

ANNEX 21

PUBLIC

From: Trial Chamber V Communications
Sent: 06 December 2021 09:55
To: [REDACTED]; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; [REDACTED] Office of the Director DJSS; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; Chamber Decisions Communication
Subject: RE: Consolidated Defence Request - Detention Centre schedule

Dear Counsel,

The Chamber has taken note of your request.

However, as previously held (*see for instance*, Decision on the Ngaissona Defence Request to Redress Violations in Detention, 22 June 2020, ICC-01/14-01/18-563, para. 7), the Chamber considers that complaints pertaining to detention matters do not fall within its purview. Rather, they are to be addressed through the complaints procedure set out in Section 5 of the Regulations of the Registry (the 'RoR').

In this regard, the Chamber notes that the Defence may wish to avail itself of the possibility to seek review by the Registrar pursuant to Regulation 219 of the RoR and judicial review by the Presidency as foreseen in Regulation 220 of the RoR.

Kind regards, TC V

From: [REDACTED]
Sent: 02 December 2021 18:47
To: Trial Chamber V Communication [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team
 <[REDACTED]; [REDACTED]; Office of the Director DJSS
 [REDACTED] V44 LRV Team OPCV [REDACTED] V44 LRV Team
 [REDACTED] V45 LRV Team [REDACTED] OTP CAR IIB Case Management
 [REDACTED]; OTP CAR IIB Operations [REDACTED]>
Subject: Consolidated Defence Request - Detention Centre schedule

Dear Trial Chamber V,

Over the past month, the Defence teams of Mr Yekatom and Mr Ngaissona ('Defence') have been made aware that, when Court hearings are ongoing, Mr Yekatom and Mr Ngaissona are subject to several limitations on their basic rights in detention, namely:

- 1) As the Chamber is already aware, Mr Yekatom and Mr Ngaissona often struggle to avail themselves of their full 180 minutes per week of phone calls;
- 2) After having sat for the whole day in the courtroom and not having been provided with any warm meal, Mr Yekatom and Mr Ngaissona are frequently locked up in their cells from their return to the Detention Centre until 19.00, after which they only have one hour and a half to prepare their meals and stay in the common area, before being locked up again at 20.30 for the whole night;
- 3) Due to their attendance to Court hearings, Mr Yekatom and Mr Ngaissona are often not afforded the possibility to benefit from fresh air after returning to the Detention Centre.

The Defence understands that the above issues are mainly due to the fact that other detainees, whose trials are not currently ongoing, have conflicting schedules with Mr Yekatom and Mr Ngaissona's. For example, other detainees

have their sport sessions scheduled in the late afternoon, causing Mr Yekatom and Mr Ngaïssona to be locked up during that time, due to the absence of personnel who can supervise them in the common area.

While the Defence appreciates the organizational constraints faced by the Detention Centre, it respectfully submits that the current situation is affecting Mr Yekatom and Mr Ngaïssona's fair trial rights. Given that they spend an entire day in court in a static position where they are required to fully follow the evidence presented and provide meaningful instructions to Counsel, they should be able to benefit from their rights listed above, and provided by in the Regulations, upon arrival at the Detention Centre without having to opt between one of them. On the long term, the effect of being locked in for two hours upon arrival at the Detention Centre and after having spent an entire day in a static position providing its full concentration and focus on the evidence presented, might have a negative impact on the fair and expeditious conduct of the trial.

The Defence is aware that detention-related matters should be raised directly with the Detention Centre. Indeed, the Defence has raised the above issues with the Chief Custody Officer over a month ago, but has not received any meaningful response (see Annex 1 attached). While a memo was circulated yesterday to Mr Yekatom and Mr Ngaïssona concerning the possibility to request to benefit from fresh air after a hearing day, the memo makes clear that such right to fresh air is conditioned upon the "demands of the daily schedule of the Detention Centre, the staff available and the need to maintain good order and security". Moreover, the memo failed to fully address the issues raised by the Defence in its request, such as the lengthy lock-up times to which Mr Yekatom and Mr Ngaïssona are subject and their inability to cook a warm meal upon return to the Detention Centre (see Annex 2 attached).

The present conditions of Mr Yekatom and Mr Ngaïssona's detention combined with the intensity of the current and upcoming 9-14th Blocks will seriously affect their fair trial rights as their rights provided under the Regulations are not fully respected during trial hearings. In turn, this affects their mental health and ability to focus and effectively participate to trial proceedings. Hence, the Defence respectfully requests the Chamber to issue any order it deems appropriate pursuant to Article 64 (3) a) of the Statute in order for Mr. Yekatom and Mr. Ngaïssona to continue to benefit from their rights provided under the Regulation of the Registry regardless as to the evidentiary block hearing schedule.

The Defence stands ready to submit a formal request should the Chamber instructs to do so.

Kind regards,

On behalf of the Defence teams for Mr Yekatom and Mr Ngaïssona

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