

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-RoR-217-02/08**

Date: **12 December 2008**

THE PRESIDENCY

Before: Judge Philippe Kirsch, President
Judge Akua Kuenyehia, First Vice-President
Judge René Blattmann, Second Vice-President

Confidential

**Registrar's Explanations in Response to the Presidency's Order of 5 December
2008**

Source: The Registrar

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

Counsel for the Defence

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REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Detention Section

Mr Anders Backman

Other

The Presidency

The Registrar of the International Criminal Court ("the Court");

NOTING the *Order concerning the Application for judicial review of Mr Mathieu Ngudjolo Chui of 21 November 2008* issued by the Presidency on 5 December 2008;¹

NOTING regulations 90 of the *Regulations of the Registry*, 179, 180, 217, 218, 219, 220 and 221 of the *Regulations of the Court*;

CONSIDERING that on 21 November 2008, Mr Mathieu Ngudjolo Chui appealed² the *Décision du Greffier en application de la norme 220 suite au recours de Mathieu Ngudjolo contre la décision du Chef du quartier pénitentiaire en date du 7 novembre 2008* of 18 November 2008";³

CONSIDERING that the Presidency ordered the Registrar to explain the reasons which formed the basis for her decision, particularly those justifying the frequency of the visits, the number of persons per visit and to explain the financial constraints to which reference was made;

RESPECTFULLY SUBMITS the following explanations:

1- The frequency of the visits and the number of persons per visit

- 1- The Registrar would first state that every detained person is entitled to receive as many visits from his or her family as he or she desires, subject to the

¹ ICC-RoR217-02/08-5-Conf.

² ICC-RoR217-02/08-3-Conf-Exp.

³ ICC-RoR217-02/08-2-Conf-Exp.

authorisation of the detention centre administration. The Registrar further reiterates that every detained person who is able to fund the family visits which he or she receives may submit the necessary requests for authorization and receive as many family visits as it is possible to accommodate at the detention centre. Accordingly, irrespective of whether the detained person is indigent or not, the detention centre administration may justify adjustments to the frequency of the visits.

- 2- By taking the initiative to fund family visits, the Registrar has taken account of, amongst other criteria, the situation of the detained persons whose indigence has been established. The adjustment to the frequency of the visits and to the number of persons per visit with respect to family visits to indigent detained persons responds to certain considerations.

- 3- The number of persons authorised per visit, irrespective of whether or not it is a family visit, is set at six: three adults and three children. This information not only features in the application for permission to visit provided to the visitors but also in Section XII of the Policy on Family Visits⁴ which was provided to each detained person upon admission to the detention centre. Such an adjustment is justified by constraints which are related to, *inter alia*, the schedule, the detention centre's reception facilities and capacity as well as the modalities for the monitoring of the visits and therefore for the maintenance of order and security. Accordingly, for example, a greater number of visitors would make it difficult for the designated personnel to monitor the visit which could result in difficulties in maintaining order and security.

⁴ Attached hereto as an annex.

- 4- The number of visitors thus set at six visitors per visit does not *de facto* preclude the possibility for flexibility by the Registrar when circumstances at the detention centre or the specific situation of the visitors and/or the detained person are, in the Registrar's opinion, such as to permit such flexibility. In such cases and in view of the authority conferred on her by regulation 90 of the *Regulations of the Court*, the Registrar may, on a case-by-case basis, authorize an easing of the limitation of the maximum number to six persons per visit, thus allowing the composition of the group of visitors to be altered and increasing the number of visitors.
- 5- The Policy on Family Visits specifically refers to "[o]ne family visit with a maximum of four nuclear family members per year per indigent detained person".⁵ Although the said policy stipulates a single family visit per year funded by the Court for a maximum of four persons, in practice there have been other examples and arrangements. Consequently, there were in fact four visitors during the very first visit organized in September 2006 to the only detained person at the time. Other than the family visits from the detained person's sole partner – two visits in 2007 and one in 2008 – the extension of family visits to children, organized in August 2007 to the same detained person, involved five persons. This summarises Court practice in the organization and funding of family visits to the indigent detained persons.
- 6- Although criteria for assessing applications to visit – indigence of the detained person, duration of separation from the family and availability of resources – did exist, these criteria had not been sufficiently bolstered so as to achieve a reasonable balance between the Registrar's desire to fund the visits and the actual management of the funds allocated for the operation of the detention centre. As early as autumn 2007, the Committee on Budget and Finance

⁵ Ibid, Section XII, 2. a.

rightly expressed concerns which led the Assembly of States Parties to request the Court to make an in-depth study of the matter.⁶

7- With respect to the said study, numerous institutions and organizations concerned by the issue and aware of the lack of a positive norm requiring a detaining authority to fund family visits to detained persons stated that, in contrast to the option considered in the Court's study of funding an annual visit from a family of seven persons (the partner and six children), it would be desirable to endeavour to fund two or three visits by a limited number of persons, in this case two or three. This would therefore allow a rotation of sorts among visits and visitors. As a result, the Registry suggested two visits by three persons or three visits by two persons at key moments in the life of the family or the detained person or even the judicial process. This suggestion, which was accepted by the Registry's discussion partners and the Court itself, was submitted both to the Committee on Budget and Finance and the Assembly of States Parties in the report approving the study. This adjustment responds, as does the issue of legal assistance paid by the Court, to a concern to aid or assist detained indigent persons, to flexible approaches and also to the conditions for managing public funds without which the Registrar would be unable to fund such visits.

8- The Host State grants a 45-day visa per person per year, which thus amounts to three 15-day visits. 15 days are considered to be an appropriate period neither too short nor too long for children, for example. However, the Registrar intends to make exceptions to these measures if the duration of separation from the family prior to transfer exceeds 18 months and/or if the

⁶ Official Documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court, sixth session, New York, 30 November – 14 December 2007 (International Criminal Court publication, ICC-ASP/6/12), vol I, part III, resolution ICC-ASP/6/Res.2.

threefold rotation of two members of a large family does not allow the detained person to see his or her entire family within a reasonable timeframe.

- 9- From a practical perspective, three visits from two family members – one adult and one child under the age of 18; two children over 18; one adult child and one child under the age of 18 – would be spread over the year. This involves, *inter alia*, additional criteria allowing family visits to indigent detained persons to be funded. These criteria in particular played a part in the States Parties' decision to approve the Court's proposed 2009 budget, so as to allow the funding of the family visits to the three indigent detained persons currently at the detention centre.

2- Financial constraints

- 10- Pursuant to the States Parties Resolution of 14 December 2007,⁷ the Court submitted a report on family visits to indigent detained persons in which the budgets permitting the funding of family visits to date are clearly set out.⁸ The Registrar wishes to highlight the budgets allocated or used in order to provide further information to the Presidency about the financial constraints associated with the funding of these visits.

- 11- In 2006, there was no budget for such visits and the funds which enabled the first family visit to a person detained by the Court to be organised were drawn from the unexpended balance of the Detention Section's budget. In 2007, family visits were funded from the "Travel" component of the Detention Section's budget. In the Court's 2008 budget, the Registrar obtained €31,700 to fund the family visit by nine persons (two visits by the spouse and one visit by

⁷ Ibid.

⁸ Report of the Court on family visits to indigent detained persons, ICC-ASP/7/24.

the spouse and six children, for example). This amount was allocated at the same time the Court was asked to prepare a report on the matter.

12- Taking into account the successive admission of two new detained persons whose indigence might subsequently be established, the Registrar has contemplated the possibility of using the Contingency Fund to fund the family visits to the new detained persons. These funds have never been allocated, which means that for all the family visits to the three detained indigent persons, only €31,700 could be used, especially since at its eleventh session held in September 2008,⁹ the Committee on Budget and Finance did not follow the Court's suggestion to use the Contingency Fund, whilst favouring the adoption of the Court's proposed 2008 budget amounting to €40,500 for the family visits to the three indigent detained persons.

13- The resulting budget allocated by the States at their seventh session may only be used sparingly and responsibly so as to allow each detained person to receive two or three visits a year. It is not a matter of restricting the right of detained persons to family visits, or even less so their right to maintain ties with their families. Given the absence of a positive obligation to fund family visits to indigent detained persons and given the absence of a practice similar to that of the Court in international courts or even domestic systems, – that is the funding of family visits to detained persons whose relatives live overseas – at issue here is the provision, within the limits of the public funds allocated, of financial assistance to the indigent detained persons so that they can continue to communicate with and maintain ties with their close relatives. These financial constraints do not entail any *de facto* rigidity in the application of those criteria on which the funding of family visits is based but do require that the available funds be carefully managed.

⁹ Report of the Committee on Budget and Finance on the work of its eleventh session, ICC-ASP/7/15, para. 68.

14- The case remains that, within the limits of the funds enabling family visits to each detained person to be covered, when the composition of the group of visitors so allows, the Registrar may decide on a case-by-case basis, as already emphasised above, as well as in her decision of 18 November, to introduce some easing of the restrictions. It was in this spirit and in consultation with the Chief Custody Officer, that it was suggested to Mr Mathieu Ngudjolo Chui that he initially be visited by three, rather than two, family members.

15- The only guarantee which can be given to each indigent detained person is an entitlement to two or three visits in 2009 according to those criteria which have already been mentioned and within the limits of the funds approved by the States.

16- It is appropriate to recall that in addition to the budget allocated by the States for 2009, consultations between the States and the Court will continue so that at the next session to take place in late 2009, a final decision will be taken on whether or not the Court intends to continue funding family visits and if so, under which conditions.

[signed]
Marc Dubuisson
Director, Division of Court Services
on behalf of
Silvana Arbia
Registrar

Dated this 12 December 2008

At The Hague, the Netherlands