

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/11-01/25
Date: 11 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 Defence request for leave to appeal the ‘Second decision on contact restrictions’

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’).

I. Procedural history and submissions

1. Following a number of requests on contact restrictions by the Prosecution, on 20 February 2026, the Chamber issued its Second decision on contact restrictions (the ‘Impugned Decision’).¹

2. On 27 February 2026, the Defence filed a request seeking leave to appeal the Impugned Decision (the ‘Request’) in respect of:

Whether the Pre-Trial Chamber erred in determining that the contact restrictions are necessary and proportionate to the objectives being served.²

3. In its Request, the Defence argues that the Impugned Decision significantly impacts Mr El Hishri’s human rights, and if the restrictions continue in their current form, there is a risk they will have an increasingly deleterious effect on his well-being in detention and his consequent ability to effectively participate in the proceedings.³ The Defence submits that immediate review by the Appeals Chamber is necessary to ‘ensur[e] that the proceedings follow the right course,’ and to provide a ‘safety net for the integrity of the proceedings.’⁴

4. On 4 March 2026, the Prosecution filed its response to the Request (the ‘Response’),⁵ submitting that the Request should be dismissed *in limine* because it is insufficiently developed.⁶ In the Prosecution’s view, the proposed issue is insufficiently concrete and the Defence does not show that it would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.⁷ Additionally, the Prosecution asserts that the Defence has not shown that an intervention by the Appeals Chamber may materially advance the proceedings.⁸

¹Second decision on contact restrictions, ICC-01/11-01/25-70-Conf-Exp. A confidential redacted version thereof was filed on the same day.

² Defence request for leave to appeal “Second decision on contact restrictions”, ICC-01/11-01/25-74-Conf, para. 2.

³ Request, para. 1.

⁴ Request, para. 3.

⁵ Prosecution response to “Defence request for leave to appeal ‘Second decision on contact restrictions’”, ICC-01/11-01/25-78-Conf.

⁶ Response, para. 5.

⁷ Response, para. 6.

⁸ Response, para. 6.

II. Determination

5. The Chamber incorporates by reference the applicable legal framework for authorising interlocutory appeals under article 82(1)(d) of the Statute⁹ and recalls that the following cumulative requirements must all be met for leave 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
 - (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. In the present case, the proposed issue, *i.e.* the Chamber’s alleged erroneous determination that the contact restrictions are necessary and proportionate to the objectives being served, is impermissibly broad. The Chamber considers that the Request does not identify a discrete factual or legal question, but essentially constitutes an attempt to re-litigate the core of the Impugned Decision before the Appeals Chamber.

7. Given this conclusion, it is not strictly necessary to assess whether the remaining criteria under article 82(1)(d) of the Statute have been met. Nevertheless, the Chamber notes that, though the Defence argues that the Impugned Decision ‘interferes’ with Mr El Hishri’s right to privacy and family life, the Defence has not demonstrated how nor to what extent the issue affects the fair and expeditious conduct of the proceedings. In this sense, the Chamber agrees with the Prosecution that the Defence did not even attempt to show that the issue ‘*significantly*’ affects the fairness of the proceedings.

8. Accordingly, the Chamber concludes that the Request fails to meet the test under article 82(1)(d) of the Statute.

⁹ 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, 2 March 2026, ICC-01/11-01/25-75, paras 4-6.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence Request.

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



Judge Iulia Antoanella Motoc, Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Wednesday, 11 March 2026

At The Hague, The Netherlands