

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25
Date: 11 December 2025

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN LIBYA

IN THE CASE OF THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI

CONFIDENTIAL

**Defence motion for access to unredacted versions of
pending requests regarding contact restrictions**

Source: Defence for Mr Khaled Mohamed Ali El Hishri

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri ("Defence") requests access to unredacted versions of the filings concerning the Prosecution's various requests for contact restrictions ("Pending Requests"), and the Registry's various observations thereon ("Observation"). Having the redacted versions of these filings only, which contain many dozens of redactions, the Defence has no understanding of the legal and factual basis or bases said to justify these restrictions. Consequently, Mr El Hishri will be prejudiced by not being in a position to make any meaningful response to the Pending Requests. The litigation in this matter risks being entirely one-sided thereby violating the principle of *audi alteram partem*.

2. The Defence also asks for a variation of the time limit, pursuant to Regulation 35 of the Regulations of the Court ("RoC"), to file a consolidated response to the Pending Requests from close of business on Monday, 15 December 2025 to seven days after it has received the unredacted versions of the Pending Requests.

II. PROCEDURAL HISTORY

1. On 10 July 2025, Pre-Trial Chamber I ("PTC") issued the warrant of arrest against Mr El Hishri.¹

2. On 16 July 2025, Mr El Hishri was arrested in the Federal Republic of Germany.

3. On 4 August 2025, the Prosecution filed its first request for "measures to restrict Mr EL HISHRI's communications from the Detention Centre in The Hague immediately upon his surrender to the International Criminal Court" ("First Request").² The measures requested are set out in unredacted form in paragraphs 27 and 28 of the

¹ Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri, [ICC-01/11-188-US-Exp](#), 10 July 2025; [ICC-01/11-188-US-Exp-tARB](#), 15 July 2025; reclassified as public on 31 July 2025

² Prosecution's request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court", ICC-01/11-201-US-Exp, 4 August 2025, para. 1; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-10-Conf-Red

confidential redacted version of the First Request to which the Defence has access, although the evidential basis for seeking the restrictions is heavily redacted.

4. On 5 August 2025, the Registry provided its observations on the First Request ("First Observations").³

5. On 31 October 2025, the Prosecution filed additional information said to be of relevance to the First Request, together with a second request for contact restrictions ("Second Request").⁴ The confidential redacted version of the Second Request is accompanied by an Annex containing six unredacted documents originating from the Dutch Ministry of Justice, the Dutch Minister for Legal Protection, and an excerpt of Dutch internal regulations on detainees (with their English translations), and three additional documents redacted in their entirety. Again, the evidential basis for seeking the restrictions is heavily redacted in the confidential redacted version of the Second Request, as are the requested additional restrictions themselves.

6. On 5 November 2025, the Registry provided its observations on the Second Request ("Second Observations").⁵ The confidential redacted version is heavily redacted.

7. On 26 November 2025, the PTC issued its first decision on contact restrictions ("First Decision") in which it *inter alia* dismissed the Second Request but invited the Prosecution to file an amended request.⁶

³ Registry's Observations on the "Prosecution's request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court" (ICC-01/11-201-US-Exp) dated 4 August 2025, ICC-01/11-202-US-Exp, 5 August 2025; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-17-Conf-Red

⁴ Prosecution's provision of additional information regarding contact restrictions and second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court", ICC-01/11-212-US-Exp, 31 October 2025; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-21-Conf-Red

⁵ Registry's Observations on the "Prosecution's provision of additional information regarding contact restrictions and second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court" (ICC-01/11-212-US-Exp) dated 31 October 2025, ICC-01/11-213-US-Exp, 5 November 2025; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-22-Conf-Red

⁶ First decision on contact restrictions, ICC-01/11-219-US-Exp, 26 November 2025, para. 7; confidential redacted version filed on 4 December 2025, ICC-01/11-01/25-24-Conf-Red

8. On 1 December 2025, the Prosecution filed additional information regarding its requests for contact restrictions and an amended second request ("Amended Request").⁷ Again, the evidential basis for seeking the restrictions is heavily redacted in the confidential redacted version, as are the requested additional restrictions themselves.

9. Also on 1 December 2025, Mr El Hishri was surrendered to the custody of the Court.

10. Later on 1 December 2025, the PTC issued by email an urgent order to the Registry to provisionally implement the contact restrictions requested in paragraphs 27 and 28 of the First Request.⁸

11. On 4 December 2025, the Prosecution filed a further request for contact restrictions ("Further Request").⁹ Once again, the evidential basis for seeking the restrictions is heavily redacted in the confidential redacted version, as are the requested additional restrictions themselves.

12. On 5 December 2025, the Registry provided its observations on the Amended Request ("Third Observations").¹⁰ The confidential redacted version is heavily redacted.

13. Also on 5 December 2025, the PTC issued various orders by email, including an order to the Defence "to file a consolidated response to pending requests regarding

⁷ Prosecution's provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court", ICC-01/11-220-US-Exp, 1 December 2025; confidential redacted version filed on 4 December 2025, ICC-01/11-01/25-25-Conf-Red

⁸ Decision communicated by email, subject "[Confidential] Order to the Registry to provisionally implement contact restrictions", 1 December 2025 at 19:37

⁹ Prosecution's further request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court", ICC-01/11-01/25-31-US-Exp, 4 December 2025; confidential redacted version filed on 5 December 2025, ICC-01/11-01/25-31-Conf-Red

¹⁰ Registry's Observations on the "Prosecution's provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court", 1 December 2025, ICC-01/11-220-US-Exp, ICC-01/11-01/25-33-US-Exp, 5 December 2025; confidential redacted version filed on 9 December 2025, ICC-01/11-01/25-33-Conf-Red

contact restrictions by no later than C.O.B. on Monday 15 December 2025" ("Order for Response").¹¹

14. On 9 December 2025, the Registry provided its observations on the Further Request ("Fourth Observations").¹² Again, the confidential redacted version is heavily redacted.

III. APPLICABLE LAW

15. Article 67(1) of the Rome Statute enumerates the rights of the accused:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, **to a fair hearing conducted impartially**, and to the following minimum guarantees in full equality [...]¹³

16. Regulation 101(2) and (3) of the RoC provide as follows:

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- (a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- (c) Could be harmful to a detained person or any other person;
- (d) Could be used by a detained person to breach an order for non-disclosure made by a judge;
- (e) Is against the interests of public safety; or
- (f) Is a threat to the protection of the rights and freedom of any person.

3. The detained person shall be informed of the Prosecutor's request **and shall be given the opportunity to be heard or to submit his or her views**. In exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request. In such a case, the detained person shall, as soon

¹¹ Order communicated by email, subject "[Confidential – 01/11-01/25] Order following notification of Prosecution request ICC-01/11-01/15-31-US-Exp (*sic.*) and 31-Conf-Red", 5 December 2025 at 16:13

¹² Registry's Observations on the "Prosecution's further request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court", 4 December 2025, ICC-01/11-01/25-31-US-Exp, ICC-01/11-01/25-36-US-Exp, 9 December 2025; confidential redacted version also filed on 9 December 2025, ICC-01/11-01/25-36-Conf-Red

¹³ Added emphasis

as practicable, be informed **and shall be given the opportunity to be heard or to submit his or her views.**¹⁴

17. Regulation 35(2) of the RoC in relevant part provides:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

IV. SUBMISSIONS

18. A fundamental feature of fairness in judicial proceedings is the right of a party to be heard. It is an essential characteristic of natural justice, encapsulated in the maxim *audi alteram partem*.

19. Regulation 101(3) makes it clear that a detained person must be informed of the Prosecutor's request for contact restrictions, and shall be given the opportunity to be heard or to submit his or her views. However, in order for a detained person to be able to meaningfully realise this right, he or she must be able to know what the basis for the request is.

20. This principle was neatly captured in the comments of Lord Denning in the United Kingdom Privy Council case of *Kanda v. Government of the Federation of Malaya*:

If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. [...] It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other.¹⁵

21. In Mr El Hishri's case, the Pending Requests and the Registry's Observations are redacted to such an extent that the Defence cannot know the evidence or assertions upon which the Pending Requests are based. The Defence has no fair opportunity to make informed and meaningful submissions to correct or contradict the evidence or

¹⁴ Added emphasis

¹⁵ *Kanda v. Government of the Federation of Malaya* (Privy Council) [1962] A.C. 322 at 337

assertions. Faced with the heavily redacted Pending Requests and Observations, the only submissions that the Defence could realistically make would be vague and generic arguments of principle, lacking in the sort of focus and substance that a response to requests for contact restrictions demand. This would seriously prejudice Mr El Hishri in his attempt to contest the requested contact restrictions.

22. It is also to the advantage of the PTC to receive meaningful and targeted submissions from the Defence. However, unless the Defence is able to study and respond to unredacted versions of the Pending Requests and Observations, the assistance it will be able to provide the PTC will necessarily be extremely limited.

23. Once unredacted versions of the Pending Requests and Observations are received by the Defence, it will be necessary to take instructions thereon from Mr El Hishri. It will not, realistically, be possible to do so and prepare a useful consolidated response by the current deadline of close of business on Monday, 15 December 2025. It is submitted, therefore, that the Defence has shown good cause for extending the time limit, pursuant to Regulation 35(2), to seven days after the Defence has received unredacted versions of the Pending Requests and Observations.

V. CONCLUSION

24. For the foregoing reasons, the Defence respectfully requests that the PTC:

- (i) **ORDER** the provision of unredacted versions of the Pending Requests and Observations without delay; and
- (ii) **EXTEND** the deadline for a consolidated response to the Pending Requests by seven days after the Defence has received unredacted versions of the Pending Requests and Observations.



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 11 December 2025
at The Hague, The Netherlands