

**Cour
Pénale
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**International
Criminal
Court**

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No.: ICC-01/11-01/25

Date: 4 March 2026

PRE-TRIAL CHAMBER I

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

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

Public

**With confidential *ex parte* only available to the Prosecution and Victims and
Witnesses Unit Annexes 1-4**

**Public Redacted Version of “Prosecution’s request for authorisation to withhold
the identity of witnesses P-0568, P-0635, P-0644, P-0872 and P-1046 upon whose
evidence the Prosecution will rely at the confirmation hearing”, 26 January 2026,
ICC-01/11-01/25-58-Conf-Exp**

Source: Office of the Prosecutor

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

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☐ Legal Representatives of the Victims

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A. INTRODUCTION

1. On 3 December 2025, during the initial appearance of Mr Khaled Mohamed Ali EL HISHRI (“Mr EL HISHRI”), Pre-Trial Chamber I (“the Chamber”), ordered the Office of the Prosecutor (“Prosecution”) to disclose, by 11 December 2025, all information or materials upon which the Warrant of Arrest for Mr EL HISHRI¹ was issued (“the Arrest Warrant materials”).² On 9 December 2025, the Prosecution filed an application pursuant to regulation 35 of the Regulations of the Court (“RoC”) to extend the disclosure deadline for the Arrest Warrant materials of 32 witnesses (“Regulation 35 Application”) to *inter alia* enable it to complete its assessment in relation to 17 witnesses and file, by 26 January 2026, any necessary non-disclosure requests.³ On 23 December 2025, the Chamber granted the Regulation 35 Application and set the time limit for the filing of non-disclosure requests for Arrest Warrant materials to no later than 26 January 2026 and encouraged the Prosecution to file these applications at the earliest opportunity and on a rolling basis.⁴

2. Further to the instructions of the Chamber, the Prosecution requests the Chamber to authorise the non-disclosure of the identity of five Prosecution witnesses LBY-OTP-P-0568 (“P-0568”), LBY-OTP-P-0635 (“P-0635”), LBY-OTP-P-0644 (“P-0644”), LBY-OTP-P-0872 (“P-0872”), and LBY-OTP-P-1046 (“P-1046”), (the “five Witnesses”). Specifically, the Prosecution requests authorisation to disclose to the Defence anonymous redacted versions of the statements of these Witnesses and associated witness materials; to redact the names of these Witnesses in the metadata of these materials;⁵ and not to disclose certain annexes to their statements and associated witness materials,⁶ pursuant to article 68(1) of the Rome Statute (“Statute), as well as rules 76(4), 81(2) and (4) of the Rules of Procedure and Evidence (“Rules”).

¹ ICC-01/11-188 (“Warrant of Arrest”).

² ICC-1-11-01-25-T-001-ENG, p. 8, ll 1-3 (“Chamber’s Order”).

³ ICC-01/11-01/25-35-Conf-Exp-Corr; a confidential redacted version has been filed on 11 December 2025, *see* ICC-01/11-01/25-35-Conf-Corr-Red.

⁴ ICC-01/11-01/25-46-Conf, para. 10 and p. 7.

⁵ *See* Annex 1. The materials listed in Annex 1 will be made available to the Chamber electronically with the proposed redactions in transparent form. The English versions of these materials will simultaneously be disclosed to the Defence with the proposed redactions applied. The Arabic versions will be disclosed as soon as practicable. In addition to the Arrest Warrant materials of the five Witnesses, falling under the Chamber’s Order, the present request also includes materials related to these five Witnesses that were not cited in the Arrest Warrant; translations for some of these materials are still pending and will be made available as soon as possible.

⁶ *See* Annex 2. The materials listed in Annex 2 will be made available to the Chamber electronically in unredacted form.

3. While the Prosecution intends to rely on the evidence of the five Witnesses at the confirmation hearing, their identity and cooperation cannot safely be disclosed at this stage because they face psychosocial risks [REDACTED]. The five Witnesses are also exposed to risks of physical harm and intimidation. Moreover, in relation to P-0568 and P-0872, more time is required to [REDACTED]. [REDACTED]. Non-disclosure of their identity and identifying information is necessary as no less intrusive measures short of non-disclosure are available and feasible in the circumstances. Furthermore, the proposed measures are proportionate and do not unduly prejudice the Defence at this preliminary stage of the proceedings.

B. CONFIDENTIALITY

4. This request and its annexes 1-4 are filed as Confidential and *ex parte*, only available to the Prosecution and Victims and Witnesses Unit (“VWU”) in accordance with regulation 23bis(2) of the RoC because of their sensitive and confidential content. Such content includes, *inter alia*, references to filings marked with the same classification as well as information regarding the security situation of vulnerable witnesses and investigation reports detailing security incidents.

5. The Prosecution will file a confidential redacted version of the present request as soon as practicable.

C. SUBMISSIONS

6. Pursuant to article 68(1) of the Statute, the Chamber is obliged to ensure the safety, physical and psychological well-being of victims and witnesses. In fulfilling this obligation, the Chamber must take all appropriate measures to safeguard their privacy and protection, while ensuring that such measures remain consistent with the rights of the accused.⁷

7. The Court’s appellate jurisprudence sets out several criteria relevant to substantiating a request for non-disclosure of witness identity:⁸

- a) there is an objectively justifiable risk to the safety of the person concerned which arises from disclosing the information to the Defence;
- b) the non-disclosure of information could overcome or reduce the risk and it is necessary in that there is no less intrusive measure, short of non-disclosure, that is available and feasible in the circumstances; and

⁷ ICC-01/12-01/18-765-Red, para. 16.

⁸ ICC-01/04-01/07-475, paras. 71-73; ICC-01/04-01/06-773, paras. 33-34. *See also e.g.* ICC-01/12-01/18-765-Red, para. 19; ICC-01/14-01/18-273-Red, para. 26; ICC-01/12-01/18-777-Red, paras. 12-13.

c) the non-disclosure of information is proportionate, meaning that it is not prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial.

1. Overview of the five Witnesses and their evidence

8. The Prosecution seeks authorisation for the non-disclosure of the identity of crime-base witnesses P-0568, P-0635, P-0644, P-0872, and P-1046, whose evidence is summarised as follows:

- a. P-0568 [REDACTED], was arrested [REDACTED]. He was apparently detained for [REDACTED]. [REDACTED]. P-0568 was subjected to abuses amounting to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts.⁹
- b. P-0635 [REDACTED], was arrested [REDACTED]. He was interrogated about [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0635 was [REDACTED] and persecuted.¹⁰
- c. P-0644 [REDACTED] was arrested [REDACTED], detained, [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0644 was persecuted. [REDACTED].¹¹
- d. P-0872 [REDACTED] was arrested by SDF/RADA [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0872 was [REDACTED] and persecuted. He was beaten [REDACTED], and he was tortured and shot at by other SDF/RADA members.¹²
- e. P-1046 [REDACTED] was arrested [REDACTED]. P-1046 was unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts. He provides direct evidence of Mr EL HISHRI beating other detainees.¹³

2. There are objectively justifiable risks arising from the disclosure of the identity of the five Witnesses

9. There are objectively justifiable risks to the safety of the five Witnesses and their families arising from the disclosure of their identity to Mr EL HISHRI. The danger caused by the

⁹ See Annex 3, p. 1.

¹⁰ See Annex 3, p. 5.

¹¹ See Annex 3, p. 8.

¹² See Annex 3, p. 12.

¹³ See Annex 3, pp. 15-16.

disclosure of the Witnesses' identity to the Defence must be assessed with regard to each individual witness, taking into account his/her specific situation: (i) the witness's personal circumstances; (ii) whether there are currently protection or security measures in place for the witness; (iii) the relevant security situation in the area where the witness or his/her family currently reside; (iv) whether the witness or his/her family members have received any threats on account of his/her (perceived) involvement with the Court; (v) whether the witness him/herself has undertaken any activity to endanger his/her personal safety; and (vi) whether the witness consented that his/her identity be disclosed to the Defence (without prejudice to the Chamber's *proprio motu* assessment whether to disclose such identity).¹⁴ Victims of sexual violence are afforded "special and increased protection" in proceedings before the court, *a fortiori* at the Confirmation of Charges stage.¹⁵ Risks of stigmatisation have also been taken into consideration to authorise the non-disclosure of identity.¹⁶

(a) P-0635, P-0644, P-0872 and P-1046 face [REDACTED] and P-0568 [REDACTED] psychosocial risks upon disclosure of their identity

10. The five Witnesses face an objectively justifiable risk of psychosocial harm should their identity be disclosed to the Defence. Their psychosocial vulnerability is rooted in the severity of the crimes they endured at Mitiga Prison—unlawful detention, torture, cruel treatment, sexual violence, and other inhumane acts—and is compounded by SDF/RADA's documented use of public exposure to intimidate, stigmatise, or punish individuals. These factors, taken together, establish that disclosure at this stage [REDACTED] would place them at a foreseeable, serious, and unacceptable risk to their psychological well-being.

11. P-0635, P-0644, P-0872 and P-1046 face [REDACTED] risks to their psychosocial well-being, upon disclosure of their identity.¹⁷ All four were subjected to extremely serious abuse by SDF/RADA during detention, including torture, cruel treatment, outrages upon personal dignity, and other inhumane acts, and, in the case of P-0635, P-0644, and P-0872, persecution.¹⁸ P-0635 and P-0872 [REDACTED].¹⁹ [REDACTED].²⁰ All four witnesses [REDACTED].²¹ P-

¹⁴ See e.g. ICC-01/14-01/18-273-Red, para. 27; ICC-01/12-01/15-61, para. 6; ICC-01/05-01/08-215-Red, para. 51; ICC-01/05-01/08-202, para. 10; ICC-01/05-01/08-85, para. 30.

¹⁵ ICC-01/12-01/18-545-Red2, paras. 9-10.

¹⁶ ICC-01/12-01/18-765-Red2, paras. 23-25.

¹⁷ Annex 3, pp. 7, 10-11, 13-14, 17-18.

¹⁸ Annex 3, pp. 5, 7, 8, 10, 12-13, 15, 17.

¹⁹ Annex 3, pp. 5, 13-14.

²⁰ Annex 3, pp. 6-7, 10-11, 13-14, 17-18.

²¹ Annex 3, pp. 6-7, 10-11, 13-14, 17-18.

0635, P-0644 and P-1046 [REDACTED].²² [REDACTED] and disclosure to Mr EL HISHRI would further elevate this risk, particularly in relation [REDACTED].²³

12. P-0568 was subjected to torture, cruel treatment, outrages upon personal dignity, and other inhumane acts, [REDACTED].²⁴ He has firmly opposed any disclosure of his identity, [REDACTED].²⁵ [REDACTED].²⁶ He also has health problems as a result of his detention and mistreatment that further contribute to his vulnerability.²⁷ Although psychosocial risk level has not been formally assessed, [REDACTED] suggest an [REDACTED] psychosocial risk.²⁸ Disclosure of his identity would likely increase this risk, particularly given [REDACTED].²⁹

13. As previously argued, even if the Chamber [REDACTED],³⁰ and even though the Chamber has indicated that it would be appropriate to adopt the *Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant*,³¹ there remains at least a risk that if the identity of Prosecution witnesses is disclosed to Mr EL HISHRI, they would become known to SDF/RADA. This risk is amplified by his retained authority over SDF/RADA and his close family ties to the group.³² Even with [REDACTED], Mr EL HISHRI maintains contact with [REDACTED] who are themselves directly in contact or involved with SDF/RADA. Any information shared [REDACTED], whether deliberately or inadvertently, can easily reach individuals embedded in SDF/RADA who would be in a position, and are likely motivated, to use this information to the detriment of the safety of those witnesses.

14. That this risk is not hypothetical is demonstrated [REDACTED]. [REDACTED].³³ [REDACTED].³⁴ [REDACTED]. [REDACTED]. [REDACTED].³⁵ [REDACTED].³⁶

²² Annex 3, pp. 6, 10, 17.

²³ Annex 3, pp. 7, 10-11, 13-14, 17-18.

²⁴ Annex 3, pp. 1-4.

²⁵ Annex 3, pp. 2-4.

²⁶ Annex 3, pp. 2, 4.

²⁷ Annex 3, pp. 2-3.

²⁸ Annex 3, p. 4.

²⁹ Annex 3, p. 4.

³⁰ See ICC-01/11-01/25-54-Conf-Anx9. See also ICC-01/11-01/25-16-Conf-Red, paras. 27-28; ICC-01/11-01/25-54-Conf-Anx16.

³¹ See ICC-1-11-01-25-T-001-ENG, p. 8, ll 13-16; Chambers Practice Manual, Annex, Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant ("Confidential Information and Witness Contact Protocol").

³² Regulation 35 Application, paras. 17-19

³³ Regulation 35 Application, para. 14.

³⁴ Regulation 35 Application, para. 19.

³⁵ Regulation 35 Application, para. 27(i).

³⁶ [REDACTED]. See also ICC-01/11-172-Conf-Red-Corr, para. 110.

15. SDF/RADA has previously used and threatened to use public exposure to stigmatise and harm individuals, increasing the risk that disclosure would be weaponised against these witnesses. [REDACTED]: “[REDACTED].”³⁷ [REDACTED]. [REDACTED].³⁸ [REDACTED].³⁹ SDF/RADA routinely forced detainees to record videos confessing to crimes that they denied committing and published those videos.⁴⁰

16. Notably, P-0644 [REDACTED].⁴¹ [REDACTED]⁴² [REDACTED]. [REDACTED].⁴³ [REDACTED].⁴⁴ These examples demonstrate a readiness to disclose or amplify sensitive information when it serves to punish, intimidate, or discredit perceived opponents. It is therefore likely that SDF/RADA would disclose the identity of Prosecution witnesses to the wider community if it believes that it would subject them to stigma, social exclusion, or other negative consequences (such as accusations of immoral conduct, “treachery,” or “collaboration”). This would substantially heighten the psychosocial risks for these Witnesses, particularly for [REDACTED] who, [REDACTED], are already vulnerable to stigma.⁴⁵

17. In light of the Witnesses’ past abuse, current vulnerability, the real risk that any identity disclosed to Mr EL HISHRI may become known to SDF/RADA and considering SDF/RADA’s prior use of public exposure to stigmatise individuals, disclosure of the identity of the five Witnesses would foreseeably and materially endanger their psychosocial wellbeing.

(b) The five Witnesses [REDACTED] face an objectively justifiable risk of physical harm and intimidation

18. In addition to the psychosocial risks, the five Witnesses also face an objectively justifiable risk of physical harm and intimidation. Disclosing the identity of the five Witnesses would create an objectively justifiable risk to the five Witnesses and their families because: (1) they [REDACTED] face [REDACTED] risk of physical harm and intimidation; (2) SDF/RADA have the capacity and motivation to interfere with and intimidate witnesses as well as a history

³⁷ LBY-OTP-0080-0784; LBY-OTP-0080-0786; LBY-OTP-0080-0788; LBY-OTP-0080-0790; LBY-OTP-0080-0792; LBY-OTP-0080-0794; LBY-OTP-0080-0794.

³⁸ LBY-OTP-0073-0025, paras. 105-111.

³⁹ See above at para. 15.

⁴⁰ See, for instance LBY-OTP-0070-7295, paras. 116-118 and 130, [REDACTED]. [REDACTED].

⁴¹ Annex 3, p. 9.

⁴² Annex 3, p. 9.

⁴³ Annex 3, p. 10.

⁴⁴ Annex 3, p. 10.

⁴⁵ Annex 3, pp. 7, 11, 13-14.

of doing so; (3) [REDACTED]; and (4) SDF/RADA has an established practice of detaining or victimising family members to coerce or punish individuals.

19. First, [REDACTED].⁴⁶ The Prosecution's Security and Protection Unit ("SPU") has assessed that they face a [REDACTED] risk of physical harm and intimidation [REDACTED], should their identity become known to SDF/RADA.⁴⁷ P-0644 [REDACTED],⁴⁸ [REDACTED]. In addition, the five Witnesses [REDACTED],⁴⁹ [REDACTED]. P-0635, P-0644, P-0872 [REDACTED],⁵⁰ [REDACTED]. Moreover, [REDACTED] P-0568, P-0635, P-0644, and P-0872 [REDACTED].⁵¹ These additional factors collectively elevate the overall risk faced by the Witnesses [REDACTED].

20. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁵² [REDACTED],⁵³ [REDACTED]. [REDACTED].⁵⁴ Accordingly, with respect to P-0872 and P-0568, the Prosecution requires additional time to obtain the necessary information and [REDACTED].

21. Second, as set out in detail in the Prosecution's Regulation 35 Application, Mr EL HISHRI, his associates and SDF/RADA have both the capacity to interfere with and intimidate witnesses [REDACTED],⁵⁵ as well as a history of intimidating victims and witnesses, concealing crimes and violating judicial orders.⁵⁶ In addition, both SDF/RADA and its senior members—in particular Mr EL HISHRI [REDACTED]—are motivated to intimidate or otherwise interfere with Prosecution witnesses in this case [REDACTED],⁵⁷ [REDACTED].⁵⁸ [REDACTED].⁵⁹ [REDACTED].

22. [REDACTED] information received by the Prosecution further underscores this risk. [REDACTED]. [REDACTED].⁶⁰ [REDACTED].

⁴⁶ See Annex 3, pp. 1, 3, 5, 7-8, 10, 12-13, 15, 17.

⁴⁷ Annex 3, pp. 3, 7, 10, 12, 16.

⁴⁸ Annex 3, pp. 9-10.

⁴⁹ See Annex 3, pp. 1, 5, 7, 9, 12-13, 17.

⁵⁰ See Annex 3, pp. 5, 9, 12-13.

⁵¹ See Annex 3, pp. 1, 3, 5, 7, 9, 12.

⁵² Annex 3, pp. 1, 3.

⁵³ Annex 3, p. 2.

⁵⁴ Annex 3, p. 3.

⁵⁵ Regulation 35 Application, paras. 15-21. See also ICC-01/11-01/25-24-Conf, para. 7.

⁵⁶ Regulation 35 Application, paras. 22-24.

⁵⁷ Regulation 35 Application, paras. 25-27.

⁵⁸ Regulation 35 Application, para. 27.

⁵⁹ Regulation 35 Application, para. 27.

⁶⁰ Annex 4, pp.1-2.

23. [REDACTED]:

- a. [REDACTED]. [REDACTED].⁶¹
- b. [REDACTED]. [REDACTED].⁶² [REDACTED].⁶³
- c. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁶⁴

24. [REDACTED].

25. Fourth, the risk of physical harm and intimidation [REDACTED]. [REDACTED].⁶⁵ [REDACTED],⁶⁶ [REDACTED].⁶⁷ [REDACTED],⁶⁸ [REDACTED]. [REDACTED].⁶⁹ [REDACTED].⁷⁰

26. In these circumstances, disclosure of the identity of the five Witnesses would expose them and their families to at least a [REDACTED] risk of physical harm and intimidation.

(c) Existing protection measures [REDACTED]

27. The protection measures currently available to five Witnesses and their families are [REDACTED]. As set out in the Regulation 35 Application,⁷¹ [REDACTED]. [REDACTED].

28. Briefing the five Witnesses on confidentiality offers no protection against risks arising from disclosure of their identity. While confidentiality briefings may reduce the chance of inadvertent disclosure by the Witnesses themselves, they provide no safeguard at all against the risks described above—namely, the dangers arising from disclosure to Mr EL HISHRI and through him and his associates or family members to SDF/RADA. They do not diminish the risk of retaliation, intimidation, or coercive tactics by SDF/RADA.

⁶¹ Annex 3, pp. 5-6.

⁶² Annex 3, pp. 9.

⁶³ See ICC-01/11-01/25-55-Conf-Exp, para. 16(a).

⁶⁴ Annex 3, p. 12.

⁶⁵ Regulation 35 Application, para. 20.

⁶⁶ [REDACTED].

⁶⁷ Regulation 35 Application, para. 20.

⁶⁸ See above at para. 23(c).

⁶⁹ See above at para. 19.

⁷⁰ Annex 3, p. 9.

⁷¹ Regulation 35 Application, para. 28.

29. [REDACTED]. [REDACTED]⁷²—[REDACTED]. [REDACTED]. [REDACTED] P-0568's [REDACTED].⁷³ P-0644 [REDACTED].⁷⁴ P-0644 [REDACTED];⁷⁵ [REDACTED]. P-0635 and P-0644 [REDACTED].⁷⁶ [REDACTED].

30. [REDACTED]. [REDACTED],⁷⁷ [REDACTED]. [REDACTED]. [REDACTED].

31. [REDACTED]. P-0644 [REDACTED].⁷⁸ Moreover, P-0635, P-0644 and P-1046 [REDACTED].⁷⁹ [REDACTED].

32. Finally, the five Witnesses have taken deliberate steps to reduce their exposure and [REDACTED]. [REDACTED];⁸⁰ [REDACTED].⁸¹

(d) The five Witnesses did not provide informed consent to their identity being disclosed

33. P-0635, P-0644 and P-0568 did not consent to the disclosure of their identity,⁸² while P-0872 and P-1046 have not yet been able to provide informed consent as [REDACTED].⁸³

34. P-0568 [REDACTED]. [REDACTED].⁸⁴ [REDACTED].⁸⁵ [REDACTED].⁸⁶ [REDACTED] agreed that the Prosecution may rely on his statement only if his identity remains undisclosed.⁸⁷ [REDACTED].⁸⁸

35. While P-0872 initially indicated that he had no objection to disclosure,⁸⁹ this statement cannot be treated as informed consent. [REDACTED],⁹⁰ [REDACTED]. In any case, even where a witness authorises the use of his statement, knowing that his identity might be disclosed to the Defence, any consent must still be weighed by the Chamber against the objective risks associated with disclosure.⁹¹ In the case of P-0872, the risks to his psychosocial well-being are

⁷² Annex 3, pp. 2-3, 6, 10, 13, 17.

⁷³ See Annex 3, pp. 2-3.

⁷⁴ Annex 3, pp. 10.

⁷⁵ Annex 3, p. 10.

⁷⁶ Annex 3, pp. 6, 10.

⁷⁷ Annex 3, pp. 2-3, 6, 10, 13, 17.

⁷⁸ Annex 3, pp. 8-10.

⁷⁹ Annex 3, pp. 6-7, 10, 16.

⁸⁰ Annex 3, pp. 2-3.

⁸¹ Annex 3, p. 13.

⁸² Annex 3, pp. 2, 6, 9.

⁸³ Annex 3, pp. 14, 17.

⁸⁴ Annex 3, p. 2.

⁸⁵ Annex 3, p. 2.

⁸⁶ Annex 3, p. 2.

⁸⁷ Annex 3, p. 2.

⁸⁸ Annex 3, p. 2.

⁸⁹ See Annex 3, pp. 13-14.

⁹⁰ See Annex 3, pp. 13-14.

⁹¹ See ICC-01/05-01/08-202, para. 12.

[REDACTED], compounded by additional risks of physical harm and intimidation [REDACTED]. These risks can only be reliably evaluated once [REDACTED].

36. Similarly, [REDACTED]. [REDACTED].⁹² [REDACTED].⁹³

37. [REDACTED].

38. In addition to the absence of informed consent, [REDACTED] articulated specific fears in relation to disclosure.⁹⁴ [REDACTED].⁹⁵ [REDACTED].⁹⁶ [REDACTED].⁹⁷

39. Taken together, the absence of informed consent and the credible, well-founded security concerns, underscore the seriousness of the risks the five Witnesses face. When viewed against the background of SDF/RADA's demonstrated capacity and motivation to target former detainees; their history of targeting former detainees [REDACTED], including through the use of extreme violence and killings or public exposure creating long-lasting stigmatization; [REDACTED], it is unequivocal that disclosure of the identity of the five Witnesses would expose them to an objectively unacceptable level of risk.

3. Withholding identity is necessary to reduce the risks and is the least intrusive measure available

40. In these circumstances, it is necessary to withhold the identity of the five Witnesses from disclosure to Mr EL HISHSRI.

41. Non-disclosure of identity is necessary where no alternative measure short of anonymity can adequately safeguard the Witnesses. [REDACTED].⁹⁸ Where the nature and immediacy of the risks triggered by disclosure are such that they cannot be addressed merely through confidentiality obligations, anonymity may be required. This may be the case in situations where security assessments indicate that the risks arising from any disclosure, even if inadvertent, would materialise immediately, leaving little or no opportunity to put in place adequate countermeasures.⁹⁹ Additionally, as the Appeals Chamber held, "further or ongoing

⁹² Annex 3, p. 16.

⁹³ Annex 3, p. 16.

⁹⁴ Annex 3, pp. 2, 4, 6, 10, 17.

⁹⁵ Annex 3, p. 6.

⁹⁶ Annex 3, p. 9.

⁹⁷ Annex 3, p. 16.

⁹⁸ [REDACTED].

⁹⁹ ICC-01/12-01/15-61, para. 8. *See also* ICC-01/12-01/18-174-tENG-Red, para. 31.

investigations may be prejudiced if potential prosecution witnesses are interfered with in a manner that could lead to them being unable to cooperate with the Prosecutor.”¹⁰⁰

42. In the present case, non-disclosure of the identity of the five Witnesses is necessary at this stage of the proceedings as the five Witnesses face [REDACTED] psychosocial risks as well as additional risks of physical harm and intimidation and [REDACTED]. [REDACTED].¹⁰¹ [REDACTED]. [REDACTED]. [REDACTED].

43. [REDACTED], any inadvertent or illicit disclosure of the identity of Prosecution witnesses—in particular to SDF/RADA, could trigger immediate consequences, [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

44. In addition, non-disclosure of the Witnesses’ identity is necessary and the least intrusive means to protect them from identified psychosocial risks. As set out above, disclosure would foreseeably [REDACTED] endanger their psychological well-being. While therapeutic care may, over time, alleviate certain harms for some witnesses, its efficacy is inherently individualised and depends on sustained engagement over time. Accordingly, unless and until any therapeutic intervention can be shown to be effectively mitigating the relevant risks for the specific witness, anonymity is the least restrictive means to ensure their protection. Moreover, therapeutic care cannot neutralise stigma-driven harms—including revictimisation, social shaming, and related coercive pressures—[REDACTED].¹⁰² In these circumstances, anonymity is the only effective protective measure at this stage to avert predictable psychological harm and preserve the witnesses’ ability to cooperate safely.

45. Finally, in light of the risks attached to disclosure of the identity of the five Witnesses set out above, any incident affecting any of the five Witnesses [REDACTED]. In these circumstances, the non-disclosure of the identities of the five Witnesses is necessary to mitigate concrete, imminent, and [REDACTED] risks to their safety as well as to the integrity of the proceedings and is the least restrictive measure.

46. In order to effectively implement anonymity, it is necessary to redact the identifying information in the materials of witnesses of the five Witnesses. In addition to the names of the Witnesses, such identifying information may include their (1) personal details such as their signatures, dates and places of birth, places of residence, educational and occupational

¹⁰⁰ ICC-01/04-01/07-476, para. 49.

¹⁰¹ See also ICC-01/11-01/25-56-Conf, para. 8.

¹⁰² See Annex 3, pp. 4, 7, 14, 17.

backgrounds, and names and identifying information on family members; (2) information related to their arrest and detention, such as exact dates of their arrest and release, the sequence of cell (and section) numbers where they were detained or names and identifying information of their cellmates or the fact that they shared the same cell; as well as (3) unique interactions with SDF/RADA members.¹⁰³

47. It is further necessary to withhold certain associated materials related to the five Witnesses, where the materials themselves would be identifying, and redactions could not be effectively implemented. [REDACTED].¹⁰⁴

48. Accordingly, the non-disclosure of identity is the only practical measure capable of averting the severe and immediate risks identified. It remains the least intrusive option available that meaningfully safeguards the five Witnesses and their families.

4. Withholding identity is proportionate

49. Mr EL HISHRI will not be unduly prejudiced by withholding the identities of the five Witnesses.

50. When assessing this last criterion, the Chamber should give due consideration of the pre-trial nature of proceedings in which the non-disclosure is sought, considering, as held by the Appeals Chamber, that “[a]s such it may be permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial.”¹⁰⁵

51. Withholding the identities of the five Witnesses, disclosing redacted versions of the witness statements and associated materials of the five Witnesses will not unduly prejudice Mr EL HISHRI’s fair trial rights since: (i) the scope of confirmation proceedings is limited; (ii) in relation to the five Witnesses, the Defence is receiving redacted versions of their statements as well as annexes and associated witness materials and the redactions applied do not materially hinder the understanding of the statements in terms of the substance of the witnesses accounts; (iii) the number of witnesses for whom non-disclosure of identity is sought is limited and the Defence is receiving the preponderance of the witness statements cited in the Warrant of Arrest

¹⁰³ The Prosecution has set out in detail in Annex 1 the bases for the non-standard redactions applied.

¹⁰⁴ The Prosecution has set out in detail in Annex 2 the reasons why these documents may be identifying and should be withheld.

¹⁰⁵ ICC-01/04-01/07-475, para. 68.

without identity redactions; and (iv) the evidence of the relevant witnesses is corroborative of other evidence available to the Defence.

52. Finally, the limited interference with Mr EL HISHRI's fair trials rights is justified by the gravity of the risks, which encompass both the [REDACTED] psychosocial vulnerabilities faced by several Witnesses as well as the risks of physical harm and intimidation, set out above. In light of SDF/RADA's demonstrated capacity and motivation to target former detainees, coupled with Mr EL HISHRI and SDF/RADA's history of targeting former detainees including through the use extreme violence and killings and public exposure, [REDACTED], and [REDACTED], any disclosure could expose the Witnesses and their families to immediate and irreversible harm. In this context, the proposed non-disclosure of identities represents a proportionate response to mitigate severe risks.

D. CONCLUSION AND RELIEF SOUGHT

53. For the foregoing reasons, the Prosecution respectfully requests the Chamber to authorise the non-disclosure of the identities of these Witnesses.

54. The Prosecution will continue assessing the risk to the safety and security of its witnesses and immediately inform the Chamber of any changes to the current security situation.



Nazhat Shameem Khan
Deputy Prosecutor

Dated this 4th day of March 2026

At The Hague, The Netherlands