

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR220-02/23**
Dated: **13 September 2023**
Date of original: **7 August 2023**

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

Public redacted version of “Decision on the ‘Application for Judicial Review of the Registrar’s “Decision on the Request for Review by Mr Patrice-Edouard Ngaïssona concerning certain issues of food in detention””, dated 17 May 2023 (ICC-RoR220-02/23-1-Conf)” dated 7 August 2023 (ICC-RoR220-02/23-3-Conf-Exp)

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

The Office of the Prosecutor

Counsel for the Defence of Mr Ngaïssona
Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx

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 Osvaldo Zavala Giler

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 Patrice-Edouard Ngaïssona (‘Mr Ngaïssona’) dated 17 May 2023, seeking judicial review pursuant to regulation 220 of the Regulations of the Registry (the ‘Regulations’) of a decision of the Registrar issued on 9 May 2023 (the ‘Application’).¹ The Application requests the Presidency to order the Registrar to provide the items from the ‘Africa Shop List’ free of charge or, alternatively, to provide sufficient funds to buy items from the list.²

I. PROCEDURAL HISTORY

1. On 16 August 2019, Mr Ngaïssona filed a complaint to the Chief Custody Officer (the ‘CCO’) regarding the provision of food at the Detention Centre, claiming, *inter alia*, that the Detention Centre had failed to provide Mr Ngaïssona ‘with affordable quality food that is consistent with his cultural requirements’ (the ‘Initial Complaint’).³ Mr Ngaïssona argued that he was unable to afford the food items on the Africa Shop List due to their elevated prices and that the food provided by the Detention Centre was not prepared in accordance with his culture.⁴ This complaint was rejected by the CCO on 30 August 2019 as not justified.⁵
2. On 20 September 2019, following a request for review by Mr Ngaïssona to the Registrar on 9 September 2019,⁶ the Registrar issued a decision requesting that an inquiry be conducted into issues concerning the provision of food in the Detention Centre, noting, *inter alia*, that Mr Ngaïssona had raised ‘important systemic policy issues regarding the provision of food in the detention centre’ (the ‘First Registrar’s Decision’).⁷ The said

¹ Defence for Mr Patrice-Edouard Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Application for Judicial Review of the Registrar’s “Decision on the Request for Review by Mr Patrice-Edouard Ngaïssona concerning certain issues of food in detention”, 17 May 2023, ICC-RoR220-02/23-1-Conf, para. 8.

² Application, ICC-RoR220-02/23-1-Conf, paras 2, 14, 37.

³ Registry, Complaint, 16 August 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, p. 3, *annexed to* Registry, Third Registry Report pursuant to Regulation 221(2) of the Regulations of the Registry, 31 January 2020, ICC-RoR221-01/20-1-Conf-Exp (the ‘Third Registry Report’).

⁴ Initial Complaint, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 3-7.

⁵ Registry, CCO Decision, 30 August 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 9, 13, *annexed to* Third Registry Report, ICC-RoR221-01/20-1-Conf-Exp.

⁶ Registry, Request for Review, 9 September 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 14-15, 19-20, *annexed to* Third Registry Report, ICC-RoR221-01/20-1-Conf-Exp.

⁷ Registrar, Decision on Mr Ngaïssona’s Complaint to the Registrar received 9 September 2019, 20 September 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, p. 27, *annexed to* Third Registry Report, ICC-RoR221-01/20-1-Conf-Exp.

decision deferred consideration of the relief requested by Mr Ngaïssona until 18 November 2019.⁸

3. On 18 November 2019, following the receipt of a preliminary report from the Director of the Division of Judicial Services, the Registrar issued a second decision on Mr Ngaïssona's request for review of 9 September 2019, communicating that the initial inquiry indicated a need for a further full inquiry, with the Registrar to issue a decision on Mr Ngaïssona's complaint of 16 August 2019 pending the outcome of such full inquiry (the 'Second Registrar's Decision').⁹
4. On 20 December 2019, Mr Ngaïssona made a complaint to the Registrar, arguing that the Second Registrar's Decision to postpone the decision on the Initial Request constituted undue delay and requesting that the Registrar put in place provisional measures pending the outcome of the full inquiry.¹⁰ On 31 December 2019, the Registrar rejected the request for provisional measures, stating that the full inquiry was scheduled to be completed by the end of March 2020 and confirmed the expectation that the Registrar would be able to render a decision on the matters raised by Mr Ngaïssona shortly thereafter (the 'Third Registrar's Decision').¹¹
5. On 2 April 2020, following a request to the Registrar from Mr Ngaïssona to reconsider the Third Registrar's Decision,¹² the Registrar issued a decision in which he indicated that his final decision on the matter of provision of food in detention would be taken upon completion of the inquiry, but indicated that the inquiry, originally scheduled to end in March 2020, had been impeded by the COVID-19 pandemic (the 'Fourth Registrar's Decision').¹³

⁸ First Registrar's Decision, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 27-28.

⁹ Registrar, Second Decision on Mr Ngaïssona's Complaint to the Registrar received 9 September 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 30-32, *annexed to* Third Registry Report, ICC-RoR221-01/20-1-Conf-Exp.

¹⁰ Registry, Complaint, 20 December 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 33, 37, *annexed to* Third Registry Report, ICC-RoR221-01/20-1-Conf-Exp.

¹¹ Registrar, Decision on Mr Ngaïssona's Complaint to the Registrar received 20 December 2019, 31 December 2019, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 41-44, *annexed to* Third Registry Report, ICC-RoR221-01/20-1-Conf-Exp.

¹² Registry, Complaint, 18 March 2020, ICC-RoR221-02/20-1-Conf-Exp-AnxI, *annexed to* Registrar, Fourth Registry Report pursuant to Regulation 221(2) of the Regulations of the Registry, ICC-RoR221-02/20-1-Conf-Exp (the 'Fourth Registry Report').

¹³ Registrar, Decision on Mr Ngaïssona's Complaint to the Registrar received 18 March 2019 [*sic*], 2 April 2020, ICC-RoR221-02/20-1-Conf-Exp-AnxI, p. 16, *annexed to* Fourth Registry Report, ICC-RoR221-02/20-1-Conf-Exp.

6. On 17 August 2020, Mr Ngaïssona requested the Presidency to intervene in his complaint concerning the provision of food in the Detention Centre.¹⁴ On 20 August 2020, the Presidency rejected this request as inadmissible, noting the absence of a decision subject to review under regulation 220(1) of the Regulations.¹⁵ The Presidency suggested that any outstanding issues should first be addressed to the Registrar pursuant to regulation 218(1) of the Regulations and expressed that it ‘hope[d] that the inquiry in process and the issues arising in connection to it will be resolved as promptly as possible by the Registrar’.¹⁶
7. On 26 August 2020, Mr Ngaïssona addressed a subsequent complaint to the Registrar pursuant to regulations 217(1), 218(1) and 222 of the Regulations, requesting the Registrar, *inter alia*, to make a decision on the Initial Complaint, submitting that the delay in resolving this issue amounted to undue delay.¹⁷ On 10 September 2020, the Registrar rejected the complaint and clarified that the inquiry was now finalised and that the report of the food experts identified ways forward on how to generally improve the food services in detention.¹⁸ The Registrar posited that since the Court [REDACTED].¹⁹ The Registrar was mindful of the delay in fully implementing the First Registrar’s Decision, but considered that this did not constitute undue delay, as the resolution of the matter was ongoing and the delay was caused by events outside of his control.²⁰
8. On 9 March 2021, the Registrar issued a further decision in relation to Mr Ngaïssona’s Initial Complaint (the ‘Fifth Registrar’s Decision’).²¹ The Registrar explained that the

¹⁴ Defence for Mr Patrice-Edouard Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Request to order the Registrar to implement the Registrar’s Decision on Mr Ngaïssona’s Complaint delivered on 20 September 2019, 17 August 2020, ICC-RoR220-02/20-1-Conf.

¹⁵ Presidency, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the ‘Request to order the Registrar to implement the Registrar’s Decision on Mr Ngaïssona’s Complaint delivered on 20 September 2019’ dated 17 August 2020 (ICC-RoR220-02/20-1-Conf), 20 August 2020, ICC-RoR220-02/20-2-Conf, para. 12 (the ‘Presidency Decision of 20 August 2020’).

¹⁶ Presidency Decision of 20 August 2020, ICC-RoR220-02/20-2-Conf, para. 12.

¹⁷ Registry, Complaint, 26 August 2020, ICC-RoR221-01/21-1-Conf-Exp-AnxIII, pp. 2, 5-7, *annexed to* Registry, Fifth Registry Report pursuant to Regulation 221(2) of the Regulations of the Registry, 1 February 2021, ICC-RoR221-01/21-1-Conf-Exp (the ‘Fifth Registry Report’).

¹⁸ Registrar, Decision on Mr Ngaïssona’s Complaint to the Registrar received 26 August 2020, 10 September 2020, ICC-RoR221-01/21-1-Conf-Exp-AnxIII, pp. 9, 17-18 (the ‘Registrar’s Decision of 10 September 2020’), *annexed to* Fifth Registry Report, ICC-RoR221-01/21-1-Conf-Exp.

¹⁹ Registrar’s Decision of 10 September 2020, ICC-RoR221-01/21-1-Conf-Exp-AnxIII, p. 18.

²⁰ Registrar’s Decision of 10 September 2020, ICC-RoR221-01/21-1-Conf-Exp-AnxIII, p. 18.

²¹ Registrar, Fifth Decision to implement the Registrar’s Decision on Mr Ngaïssona’s initial complaint delivered on 20 September 2019, 9 March 2021, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, *annexed to* Registry, Sixth Registry Report pursuant to Regulation 221(2) of the Regulations of the Registry, 30 July 2021, ICC-RoR221-02/21-1-Conf-Exp.

[REDACTED].²² The Registrar noted that [REDACTED] will continue in order to improve the provision of food in detention’,²³ and clarified being ‘now in a position to [REDACTED].²⁴ In addition, the Registrar maintained that he would first need to [REDACTED] before making any final decisions on individual food complaints.²⁵ With regard to the prices of items on the Africa Shop List, the Registrar noted that [REDACTED] he is ‘well aware of this pricing issue, which needs to be resolved once for all’, and accordingly, [REDACTED], decided to increase, on a temporary basis, Mr Ngaïssona’s weekly allowance [REDACTED].²⁶

9. Accordingly, although five decisions have been rendered by the Registrar pertaining to the provision of food at the Detention Centre following Mr Ngaïssona’s Initial Complaint of 16 August 2019, the core issue of whether Mr Ngaïssona is provided with food which take into account his cultural [REDACTED] requirements, pursuant to regulation 199 of the Regulations, has yet to be determined by the Registrar.
10. On 28 March 2023, Mr Ngaïssona submitted a complaint to the CCO pursuant to regulations 217, 218 and 222 of the Regulations, stating that regulation 222 of the Regulations allows a detained person to renew a complaint if it raises additional matters (the ‘Complaint’).²⁷ Mr Ngaïssona submitted that the meals he received for breakfast and lunch on days he attends court hearings did not meet the necessary quality and nutritional requirements considering [REDACTED] and were not culturally appropriate, as required by regulation 199 of the Regulations.²⁸ He also claimed that at times, items, [REDACTED], are removed from the Africa Shop List and necessities, [REDACTED], become unavailable.²⁹ Mr Ngaïssona also submitted that the prices of the items of the Africa Shop List are increasing regularly, that although this increase could be justified by the current inflation, this issue appears to persists since 2020, and that orders of these items are sometimes charged excessively or by mistake.³⁰

²² Fifth Registrar’s Decision, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, para. 30.

²³ Fifth Registrar’s Decision, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, para. 31.

²⁴ Fifth Registrar’s Decision, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, para. 32.

²⁵ Fifth Registrar’s Decision, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, para. 32.

²⁶ Fifth Registrar’s Decision, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, paras 42-43.

²⁷ Defence for Mr Patrice-Edouard Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Complaint, 28 March 2023, ICC-RoR220-02/23-1-Conf-AnxA, p. 3, *annexed to* Application, ICC-RoR220-02/23-1-Conf.

²⁸ Complaint, ICC-RoR220-02/23-1-Conf-AnxA, pp. 3-5.

²⁹ Complaint, ICC-RoR220-02/23-1-Conf-AnxA, pp. 5-6.

³⁰ Complaint, ICC-RoR220-02/23-1-Conf-AnxA, p. 6.

11. On 12 April 2023, the CCO rejected the Complaint as unjustified, explaining that the lunch packages provided to Mr Ngaïssona on days he attends court hearings [REDACTED] requirements (the ‘CCO Decision’).³¹ The CCO stated that [REDACTED].³² The CCO further explained that [REDACTED].³³ With regard to the cultural appropriateness of the meals provided, the CCO considered that since the Initial Complaint is still pending before the Registrar, this part of the Complaint was moot.³⁴ The CCO recalled that [REDACTED] the possibility to change items from the shopping lists, the issue with the provision of [REDACTED] was already solved and [REDACTED] can be bought by detained persons.³⁵ With regard to the increase of prices of items on the Africa Shop List, the CCO noted that the food allowance of the detained persons had already been increased in 2021 as part of the Fifth Registrar’s Decision.³⁶ With regard to issues with orders from the food shopping lists, the CCO indicated taking ‘responsibility to make their best efforts to promptly resolve any issues and discrepancies on prison shop orders, and provide detained persons with swift replies and reimbursements of the non-delivered products’.³⁷ Finally, the CCO noted that issues such as the temporary unavailability of the [REDACTED] and problems about the billing system of the food shopping lists should not be addressed in a complaint but rather, directly with the custody officers.³⁸
12. On 24 April 2023, Mr Ngaïssona submitted a request for review of the CCO Decision to the Registrar pursuant to regulation 219(1) of the Regulations, claiming that the CCO reached an unreasonable decision [REDACTED] (the ‘Request for Review’).³⁹ In that regard, Mr Ngaïssona specified that the provision of inappropriate food is a systemic issue and the issue at stake is a matter of provision of food [REDACTED].⁴⁰ Mr Ngaïssona also claimed that the CCO relied on irrelevant factors such as [REDACTED]

³¹ Defence for Mr Patrice-Edouard Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, CCO Decision, 17 May 2023, ICC-RoR220-02/23-1-Conf-AnxA, pp. 8, 10, 15, *annexed to* Application, ICC-RoR220-02/23-1-Conf.

³² CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, pp. 11-12.

³³ CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, p. 11.

³⁴ CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, p. 12.

³⁵ CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, pp. 12-13.

³⁶ CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, p. 13.

³⁷ CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, p. 14.

³⁸ CCO Decision, ICC-RoR220-02/23-1-Conf-AnxA, pp. 13-14.

³⁹ Defence for Mr Patrice-Edouard Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Request for Review, 24 April 2023, ICC-RoR220-02/23-1-Conf-AnxB, paras 3, 10-13, *annexed to* Application, ICC-RoR220-02/23-1-Conf.

⁴⁰ Request for Review, ICC-RoR220-02/23-1-Conf-AnxB, paras 12-13, 21.

will not address the systemic problem with the provision of culturally appropriate food to detained persons, nor the issues of missing items from the Africa Shop List.⁴¹ Mr Ngaïssona further asserted that the CCO failed to take into account relevant factors, namely the current inflation and the high prices of the food items on the Africa Shop List.⁴² Finally, Mr Ngaïssona submitted that the issues at stake should not be resolved internally, as indicated by the CCO, but, rather, through the complaint procedure, as those issues are reoccurring and affect Mr Ngaïssona's well-being.⁴³ Mr Ngaïssona asked the Registrar, *inter alia*, to establish a deadline for rendering a decision on his Initial Complaint, order the implementation of measures to ensure that the supply of [REDACTED] culturally appropriate food is not disrupted and increase his weekly allowance.⁴⁴

13. On 9 May 2023, the Registrar dismissed the Request for Review, holding that it was not advisable to render a decision on Mr Ngaïssona's original complaint of 16 August 2019 before the [REDACTED] (the 'Impugned Decision').⁴⁵
14. On 17 May 2023, Mr Ngaïssona filed the present Application seeking judicial review of the Impugned Decision pursuant to regulation 220(1) of the Regulations, requesting the Presidency to quash the Impugned Decision and order the Registrar to provide Mr Ngaïssona, free of charge, the items in the Africa Shop List or, alternatively, sufficient funds to buy items from the Africa Shop List.⁴⁶
15. On 22 May 2023, the Registrar transmitted the supporting documents to the Presidency in accordance with regulation 220(3) of the Regulations (the 'Registry Transmission').⁴⁷ The Registrar did not submit any observations pursuant to regulation 220(4) of the Regulations.

⁴¹ Request for Review, ICC-RoR220-02/23-1-Conf-AnxB, paras 14-17.

⁴² Request for Review, ICC-RoR220-02/23-1-Conf-AnxB, paras 18-19.

⁴³ Request for Review, ICC-RoR220-02/23-1-Conf-AnxB, paras 20-22.

⁴⁴ Request for Review, ICC-RoR220-02/23-1-Conf-AnxB, paras 4, 23.

⁴⁵ Defence for Mr Patrice-Edouard Ngaïssona, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Impugned Decision, 9 May 2023, ICC-RoR220-02/23-1-Conf-AnxC, para. 25, *annexed to* Application, ICC-RoR220-02/23-1-Conf.

⁴⁶ Application, ICC-RoR220-02/23-1-Conf, paras 2, 14, 37.

⁴⁷ Registrar, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transmission pursuant to Regulation 220(3) of the Regulations of the Registry, 22 May 2023, ICC-RoR220-02/23-2-Conf-Exp, para. 2.

II. THE IMPUGNED DECISION

16. The Registrar notes that the Request for Review relates ultimately to the right to food enshrined in regulation 199 of the Regulations and that certain aspects of the request, in particular those relating to the cultural appropriateness of the food to which Mr Ngaïssona has access in the Detention Centre, raise broader implications for the management of the Detention Centre.⁴⁸ The Registrar considers that [REDACTED].⁴⁹ The Registrar also considers that, in that context, it is not advisable to establish a deadline for rendering a decision on the Initial Complaint, at least until [REDACTED].⁵⁰ In this respect, the Registrar considers that the reference to [REDACTED] cannot be considered as an irrelevant factor to the assessment of the Complaint, as submitted by Mr Ngaïssona.⁵¹
17. The Registrar also rejects Mr Ngaïssona's request for an increase of the weekly allowance received by detained persons at the Detention Centre, holding that such allowance was increased [REDACTED] in 2021, which is well above the inflation rates provided by Mr Ngaïssona, and that this is an exceptional entitlement not prescribed in the Court's legal framework and well above the [REDACTED].⁵² The Registrar further notes that detained persons [REDACTED].⁵³
18. The Registrar further notes that many issues raised in the Request for Review, which Mr Ngaïssona considers as evidence of a systemic problem with the provision of culturally appropriate food, have already been solved.⁵⁴ This concerns, in particular, the provision of [REDACTED] for breakfast and lunch, the availability of some items in the Africa Shop List and the alleged lack of transparency with respect to receipts for purchases made from the said list.⁵⁵ The Registrar considers, in the absence of more specific submissions or evidence, these submissions as moot.⁵⁶ Finally, as regards the provision of [REDACTED], the Registrar notes that Mr Ngaïssona is provided with reasonable alternatives that meet the requirements of regulation 197(1) of the Regulations.⁵⁷

⁴⁸ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, paras 21-22.

⁴⁹ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, paras 24-25.

⁵⁰ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, para. 25.

⁵¹ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, para. 24.

⁵² Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, paras 26-27.

⁵³ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, fn. 42.

⁵⁴ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, para. 28.

⁵⁵ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, para. 28.

⁵⁶ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, para. 28.

⁵⁷ Impugned Decision, ICC-RoR220-02/23-1-Conf-AnxC, para. 29.

III. THE APPLICATION

19. Mr Ngaïssona requests that the Presidency quashes the Impugned Decision and order the Registrar to provide him, free of charge, items from the Africa Shop List or, alternatively, sufficient funds to buy items from the list.⁵⁸ Mr Ngaïssona submits that the issues assessed by the Registrar in the Impugned Decision were raised several times in the past by Mr Ngaïssona but that this Application raises additional matters, as required by regulation 222 of the Regulations.⁵⁹
20. First, Mr Ngaïssona submits that the Registrar erred in law by deciding to defer his decision on Mr Ngaïssona's Initial Complaint, [REDACTED].⁶⁰ According to Mr Ngaïssona, this illustrates the Registrar's unwillingness to take measures to address the situation, and constitutes 'an error of law by not interpreting [regulation 199 of the Regulations] correctly'.⁶¹ Mr Ngaïssona explains that the regular meals, as well as the meals labelled 'African meals', provided at the Detention Centre, are not culturally acceptable, and therefore, detained persons must resort to buying food items from the Africa Shop List.⁶² The 'exorbitant prices' of these items, however, and the 'limited allowance' they are given prevent them from enjoying their right to culturally appropriate food under regulation 199(1) of the Regulations.⁶³
21. Second, Mr Ngaïssona submits that the Registrar failed to act with procedural fairness.⁶⁴ According to Mr Ngaïssona, the Impugned Decision lacks reasoning, as it merely refers to the [REDACTED].⁶⁵ Mr Ngaïssona also claims that the information about [REDACTED] in the CCO Decision and the Impugned Decision is contradictory,⁶⁶ and that, in any case, [REDACTED] will not address the concrete issues raised in the Complaint and the Request for Review.⁶⁷
22. Third, Mr Ngaïssona submits that the Registrar took into account irrelevant factors regarding the food allowance received by the detained persons at the Detention Centre.

⁵⁸ Application, ICC-RoR220-02/23-1-Conf, paras 2, 14, 37.

⁵⁹ Application, ICC-RoR220-02/23-1-Conf, paras 1-2.

⁶⁰ Application, ICC-RoR220-02/23-1-Conf, para. 17.

⁶¹ Application, ICC-RoR220-02/23-1-Conf, para. 17.

⁶² Application, ICC-RoR220-02/23-1-Conf, para. 18.

⁶³ Application, ICC-RoR220-02/23-1-Conf, para. 18.

⁶⁴ Application, ICC-RoR220-02/23-1-Conf, paras 20-25.

⁶⁵ Application, ICC-RoR220-02/23-1-Conf, paras 20-22.

⁶⁶ Application, ICC-RoR220-02/23-1-Conf, paras 23-24.

⁶⁷ Application, ICC-RoR220-02/23-1-Conf, para. 25.

Mr Ngaïssona submits that the information [REDACTED], were irrelevant to the present case.⁶⁸

23. Fourth, Mr Ngaïssona claims that the Registrar failed to consider relevant factors in reaching the Impugned Decision, namely that since the prepared meals received at the Detention Centre are not culturally appropriate, Mr Ngaïssona has to resort to buying food from the Africa Shop List, but his weekly allowance does not suffice to cover his expenses since the prices of the items on the list are costly and have increased significantly due to recent inflation.⁶⁹ In that regard, Mr Ngaïssona argues that the increase of allowance in 2021 pre-dates the ‘brutal inflation of 2022’ and fails to cover the ‘drastic increase’ in prices of the items on the Africa Shop List.⁷⁰

24. Finally, Mr Ngaïssona asserts that in finding that in the absence of more specific submissions or evidence, there was no systemic problem with the food distribution system at the Detention Centre, the Registrar failed to take into account the various exchanges between the Detention Centre and the Defence of Mr Ngaïssona on these issues in the last four year.⁷¹ Mr Ngaïssona argues that regulation 218(4) of the Regulations allows the Registrar to investigate a complaint thoroughly where it is appropriate and that it would have been appropriate to do so in the circumstances,⁷² and would have led to Registrar to uncover several emails exchanged between the Detention Centre and the Defence of Mr Ngaïssona detailing incidents in relation to provision of food.⁷³ According to Mr Ngaïssona, the incidents he mentioned in his Request for Review were the most recent ones at the time of submission and demonstrate a series of issues stemming from the ineffective food distribution system at the Detention Centre.⁷⁴ Mr Ngaïssona claims that in any event, the Registrar was aware of Mr Ngaïssona’s Initial Complaint of 16 August 2019 as well as the food experts’ report of 2020, addressing the same issues.⁷⁵

⁶⁸ Application, ICC-RoR220-02/23-1-Conf, paras 26-29.

⁶⁹ Application, ICC-RoR220-02/23-1-Conf, para. 30.

⁷⁰ Application, ICC-RoR220-02/23-1-Conf, para. 31.

⁷¹ Application, ICC-RoR220-02/23-1-Conf, para. 33.

⁷² Application, ICC-RoR220-02/23-1-Conf, para. 33.

⁷³ Application, ICC-RoR220-02/23-1-Conf, para. 35.

⁷⁴ Application, ICC-RoR220-02/23-1-Conf, paras 34-35.

⁷⁵ Application, ICC-RoR220-02/23-1-Conf, para. 36.

IV. DETERMINATION OF THE PRESIDENCY

A. Standard for judicial review and applicable law

25. 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.⁷⁶
26. In respect of applicable law, the Presidency recalls that regulation 199(1) of the Regulations provides the following:

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.

B. Merits

27. The Presidency considers that the overarching issue arising from the Application is whether Mr Ngaïssona's right to be provided with culturally [REDACTED] appropriate food, afforded to him pursuant to regulation 199 of the Regulations, is being respected.
28. The Presidency is of the view that making this determination requires that the Application be examined in the broader context of Mr Ngaïssona's Initial Complaint of 16 August 2019, as set out in paragraphs 1 to 15 above. The Presidency notes, in particular, that while the Registrar recognised that Mr Ngaïssona raised 'important systemic policy issues regarding the provision of food in the detention centre' in the Initial Complaint

⁷⁶ 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.

and the related subsequent request for review,⁷⁷ the Registrar has, until now, deferred taking a decision on Mr Ngaïssona's grievance on the food provided at the Detention Centre. On 20 September 2019, the Registrar deferred his decision on this matter until 18 November 2019.⁷⁸ On 18 November 2019, 31 December 2019 and 2 April 2020, the Registrar deferred his decision until the completion of the food inquiry.⁷⁹ On 10 September 2020 and 9 March 2021, although the food inquiry had been finalised, the Registrar deferred his decision until [REDACTED].⁸⁰ More than two years later, the Registrar, in the Impugned Decision, determined that given that [REDACTED], it was not advisable to establish a deadline for rendering a decision on Mr Ngaïssona's Initial Complaint.⁸¹ Accordingly, the Presidency observes that the issues arising from the Initial Complaint are outstanding since Mr Ngaïssona made the Initial Complaint in 2019.

29. The Presidency acknowledges the complexity of the procedural history leading to the Application. It also acknowledges that steps have been taken by the Registrar concerning the provision of food in the Detention Centre since the Initial Complaint was made in 2019, notably by requesting that an inquiry be conducted into these matters. In the Presidency's view, these contextual elements indicate that the issues raised by Mr Ngaïssona in relation to the appropriateness of the food in the Detention Centre are not manifestly unfounded. The Presidency considers, therefore, that Mr Ngaïssona had a reasonable expectation that a decision be taken by the Registrar on his Initial Complaint in a timely manner.
30. The Presidency also acknowledges that some of the reasons preventing the Registrar from issuing a decision on the Initial Complaint were out of his control, notably the impediments created by the COVID-19 pandemic in the completion of the food inquiry and the time required to [REDACTED]. That being said, the Presidency notes that four years have elapsed since Mr Ngaïssona made his Initial Complaint. The Presidency finds that this clearly constitutes an unreasonable delay. This is all the more so given that the Presidency has, in a recent decision, reiterated the entitlement of detained persons to be

⁷⁷ First Registrar's Decision, ICC-RoR221-01/20-1-Conf-Exp-AnxI, p. 27.

⁷⁸ First Registrar's Decision, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 27-28.

⁷⁹ Second Registrar's Decision, ICC-RoR221-01/20-1-Conf-Exp-AnxI, p. 32; Third Registrar's Decision, ICC-RoR221-01/20-1-Conf-Exp-AnxI, pp. 41-44; Fourth Registrar's Decision, ICC-RoR221-02/20-1-Conf-Exp-AnxI, p. 16.

⁸⁰ Registrar's Decision of 10 September 2020, ICC-RoR221-01/21-1-Conf-Exp-AnxIII, p. 18; Fifth Registrar's Decision, ICC-RoR221-02/21-1-Conf-Exp-AnxVII, para. 32.

⁸¹ Impugned Decision, paras 24-25.

provided with culturally [REDACTED] adapted food, in accordance with regulation 199 of the Regulations.⁸²

31. The Presidency finds, accordingly, that in order to ensure that Mr Ngaïssona's right under regulation 199 of the Regulations is preserved, it would be appropriate for the Registrar to put in place immediate interim measures until [REDACTED], or until a decision is taken by the Registrar on the substantive issues raised in the Initial Complaint. The Presidency observes, in that regard, that Mr Ngaïssona had indicated that being provided with sufficient funds to buy items from the Africa Shop List could remedy the situation.⁸³ Nevertheless, noting that any interim measure may be equally of relevance to detained persons other than Mr Ngaïssona, the Presidency leaves it to the Registrar to determine precisely which interim measure is best suited to the circumstances, considering that the Registrar is best placed to make this operational determination. The Registrar is requested to inform the Presidency which interim measure(s) he has put in place within one month of the date of notification of the present Decision. In addition, the Registrar is directed to issue a decision on the Initial Complaint as soon as possible.

32. In light of this finding, the Presidency does not consider it necessary to further examine Mr Ngaïssona's other submissions.

V. CLASSIFICATION

33. In light of the classification of the Application, the present decision is classified as confidential and *ex parte*. The Presidency takes the view, however, that it would be beneficial to make this decision publicly available, including for the benefit of other detained persons. If there is any factual or legal basis for retaining the confidential classification of this decision or if there is any information in this decision requiring

⁸² Presidency, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Public redacted version of "Decision on the 'Application for Judicial Review of Registrar's Decision of 2 September 2022', dated 12 September 2022 (ICC-RoR220-03/22-1-Conf-Exp)" dated 17 February 2023 (ICC-RoR220-03/22-5-Conf-Exp), 26 May 2023, ICC-RoR220-03/22-5-Red, para. 24.

⁸³ Application, ICC-RoR220-02/23-1-Conf, para. 2.

redaction prior to publication, Mr Ngaissona and/or the Registrar may inform the Presidency thereof no later than by 4pm on 31 August 2023.

In view of the above, the Presidency hereby:

- (i) **GRANTS** the Application, in part;
- (ii) **ORDERS** the Registry to put in place an interim measure in accordance with paragraph 31 above; and
- (iii) **REJECTS** the remainder of the Application.

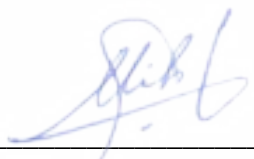
Done in both English and French, the English version being authoritative.



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 7 August 2023

At The Hague, The Netherlands