 17 June 2022”¹ (“Application” and “Impugned Decision”, respectively) submitted by Mr Alfred Rombhot Yekatom and his defence team (“Complainant” and “Defence”, respectively) and pursuant to regulation 220(4) of the Regulations of the Registry (“RoR”), the Registrar hereby submits his observations (“Observations”). It is the Registrar’s position that the Application ought to be dismissed as unjustified.

II – Classification

2. Although the Application has been filed publicly, as explained in the Registry’s “Transmission pursuant to Regulation 220(3) of the Regulations of the Registry” (“Transmission”)² and in accordance with regulation 23 *bis*(2) of the Regulations of the Court (“RoC”), the present Observations are classified confidential *ex parte* only available to the Defence and the Registry as they refer documents and the said Transmission and its annex, notably the Impugned Decision, with the same classification.

III - Observations

3. In the Application, the Complainant mainly submits that the Court has failed to “fulfil its obligation to finance family visits and make meaningful efforts to obtain funds”.³ In particular, the Complainant argues that the Impugned Decision⁴ is without merit while raising issues regarding (1) the use of a screening process for individual donations;⁵ (2) the use of the Court’s image

¹ Mr Alfred Rombhot Yekatom (“Complainant”), Application for Judicial Review of the Registry Decision issued on the 17 June 2022 (“Application”), 27 June 2022, ICC-RoR220-02/22-1.

² Registry, “Transmission pursuant to Regulation 220(3) of the Regulations of the Registry” (“Transmission”), 30 June 2022, ICC-RoR220-2-Conf-Exp.

³ Complainant, Application, Part I.

⁴ Registrar, Impugned Decision, Annex I to the Transmission, 30 June 2022, ICC-RoR220-02/22-Conf-Exp.

⁵ Complainant, Application, Part II(a).

and logo;⁶ (3) the potential for discrimination in providing support for fundraising by the Complainant;⁷ and (4) the risk of jeopardizing the Registry's neutrality.⁸

4. To allow the Presidency to make an informed decision when reviewing the Impugned Decision, the Observations below are limited to the following three issues: (a) the substantial measures taken by the Registry to secure financing for family visits; (b) the need for a screening process were the Registry to agree to the Complainant's request; and (c) the Complainant's allegations against the Registry's neutrality.

(a) The Registry has been highly active in seeking funds for family visits

5. The Complainant contends that the Registry's support for its proposed fundraising campaign is necessary because of the Court's alleged failure to take sufficient measures to ensure the availability of funds for the Trust Fund for Family Visits ("TFFV").⁹
6. The Registry has consistently acknowledged the importance of a detained person's right to family visits and its obligation to fund such visits for indigent detained persons.¹⁰ In accordance with that obligation, and contrary to the Complainant's allegations, the Registry has acted proactively in seeking donations to the TFFV from various sources.

⁶ Complainant, Application, Part II(b).

⁷ Complainant, Application, Part II(c).

⁸ Complainant, Application, Part II(d).

⁹ See Complainant, Application, 13, 18.

¹⁰ See *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", 10 December 2019, ICC-RoR220-01/19-2-Red](#), paras. 19-21.

7. Indeed, the Complainant concedes “the many efforts made by the Registry to replenish the TFFV”.¹¹ Registry staff in both the Headquarters and the Country Offices have been regularly and continuously engaged in diplomatic efforts to secure donations from states, including by communicating with embassies and state representatives regarding this issue. The Registry has also sought funding from a variety of other sources, including international organisations and non-governmental actors. Such efforts have borne fruit. [REDACTED]. The Registry has additionally engaged in recent and promising discussions with other organizations regarding this issue.¹²
8. It also bears noting that the TFFV’s financial situation has in no way prevented the Complainant from receiving family visits. In particular, the Complainant is regularly visited [REDACTED]. As to the funded visits, save for the period in which family visits were impossible due to COVID-19, the Complainant’s requests for funded family visits have generally been granted,¹³ with only limited exceptions for reasons which were not related to the scarcity of funds in the TFFV. Where requests were denied, such denials were not made for lack of funds in the TFFV but because the requests were inconsistent with the Court’s family visit policy. In one instance a request was partially granted [REDACTED].¹⁴ In a more recent instance, a request was not denied for lack of funds but because it was inconsistent with the Court’s family visit policy. That request was later modified by Mr Yekatom and was subsequently approved.¹⁵

¹¹ Complainant, Application, para. 13.

¹² See Registrar, Impugned Decision, para. 14.

¹³ The Complainant received funded family visits in [REDACTED] and [REDACTED].

¹⁴ [REDACTED]

¹⁵ The Complainant’s initial request was denied, *inter alia*, because of one of the requested visitors fell outside the scope of the policy on family visits. [REDACTED].

9. Finally, it should be recalled that the Registry's inability to support the Complainant's proposed fundraising campaign in the manner requested does not prevent the Complainant, with the assistance of his counsel, from engaging in such a campaign on his own initiative.¹⁶

(b) An onerous screening process would most likely be necessary under the Complainant's proposal

10. The Complainant argues that the Impugned Decision is incorrect when it states that the acceptance of funds from individual donors would require the use of a Screening Committee.¹⁷ The Complainant points out that paragraph 2.2 of AI/2004/005 only requires the use of a Screening Committee "where necessary" and impliedly suggests that such a screening process would not be required in this instance.¹⁸

11. However, it is the Registry's view that, in practice, a screening process would indeed be necessary for the individual donations that would likely be received as part of a fundraising campaign of the type proposed by the Complainant. In this respect, the Registrar wishes to clarify the submissions made at paragraph 17 of the Impugned Decision. As explained in that paragraph, voluntary contributions raised through the proposed fundraising campaign would need to be deposited in a trust fund. If those funds were to be earmarked towards visits by the family of a particular detained person (i.e. the Complainant), they could not be deposited into the TFFV itself. This is because donations to the TFFV can only be made for the purpose of "collectively

¹⁶ Registrar, Impugned Decision, para. 24.

¹⁷ Complainant, Application, para. 22; Registrar, Impugned Decision, paras. 17-18.

¹⁸ Complainant, Application, para. 22.

help[ing] it meet its obligations towards indigent detained persons”, without any possibility of earmarking.¹⁹ [REDACTED].

12. As a result, any such funds – if raised through a fundraising campaign the Complainant proposes to organise - would then need to be deposited in a separate trust fund established by the Registrar. Such a trust fund would be subject to the requirements of the Administrative Instruction for the “Establishment of trust funds by the Registrar” (“AI/2004/005”). AI/2004/005, in turn, requires where necessary a Screening Committee to “evaluate any potential implications of the proposed donation on the reputation of the Court”. The Registry maintains that, here, for the purpose of the fundraising campaign in the terms proposed by the Complainant, it would most likely be necessary to verify the sources of the funds.

13. In particular, the Registrar will have first to determine on a case-by-case basis whether a screening process is required. This is burdensome. Second, the likelihood of having to examine the potential for reputational harm would be high. It requires considering both the identity of the donor and the provenance of the funds in question. The risk of such harm is particularly high when dealing with donations from unknown individual donors, precisely the type of donors that the Complainant is seeking to reach. Accordingly, it is likely that most if not all individual donations received as part of the Complainant’s proposed fundraising campaign would necessitate the use of a screening process. Third, if so, and as explained in the Impugned Decision, this screening procedure as such is onerous and would impose a substantial administrative burden on the Court. Finally, by requiring the involvement of

¹⁹ ICC, “The Trust Fund for Family Visits”, <https://www.icc-cpi.int/sites/default/files/Publications/20190919-tffvisits-eng.pdf>.

the Office of the Prosecutor, this procedure would be problematic as it would jeopardise the Complainant's right to privacy.²⁰

14. Notably, the procedure provided for in AI/2004/005 does not apply to the TFV, which was not created by the Registrar and possesses its own organizational structure. AI/2004/005 only applies to trust funds created by the Registrar pursuant to Financial Regulation 6.5.²¹ Voluntary contributions to the TFV are instead submitted to the TFV's Board for assessment and approval.²²

(c) The Registry has acted in a neutral manner towards the TFFV

15. The Complainant alleges that the Registry has breached its duty to act in a neutral manner when it comes to its support of the TFFV. In particular, the Complainant submits that the Registry has favoured the Trust Fund for Victims ("TFV") over the TFFV and argues that this situation threatens his presumption of innocence. There is no basis to these allegations.

16. The Complainant states that the TFV has not experienced the same financial difficulties as the TFFV.²³ However, it should be recalled that the TFV, unlike the TFFV, has its own operational and managerial structure outside the Registry. Accordingly, one cannot compare the TFV's capacity to mobilise funds with the TFFV as they are structurally and fundamentally different. The former has its own Board of Directors, Secretariat and Executive Director and possesses the capacity to fundraise on its own behalf.²⁴ The latter, on the other

²⁰ See Registrar, Impugned Decision, paras. 18-19.

²¹ Registrar, "Establishment of Trust Funds by the Registrar", 4 November 2004, ICC/AI/2004/005, para. 1.

²² Assembly of States Parties, "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, para. 8.

²³ Complainant, Application, para. 27.

²⁴ See Assembly of States Parties ("ASP"), "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-

hand, is thus far merely a means of administering the provision of funds for the benefit of the detained persons' family members travelling to the Court's Detention Centre. The TFV is also a much larger body than the TFFV, with a more expansive and complex mandate that requires significantly more financial resources.

17. To the extent the TFV is in a superior financial situation to the TFFV, this is not due to any favouritism by the Registry but is rather the result of a greater willingness by states and other entities to donate to the TFV than the TFFV.

18. The Complainant also contends that the Registry has provided greater levels of support to the TFV than the TFFV, pointing specifically to an alleged discrepancy between the quality of the respective websites of the two bodies.²⁵ This is incorrect. As already noted above, the TFV is separate and independent from the Court. It formulates its own communication strategies as decided by the Board of Directors, with the Registry only playing an advisory role.²⁶ Similarly, the TFV's website is separate from that of the Court. Where the TFV and TFFV are mentioned on the Court's website, as in the context of soliciting donations, the two bodies are provided equal status.²⁷ Moreover, and in any event, the Registry has provided significant support to the TFFV, as demonstrated by the extensive fundraising efforts undertaken by the Registry discussed above.

ASP/1/Res.6, para 3, Annex, paras. 1, 6-7; ASP, "Regulations of the Trust Fund for Victims", 3 December 2005, ICC-ASP/4/Res.3, Annex, Part I.

²⁵ Complainant, Application, paras. 28-29.

²⁶ Assembly of States Parties, "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, para. 5.

²⁷ See <https://www.icc-cpi.int/get-involved>, where the websites of both Funds are listed side by side.

19. To conclude, reiterating the Impugned Decision's findings and in light of the above clarifications, the Registrar observes that the Application ought to be dismissed as unjustified.

A handwritten signature in black ink, appearing to read 'P. E. Lewis', written in a cursive style.

Mr Peter Lewis
Registrar

Dated this 30 September 2022

At The Hague, Netherlands