

5 December 2018

**INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS
REGULATIONS ON THE COMPLAINTS PROCEDURE FOR DETAINEES**

(MICT/25)

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*Issued by the Registrar
5 December 2018*

PREAMBLE

The Registrar of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) issues the Regulations on the Complaints Procedure for Detainees (“Regulations”) pursuant to the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism (“Rules of Detention”).

GENERAL PROVISIONS

Regulation 1

- (A) In accordance with Rules 91-97 of the Rules of Detention, these Regulations establish procedures to safeguard the right of a Detainee to make a complaint.
- (B) Unless otherwise specified herein, these Regulations apply to all Detainees, both at the United Nations Detention Facility in Arusha, the United Republic of Tanzania, and the United Nations Detention Unit in The Hague, the Netherlands (“Detention Unit”), and are subject to the provisions of the Rules of Detention, including the Definitions in Rule 2 thereof, and, where applicable, the Rules of Procedure and Evidence of the Mechanism.
- (C) All communications with the Detainee pursuant to these Regulations must be in a language the Detainee understands. All timelines contained in these Regulations run from the date of receipt of the communication in a language the recipient understands.

Regulation 2

- (A) In accordance with Rule 96 of the Rules of Detention, the Commanding Officer is responsible for ensuring that safeguards are in place to enable a Detainee to have the opportunity when submitting a complaint to speak freely, safely and without censorship as to substance, and, if so requested by the Detainee, in a confidential manner.
- (B) Complaints regarding allegations of torture or other cruel, inhuman or degrading treatment or punishment shall be reported to the Registrar who, after consultation with the President, shall take all necessary action.

Regulation 3

The right of a Detainee to submit a complaint shall extend to the Legal Representative of the Detainee, or, in cases where neither the Detainee nor his or her Legal Representative has the

possibility of exercising such rights, to a member of the Detainee's family or any other person who has knowledge of the case in accordance with Rule 97 of the Rules of Detention. A Detainee may be assisted by his or her Legal Representative in connection with any complaint at any stage of the complaints procedure.

COMPLAINTS TO THE COMMANDING OFFICER

Regulation 4

- (A) A Detainee may submit a complaint concerning the conditions of his or her detention to the Commanding Officer of the Detention Unit or a Designated Official from the Registry at any time. This includes complaints concerning an alleged breach of the Rules of Detention or of any Regulations adopted thereunder.
- (B) The Staff of the Detention Unit shall keep a daily log of all complaints submitted to the Commanding Officer and of the action taken in respect thereof.

Regulation 5

The Commanding Officer shall take a decision under these Regulations within seven (7) calendar days of receipt of the complaint.

Regulation 6

- (A) If the Commanding Officer decides that the complaint is justified and it is within the power of the Commanding Officer to rectify the matter complained of, the Commanding Officer shall advise the Detainee accordingly, and shall take action to rectify the matter as soon as practicable.
- (B) If the Commanding Officer decides that the complaint is justified, but the power to rectify it does not lie with the Commanding Officer, the Commanding Officer shall transmit the complaint to the Registrar, and inform the Detainee accordingly. Such complaints will be handled by the Registrar in accordance with these Regulations.
- (C) If the Commanding Officer decides that the complaint is not justified, he or she shall inform the Detainee accordingly, providing reasons for his or her decision. The Commanding Officer shall also advise the Detainee that he or she has the right to make a complaint to the Registrar in accordance with these Regulations.

COMPLAINTS TO THE REGISTRAR

Regulation 7

- (A) If a Detainee is not satisfied with the decision taken by the Commanding Officer regarding his or her complaint, he or she may make a complaint to the Registrar within fourteen (14) calendar days of notification of the decision.
- (B) If no decision is taken by the Commanding Officer on a complaint submitted by a Detainee within seven (7) calendar days as provided by Regulation 5, the Detainee may

make a complaint to the Registrar within the next fourteen (14) calendar days.

- (C) A Detainee may exceptionally seize the Registrar of a complaint directly without first seeking review by the Commanding Officer where: the subject matter of the complaint concerns disciplinary measures imposed by the Commanding Officer; the Commanding Officer's determination of the matter places him or her in a conflict of interest; or the subject matter of the complaint is time-sensitive. Should the Registrar determine that he or she should not be seised of the complaint directly, he or she shall notify the Detainee accordingly, within twenty-four (24) hours, dismissing the complaint. The Detainee may thereafter submit the complaint to the Commanding Officer within fourteen (14) calendar days from the Registrar's determination.
- (D) The Detainee may deliver a complaint for transmission to the Registrar through the Detention Unit's administration office. A Detainee may also submit such a complaint directly to the Registrar by mail or through other means, including through his or her Legal Representative or family members. The complaint shall not be censored by the Staff of the Detention Unit and shall be transmitted to the Registrar without delay.

Regulation 8

- (A) With the exception of complaints dismissed by the Registrar under Regulation 7(C), the Registrar shall acknowledge receipt of all complaints within seventy-two (72) hours of receipt of the complaint. The Registrar shall forward a copy of each and every complaint to the President.
- (B) A complaint submitted to the Registrar shall be investigated promptly and efficiently, seeking the views of all relevant persons or bodies, including the Commanding Officer. The Detainee shall be permitted to communicate freely and without censorship on the matter with the Registrar during this period. The Registrar shall, where appropriate, pass all such communications to the President without delay.
- (C) The Registrar shall issue a reasoned written decision on the complaint as soon as practicable, or, at the latest, within fourteen (14) calendar days of receipt of the complaint. The Registrar shall inform the President of his or her decision.

Regulation 9

- (A) If the Registrar finds the complaint to be justified, he or she shall take action to address the complaint as soon as possible and shall inform the Detainee of both the action to be taken and the timeline for implementation.
- (B) If the Registrar finds the complaint to be unfounded, the Registrar shall notify the Detainee in writing, giving reasons for rejection of the complaint.
- (C) The Registrar shall advise the Detainee that he or she has the right to make a complaint to the President challenging the Registrar's decision in accordance with these Regulations.

COMPLAINTS TO THE PRESIDENT

Regulation 10

- (A) If a Detainee is not satisfied with the decision or action taken by the Registrar, he or she may make a complaint to the President within fourteen (14) calendar days of notification of the decision or action.
- (B) If no decision is taken by the Registrar on a complaint submitted by a Detainee within fourteen (14) calendar days as provided by Regulation 8(C), the Detainee may make a complaint to the President within the next fourteen (14) calendar days.
- (C) The Detainee may deliver a complaint for transmission to the President through the Registrar, who shall forward the complaint to the President. The Detainee may also submit such a complaint directly to the President by mail or through other means, including through his or her Legal Representative or family members. The complaint shall not be censored by the Staff of the Detention Unit or any other person and shall be transmitted to the President without delay.
- (D) The Registrar shall transmit to the President all relevant information obtained in the course of the Registrar's investigation of the complaint.

Regulation 11

- (A) The President shall acknowledge receipt of all complaints within seventy-two (72) hours of receipt of the complaint.
- (B) Prior to issuing his or her decision on the complaint to the Registrar, the President may conduct any investigations he or she considers warranted and may seek the views of relevant persons or bodies, as appropriate. The Detainee shall be permitted to communicate freely and without censorship on the matter with the President during this period.
- (C) The President shall issue a reasoned written decision on the complaint as soon as practicable, or at the latest, within fourteen (14) calendar days of receipt of the complaint, unless the interests of justice require otherwise.

Regulation 12

- (A) If the President finds the complaint to be justified, he or she shall take action to address the complaint as soon as possible and shall inform the Detainee of both the action to be taken and the timeline for implementation.
- (B) If the President finds the complaint to be unfounded, the President shall notify the Detainee in writing, giving reasons for rejection of the complaint. The President shall also advise the Detainee that he or she has the right to make a complaint to the Independent Monitoring Body, in accordance with Regulation 14.

SUBSEQUENT COMPLAINTS

Regulation 13

- (A) Rejection of a complaint by the Commanding Officer, the Registrar, or the President does not prevent the Detainee from raising the complaint again.
- (B) If the substance of the complaint concerns a complaint that has been rejected on a previous occasion, the Commanding Officer, the Registrar, or the President may reject the complaint without further investigation where the complaint does not reveal additional matters not already considered.

INDEPENDENT MONITORING BODY

Regulation 14

Nothing in these Regulations shall impede the right of all Detainees to raise a complaint concerning the conditions of their detention at any time with the Independent Monitoring Body, whose duty it is to examine the manner in which Detainees are treated. At any time during an inspection of the Detention Unit by the Independent Monitoring Body, Detainees shall be entitled to talk freely with such inspectors out of the sight and hearing of the Staff of the Detention Unit.