

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/11-01/25
Date: 2 March 2026**

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

THE PROSECUTOR V. KHALED MOHAMED ALI EL HISHRI

Public

Decision on the Defence request for leave to appeal the Chamber's order on the non-disclosure of the identity and identifying information of 17 Prosecution witnesses

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☒ **The Office of Public Counsel for Victims**

☐ **The Office of Public Counsel for the
Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☒ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations**

☐ **Other**

Section

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’), issues the present decision pursuant to article 82(1)(d) of the Rome Statute (the ‘Statute’).

1. On 20 February 2026, the Chamber issued a decision authorising the Prosecution not to disclose to the Defence the identity and identifying information of 17 of its witnesses (the ‘Impugned Decision’).¹

2. On 27 February 2026, the Defence filed a request for leave to appeal the Impugned Decision (the ‘Request’), seeking that the Chamber certifies the following issue for appeal:

Whether the Prosecution may withhold the identities and all identifying information of witnesses P-0342, P-0497, P-0670, P-0719, P-0925, P-0943, P-1031, P-0568, P-0635, P-0644, P-0872, P-1046, P-0054, P-0439, P-0551, P-0650, P-0665 from the Defence (the ‘Issue’).²

3. In its Request, the Defence argues that: (i) given the enormous volume of redactions applied to the Prosecution’s non-disclosure applications, the Defence was prevented from understanding and making informed and meaningful submissions in its relevant responses and this (together with the amount of redactions contained in the Impugned Decision) amounts to a prejudice;³ and (ii) the withholding of witness identities and identifying information will impact the fair and expeditious conduct of the proceedings as it prevents the Defence from conducting investigations and challenging many aspects of the case, including credibility and key factual allegations by the Prosecution.⁴ The Defence avers that the above violates Mr El Hishri’s basic fair trial rights and puts into question the fairness of the confirmation proceedings as a whole.⁵

4. Based on the Court’s long-established jurisprudence, the Chamber recalls the exceptional character of the remedy of interlocutory appeals under article 82(1)(d) of the Statute, and that the following requirements must be met in order for leave to appeal to be granted:

(a) a decision must involve an issue that would significantly affect

(i) both the ‘fair’ and ‘expeditious’ conduct of the proceedings; or

¹ Decision on the Prosecution’s requests to authorise the non-disclosure of the identity and identifying information of 17 witnesses, ICC-01/11-01/25-69-Conf-Exp. A confidential redacted version was filed on the same day and a public redacted version thereof will follow in due course.

² Defence request for leave to appeal “Decision on the Prosecution’s requests to authorise the non-disclosure of the identity and identifying information of 17 witnesses”, ICC-01/11-01/25-73-Conf, para. 2.

³ Request, ICC-01/11-01/25-73-Conf, paras 33-35.

⁴ Request, ICC-01/11-01/25-73-Conf, paras 36-40.

⁵ Request, ICC-01/11-01/25-73-Conf, paras 41-44.

(ii) the outcome of the trial; and

(b) an immediate resolution of the issue by the Appeals Chamber is warranted as it may materially advance the proceedings.⁶

5. An appealable ‘issue’ is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion; it must emanate from the relevant decision itself and cannot represent a hypothetical concern or abstract legal question.⁷

6. The Chamber notes that it can exercise its power under article 82(1)(d) of the Statute only with respect to discrete legal or factual issues arising out of its decisions. The Court’s jurisprudence is clear that leave to appeal interlocutory decisions cannot be granted if the party seeking it, instead of identifying appealable issues, seeks leave to litigate *ex novo* before the Appeals Chamber the entire decision. A request for leave to appeal must identify clearly the appealable issue, including by way of indicating a specific factual and/or legal error. Only in this case can a chamber assess whether the issue, provided it was wrongly decided, may have implications on the fairness and expeditiousness of the proceedings or outcome of the trial.⁸

7. The Chamber is of the view that, in the present case, the Defence’s formulation of the Issue is inconsistent with this requirement insofar as its Request merely constitutes disagreement with the Impugned Decision (discussing its impact on fairness) as a whole, rather than identifying a sufficiently discrete factual and/or legal issue stemming therefrom. As formulated, the Request simply seeks the Chamber’s authorisation to re-litigate the matter before the Appeals Chamber. In these circumstances, the Chamber concludes that the Defence has failed to identify an appealable issue pursuant to article 82(1)(d) of the Statute and accordingly rejects the Request.

⁶ See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168](#) (the ‘DRC Leave to Appeal Judgment’), paras 7-8; Pre-Trial Chamber III, *The Prosecutor v. Joseph Kony*, [Decision on the ‘Kony Defence request for leave to appeal \[the\] “Decision on the criteria for holding confirmation of charges proceedings in absentia”’](#), 28 January 2025, ICC-02/04-01/05-551 (‘Kony Leave to Appeal Decision’), para. 26.

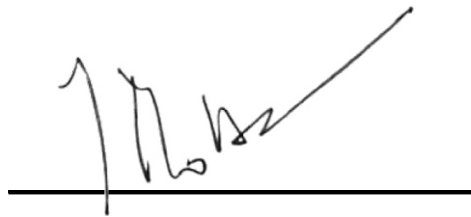
⁷ [DRC Leave to Appeal Judgment](#), para. 9; [Kony Leave to Appeal Decision](#), para. 26.

⁸ See e.g. Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on three applications for leave to appeal](#), 29 November 2012, ICC-02/11-01/11-307, paras 69-70; *The Prosecutor v. Bosco Ntaganda*, [Decision on Defence request for leave to appeal the ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’](#), 16 September 2016, ICC-01/04-02/06-1513, para. 15.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

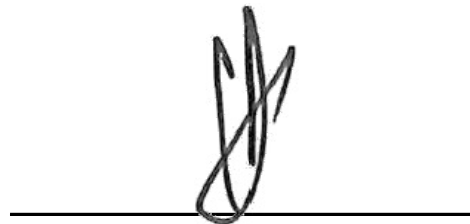
Done in English. A French translation will follow. The English version remains authoritative.

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Judge Iulia Antoanella Motoc, Presiding

A handwritten signature in black ink, appearing to be 'A. Gansou', written above a horizontal line.

**Judge Reine Adélaïde Sophie Alapini-
Gansou**

A handwritten signature in black ink, appearing to be 'M. Flores Liera', written above a horizontal line.

Judge María del Socorro Flores Liera

Dated this Monday, 2 March 2026

At The Hague, The Netherlands