

5 December 2018

INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

**REGULATIONS ON THE SUPERVISION OF VISITS TO AND
COMMUNICATIONS WITH DETAINEES**

(MICT/23)

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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 Supervision of Visits to and Communications with 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 70-79 of the Rules of Detention, these Regulations establish conditions for Detainee communications and visits to safeguard the interests of the administration of justice and the security and good order of the Detention Unit, Detainees, staff and visitors.
- (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) It shall constitute an “Offence” under these Regulations to undertake or attempt to:
 - (i) arrange escape;
 - (ii) interfere with the administration of justice, including but not limited to breaching an order of the Mechanism or interfering with or intimidating a witness; or
 - (iii) otherwise disturb or endanger the security, safety and good order of the Detention Unit or any person, including but not limited to importing contraband, such as mobile telephones and other communication devices, or breaching these Regulations, the Rules of Detention or any other regulations, rules or guidelines relating to detention matters issued by the Mechanism.

Regulation 3

- (A) If the Commanding Officer has reasonable grounds to believe that a Detainee, or person with whom the Detainee wishes to communicate or visit, may have committed or may be committing an Offence, the Commanding Officer may, as applicable and pending any further investigation:
- (i) immediately terminate any communication or visit with, to or from a Detainee;
 - (ii) temporarily confiscate any offending item;
 - (iii) return any offending item to the sender or retain any offending item in accordance with Rule 22 of the Rules of Detention;
 - (iv) require any visitor to leave the Detention Unit;
 - (v) temporarily restrict the Detainee's use of the Detention Unit's communication facilities; and/or
 - (vi) take any other measures authorized under these Regulations.
- (B) In such event, the Commanding Officer:
- (i) will advise the Detainee, and the person with whom the Detainee wishes to communicate or visit, if applicable, within three (3) working days, of any action taken and the reasons therefor, unless the Commanding Officer determines that informing the Detainee or the person with whom the Detainee wishes to communicate or visit may impact the investigation of the matter;
 - (ii) will offer the Detainee, and the person with whom the Detainee wishes to communicate or visit, if applicable, an opportunity to comment on the potential Offence and any measures taken in response;
 - (iii) will report the matter and any interim action taken to the Registrar; and
 - (iv) will retain and provide the Registrar with any evidence of an Offence.
- (C) This Regulation is not subject to the Regulations on the Disciplinary Procedure for Detainees (MICT/24) and as subsequently revised) except as provided for in Regulation 4(A)(ii).

Regulation 4

- (A) If the Registrar, or the Commanding Officer in consultation with the Registrar, finds that a Detainee or person with whom the Detainee wishes to communicate or visit has committed an Offence, they may:
- (i) impose restrictions or conditions on the offender's future use of the Detention Unit's communication facilities;
 - (ii) impose sanctions under the Regulations on the Disciplinary Procedure for Detainees (MICT/24) and as subsequently revised); and/or
 - (iii) take any other measures authorized under these Regulations.
- (B) In such event, the Registrar or Commanding Officer:
- (i) shall retain evidence of the Offence or, if necessary, shall document the evidence and dispose of it in accordance with Rule 22 of the Rules of Detention;
 - (ii) shall inform the Detainee, Legal Representative and any other offending party of the finding and the reasons therefor; and

- (iii) may notify the Prosecutor and, if necessary, State authorities of the Offence.
- (C) If the Offence could constitute contempt of the Mechanism or false testimony under Rules 90 or 108, respectively, of the Rules of Procedure and Evidence, the Registrar may advise the President or the relevant Chamber.
- (D) If the Registrar or Commanding Officer finds that no Offence has been committed, they shall, if possible, reverse any interim measures taken under Regulation 3(A).

MAIL

Regulation 5

- (A) Subject to these Regulations, a Detainee has the right to send and receive mail, including parcels.
- (B) The Commanding Officer, in consultation with the Registrar, may impose reasonable limits as to the quantity and weight of parcels or mail received or sent.
- (C) Detainees shall be responsible for the cost of outgoing mail, including postage. A Detainee without financial means to cover the cost of outgoing mail may seek permission from the Commanding Officer to send mail at the Mechanism's expense.

Regulation 6

- (A) All incoming and outgoing mail shall be subject to inspection for explosives or irregular material and the security controls at the Mechanism's premises or at the Host Prison, where applicable, and the Detention Unit, including the use of X-ray machines and other detectors.
- (B) The Commanding Officer shall keep a log of all mail sent or received by a Detainee, including the addressee, the sender (if known), the date of transmission or receipt, and any other information the Commanding Officer deems relevant.

Regulation 7

- (A) Subject to Regulations 7(B), (C), and (D), the Commanding Officer shall open and read all incoming and outgoing mail within three (3) working days of receipt, where possible, and, subject to Regulations 3 and 4, will deliver incoming mail to the Detainee and post outgoing mail to the addressee without undue delay. Any items delivered by mail shall be treated in accordance with Rules 85-90 of the Rules of Detention.
- (B) Mail addressed to or from a Legal Representative containing only paper records related to the legal representation of the Detainee shall only be opened in exceptional circumstances where the Registrar or Commanding Officer has reasonable grounds to believe that the Detainee or Legal Representative may have committed or may be committing an Offence, in which case:
 - (i) the Commanding Officer shall note the interception in the Regulation 6(B) log, forward the unopened item in question to the Registrar without delay and notify

- the Detainee within two (2) working days;
 - (ii) the Registrar shall ask the Legal Representative to open the item in the Registrar's presence;
 - (iii) the Registrar may require the Legal Representative to explain the nature of the item in one of the working languages of the Mechanism; and
 - (iv) the Registrar will determine whether further action is necessary under Regulations 3 and 4.
- (C) Mail addressed to or received from a Legal Representative containing anything other than paper records, as apparent from inspection performed under Regulation 6(A), shall be opened by the Commanding Officer, in which case:
 - (i) the Commanding Officer shall note the interception in the Regulation 6(B) log;
 - (ii) any paper items shall be inspected in accordance with Regulation 18(B); and
 - (iii) if the non-paper item(s) are digital media carriers allowed by the Detention Unit, including but not limited to CDs, and are accompanied by the legitimate form(s), correctly completed, the digital media carrier(s) shall be registered and issued to the Detainee. In all other cases, the non-paper items shall be treated in accordance with Rules 85-90 of the Rules of Detention with the Legal Representative advised accordingly.
- (D) Regulation 7(B) shall apply *mutatis mutandis* to mail addressed to or from staff members of the Mechanism and to or from diplomatic or consular representatives of the State to which the Detainee belongs or which takes charge of his or her interests.
- (E) Outgoing mail to the Legal Representative will be sent to the Legal Representative's professional address registered with the Registrar. If a different address is provided, outgoing mail will be returned unopened to the Detainee referring to this Regulation.

TELEPHONE CALLS

Regulation 8

- (A) The Commanding Officer shall keep a log of all outgoing calls, including the name of the Detainee, the telephone number dialed, the time and date of the call, and any other information the Commanding Officer deems relevant.
- (B) The Commanding Officer shall receive all incoming calls for a Detainee and shall inform the Detainee accordingly. At his or her sole discretion, the Commanding Officer may permit a Detainee to receive an incoming call in an emergency, in which case the details of the call shall be noted in the Regulation 8(A) log.
- (C) Detainees may make outgoing calls when they are unlocked from their cells, subject to the daily schedule of the Detention Unit and the availability of the telephone facilities. At his or her sole discretion, the Commanding Officer may permit a Detainee to make calls outside these times.
- (D) To ensure the good order of the Detention Unit, the Commanding Officer, in consultation with the Registrar, may place reasonable restrictions on the time a Detainee may spend using the telephone facilities.

Regulation 9

- (A) The Mechanism shall bear the cost of a reasonable number of outgoing calls for each Detainee, as determined by the Commanding Officer.
- (B) Detainees wishing to make additional calls must do so at their own expense. A Detainee without financial means to cover the cost of such calls may seek permission from the Commanding Officer to make additional calls at the Mechanism's expense.

Regulation 10

- (A) Detainees have access to privileged and non-privileged telephone lines.
- (B) All telephone conversations on the non-privileged line may be digitally recorded, but shall not be listened to except as provided under Regulation 11. Except where retained as evidence of an Offence, all recordings of telephone conversations shall be erased within eight (8) months of their creation.
- (C) Telephone conversations on the privileged line shall not be recorded or listened to except as provided under Regulation 12. The Commanding Officer must authorize all call recipients and numbers in advance. Detainees may only use the privileged telephone line for conversations strictly related to the purpose for which the call recipient and the number have been authorized.

Regulation 11

- (A) To ensure the security and good order of the Detention Unit and in the interests of the administration of justice, the Commanding Officer may listen to and summarize up to 10% of all calls on the non-privileged line, or recordings thereof, but shall not target any specific Detainee.
- (B) If the Registrar has reasonable grounds to believe that a Detainee, or person with whom the Detainee wishes to communicate, may have committed or may be committing an Offence, he or she may order the Detention Unit to listen to and summarize a specific Detainee's conversations on the non-privileged line, including:
 - (i) prior recordings; and/or
 - (ii) future telephone conversations, for a renewable period not exceeding 30 days.
- (C) The Registrar shall notify the Detainee and his or her Legal Representative of the reasons for the order within one (1) working day unless the Registrar determines that informing the Detainee and the Legal Representative is likely to interfere with the investigation of the matter.
- (D) The Registrar shall report renewals of the order, which shall not exceed 30 days, to the President.

Regulation 12

- (A) Telephone conversations conducted on the privileged line shall only be recorded or

listened to in exceptional circumstances where the Registrar has reasonable grounds to believe the Detainee, or person with whom the Detainee wishes to communicate, may have committed or may be committing an Offence, in which case, he or she may order the Detention Unit to monitor, by recording, listening to and/or summarizing the Detainee's future telephone conversations on the privileged line for a renewable period not exceeding 30 days.

- (B) Prior to such communications being monitored, the Registrar shall notify the Detainee and the call recipient to be monitored of the reasons for the order unless the Registrar determines that informing the Detainee and call recipient to be monitored is likely to interfere with the investigation of the matter.
- (C) The Registrar shall report renewals of the order, which shall not exceed 30 days, to the President. The reports shall include information as to whether the Detainee and call recipient to be monitored have been informed and the reasons thereof. The reports shall be provided to the President as soon as possible in accordance with Rules 72 and 73 of the Rules of Detention.

VISITS

Regulation 13

Detainees shall have the right to receive visits from family, friends and others, subject to Rules 70-79 of the Rules of Detention.

Regulation 14

The Commanding Officer, in consultation with the Registrar, shall fix the daily visiting hours for all visitors, taking into account the reasonable demands of the daily schedule of the Detention Unit and the availability of visiting facilities and staff.

Regulation 15 – Requests to become approved visitors

- (A) Except as otherwise provided in Regulation 17, all persons who wish to visit a Detainee must apply to the Commanding Officer, in a working language of the Mechanism or the language of the Detainee, to become an approved visitor. In addition, Detainees must apply to the Commanding Officer to support the applicant's request to become an approved visitor. The applications must explain the relationship between the applicant and the Detainee, and the intended purpose of any authorized visits.
- (B) The Commanding Officer, in consultation with the Registrar, shall grant or deny the request in line with these Regulations and the Rules of Detention within five (5) working days of receipt of complete applications by the applicant and Detainee.
- (C) If the Commanding Officer grants the request, the applicant will be listed as an approved visitor to the Detainee. Both the applicant and the Detainee will be advised accordingly.
- (D) If the Commanding Officer denies the request, the applicant and Detainee will be informed of the denial, including the reasons thereof.

- (E) The status as an approved visitor to a Detainee may be withdrawn in accordance with Regulation 3.

Regulation 16 – Requesting visits

- (A) Once a visitor has been approved pursuant to Regulation 15(C), and other than in exceptional circumstances, visits to a Detainee may be requested solely by the Detainee to the Commanding Officer in writing, not later than five (5) working days prior to the date for which the visit is requested.
- (B) The Commanding Officer shall grant or deny the visit request submitted by the Detainee in line with these Regulations and the Rules of Detention within three (3) working days of receipt of the written request by the Detainee.
- (C) If approved, the Commanding Officer will inform the Detainee in writing. The Detainee shall be responsible for advising his or her visitor(s) of the appointment.
- (D) If the Commanding Officer denies the request, he or she will inform the Detainee and the visitor(s) of the denial. The Detainee and visitor(s) shall also be informed of the reasons for denial.

Regulation 17 – Legal, Diplomatic, Spiritual and Professional Visits

- (A) Upon recognition of a Legal Representative by the Registrar, the Commanding Officer will grant the Legal Representative permission to visit the Detainee throughout the duration of the assignment or appointment. Upon receiving such permission, the Legal Representative may contact the Detention Unit to schedule such visits.
- (B) Upon recognition of Defence team members by the Registrar, the Commanding Officer will grant Defence team members permission to visit the Detainee throughout the duration of the assignment or appointment. Defence team members may only visit the Detainees with the authorization of the Detainee's Legal Representative, who is responsible for the conduct of his or her Defence team members. The Defence team member shall contact the Detention Unit to schedule such visits.
- (C) Pursuant to Rule 72 of the Rules of Detention, the Commanding Officer may issue permission to visit to an accredited diplomatic and consular representative of the State of nationality of the Detainee, or diplomatic representatives of a third State who are accredited to the Host State and who are authorized to represent the interests of nationals of the State of which the Detained is a national in the Host State. Upon receiving such permission, the accredited diplomatic and consular representative may contact the Detention Unit to schedule such visits.
- (D) Pursuant to Rule 79(3) of the Rules of Detention, upon appointment of a qualified representative of a religion or system of spiritual beliefs by the Registrar, the Commanding Officer may issue permission to visit to the appointed representative. Upon receiving such permission, the appointed representative may contact the Detention Unit to schedule such visits.

- (E) Pursuant to Rules 70 and 71 of the Rules of Detention, the Commanding Officer may issue permission to visit to a person, other than a Legal Representative, diplomatic representative or religious or spiritual representative, who by reason of his or her occupation, is required to communicate with a Detainee. Upon receiving such permission, the person may contact the Detention Unit to schedule such visits.

Regulation 18

- (A) To enter the Detention Unit, all visitors must:
- (i) produce current official photographic identification accepted by the Detention Unit, and in The Hague, the Host Prison; and
 - (ii) comply with the security requirements of the Detention Unit and, in The Hague the Host Prison, including but not limited to X-ray examination of possessions and personal searches pursuant to Rule 77 of the Rules of Detention.
- (B) Except as provided in Regulations 3 and 4, searches of the Legal Representative shall not extend to reading or copying paper records brought to the Detention Unit which relate to the legal representation of a Detainee.
- (C) Detainees must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Registrar.

Regulation 19

- (A) The Commanding Officer shall keep documentation of all visits, including the name of the Detainee, name and address of the visitor, time and date, and any other information the Commanding Officer deems relevant.
- (B) All visits must be conducted within the sight of Detention Unit staff, except for conjugal visits with the Detainee's spouse or nominated partner. The Commanding Officer, in consultation with the Registrar, may issue guidelines on the management of conjugal visits.
- (C) Other than Legal Representatives, no visitors may directly exchange any item with a Detainee during the visit. Visitors must pass any items for the Detainee to the Commanding Officer before the visit, who will handle the items in accordance with Rule 87 of the Rules of Detention.
- (D) The Legal Representative may directly exchange case-related paper documents with a Detainee during a visit, which shall be treated as mail for the purposes of these Regulations. The Legal Representative must pass any items other than case-related paper documents to the Commanding Officer before the visit, who will handle the items in accordance with Rule 87 of the Rules of Detention.

Regulation 20

- (A) If the Commanding Officer has reasonable grounds to believe that a Detainee or visitor may have committed or may be committing an Offence, he or she may order, after consultation with the Registrar, the recording, listening to and/or summarizing of visits to the Detainee, other than by the Legal Representative and diplomatic representatives,

for a renewable period not exceeding seven (7) visiting days.

- (B) In the event of such an order:
 - (i) the Commanding Officer shall notify the Detainee and the Legal Representative of the reasons for the order within one (1) working day unless the Commanding Officer determines that informing the Detainee and the Legal Representative may impact the investigation of the matter;
 - (ii) the Commanding Officer shall keep documentation of the order date, the date and time of all visits recorded, and any summaries made; and
 - (iii) the Registrar shall report renewals of the order, which shall not exceed seven (7) visiting days, to the President, advising whether the Detainee and Legal Representative have been informed.
- (C) Except where retained as evidence of an Offence, all recordings of visits and any summaries shall be erased within four (4) weeks of their creation.

Regulation 21

- (A) Visits with the Legal Representative or diplomatic and consular representatives shall only be recorded, listened to and/or summarized upon order of the Registrar in exceptional circumstances where the Registrar has reasonable grounds to believe the Legal Representative or diplomatic and consular representatives may have committed or may be committing an Offence.
- (B) In the event of such an order:
 - (i) the Registrar shall, prior to issuing the order, first notify the Detainee and the Legal Representative of the reasons for the order unless the Registrar determines that informing the Detainee and Legal Representative may impact the investigation of the matter;
 - (ii) the Registrar shall report renewals of the order, which shall not exceed seven (7) visiting days, to the President advising whether the Detainee and Legal Representative have been informed. The reports shall be provided to the President as soon as possible in accordance with Rules 72 and 73 of the Rules of Detention; and
 - (iii) the Commanding Officer shall keep documentation of the order date, the date and time of all visits recorded and any summaries made.
- (C) Except where retained as evidence of an Offence, all recordings of visits and any summaries shall be erased within four (4) weeks of their creation.

OTHER MEANS OF COMMUNICATION

Regulation 22

Means of communication other than those described in these Regulations, as provided in Rule 71 of the Rules of Detention, shall be subject to separate procedures and conditions of use determined and issued by the Commanding Officer, in consultation with the Registrar.

COMPLAINTS

Regulation 23

A Detainee who objects to a decision taken under the Regulations may make a formal complaint in accordance with the Regulations on the Complaints Procedure for Detainees (MICT/25) and as subsequently revised) and Rules 92-96 of the Rules of Detention.