

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-RoR220-04/19

Date: 26 November 2019

THE PRESIDENCY

Before: Judge Chile Eboe Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM***

**Confidential
available only to the Registrar and Defence**

**Registry Submission on "Yekatom Defence Request for Review the Registrar's
Family Visit Decision"**

Source: Registry

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

The Office of the Prosecutor

Counsel for the Defence

Me Mylène Dimitri

Mr Peter Robinson

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

**Victims Participation and Reparations
Section**

Other

I - Introduction

1. Pursuant to regulation 220(4) of the Regulations of the Registry ("RoR"), the Registry submits its observations on the "Yekatom Defence Request for Review the Registrar's Family Visit" ("Request for Review"). The Request for Review is irreceivable as it stands given that the "Complaints Procedure" under Section 5 of Chapter V of the Regulations of the Registry ("RoR") has not been followed.

II - Classification

2. In accordance with regulation 23 *bis*(2) of the Regulations of the Registry ("RoC"), the present submission is confidential, only available to the Presidency and the Defence as it cites *verbatim* information contained in the confidential annexes to the Request. Should the Presidency so order, the Registry stands ready to reclassify the present submissions as public, with redactions as the case may be.

III – Applicable Law

3. The following provisions are of particular relevance to the present submissions: regulations 23 *bis* and 33 of the Regulation of Court ("RoC") and regulations 217 to 220 of the Regulations of the Registry ("RoR").

IV – Procedural history

4. On 30 September 2019, the Defence filled-in the standard form as appended to the Family Visits Policy to request a funded family visit ("Request for Family Visit"),¹ and submitted it to the Chief Custody Officer ("CCO"). On 3 October 2019, three days after having submitted the Request for Family Visit, the Defence renewed its request sending a letter to the Director of Division of Judicial Services ("DJS").²

¹ Confidential Annex 1 to the Request for Review.

² Confidential Annex A to the Request for Review.

5. On 15 October 2019, upon the Defence's request, the Director of DJS updated the Defence on the status of the Request, namely that the funds in the Trust Fund for Family Visit ("TFFV") are still depleted, and that the Registry is pursuing alternative feasible solutions to replete the TFFV.³
6. On 11 and 14 November 2019 respectively, and following an email exchange on a Defence's proposal to use unspent funds from the Defence team expense account, the Registry reiterated its position that it was "working on the matter" (i.e. trying to find solutions to replete the TFFV),⁴ advised that there are currently no alternative means to support the family visit on a temporary basis pending the donation of funds and that the Defence will be informed by the Detention Section when there will be available funds in the TFFV.⁵
7. On 18 November 2019, the Defence filed its Request for Review directly before the Presidency. The Request for Review was notified the following day on 19 November 2019.

V - Submissions

8. Following the Request for Review notified on 19 November 2019, the Registrar was unable to transmit to the Presidency within two working days in accordance with regulation 220(2) of the RoR: the complaint made under regulation 218(1) of the RoR (i.e. standard form 1 complaint); the request for review made under regulation 219(1) of the RoR (i.e. standard form 2 request for administrative review by the Registrar); and the Registrar's decision made under regulation 219(3) of the RoR and all other supporting documents because these documents do not exist.

³ Confidential Annex B to the Request for Review.

⁴ Confidential Annex F to the Request for Review.

⁵ Confidential Annex H to the Request for Review.

9. The Registrar submits that, in the present case, the Defence has not respected the complaint procedure since no complaint following the standard form 1 was ever submitted to the CCO. Such a complaint can be made at any time, assists in understanding the Defence's arguments and is required under regulation 218(1) of the RoR. Absent such a complaint, no final decision was ever made by the CCO or, for that matter the Registrar (i.e. decision under regulation 218(5) of the RoR), on the Request for Family Visit and no request for review following the standard form 2 was ever submitted to, much less decided by, the Registrar pursuant to 219(3) of the RoR. Arguments by counsel as typically developed in the standard form 2 request for administrative review are crucial for the Registrar to review a CCO decision in a meaningful manner.

10. Such an administrative review by the Registrar under regulation 219 of the RoR is not only a mandatory step before seeking judicial review before the Presidency but is also warranted for the sake of efficiency of the complaint procedure. In particular, it serves the purpose of streamlining all arguments and possible counter arguments so as to seize the Presidency of the crux of the matter only. In the present case, the Registrar did not have the benefit to review any decision in light of the criteria to be applied to grant or refuse a Request for Family Visit. These criteria are multiple and go beyond the mere availability of funds in the TFFV. They include, inter alia, indigence, family circumstances – a “flexible” criterion which may include a broad range of relevant factors -, availability of funds and equal treatment between detained persons.⁶

11. Here, the Defence filed its Request for Family Visit both before the CCO on 30 September 2019 and followed-up on it by sending a letter to the Director of DJS on

⁶ See for example, Presidency, 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. 47-49; Presidency, 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", 30 August 2016, ICC-RoR221-02/16-3-Red, paras. 31 and 33, referring to the ICC-ASP/8/Res.4 of 26 November 2009 on the funding of family visits for indigent detainees and paras. 49 and 50 of the Family Visits Policy.

3 October 2019. The response emails by and on behalf of the Director of DJS dated 15 October, 11 and 14 November 2019, were triggered by (1) a request for update by the Defence with regard to the availability of funds in the TFFV and (2) a Defence's proposal for alternative funding. Absent a CCO's decision on the Request for Family Visit, the Defence interacted with the DJS directly as opposed to the CCO.

12. In the email dated 15 October 2019, with a view to giving accurate and up-to-date information to the Defence, the DJS's Director merely indicated to the Defence that the Registry - as a whole -, and especially the Division of External Operations, was working on securing funds to replete the TFFV. Accordingly, the DJS's Director specified the following: *"[S]hould you wish to receive more specific information in relation to the engagement with States, you may consider reaching out to the Division of External Operations who may be in a better position to further explain".*⁷ In light of the above, the 15 October 2019 email was informative in nature and did not amount to a denial decision of the Request for Family Visit appealable before the Presidency.

13. Further, the last email by DJS of 14 November 2019 clearly indicated, on the one hand, *"there are currently no alternative means to support the family visit on a temporary basis pending the donation of funds"*.⁸ On the other hand, the DJS specified *"[I]n relation to the deployment of funds (or alternative means) when available, we will ask the Detention Section to be in touch with you regarding Mr Yekatom's family visit request"*.⁹ The 14 November 2019 email, together with the other emails exchanged with the Defence mentioned above, was merely updating the Defence on the status of the Request for Family Visit. They cannot be considered *a posteriori* as a final refusal decision by the CCO on a complaint by the Defence, let alone a final refusal decision by the Registrar on a request for review of any CCO decision.

⁷ Confidential Annex B to the Request for Review.

⁸ Confidential Annex H to the Request for Review.

⁹ *Ibid.*

14. Even assuming that, despite the absence of any complaint before the CCO, the Director of DJS had indeed taken a final negative decision on the Request for Family Visit on behalf of the CCO, which was not the case, it remains that the Defence should have sought administrative review before the Registrar in accordance with regulation 219(1) of the RoR prior to seizing the Presidency of its request for judicial review.
15. In light of the above, the Registrar submits that the Request for Review as filed before the Presidency is irreceivable.



Peter Lewis, Registrar

Dated this 26 November 2019

At The Hague, the Netherlands