

5 December 2018

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

(MICT/24)

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Issued by the Registrar
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PREAMBLE

The Registrar of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) issues the Regulations on the Disciplinary 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 58 to 59 of the Rules of Detention, these Regulations establish procedures to be adopted in managing the disciplinary process involving alleged breaches of the Rules of Detention by a detainee or convicted person awaiting enforcement.
- (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 a Detainee pursuant to these Regulations must use a language the Detainee understands.

Regulation 2

- (A) Discipline and order shall be maintained with no more restriction than is necessary to ensure the security and good order of the Detention Unit, the health and safety of all persons therein and a well ordered community life.
- (B) The Medical Officer and other health-care personnel shall report to the Commanding Officer, without delay, any adverse effects of disciplinary sanctions on the physical or mental health of a Detainee and shall advise the Commanding Officer if they consider it necessary to terminate or alter the disciplinary sanctions for physical or mental health reasons.

Regulation 3

- (A) No Detainee shall be sanctioned except in accordance with these Regulations and the principles of fairness and due process. A Detainee shall never be sanctioned twice for the same act or offence.
- (B) Disciplinary sanctions shall be proportionate to the offence for which they are established and to deter future offending.
- (C) Before imposing disciplinary sanctions, the Commanding Officer shall consider whether and how a Detainee's mental health or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. The Commanding Officer shall not sanction any conduct of a Detainee which is considered to be the direct result of his or her mental health or intellectual disability.

DISCIPLINARY OFFENCES

Regulation 4

The following conduct shall constitute a disciplinary offence:

- (A) Refusal to obey a lawful order or instruction given by a member of staff of the Detention Unit;
- (B) Verbal abuse directed at a member of staff of the Detention Unit, another Detainee or any visitor to the Detention Unit;
- (C) Violent or aggressive behaviour towards a member of staff of the Detention Unit, another Detainee or any visitor to the Detention Unit;
- (D) Possession of any object or substance prohibited under the Rules of Detention;
- (E) Repeated misconduct after a caution has been given pursuant to Regulation 7(B);
- (F) Undertaking or attempting to arrange escape from custody;
- (G) Intentionally obstructing a member of staff, or any person who is at the Detention Unit for the purpose of working there, in the performance of his or her work;
- (H) Destroying or damaging any part of the Detention Unit or any property other than his or her own;
- (I) Breaching the Rules of Detention and regulations related to detention issued by the Mechanism, if this endangers the security, good order and discipline of the Detention Unit or the health and safety of any person therein, *e.g.* mutiny or attempted mutiny; or
- (J) Inciting or attempting to incite another Detainee to commit any of the foregoing offences.

PROCEDURE

Regulation 5

- (A) Where a Detainee has refused to obey a lawful order or instruction given by a member of staff of the Detention Unit under Regulation 4(A), the senior operational officer on duty, acting under the authority of the Commanding Officer, shall be called immediately and, in accordance with these Regulations, shall determine whether the Detainee is justified in refusing to obey such an order or instruction. Should the senior operational officer determine that the Detainee is not justified in refusing to obey such an order or instruction, the senior operational officer shall instruct the relevant member of staff of the Detention Unit to report the matter in accordance with the requirements of Regulation 5(B).
- (B) Where a Detainee is suspected of committing a disciplinary offence as defined in Regulation 4, or a staff member has been involved in or witnessed a disciplinary offence as defined in Regulation 4, the staff member(s) shall report the matter to the senior operational officer in charge at the time of the alleged disciplinary offence. All members of staff who have been involved in or witnessed the alleged disciplinary offence must individually complete a detailed written report, covering all factual aspects, and submit it to the Commanding Officer.
- (C) Upon receipt of the staff report(s), the Commanding Officer shall invite the Detainee and any witnesses concerned to provide further information, either in writing or in person, with the use of an interpreter, if necessary. If, at the end of this inquiry, the Commanding Officer determines that the Detainee has committed a disciplinary offence as defined in Regulation 4, the Commanding Officer will proceed to sanction the Detainee in accordance with Regulation 7.

TEMPORARY MEASURES

Regulation 6

- (A) A member of staff of the Detention Unit who has suspected or witnessed a disciplinary offence may impose temporary measures to stabilize the situation, such as the restriction of the Detainee to his or her cell, until such time as the Commanding Officer or the senior operational officer on duty can be summoned to assess the situation, provided that such period does not exceed one (1) hour during day time or eight (8) hours at night.
- (B) The Commanding Officer or the senior operational officer on duty may continue, vary or revoke such temporary measures pending completion of the procedures regarding the alleged disciplinary offence pursuant to Regulation 5 of these Regulations, provided, however, that the period of such temporary measures shall not exceed twelve (12) hours in total.

DISCIPLINARY SANCTIONS

Regulation 7

- (A) The Commanding Officer shall ensure that a record is kept of every instance that a disciplinary sanction is given to a Detainee.
- (B) To maintain the security and good order of the Detention Unit and deter future offending, the following sanctions, either individually or in combination, may be imposed by the Commanding Officer:
 - (i) Caution;
 - (ii) Written notice of suspended sanctions to come into effect immediately upon a further breach of the Rules and Regulations within a period not exceeding three (3) months from the date that the Detainee receives the written notice;
 - (iii) Removal or reduction of privileges or of the use of personal possessions (including television, musical instrument and radio) for a period not exceeding one (1) week; or
 - (iv) Monetary fine to be paid from the Detainee's personal funds.
- (C) A monetary fine shall only be imposed if the disciplinary offence is the Detainee having cash in his or her possession or after one or more of the sanctions under Regulation 7(B)(i) through (iii) have been previously imposed and if the Detainee commits a further disciplinary offence. The amount of the monetary fine shall be determined by the Commanding Officer in accordance with Regulation 3(B).
- (D) Where the disciplinary offence concerns the possession of any object or substance prohibited under the Rules of Detention, the Commanding Officer will also confiscate the prohibited object or substance. The confiscated item shall be handled in accordance with Rule 22 of the Rules of Detention.
- (E) All sanctions, as well as a reminder of the relevant Rules of Detention and detention-related regulations, shall be communicated and explained to the Detainee, including the reasons for the imposition of such sanctions, as soon as possible but not later than twelve (12) hours after the imposition of the disciplinary sanction. A copy of the written record of the sanction and the reasons for it shall also be provided to the Detainee.
- (F) The Commanding Officer shall also inform the Detainee of his or her right to appeal to the President of the Mechanism pursuant to Regulation 8.

RIGHT OF APPEAL TO THE PRESIDENT

Regulation 8

- (A) A Detainee may appeal to the President of the Mechanism regarding the determination of a disciplinary offence and of any sanctions imposed within forty-eight (48) hours of receipt by the Detainee of a copy of the written record of the sanction and the reasons therefor. The Legal Representative of the Detainee may assist the Detainee in preparation of any such appeal. The Detainee may submit an appeal, in writing, to the

Commanding Officer for transmission to the Registry, which shall forward the appeal to the President. The Detainee may also submit such an appeal directly to the President by mail or other means, including through his or her Legal Representative or family members.

- (B) The Commanding Officer shall forward the Detainee's appeal to the Registrar immediately. The Registrar shall then forward the appeal to the President within twenty-four (24) hours of receipt.
- (C) The disciplinary sanction imposed shall remain in place pending the outcome of the appeal.
- (D) The President of the Mechanism shall issue a reasoned written decision on the appeal within three (3) days of receipt of the appeal, unless the interests of justice require otherwise. The President may order the restitution of confiscated items, the annulment of a caution, the annulment of a written notice of suspended sanctions, the restoration of privileges or of the use of personal possessions, the repayment of any monetary fine imposed, or any other action as he or she deems fit.

POTENTIAL CRIMES

Regulation 9

Any allegation of a disciplinary offence which may constitute a criminal offence under the law of the Host State or contempt of the Mechanism or false testimony under Rules 90 or 108, respectively, of the Rules of Procedure and Evidence shall be promptly reported by the Commanding Officer of the Detention Unit to the Registrar.

INDEPENDENT MONITORING BODY

Regulation 10

Nothing in these Regulations shall impede the right of all Detainees to raise a complaint concerning the conditions of their detention, including disciplinary sanctions, at any time with the Independent Monitoring Body, whose duty it is to examine the manner in which Detainees are treated.