

Annex 56

Confidential *ex parte*

Defence and Registry only

From: Trial Chamber X Communications
Sent: 01 June 2021 09:34
To: D28 Al Hassan Defence Team
Cc: Office of the Director DJSS; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications
Subject: TC X - Decision on Defence request regarding the use of consultation room for prayers during breaks

Dear counsel,

The Chamber has had regard to the below request regarding Mr Al Hassan's prayer while attending trial hearings. It is noted that the Defence submits that the Registry has failed to explore all possible options, arguing *inter alia* that it is possible for Mr Al Hassan to use the consultation room for prayers if there is visual surveillance.

As indicated in its Decision on Mr Al Hassan's ongoing fitness to stand trial (ICC-01/12-01/18-1467; the 'Fitness Decision'), the Chamber expects that the possibility of Mr Al Hassan being allowed to pray in the consultation room in between sessions will be fully explored.

However, the Chamber reiterates that this matter falls within the Registry's purview and that 'it is ultimately for the Registry to make any necessary arrangements in light of the relevant [REDACTED] requirements, as well as any COVID-19 associated restrictions' (*see* Fitness Decision, paras 85-86).

It is for the Registry to consider the feasibility of any alternatives, including the aforementioned proposal by the Defence, in light of the relevant [REDACTED], as well as any COVID-19 associated restrictions.

Kind regards,

[REDACTED]
 On behalf of Trial Chamber X

From: Taylor, Melinda [REDACTED]
Sent: 31 May 2021 17:19
To: Trial Chamber X Communications <TrialChamberXCommunications@icc-01/12-01/18-1660>
Cc: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@icc-01/12-01/18-1660>; Office of the Director DJSS <OfficeoftheDirectorDJSS@icc-01/12-01/18-1660>
Subject: FW: Use of Consultation Room for Prayers during breaks

Dear Trial Chamber X,

In the Decision concerning Mr Al Hassan's fitness to stand trial (ICC-01/12-01/18-1467, para. 86), the Chamber observed as follows:

The Chamber observes that the Defence raises an issue as regards the accused's prayer while attending trial hearings. While it is ultimately for the Registry to make any necessary arrangements in light of the relevant [REDACTED] requirements, as well as any COVID-19 associated restrictions, considering the importance of the accused being able to perform his religious activities alongside trial hearings, the Chamber expects that the possibility of Mr Al Hassan being allowed to pray in the consultation room in between sessions will be fully explored.

Following the issuance of this decision, the Defence liaised with the Registry with a view to ascertaining whether the Registry had fully explored options that would accommodate Mr Al Hassan's right to conduct his prayers in an environment that is consistent with his religious belief (that is, not next to [REDACTED]).

Today, the Registry reverted to the Defence, by reiterating their previous assessment and previous conclusion, which predated the Chamber's decision. Indeed, although it appears from the email below that it is possible for Mr

Al Hassan to use the consultation room for this purpose if there is [REDACTED] (the Defence understand that this [REDACTED] concerns [REDACTED], and not employing an [REDACTED]), this option does not appear to have been fully explored.

Both the presumption of innocence and the presumption of liberty dictate that restrictions imposed on Mr Al Hassan should be limited to those that are strictly necessary to ensure his presence at trial, and should not infringe his fundamental liberties (including his right to express his religious faith through prayer, in a suitable environment). The length of proceedings in this case is also distinguishable from domestic trials, where [REDACTED] are only used on a very temporary basis. In this case, unless an alternative solution is devised, Mr Al Hassan will be forced to pray in an inappropriate environment for an extremely prolonged period. The Registry email below has not referred to [REDACTED] that would arise from using this room for prayer, as opposed to counsel-client consultations. Mr Al Hassan regularly sits in the consultation room by himself while waiting for the Defence to enter. His prayer times are only 10 minutes long and he only has one prayer per day during sitting hours. It is clearly possible to devise [REDACTED] that is consistent with his ability to be in this room for 10 minutes per day.

For these reasons, and given that these restrictions are directly linked to the Mr Al Hassan's detention by order of the Trial Chamber, the Defence respectfully requests the Trial Chamber to order the Registry, in consultation with the Defence, to fully explore all options concerning the possibility of Mr Al Hassan being allowed to pray in the consultation room.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From: [REDACTED]
Sent: 31 May 2021 15:59
To: Taylor, Melinda; [REDACTED]; Office of the Director DJSS
Cc: D28 Al Hassan Defence Team; Bossette, [REDACTED]
Subject: RE: Use of Consultation Room for Prayers during breaks

Dear Counsel,

Thank you for your message. Following your request we have consulted with the Safety and Security Section. It is noted that in November 2020 a similar request was raised and following the assessment at the time, the Registry concluded that the request could not be accommodated.

Regarding the new request of 27 May 2021, the Registry reiterates its previous assessment and comes to the same conclusion, namely that after considering the [REDACTED] requirements in the courtroom and in the custodial environment within the ICC HQ premises and COVID-19 associated measures, there is no [REDACTED] flexibility to accommodate this request. The Registry also emphasizes what was already mentioned in November 2020, namely that the [REDACTED] are available for [REDACTED] during court hearing hours and related [REDACTED] operations when the presence of detained persons is required in court for judicial purposes. Lastly, whereas in the [REDACTED] Mr Al Hassan is able to conduct his prayers in private, even if the Registry could accommodate prayer arrangements in the consultation room, this would need to take place [REDACTED]

Considering the above, and on behalf of the Registry, we regret to inform you that the request can therefore not be accommodated.

Kind regards,

From: Taylor, Melinda [REDACTED]
Sent: 31 May 2021 14:34
To: [REDACTED]
 Office of the Director DJSS [REDACTED]
Cc: D28 Al Hassan Defence Team [REDACTED]
Subject: RE: Use of Consultation Room for Prayers during breaks

Dear [REDACTED]

Thank you for your response. Mr Al Hassan just informed us that he was again required to pray in the [REDACTED] rather than the consultation room. Would it be possible to receive an indication as to when we can expect the Registry to devise a solution to this matter?

Thank you in advance for your assistance with this matter.

Kind regards
 Melinda

From: [REDACTED]
Sent: 28 May 2021 16:52
To: [REDACTED]; Office of the Director DJSS
Cc: D28 Al Hassan Defence Team; [REDACTED] Taylor, Melinda
Subject: RE: Use of Consultation Room for Prayers during breaks

Dear Counsel,

On behalf of [REDACTED] I acknowledge receipt of your message. The Registry is looking into this request and will revert to you on this as soon as possible.

Kind regards,

From: [REDACTED]
Sent: 27 May 2021 11:50
To: Office of the Director DJSS [REDACTED]
Cc: D28 Al Hassan Defence Team [REDACTED]; Taylor, Melinda [REDACTED]
Subject: Use of Consultation Room for Prayers during breaks

Dear Mr [REDACTED]

The Defence notes Trial Chamber X's recent comments in its Decision on Mr Al Hassan's ongoing fitness to stand trial (ICC-01/12-01/18-1467, para. 86), namely:

The Chamber observes that the Defence raises an issue as regards the accused's prayer while attending trial hearings. While it is ultimately for the Registry to make any necessary arrangements in light of the relevant [REDACTED] requirements, as well as any COVID-19 associated restrictions, considering the importance of the accused being able to perform his religious activities alongside trial hearings, the Chamber expects that the possibility of Mr Al Hassan being allowed to pray in the consultation room in between sessions will be fully explored.

In light of this, the Defence would be grateful if the Registry could provide an explanation as to the steps it has taken to explore the possibility of Mr Al Hassan being allowed to perform his prayers in the consultation room (or elsewhere) rather than in the [REDACTED], which, as previously set out, cannot be considered a permissible place to worship due to its use as a bathroom. The Defence understands that Mr Al Hassan is still required to perform his prayers next to [REDACTED], and would be grateful if a suitable solution could be identified swiftly. The importance of this is amplified by the fact that the Trial Chamber will be sitting every day for the next two months.

Kind regards,

[REDACTED]

[REDACTED] [REDACTED]

Defence for Al Hassan

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