

ANNEX 35

PUBLIC

From: Trial Chamber V Communications
Sent: 13 January 2022 18:16
To: [REDACTED] Trial Chamber V Communications; [REDACTED]
Cc: Office of the Director DJSS; [REDACTED]; Dimitri, Mylene; D29 Yekatom Defence Team; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Chamber's ruling in relation to the Yekatom Defence's urgent request to access to meet Mr. Yekatom at the Detention Center

Dear counsel, dear colleagues from the Registry,

The Single Judge appreciates the additional information provided by the Registry, in particular regarding the applicable procedure and the information previously provided to [REDACTED]. Further noting the Registry's proposal that [REDACTED] could visit again this afternoon, extend tomorrow's visit or make use of a privileged video-conference, the Single Judge considers that no action is required by the Chamber at this point.

Finally, the Single Judge reiterates that the Chamber will not get involved into detention matters, unless exceptional circumstances require it to do so. If the Defence is of the view that such exceptional circumstances exist, it is expected to henceforth provide the Chamber with a full set of facts.

Kind regards, TC V

From: [REDACTED] >
Sent: 13 January 2022 17:43
To: Trial Chamber V Communications [REDACTED]
Cc: Office of the Director DJSS [REDACTED]
 Dimitri, Mylene [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 Chamber Decisions Communication [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Chamber's order in relation to the Yekatom Defence's urgent request to access to meet Mr. Yekatom at the Detention Center

Dear Trial Chamber V,

The Registry presents its sincere apologies for the present issue and regrets that the matter had to be brought to the Chamber's attention. In fact, utmost efforts were being deployed by the Director of the Registry's Division of the Judicial Services in order to resolve this issue as a matter of priority, notably following the phone call he had with Principal Counsel Dimitri and the subsequent various exchanges he had with both her and the management of the Detention Centre ("DC"). Unfortunately, the Defence team chose to contact the Chamber instead of waiting for the Registry's feedback.

Following consultation with the Detention Section, the Registry submits as follows:

The Registry recalls that the ICC DC is located within the Dutch prison at Scheveningen. All visitors to the DC must comply with the policy of the Dutch authorities and security protocols of the Dutch prison.

All visitors are asked to pass through the security gate 'without signal' [detector going off]. The Dutch security staff advise visitors to take this into account by choosing, in advance, clothing and shoes with a minimum of metal objects when visiting their establishments. If, for whatever reason [except medical and with medical proof], a visitor cannot pass the security gate 'without signal' then entry will not be allowed. [REDACTED]

[REDACTED] all visitors must pass through the host Prison security entrance [REDACTED]

[REDACTED] Scheveningen prison follows Dutch security guidelines [REDACTED]

[REDACTED]. The same treatment is applicable for all ICC staff, ICC Judges, visitors, and Defence teams.

A handheld manual detector is used only one time upon entry where the detector goes off without discernible cause [detector activates] or when the visitor does not go through 'without signal'. When the signal is detected at breast height, a body-search will be done. Their policy position is that the next time a visitor visits, then that person knows what should be done to be allowed entry 'without signal'. The metal detector simply detects any metal wherever and on whomever it is located. This rule is applicable to all.

The policy is that body-search remains a one-time exceptional measure and cannot be performed on a regular nor a daily basis. This rule is displayed and available in English on the screen in the entrance of the Dutch prison. This allows all visitors to take knowledge of it and be informed of the policy. This policy is applicable to all visitors, all staff and Defence teams as well.

During [REDACTED]'s previous visits earlier this week, when going through the metal detector at the entrance, the metal detector activated on three different days. The Dutch prison performed on an exceptional basis three body searches on three occasions. [REDACTED] was reminded each time and explained about the applicable rules and requirements to pass the detector without signal. Unfortunately, today, the metal detector activated again. As the body search remains an exceptional measure, she was refused entrance. However, [REDACTED] has been offered to come again this afternoon and to extend tomorrow's visit. The Registry also offers her a privileged video-conference should she so wish.

The Registry, once again apologizes for the inconvenience caused to the Chamber and the Defence team and hopes that the above clarifies the matter. The Registry remains entirely at the Chamber's disposal for any further clarifications or additional information.

Best regards,

[REDACTED]
On behalf of the Office of the Director
Registry

From: Trial Chamber V Communications [REDACTED]

Sent: 13 January 2022 16:20

To: [REDACTED]; Trial Chamber V Communications [REDACTED]

Cc: Office of the Director DJSS [REDACTED];
Dimitri, Mylene [REDACTED]; D29 Yekatom Defence Team [REDACTED];
Chamber Decisions Communication [REDACTED] Associate Legal Officer-Court
Officer [REDACTED] >

Subject: Chamber's order in relation to the Yekatom Defence's urgent request to access to meet Mr. Yekatom at the Detention Center

Dear colleagues from the Registry,

The Single Judge takes note of the below Yekatom Defence communication and instructs Registry to provide its observations thereto by 17:30 today.

Kind regards, TC V

From: [REDACTED]

Sent: 13 January 2022 15:24

To: Trial Chamber V Communications [REDACTED]

Cc: Office of the Director DJSS [REDACTED] >

Dimitri, Mylene [REDACTED]

Subject: Urgent request to access to meet Mr. Yekatom at the Detention Center

Dear Trial Chamber V,

It is with the regretful sense of losing precious time that should be dedicated to Mr YEKATOM's defence work, that I am obligated to seize the Chamber of a difficulty with the Detention facility which has an impact on the fundamental right of Mr. YEKATOM to speak freely with his lawyers ahead of the next block of witnesses. The regret is even deeper because it's the first time I'm addressing officially the Chamber, and quite frankly I wish it would be on an issue more in line with the substance of the case.

For the preparation of the hearings to come, several sessions of work have been scheduled for every morning of the week of 10th-14th January 2022 between M. YEKATOM and myself accompanied by the linguistic assistant, [REDACTED]. These work sessions are in direct link with the testimony of the witnesses scheduled to start testifying next Monday. Unfortunately, access to the detention facility has been denied to me today.

I am aware that usually issues on detention facility matters should be addressed at the administrative level. However, I took into consideration the jurisprudence of the Chamber when it comes to the statutory rights of the Accused, as is his right to consult freely with his lawyer. On 7 December 2021, Mr YEKATOM's lead Counsel addressed difficulties meeting with her client and the President of the Chamber has considered that issue that affects the time and facilities statutory right of an accused is an issue that is "quite important" and "urgent". (ICC-01/14-01/18-T-085-CONF-ENG ET 07-12-2021 55/94 SZ T, p. 54.)

The Defence is currently facing a similar difficulty. The reason argued to deny my access by the ICC detention staff on the motive is that the "metal detector activated" 3 days in a row. It must be said, and again it's a pity that we have to address such prosaic issues in submissions, that the only reason that the detector activates is not because there was any security breach of security from my part but because I happen to wear [REDACTED].

Since the beginning of the week, I have explained the issue and complied with the protocol which is to submit myself to the body search by a female staff of the detention facility at the entrance on the main building. The body search allowed the security officers to confirm that no breach of security had been done on my side, and that the source of the metal activation was indeed that specific item of clothing. I must say that I've been a lawyer for more than 20 years now, and I've never been denied access to any detention facility in the world for that reason, nor has it prevented me to take a plane or enter a Court building.

To access the ICC detention center, there is a [REDACTED] security check guarded by the Dutch detention administration at the entrance of the main building, [REDACTED]. It means there is no way that any dangerous or threatening object could be hidden by me [REDACTED]. Monday, Tuesday and Wednesday, after the body search, I could access the ICC detention facility without any problem. Not today.

To be complete I have to add that when I asked specifically who opposed my access, the Dutch woman staff [REDACTED] who body searched me the day before told me that it was the ICC staff. The national security check point [REDACTED] who asked them specifically to deny me the access without even body searching me. She was quite sorry because she was apparently ready to do the body search and said that I should file a complaint because it was quite intimidating to face this kind of situation.

In the past, female members of defence teams have faced similar difficulties after the change of the detector machine which is apparently not adapted to deal with the growth of female staff in the defence teams. The

way it has been addressed so far is neither consistent with the non-discrimination rules that should apply in a UN environment neither properly balanced with the superior right of the Accused to have access to his lawyers in accordance with article 67 (1) (b) of the Statute.

A body search is not nice but it's a proper remedy balancing the need for security and the rights of the Accused to be visited by the lawyers of their choice as long as they are not wearing any dangerous item, which was definitely not the case.

I submit that, if this rule indeed exists – meaning the denial of access to a lawyer who has activated the metal detectors but complies with body search and hand metal detector that shows that there is no breach of security – it is in conflict with the more important right of the Accused to be able to prepare his case with his legal team.

Again, I am very sorry to approach the Chamber for the first time for such an issue but tomorrow is the last possible day to go visit our client in detention and it appears that our attempt to solve the matter directly had failed and won't be solved in the near future when another meeting is scheduled tomorrow morning with Mr YEKATOM.

In a summary of the Detention Center Rules and Procedures for Members of Defence teams circulated in October 2014 by the then Chief Custody officer, it is stated :

In accordance with regulation 181 of the Regulations of the Registry, "all persons entering the Detention Centre shall be subject to security checks". [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]."

(Summary of detention Center rules and procedures for Defence teams, 2 October 2014.)

Nobody refused to comply with the security checks, and the hand metal detector which was used with the body search did not reveal anything suspect or dangerous. In accordance to that summary - the only one available to the Defence - there is no reason why the access was denied at such a critical time of the preparation of Mr YEKATOM's defence work.

For these reasons, we respectfully seek the help of the Chamber to order the ICC detention facility center to give access to his lawyers who submit themselves to the security checks provided.

Kind regards,

[REDACTED]

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