

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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-0054, P-0439, P-0551, P-0650 and P-0665 upon whose
evidence the Prosecution will rely at the confirmation hearing”, 26 January 2026,
ICC-01/11-01/25-59-Conf-Exp**

Source: Office of the Prosecutor

Document 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

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☒ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

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-0054 (“P-0054”), LBY-OTP-P-0439 (“P-0439”), LBY-OTP-P-0551 (“P-0551”), LBY-OTP-P-0650 (“P-0650”), and LBY-OTP-P-0665 (“P-0665”), (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, as well as of transcripts of P-0551’s [REDACTED] interview; 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. In addition to the material listed in Annex 2, the Prosecution also seeks authorisation not to disclose [REDACTED] but which in any case are identifying.

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: [REDACTED]. In addition, the five Witnesses face [REDACTED] psychosocial risks. 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.

4. The Prosecution undertakes to review the redactions applied to the relevant materials on an ongoing basis and to lift redactions to information when they are no longer deemed necessary. In the interest of judicial economy and expeditious *inter partes* disclosure, the Prosecution requests that the Chamber authorise it to lift such redactions without seeking the Chamber's prior authorisation for doing so.

B. CONFIDENTIALITY

5. 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 Regulations of the Court ("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.

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

C. SUBMISSIONS

7. 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

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

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.

- 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
- 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

9. The Prosecution seeks authorisation for the non-disclosure of the identity of crime-base witnesses P-0054, P-0439, P-0551, P-0650, and P-0665, whose evidence is summarised as follows:

- a. P-0054 [REDACTED], was [REDACTED] abducted [REDACTED] by [REDACTED] SDF/RADA members, who insulted him, beat him, and accused him of [REDACTED]. [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0054 was persecuted.⁹
- b. P-0439 [REDACTED], was arrested [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0439 was [REDACTED] and persecuted.¹⁰
- c. P-0551 [REDACTED], was arrested [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0551 was [REDACTED], and persecuted.¹¹
- d. P-0650 [REDACTED] was arrested [REDACTED] and taken to Mitiga Prison. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0650 was [REDACTED] and persecuted.¹²
- e. P-0665 [REDACTED], was arrested [REDACTED]. [REDACTED]. In addition to being unlawfully imprisoned and subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, P-0665 was [REDACTED] and persecuted.¹³

⁹ See Annex 3, p. 1.

¹⁰ See Annex 3, pp. 4-5.

¹¹ See Annex 3, pp. 8-9.

¹² See Annex 3, p. 11.

¹³ See Annex 3, p. 13.

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

10. 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 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

(a) P-0665 as well as [REDACTED] face an objectively justifiable risk of physical harm and intimidation

11. Disclosing the identity of the five Witnesses would create an objectively justifiable risk [REDACTED] because: (1) [REDACTED]; (2) SDF/RADA have the capacity and motivation to interfere with and intimidate witnesses, [REDACTED], as well as a history of doing so; (3) any identities disclosed to Mr EL HISHRI are at risk of becoming known to SDF/RADA; (4) [REDACTED]; and (5) SDF/RADA has an established practice of detaining or victimising family members to coerce or punish individuals. In addition, [REDACTED] poses a continuing potential threat to witnesses [REDACTED].

12. First, P-0665 [REDACTED]¹⁵ [REDACTED] due to SDF/RADA's significant capabilities and its demonstrated motivation to intimidate or otherwise interfere with Prosecution witnesses, as further detailed below. [REDACTED] P-0650 [REDACTED].¹⁶ P-0439 [REDACTED].¹⁷ P-0665 [REDACTED] P-0054 and P-0551 [REDACTED].¹⁸ In these circumstances, P-0665 [REDACTED] have been assessed by the Prosecution's Security and Protection Unit ("SPU") to face a [REDACTED] risk of physical harm and intimidation, should

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 See also ICC-01/11-01/25-56-Conf, para. 6.

¹⁶ Annex 3, pp. 11-12 and fn. 1.

¹⁷ Annex 3, pp. 4, 7.

¹⁸ Annex 3, pp. 1-2, 8-10, 13, 16 and fn. 1.

their identity become known to SDF/RADA.¹⁹ In addition, [REDACTED],²⁰ [REDACTED]. P-0439, P-0665 [REDACTED].²¹ [REDACTED] P-0054 and P-0439 [REDACTED].²² These additional factors collectively elevate the overall risk faced by the witnesses [REDACTED].

13. 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],²³ as well as a history of intimidating victims and witnesses, concealing crimes and violating judicial orders.²⁴ 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],²⁵ [REDACTED].²⁶ [REDACTED].²⁷ [REDACTED].

14. [REDACTED] information received by the Prosecution further underscores this risk. [REDACTED]. [REDACTED]. [REDACTED].²⁸ [REDACTED].

15. Third, as previously argued, even if the Chamber [REDACTED],²⁹ 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*,³⁰ 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.³¹ Even with [REDACTED], Mr EL HISHRI maintains contact with [REDACTED] who are themselves directly in contact or involved with SDF/RADA. Any information shared with such [REDACTED], whether deliberately or inadvertently, can easily

¹⁹ Annex 3, pp. 2, 7, 10, 12, 16.

²⁰ See Annex 3, pp. 1-2, 4-5, 7, 9-12, 14-16.

²¹ See Annex 3, pp. 4, 14.

²² See Annex 3, pp. 1-3, 5, 7.

²³ Regulation 35 Application, paras. 15-21. See also ICC-01/11-01/25-24-Conf, para. 7.

²⁴ Regulation 35 Application, paras. 22-24.

²⁵ Regulation 35 Application, paras. 25-27.

²⁶ Regulation 35 Application, para. 27.

²⁷ Regulation 35 Application, para. 27.

²⁸ Annex 4, pp. 1-2.

²⁹ 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.

³⁰ 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").

³¹ Regulation 35 Application, paras. 17-19

reach individuals embedded in SDF/RADA who would be a position, and are likely motivated, to act upon it.

16. That this risk is not hypothetical is demonstrated [REDACTED]. [REDACTED].³² [REDACTED].³³ [REDACTED]. [REDACTED]. [REDACTED].³⁴ [REDACTED].³⁵

17. [REDACTED]:

- a. [REDACTED].³⁶ [REDACTED].³⁷
- b. [REDACTED]. [REDACTED].³⁸
- c. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].³⁹

18. [REDACTED].

19. Fifth, the risk of physical harm and intimidation [REDACTED]. [REDACTED].⁴⁰ [REDACTED],⁴¹ [REDACTED].⁴² [REDACTED],⁴³ [REDACTED]. [REDACTED].⁴⁴ [REDACTED].⁴⁵

20. Finally, [REDACTED] demonstrates a potential continuing threat to witnesses [REDACTED]. [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED]. While P-0054, P-0439, P-0551, and P-0650 [REDACTED],⁴⁸ [REDACTED].

21. [REDACTED]. [REDACTED],⁴⁹ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁵⁰ [REDACTED].⁵¹ [REDACTED].⁵²

³² Regulation 35 Application, para. 14.

³³ Regulation 35 Application, para. 19.

³⁴ Regulation 35 Application, para. 27(i).

³⁵ [REDACTED]. *See also* ICC-01/11-172-Conf-Red-Corr, para. 110.

³⁶ *See* Annex 3, p. 5.

³⁷ *See* below at para. 21.

³⁸ *See* Annex 3, p. 11.

³⁹ *See* Annex 3, pp. 13-15.

⁴⁰ Regulation 35 Application, para. 20.

⁴¹ [REDACTED].

⁴² Regulation 35 Application, para. 20.

⁴³ *See* above at para. 17(a) and (c).

⁴⁴ *See* above at para. 12.

⁴⁵ Annex 3, pp. 2, 11.

⁴⁶ Regulation 35 Application, para. 21.

⁴⁷ Regulation 35 Application, para. 21. *See also* Annex 3, p. 6; ICC-01/11-172-Conf-Red-Corr, para. 3.

⁴⁸ Annex 3, pp. 1-2, 4, 7, 8-9, 11-12.

⁴⁹ *See also* ICC-01/11-172-Conf-Red-Corr, para. 110.

⁴⁹ Annex 3, pp. 5.

⁵⁰ *See* Annex 3, pp. 5-6.

⁵¹ *See* Annex 3, p. 6.

⁵² *See* Annex 3, pp. 7.

22. In these circumstances, disclosure of the Witnesses' identities could expose P-0665 [REDACTED] to immediate and serious risks of physical harm and intimidation, and would also heighten the risk of intimidation for the remaining witnesses, [REDACTED].

(b) The five Witnesses face objectively justifiable psychosocial risks

23. In addition to the serious risks of physical harm and intimidation, the five Witnesses also face an objectively justifiable risk of psychological harm should their identities be disclosed to the Defence. Their psychological vulnerability is rooted in the severity of the crimes they endured at Mitiga Prison—unlawful detention, torture, cruel treatment, sexual violence, enslavement, 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.

24. P-0551, P-0439 and P-0650 face [REDACTED] to their psychosocial well-being, which would likely increase upon disclosure of their identities.⁵³ All were subjected to extremely severe violations of physical and psychological integrity by SDF/RADA, [REDACTED] torture, cruel treatment, outrages upon personal dignity, other inhumane acts, and persecution.⁵⁴ P-0551 also [REDACTED].⁵⁵ [REDACTED].⁵⁶ P-0551 [REDACTED].⁵⁷ [REDACTED].⁵⁸ [REDACTED].⁵⁹ Disclosure to Mr EL HISHRI would significantly heighten this, particularly given the stigma and potential for revictimisation and traumatising, including the heightened vulnerability associated with [REDACTED].⁶⁰ P-0650 [REDACTED].⁶¹ [REDACTED].⁶² [REDACTED].⁶³

25. P-0054, and P-0665 face [REDACTED] psychosocial risks that would likely increase upon disclosure of their identity.⁶⁴ P-0054 was subjected to extremely serious abuse during his detention by SDF/RADA, including unlawful detention, outrages upon personal dignity, cruel

⁵³ Annex 3, pp. 7, 10, 12.

⁵⁴ Annex 3, pp. 4, 7-8, 10-12.

⁵⁵ Annex 3, pp. 8, 10.

⁵⁶ Annex 3, pp. 6-7, 9-10, 12.

⁵⁷ Annex 3, pp. 9-10.

⁵⁸ Annex 3, pp. 7, 10.

⁵⁹ See ICC-01/11-79-Conf-Exp; ICC-01/11-82-Conf-Exp.

⁶⁰ Annex 3, p. 10.

⁶¹ Annex 3, p. 12.

⁶² Annex 3, pp. 11-12.

⁶³ Annex 3, pp. 6-7.

⁶⁴ Annex 3, pp. 3, 16.

treatment, torture, other inhumane acts, and persecution.⁶⁵ [REDACTED].⁶⁶ P-0054 [REDACTED].⁶⁷ P-0665 was unlawfully imprisoned, subjected to outrages upon personal dignity, cruel treatment, torture, and other inhumane acts, [REDACTED] and persecution. [REDACTED].⁶⁸ [REDACTED], with a likelihood that disclosure of their identity to Mr EL HISHRI would elevate these risks.⁶⁹

26. 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].”⁷⁰ [REDACTED].⁷¹ SDF/RADA routinely forced detainees to record videos confessing to crimes that they denied committing and published those videos.⁷² SDF/RADA also [REDACTED]. [REDACTED].⁷³

27. Notably, [REDACTED]: [REDACTED]. [REDACTED].⁷⁴ [REDACTED],⁷⁵ [REDACTED],⁷⁶ [REDACTED]. 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 these witnesses 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 five Witnesses, particularly [REDACTED], as well as those already vulnerable to stigma, such as survivors of sexual violence.

28. In light of the Witnesses’ past abuse, current vulnerability, and SDF/RADA’s prior use of public exposure to stigmatise individuals, disclosure of the five Witnesses’ identities would foreseeably [REDACTED] endanger their psychological wellbeing.

⁶⁵ Annex 3, pp. 1, 3.

⁶⁶ Annex 3, pp. 2-3.

⁶⁷ Annex 3, pp. 2-3.

⁶⁸ Annex 3, pp. 15-16.

⁶⁹ Annex 3, pp. 3, 7, 16.

⁷⁰ 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.

⁷¹ See above at para. 15.

⁷² See, for instance LBY-OTP-0070-7295, paras. 116-118 and 130, [REDACTED]. [REDACTED].

⁷³ See LBY-OTP-00020358, paras. 33, 48, 138, 163-164.

⁷⁴ LBY-OTP-0073-0025, paras. 105-111.

⁷⁵ Annex 3, p. 9.

⁷⁶ Annex 3, p. 13.

(c) Existing protection measures [REDACTED]

29. The protection measures currently available to [REDACTED] the five Witnesses are [REDACTED]. As set out in the Regulation 35 Application,⁷⁷ [REDACTED]. [REDACTED]. [REDACTED].

30. 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.

31. [REDACTED]. [REDACTED]. [REDACTED].⁷⁸ [REDACTED]. [REDACTED].

32. [REDACTED]. [REDACTED].⁷⁹ [REDACTED].⁸⁰ [REDACTED],⁸¹ [REDACTED].

33. [REDACTED]. [REDACTED],⁸² [REDACTED]. [REDACTED]. [REDACTED].

(d) Four of the five Witnesses did not provide informed consent to their identity being disclosed

34. P-0054, P-0650 and P-0665 did not consent to the disclosure of their identity, and P-0551 could not provide informed consent [REDACTED].⁸³ [REDACTED].⁸⁴ [REDACTED].⁸⁵ Although P-0551 did not expressly refuse consent, [REDACTED]. Given [REDACTED], [REDACTED].⁸⁶ As a result, the Prosecution has not been able to obtain informed consent.

35. While P-0439 told the Prosecution that he has no security concerns regarding disclosure,⁸⁷ this does not obviate the Chamber's duty to assess the objective risks, [REDACTED]. Even where a witness authorises the use of his statement, knowing that his identity might be disclosed

⁷⁷ Regulation 35 Application, para. 28.

⁷⁸ Annex 3, pp. 15-16.

⁷⁹ Regulation 35 Application, para. 28.

⁸⁰ Regulation 35 Application, para. 28.

⁸¹ See Annex 3, p. 15.

⁸² Annex 3, pp. 2-3, 7, 10-12.

⁸³ Annex 3, pp. 2, 9, 11, 15.

⁸⁴ Annex 3, pp. 3, 11.

⁸⁵ Annex 3, p. 15.

⁸⁶ Annex 3, p. 9.

⁸⁷ Annex 3, p. 7.

to the Defence, any consent must still be weighed by the Chamber against the objective risks associated with disclosure.⁸⁸ [REDACTED].

36. Taken together, the absence of consent and/or the credible, well-founded security concerns, [REDACTED], underscore the seriousness of the risks they 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; [REDACTED]; the associated psychosocial risks and [REDACTED], it is clear that disclosure of the identity of the five Witnesses at this stage would expose them [REDACTED] to an objectively unacceptable level of risk.

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

37. In these circumstances, it is necessary at this stage of proceedings to withhold the identity of the five Witnesses from disclosure to Mr EL HISHSRI.

38. Non-disclosure of identity is necessary where no alternative measure short of anonymity can adequately safeguard the witnesses. [REDACTED].⁸⁹ 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.⁹⁰ Additionally, as the Appeals Chamber held, "further or ongoing 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."⁹¹

39. In the present case, non-disclosure of the identity of the five Witnesses is necessary as [REDACTED]. [REDACTED].⁹² [REDACTED]. [REDACTED]. [REDACTED], non-disclosure is the only measure capable of safeguarding P-0665 [REDACTED], and protecting the five Witnesses from [REDACTED].

⁸⁸ See ICC-01/05-01/08-202, para. 12.

⁸⁹ [REDACTED].

⁹⁰ ICC-01/12-01/15-61, para. 8. See also ICC-01/12-01/18-174-tENG-Red, para. 31.

⁹¹ ICC-01/04-01/07-476, para. 49.

⁹² See also ICC-01/11-01/25-56-Conf, para. 8.

40. [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].

41. 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, [REDACTED]. 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]. In these circumstances, anonymity is the only effective protective measure to avert predictable psychological harm and preserve the Witnesses' ability to cooperate safely.

42. 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.

43. 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 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.⁹³

⁹³ The Prosecution has set out in detail in Annex 1 the bases for the non-standard redactions applied.

44. 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].⁹⁴

45. Accordingly, the non-disclosure of their 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

46. The Defence and Mr EL HISHRI will not be unduly prejudiced by withholding the identities of the five Witnesses.

47. 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.”⁹⁵

48. Withholding the identity of the five Witnesses, and disclosing redacted versions of their witness statements and associated materials 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, the transcripts of P-0551’s [REDACTED] interview 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 without identity redactions; and (iv) the evidence of the relevant Witnesses is corroborative of other evidence available to the Defence.

49. Finally, the limited interference with Mr EL HISHRI’s fair trials rights is justified by the gravity of the risks. As demonstrated above, 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,

⁹⁴ The Prosecution has set out in detail in Annex 2 the reasons why these documents may be identifying and should be withheld.

⁹⁵ ICC-01/04-01/07-475, para. 68.

[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.

5. Proposal on lifting redactions that become unnecessary

50. Consistent with the approach adopted in the Chambers Practice Manual, the Prosecution “shall monitor the continued necessity of redactions, and shall re-disclose evidence with lesser redactions as soon as reasons justifying them cease to exist”.⁹⁶ The Prosecution is also required, however, to make an application under Regulation 42(3) of the Regulations of the Court to vary a protective measure ordered by the Chamber.

51. In this context, the Prosecution distinguishes between two sub-categories of redactions to information that may lead to the identification of a witness:

- a. First, redactions to information that would lead directly—without anything else—to the identification of the witness such as the witness’s name and ID photos; and
- b. Second, redactions that do not identify the witness independently of other information. [REDACTED].

52. An assessment of the necessity of redactions to information under the second sub-category is dynamic in nature and may vary based on the information that becomes available to Mr EL HISHRI as disclosure of evidence progresses.

53. In the interests of judicial economy, the Prosecution proposes that it be permitted to lift discrete redactions to this type of information falling under the second sub-category when they become unnecessary without seeking authorisation from the Chamber in each and every instance this issue arises. This proposal is not only limited to the witnesses covered by this Application, but intended to extend to all witnesses that are included in similar non-disclosure applications. The Prosecution will rely on such information if it was disclosed to the Defence prior to the final INCRIM disclosure deadline. Any other information that would directly identify the Witness under the first sub-category will remain subject to an application under regulation 42(3) of the Regulations of the Court.

54. In balance, the Prosecution submits that this approach is in keeping with the spirit and objective of the redaction protocol adopted in the Chambers Practice Manual which promotes

⁹⁶ Chamber’s Practice Manual, para. 100(6).

efficient *inter partes* disclosure. This approach would further ensure that lesser redacted versions of witness statements and related evidence are disclosed in an expeditious manner.

D. CONCLUSION AND RELIEF SOUGHT

55. For the foregoing reasons, the Prosecution respectfully requests the Chamber to authorise the non-disclosure of the identity of these Witnesses. The Prosecution further requests the Chamber to authorise it to lift redactions to information that is not directly identifying to witnesses—as noted in paragraphs 50-54—when maintaining such redactions is no longer deemed necessary.

56. 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