

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR220-03/22**

Date: **19 September 2024**

THE PRESIDENCY

Before: Judge Tomoko Akane, President
Judge Rosario Salvatore Aitala, First Vice-President
Judge Reine Alapini-Gansou, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Public Redacted Version of the “Application for Judicial Review of Registrar’s
Decision of 2 September 2022”, 12 September 2022, ICC-ROR220-03/22-1-Conf-
Exp**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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REGISTRY

Registrar

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INTRODUCTION

1. Pursuant to regulations 217 and 220 of the Regulations of the Registry ('RoR'), the Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby applies for judicial review of the Registrar's Decision of 2 September 2022 ('Impugned Decision').
2. The Defence respectfully requests that the Presidency find that the current management of food at the Detention Centre ('DC') comprises a violation of regulation 199 of the RoR; and that the Presidency direct the Registrar to take concrete measures to remedy this violation – for instance, to employ a cook or a catering company to prepare and provide culturally appropriate meals, [REDACTED].¹

PROCEDURAL BACKGROUND

3. On 24 September 2021, the Defence submitted a complaint on the basis that the current management of food at the DC comprised a violation of Mr Yekatom's right to be 'provided with food which is suitably prepared and presented and satisfies, in quality [...] the standards of dietetics and modern hygiene', as well as his right to have his 'cultural requirements [...] taken into account in the preparation and in the distribution of food', afforded to him pursuant to Regulation 199 of the RoR, noting especially the Detention Section's failure to implement the recommendations made in the Expert Report ('Complaint').
4. On 11 October 2021, the Acting CCO issued his decision, finding that the Complaint was not justified, *inter alia* on the basis that the Complaint was 'not properly addressed to him' as the Acting CCO was 'not in a position to report [...] on the implementation of the recommendations mentioned in the Experts'

¹ '[REDACTED].

Report’ (‘First Acting CCO Decision’); his decision notably contained clarifications *inter alia* in relation to the implementation of recommendations mentioned in the Expert Report.²

5. On 19 October 2021, the Defence submitted a request for review of the First Acting CCO Decision, requesting that the Registrar find that the Complaint was in fact properly addressed to the Acting CCO; and that the Registrar consider the merits of the Complaint, find that the current management of food at the DC comprised a violation of Regulation 199(1), and implement sought remedies in this regard (‘First Request for Review’).
6. On 1 November 2021, the Registrar quashed the First Acting CCO’s Decision, finding that the latter’s rejection of the Complaint on the basis that it was ‘not properly addressed to him’ was erroneous; and remitted the matter to the Acting CCO ‘in order for him to decide on the Complaint in full’ (‘First Registrar Decision’).
7. On 28 July 2022, following the Acting CCO’s ongoing failure to comply with the First Registrar Decision, the Defence sought review of the Acting CCO’s constructive dismissal of the remitted matter, and requested that the Registrar decide on the substantive merits of the Complaint, given the Acting CCO’s demonstrable ongoing lack of ability and/or willingness to meet his legal responsibilities and to render a non-erroneous decision on the Complaint (‘Second Request for Review’).
8. On 10 August 2022, nine months after the Complaint was remitted to him, the Acting CCO rendered a decision rejecting the Complaint (‘Third³ Acting CCO Decision’).

² See, First Request for Review, para. 13.

³ As noted in the Third Request for Review, the Defence maintains that the Acting CCO’s failure to issue a decision on the original Complaint within a reasonable period of time constituted constructive dismissal of the Complaint, as set out in paragraphs 16-20 of the Second Request for Review, and therefore that the Acting CCO’s Decision of 10 August 2022 comprises his third decision stemming from the Complaint.

9. On 12 August 2022, the Registrar dismissed the Second Request for Review, finding that the matter was moot on the basis of the Second Acting CCO Decision having been issued ('Second Registrar Decision').
10. On 18 August 2022, the Defence sought review of the Second Acting CCO Decision ('Third Request for Review').
11. On 2 September 2022, the Registrar issued the Impugned Decision, dismissing the Third Request for Review.

APPLICABLE LAW

12. Judicial review of decisions of the Registrar concern 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.⁴
13. Regulation 90 of the Regulations of the Court ('RoC') ('Management of the detention centre') states:
 - (1) Subject to the Statute, Rules and these Regulations, the Registrar shall have overall responsibility for all aspects of management of the detention centre, including security and order, and shall make all decisions relating thereto.
 - (2) The day-to-day fulfilment of the functions described in sub-regulation 1 shall be delegated to the Chief Custody Officer.
14. Regulation 199(1) of the RoR states:

⁴ See, 'Decision on the request to review the decision of the Registrar denying the inclusion of Ms Ana Cristina Rodríguez Pineda in the list of counsel', ICC-RoC72-01/18, 20 April 2018, para. 17.

Each detained person shall be provided with food which is suitably prepared and presented and satisfies, in quality and quantity, the standards of dietetics and modern hygiene. The age, health, religion and cultural requirements of the detained person shall be taken into account in the preparation and in the distribution of food.

15. Regulation 217(1) of the RoR states:

At any time, a detained person may make a complaint against any matter concerning his or her detention.

16. Regulation 220(1) of the RoR states:

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.

SUBMISSIONS

17. Under the current food management system at the DC, detainees are provided with two pre-prepared, packaged cold meals.⁵ Following complaints regarding the lack of cultural appropriateness of the pre-prepared meals, the DC adopted a system whereby detainees are provided with a weekly allowance to purchase African food products from the 'African shopping list' and access to cooking facilities.⁶

A. In misinterpreting the obligations of the DC as set out in Regulation 199(1), the Registrar erred in law.

18. The Defence submits that the current system of food management at the DC comprises a violation of regulation 199(1) of the RoR, which states in relevant part:

Each detained person shall be provided with food which is suitably prepared and presented [...] The [...] cultural requirements of the detained person shall be taken into account in the preparation and in the distribution of food.

⁵ [REDACTED].

⁶ [REDACTED].

19. As is evident from its wording, regulation 199(1) guarantees that DC detainees be provided with food that is suitably prepared and presented, and that cultural requirements of the detained person be taken into account in the preparation of said meals.
20. However, the current food management system at the DC appears to be based on the misconception that regulation 199(1) can be read disjunctively – i.e. that this regulation guarantees either that prepared food be provided or that DC detainees have access to culturally appropriate food products and cooking facilities.
21. In other words, the position of the Acting CCO, as upheld by the Registrar in the Impugned Decision,⁷ appears to be that should DC detainees wish to have meals that are both prepared and culturally appropriate, they must cook them themselves.
22. Such an understanding of the Acting CCO's obligations is not reasonably available on the wording of regulation 199(1). Ensuring due respect for culinary cultural requirements, guaranteed under that regulation, and reflected in multiple international human rights instruments,⁸ cannot be simply outsourced to the DC detainees themselves.
23. The Acting CCO's and Registrar's erroneous reading of regulation 199(1) therefore comprises an error of law, which has the effect of invalidating the Registrar's finding that 'food management in detention is in accordance with' that regulation.⁹
24. Further, the Registrar's failure to recognise the ongoing violation of regulation 199(1) at the DC necessarily would have impacted his assessment of the

⁷ See, Impugned Decision, para 25.

⁸ See *infra*, paras 35-39.

⁹ Impugned Decision, para. 35.

feasibility of [REDACTED] – for instance, the hiring of a cook or a catering company to prepare and provide culturally appropriate meals at the DC.

25. In this regard, the Defence notes that the Registrar effectively ignored the Defence's specific request for 'information as to concrete steps taken that would reflect meaningful consideration by the Registry of these scenarios'.¹⁰
26. As set out below, the pre-prepared meals remain culturally inappropriate, and access to the 'African shopping list' does not remedy this violation.

i) The pre-prepared meals.

27. The pre-prepared meals provided to the DC detainees are not culturally appropriate, both in terms of their content and manner of distribution.
28. The Defence recalls the following findings in the Registry-commissioned Expert Report:

[REDACTED].¹¹

[REDACTED].¹²

29. The very fact that the 'African shopping list' system was implemented can be understood as a concession as to the cultural inappropriateness of the pre-prepared meals. In this regard, the Acting CCO's reliance on an operative qualifier in his claim that 'The CCO continues to provide nutritious and culturally appropriate meals and options to all detained persons [emphasis added]'¹³ is illustrative.
30. Further, the Defence reiterates its previous submissions as follows:

¹⁰ Third Request for Review, para. 17.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ See, Third Acting CCO Decision, para. 15.

The pre-cooked meals are prepared in a manner that is not reflective of Mr Yekatom's (and the other African detainees') culture: they are too sweet; too dry and lacking in sauce; and lacking in variety.

[...]

Likewise, the manner in which the pre-cooked meals are served – i.e. cold, for the detainees to re-heat in the microwave – is culturally alien to Mr Yekatom and therefore comprises a culturally inappropriate manner of distributing food.¹⁴

31. The Registrar's argument, that 'In any event, it is also possible to heat the food in a normal oven should the Complainant wishes so [sic]', is puzzling. A 'hot meal' is a meal that is served hot. Mere access to a microwave or oven does not have the effect of qualifying pre-prepared, pre-packaged food, distributed cold, as a 'hot meal'. By the Registrar's logic, a cucumber salad, which detainees could theoretically heat in a microwave or oven 'should they so wish', would qualify as a 'hot meal' for DC detainees. The Registrar's self-congratulatory submission, regarding the DC's providing 'the opportunity to receive two hot meals per day, which is an important requirement and above the international standards and the usual Dutch standards in national prisons',¹⁵ is thus misguided, and is indicative of the Registrar's broader failure to recognise the ongoing violation of regulation 199(1).¹⁶

ii) *The 'African shopping list'.*

32. The Registrar's reliance on the fact that DC detainees have access to the 'African shopping list' and cooking facilities is misplaced. While said access is a positive feature of the food management system, it does not absolve the DC of its duty, enshrined in regulation 199(1), to provide food that is 'suitably prepared and presented', with 'cultural requirements of [detainees] taken into account in the preparation and in the distribution' thereof.

¹⁴ First Request for Review, para. 18.

¹⁵ Impugned Decision, para. 26.

¹⁶ In the same vein, the Defence notes the fact that in the Impugned Decision, the Registrar repeatedly refers to the food provided at the DC as a 'free' meal (i.e. to Mr Yekatom 'getting a free meal'; 'the pre-cooked meals he receives for free'; 'the "African" meal provided for free'), which is similarly revealing; see, Impugned Decision, paras 25, 26, 28.

33. This is aptly illustrated in recommendation 20 of the Council of Europe's 'Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners':

In addition to providing a nutritious diet that takes account of the cultural [...] requirements of prisoners, prison authorities shall, where possible, provide prisoners with opportunities to purchase and cook food that makes their diet more culturally appropriate [emphasis added][.]¹⁷

34. In this regard, the Defence recalls the finding in the Registry-commissioned Expert Report that '[REDACTED]'.¹⁸ This limited cooking proficiency also restricts DC detainees' ability to prepare culturally appropriate (not to mention nutritiously balanced and healthy) meals.
35. In addition, there are obvious objective limits to the DC detainees' ability to culturally 'adapt' the pre-prepared meals. As the Defence has previously submitted:

[D]ue accounting for African culinary 'cultural requirements' is not a matter of simply 'adapting' pre-cooked meals by adding ingredients bought from the so-called African shopping list. To use a real-life example: it remains unclear to the Defence how a cold, precooked microwave meal of 'tofu [REDACTED]' – presented at the DC as an 'African meal' – could possibly be 'adapted' by DC detainees to meet African culinary cultural requirements. In the same way that a pre-cooked European-style meal cannot be 'adapted' to meaningfully meet Asian culinary cultural requirements with the mere subsequent addition of typical Asian ingredients – for instance, rice, soy sauce, or Asian herbs and spices – such a meal cannot be 'adapted' to meet African culinary cultural requirements with the addition of smoked fish, plantains and manioc. Indeed, the very suggestion betrays a fundamental miscomprehension of what is meant by the term 'cultural requirements' in the culinary context – which itself goes some way to explaining the current impasse as regards food management at the DC.¹⁹

¹⁷ 'Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners', Council of Europe Committee of Ministers, 10 October 2012.

¹⁸ [REDACTED].

¹⁹ Third Request for Review, para. 10.

B. The Registrar failed to take into account the importance of due respect for cultural requirements in food preparation and distribution, as set out in international human rights instruments and standards.

36. In the Impugned Decision, the Registrar failed to address – let alone take into account – international human rights instruments and standards that enshrine or echo Mr Yekatom’s right to culturally appropriate food, such that his decision-making process was improper. Had the Registrar paid due regard to these rights and standards, the lack of cultural appropriateness of the pre-prepared meals, in terms of content and distribution, would have weighed more heavily in his decision-making process; and by extension, would have also led to the conclusion that current food management at the DC does in fact comprise a violation of regulation 199(1).
37. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’), recognises the right to ‘adequate food’.²⁰ As set out in General Comment no. 12 of the Committee on Economic, Social and Cultural Rights (‘Committee’), this right should not be ‘interpreted in a narrow or restrictive sense which equates it with a minimum package or calories, proteins and other specific nutrients [...] the meaning of “adequacy” is to a large extent determined by prevailing [...] cultural [...] conditions.’²¹ The Committee has notably found that ‘the core content’ of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals [...] and acceptable within a given culture.’²²
38. The Defence further notes that the right to take part in cultural life, enshrined in Article 15(1)(a) of the ICESCR, entails the element of ‘appropriateness’, which ‘refers to the realization of a specific human right in a way that is pertinent and

²⁰ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 (‘ICESCR’).

²¹ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, para. 7 (‘General Comment No. 12’).

²² General Comment No. 12, para. 8.

suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals'; in this regard, the Committee 'stress[ed] [...] the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption'.²³

39. The European Prison Rules established by the Council of Europe in 2006, which set out standards related to prison management and treatment of detainees, expressly hold that all detainees 'shall be treated with respect for their human rights' and that detainees 'retain all rights that are not lawfully taken away'.²⁴ The European Prison Rules further specifically state that detainees 'shall be provided with a nutritious diet that takes into account their [...] culture'; and that 'Food shall be prepared and served[.]'²⁵
40. Mr Yekatom's right to culturally appropriate food under Regulation 199(1) is also mirrored, albeit indirectly, in the United Nations Standard Minimum Rules for the Treatment of Prisoners (aka the 'Nelson Mandela Rules').²⁶ Specifically, Rule 22(1) provides that detainees 'shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health [...] of wholesome quality and well prepared and served [emphasis added]'. The term 'health' in that rule would necessarily encompass both physical and mental health, not least given that a number of the Nelson Mandela Rules refer to detainees' mental and psychological health and well-being.²⁷ Given the primary importance of food in an individual's life, it cannot be controversial that the DC's failure to provide Mr Yekatom with culturally appropriate food continues to negatively impact his mental health,

²³ UN Committee on Economic, Social and Cultural Rights, *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, E/C.12/GC/21, para. 16(e) ('General Comment No. 21').

²⁴ Council of Europe, *European Prison Rules*, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006, Rules 1, 2 ('European Prison Rules')

²⁵ European Prison Rules, Rules 22.1, 22.3.

²⁶ UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, 29 September 2015, A/C.3/70/L.3 ('Mandela Rules').

²⁷ See e.g., Mandela Rules, Rules 25, 105.

unnecessarily compounding the considerable psychological stress inherent to the carceral environment.

41. In this regard, the Defence notes that, according to the ‘ICC Detention Centre’ publication available on the Court’s website, the Registrar, in fulfilling his mandate of responsibility for management of the DC, ‘endeavours to ensure the mental [...] welfare of the detained persons [...] with consideration to their cultural diversity’.²⁸ Notably, the publication further states that DC detainees ‘are provided with suitably prepared food’.²⁹

I. The Registrar took into account irrelevant factors in the Impugned Decision.

42. In the Impugned Decision, the Registrar improperly took into account multiple irrelevant factors, which further invalidated his decision-making process and his conclusion.

i) Mr Yekatom’s ‘specific health condition’.

43. In the Impugned Decision, the Registrar recalled that Mr Yekatom has a ‘specific health condition’ requiring him to take special meals, which contain less salt and fat, and concludes that ‘In these circumstances, it is difficult to maintain that no due regard has been given to the specific situation and cultural difference of the Complainant’.³⁰
44. With respect, the Registrar’s reasoning is difficult to comprehend.
45. First, the fact that Mr Yekatom has been advised to reduce the salt and fat in his diet has no bearing on the cultural inappropriateness of the pre-prepared meals at the DC. The Registrar’s conclusion is a non-sequitur.

²⁸ ‘ICC Detention Centre’, ICC-PIDS-PRI-02/07_En, p. 2, available at <https://www.icc-cpi.int/iccdocs/PIDS/publications/DetentionCentreEng.pdf> (‘ICC DC Publication’).

²⁹ ICC DC Publication, p. 2.

³⁰ Impugned Decision, para. 26.

46. Second, nowhere in the Complaint does Mr Yekatom suggest that no due regard is given to his medical conditions.
47. Third, the Registrar's argument that Mr Yekatom is 'free to ask to change his meals to some African food' is entirely beside the point, given that the 'African meals', and their cultural inappropriateness, comprise the very crux of the Complaint.
48. The Registrar's reliance on Mr Yekatom's 'specific health condition' in the Impugned Decision was thus misplaced.

ii) The DC's discussions as regards the [REDACTED].

49. In the Impugned Decision, the Registrar states that '[REDACTED]'; and on this basis, concludes that 'In this context, the argument that the Acting CCO's misread [regulation 199(1)] is unjustified'.³¹
50. While the Defence welcomes any and all meaningful efforts aimed at ameliorating the current management of food at the DC, these [REDACTED] are nonetheless irrelevant for the specific purposes of the request, for three reasons.
51. First, the Registrar's argument amounts to another non-sequitur. The mere fact that [REDACTED] are ongoing has no bearing on whether the current management of food at the DC comprises a violation of regulation 199(1). If anything, the fact that the DC deems it necessary to [REDACTED] would appear to undermine the Registrar's position that current management of food at the DC meets the guarantees in that regulation.
52. Second, while the Registrar asserts that the DC is currently [REDACTED], no further details are provided. The Registrar fails to provide any indication as

³¹ Impugned Decision, para. 28.

regards what the [REDACTED]. Most importantly, the Registrar fails to explain in any meaningful sense how these [REDACTED] will impact the matter at issue – i.e. the lack of cultural appropriateness of the pre-prepared meals provided at the DC. In the absence of such basic information, the Registrar's reliance on these [REDACTED] in the Impugned Decision was improper.

53. Third, in the [REDACTED] in relation to food management at the DC was considered; the [REDACTED].³²

iii) [REDACTED].

54. In the same vein, while the Registrar refers to the fact that [REDACTED] this i) has no bearing on the lack of cultural appropriateness of the pre-prepared meals at the DC, and the ongoing violation of regulation 199(1) as set out above; ii) is couched in noncommittal language; and iii) is lacking in basic information that would allow an assessment as to what impact, if any, it might have on the current management of food at the DC.
55. As such, to the extent that this irrelevant 'factor' was relied upon by the Registrar in the Impugned Decision, this was improper.

iv) The fact that 'at least one African DC detainee eats the 'Africa Meal'.

56. In the Impugned Decision, the Registrar argues that Mr Yekatom's complaint regarding the culturally inappropriate nature of the pre-prepared meals is 'not entirely justified since at least one detained person from Africa does not reject [them]'.³³
57. The Registrar appears to be suggesting that because one African detainee eats the 'Africa Meal', it follows that the detainees' systematic discarding of the pre-

³² [REDACTED].

³³ Impugned Decision, para. 28.

prepared meals should be understood as the result of mere personal preference, as opposed to being motivated by cultural considerations.

58. This position is obviously without merit. The lack of cultural appropriateness of the pre-prepared meals is both subjectively and objectively evidenced and documented, as set out above.³⁴ In such a context, the Registrar's reliance on the sole DC detainee who does not systematically discard the pre-prepared meal is as misplaced.

v) The fact that Mr Yekatom prepares his meals.

59. As set out above, under current DC food management, if detainees wish to eat culturally appropriate food, they have no option but to purchase African goods from the 'African shopping list' and cook it themselves.
60. In these circumstances therefore, to the extent that the Registrar interprets the fact that Mr Yekatom is obliged to cook his own meals in detention as an indication that food management at the DC is satisfactory, as opposed to an indication that the DC is failing to meet its duties under regulation 199(1), the Registrar is deeply misguided.

CONCLUSION

61. The importance of access to food that conforms with one's own cultural requirements to individuals' physical and mental health and well-being cannot be overstated. Indeed, those involved in the work of the Court, the vast majority of whom are expatriates who have chosen to live and work in a country and culture that is removed from their own, would be acutely aware of this.
62. The Defence submits that it is in recognition of this importance that regulation 199(1) guarantees, in relation to those detained on the authority of the Court,

³⁴ See *supra*, paras 26-30.

that cultural requirements be duly taken into account in the preparation and distribution of the food that is provided to them in detention. It is also submitted that, in preparing the regulatory framework regarding detainee rights, the drafters would likely have envisioned that individuals detained at the DC would also be living in a country and culture deeply foreign to their own, waiting years before the outcome of their trials are known.

63. The Defence strongly believes that, if the above is duly kept in mind while considering the merits of this request, concrete steps towards meaningful resolution of this long-standing impasse regarding food management at the DC can be made.
64. Lastly, as set out in the Procedural History section of this request, nearly 12 months have passed since the Complaint was filed, due to the Acting CCO's failure to comply with the Registrar's order, and the Registrar's supervisory failure to ensure said compliance. While mindful of the workload faced by the Presidency, given the regrettable delays that have been occasioned to date, the Defence respectfully requests that this request be dealt with as a matter of priority.

CONFIDENTIALITY

65. This request is filed on a confidential *ex parte* basis as it contains references to Mr Yekatom's medical history. A public redacted version will be filed forthwith.

RELIEF SOUGHT

66. In light of the above, the Defence respectfully requests that the Presidency:

FIND that the current management of food at the DC comprises a violation of regulation 199(1); and,

ORDER that the Registrar immediately take concrete steps to remedy this violation – for instance, by employing a cook or a catering company to prepare and provide culturally appropriate meals at the DC.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF SEPTEMBER 2024



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