

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 25 March 2026

Date of original: 20 February 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 redacted version of

Decision on the Prosecution's requests to authorise the non-disclosure of the identity and identifying information of 17 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
Section**

☐ **Other**

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’ or the ‘ICC’) issues this Decision on the Prosecution’s requests to authorise the non-disclosure of the identity and identifying information of 17 witnesses.¹

I. Procedural history

1. On 3 December 2025, during the initial appearance of Mr Khaled Mohamed Ali El Hishri (‘Mr El Hishri’), the Chamber ordered the Prosecution to disclose the materials underlying the Warrant of Arrest (the ‘Arrest Warrant Materials’) by 11 December 2025.²
2. On 9 December 2025, the Prosecution filed an application pursuant to regulation 35 of the Regulations of the Court (the ‘Regulations’) to extend the disclosure deadline for the Arrest Warrant Materials of 32 witnesses (the ‘Application’) to, *inter alia*, enable it to complete its assessment in relation to 17 witnesses and file any necessary non-disclosure requests by 26 January 2026.³
3. On 10 December 2025, the Chamber suspended the deadline set for 11 December 2025 with respect to the disclosure of material covered by the Prosecution’s abovementioned Application, ordered the Prosecution to file a confidential redacted version of the Application, and instructed the Defence to provide any response within three working days of the notification of its confidential redacted version.⁴
4. On 16 December 2025, the Defence filed its response to the Application.⁵
5. On 23 December 2025, the Chamber granted the Application and set the time limit for the filing of non-disclosure requests for the Arrest Warrant materials to no later than 26 January

¹ See Prosecution’s request for authorisation to withhold the identity of witnesses P- 0342, P-0497, P-0670, P-0719, P-0925, P-0943, and P-1031 upon whose evidence the Prosecution will rely at the confirmation hearing, 21 January 2026, ICC-01/11-01/25-55-Conf-Exp; 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; 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.

² Transcript of hearing, ICC-1-11-01-25-T-001-ENG, p. 8.

³ Prosecution’s application under regulation 35 of the Regulations of the Court to extend the disclosure deadline for the arrest warrant materials of 32 witnesses, 8 December 2025, ICC-01/11-01/25-35-Conf-Exp (corrected version filed on 9 December 2025 and confidential redacted version filed on 11 December 2025).

⁴ Email from the Chamber on 10 December 2025 at 14:25.

⁵ Defence response to “Prosecution’s application under regulation 35 of the Regulations of the Court to extend the disclosure deadline for the arrest warrant materials of 32 witnesses”, ICC-01/11-01/25-42-Conf.

2026 and encouraged the Prosecution to file these requests at the earliest opportunity and on a rolling basis.⁶

6. On 21 January 2026, the Prosecution filed its first request for authorisation to withhold the identity of seven witnesses (the ‘First Request’).⁷

7. On 22 January 2026, as instructed by the Chamber,⁸ the Registry provided to the Chamber its first report on the security and political situation in the State of Libya (‘Libya’) (the ‘Report’)⁹ with two annexes (respectively ‘Annex I to the Report’ and ‘Annex II to the Report’).¹⁰

8. On 26 January 2026, the Prosecution filed its second request (the ‘Second Request’)¹¹ and its third request (the ‘Third Request’)¹² (collectively with the First and Second Requests, the ‘Requests’) for authorisation to withhold the identity of ten witnesses in total.

9. On 28 January 2026, the Prosecution filed a confidential redacted version of the First Request.¹³

10. On 29 January 2026, the Prosecution filed confidential redacted versions of the Second¹⁴ and Third Requests.¹⁵

⁶ Decision on the Prosecution’s application under regulation 35 to extend the disclosure deadline for the arrest warrant materials of 32 witnesses, ICC-01/11-01/25-46-Conf.

⁷ Prosecution’s request for authorisation to withhold the identity of witnesses P- 0342, P-0497, P-0670, P-0719, P-0925, P-0943, and P-1031 upon whose evidence the Prosecution will rely at the confirmation hearing, 21 January 2026, ICC-01/11-01/25-55-Conf-Exp.

⁸ Email from the Chamber on 15 December 2025 at 9:21.

⁹ First Report of the Registry on the Security and Political Situation in the State of Libya, ICC-01/11-01/25-56-Conf.

¹⁰ Annex I to ‘First Report of the Registry on the Security and Political Situation in the State of Libya’, ICC-01/11-01/25-56-Conf-Anx1; Annex II to ‘First Report of the Registry on the Security and Political Situation in the State of Libya’, ICC-01/11-01/25-56-Conf-Anx2.

¹¹ 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.

¹² 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.

¹³ Confidential Redacted Version of “Prosecution’s request for authorisation to withhold the identity of witnesses P-0342, P-0497, P-0670, P-0719, P-0925, P-0943, and P-1031 upon whose evidence the Prosecution will rely at the confirmation hearing”, ICC-01/11-01/25-55-Conf-Red.

¹⁴ Confidential 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”, ICC-01/11-01/25-58-Conf-Red.

¹⁵ Confidential 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”, ICC-01/11-01/25-59-Conf-Red.

11. On 30 January 2026, the Chamber instructed the Victims and Witnesses Unit (the ‘VWU’ or ‘VWS’) to provide its observations on the Requests by 9 February 2026.¹⁶

12. On 9 February 2026, the Defence filed a consolidated response to the Requests (the ‘Response’).¹⁷

13. On the same day, the VWU filed its observations on the Requests (the ‘Observations’)¹⁸ and the Office of the Public Counsel for Victims (the ‘OPCV’) indicated that they support the Requests ‘in full and accordingly will not file a response’.¹⁹

II. Applicable law

14. The Chamber recalls articles 57(3)(c), 61(3), 67(1)(b) and (e), 67(2) and 68 of the Rome Statute (the ‘Statute’), rules 15, 76, 77, 81(2), 81(4) and 121 of the Rules of Procedure and Evidence (the ‘Rules’) and regulation 42 of the Regulations of the Court (the ‘Regulations’).

15. Article 68(1) of the Statute mandates that ‘[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’. For this reason, rule 81(4) of the Rules allows for the non-disclosure of a witness’ identity prior to the commencement of trial when it is necessary in order to protect the safety and privacy of the witness, victims and members of their families. At the same time, under article 68(1) of the Statute, the Chamber must also ensure that such protective measures ‘shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’.

16. The Appeals Chamber has determined that ‘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’.²⁰ As established by the jurisprudence of the Court, when considering a request by the Prosecution pursuant to rule 81(4) of the Rules, the Chamber must take into account the following factors: (i) the disclosure of the witness’s identity must pose an objectively justifiable risk to their safety; (ii) the non-disclosure of the information must effectively mitigate or eliminate this risk and non-disclosure must be necessary, as no less

¹⁶ Email from the Chamber on 30 January 2026 at 14:14.

¹⁷ Defence preliminary consolidated response to Prosecution requests for authorisation to withhold identity of 17 witnesses, ICC-01/11-01/25-65-Conf.

¹⁸ Victims and Witnesses Unit Observations on the Prosecution’s requests for non-disclosure of the identity and identifying information of certain witnesses, ICC-01/11-01/25-64-Conf-Exp.

¹⁹ Email to the Chamber on 9 February 2026 at 10:37.

²⁰ Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’, 13 May 2008, ICC-01/04-01/07-475, para. 68 9 (the ‘Katanga Judgment on the Appeal’).

intrusive and feasible alternatives exist under the circumstances; and (iii) the non-disclosure must be proportionate, ensuring it does not unduly prejudice the rights of the suspect or compromise a fair and impartial trial.²¹

17. In order to assess whether the safety of the witness is at risk, the Chamber has to weigh the following factors: ‘(i) the witness’ 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)’.²²

18. This assessment has to be conducted on a case-by-case basis,²³ and it is to be modified in light of changing circumstances and must, for this reason, be constantly reviewed.²⁴

²¹ Katanga Judgment on the Appeal, paras 71-73; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81’, 14 December 2006, ICC-01/04-01/06-773, paras 21, 33-34; Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto et al.*, Redacted First Decision on the Prosecutor’s Requests for Redactions and Related Requests, 29 June 2011, ICC-01/09-01/11-145-Conf-Red, paras 27-29; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom And Patrice-Edouard Ngaïssona*, Decision on the ‘Prosecution’s Urgent Request for the Non-Disclosure of Witness Identities’, 3 February 2020, ICC-01/14-01/18-273-Red2, para. 26 (the ‘Yekatom Decision on Non-Disclosure’); Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Public redacted version of ‘Decision on Prosecution request relating to protective measures for P-0543’, 18 May 2020, ICC-01/12-01/18-765-Red2, para. 19; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Public redacted version of ‘Decision on a Defence motion seeking disclosure of Biographical and Security Questionnaires conducted by Prosecution investigators with [REDACTED]’, 18 May 2020, ICC-01/12-01/18-777-Red, paras 12-13.

²² Yekatom Decision on Non-Disclosure, para. 27. See also Pre-Trial Chamber I, *The Prosecutor v. Ahmad Al Faki Al Mahdi*, Second Decision on the Prosecutor’s requests for redactions, 16 December 2015, 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; Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, First decision on the Prosecutor’s request for redactions, 31 August 2008, ICC-01/05-01/08-85, para. 30.

²³ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence’, 13 October 2006, ICC-01/04-01/06-568, paras 1, 36, 39. See also Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests, 3 July 2014, ICC-01/04-02/06-117-Red3, para. 34 (the ‘Ntaganda Decision on Redactions’).

²⁴ Ntaganda Decision on Redactions, para. 36.

III. Submissions

i. The Requests

19. In the Requests, the Prosecution requested the Chamber to authorise the non-disclosure of the identity and identifying information of 17 Prosecution witnesses (the ‘Seventeen Witnesses’), on whose evidence it intends to rely on for the confirmation of charges against Mr El Hishri,²⁵ namely (i) P-0342, P-0497, P-0670, P-0719, P-0925, P-0943, P-1031 in the First Request (collectively the ‘First Request’s Witnesses’); (ii) P-0568, P-0635, P-0644, P-0872, P-1046 in the Second Request (collectively the ‘Second Request’s Witnesses’); and, (iii) P-0054, P-0439, P-0551, P-0650, and P-0665 in the Third Request (collectively the ‘Third Request’s Witnesses’).

20. More specifically, the Prosecution requests to: (i) disclose to the Defence anonymous redacted versions of the statements of the Seventeen Witnesses and associated witness materials, as well as of the [REDACTED] interview transcripts of P-0551;²⁶ (ii) redact the names of the Seventeen Witnesses in the metadata of these materials; and (iii) not to disclose certain annexes to their statements and associated witness materials.²⁷ With respect to P-0342, given the peculiarity of his profile and the substance of his evidence, the Prosecution requests to ‘disclose a summary of the relevant parts of P-0342’s statement, to withhold all identifying information pertaining to this witness and not to disclose his witness statements and annexes’.²⁸

21. Regarding the First Request’s Witnesses, the Prosecution alleges that ‘their identities and cooperation cannot safely be disclosed at this stage: [REDACTED]. [REDACTED].’²⁹

22. Concerning the Second Request’s Witnesses, the Prosecution alleges that ‘their identity and cooperation cannot safely be disclosed at this stage because they face psychosocial risks [REDACTED]. The [Second Request’s 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].’³⁰

²⁵ See First Request, para. 3; Second Request, para. 3 and Third Request, para. 3.

²⁶ Third Request, para. 2.

²⁷ See First Request, para. 2; Second Request, para. 2; Third Request, para. 2.

²⁸ First Request, para. 2.

²⁹ First Request, para. 3.

³⁰ Second Request, para. 3.

23. Finally, in respect of the Third Request's Witnesses, the Prosecution alleges that 'their identity and cooperation cannot safely be disclosed at this stage: [REDACTED]. In addition, the [Third Request's Witnesses] face [REDACTED] psychosocial risks.'³¹

24. The Prosecution submits that the '[n]on-disclosure of [the Seventeen Witnesses]' 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 prejudice the Defence at this preliminary stage of the proceedings'.³²

ii. The Response

25. The Defence opposes the Requests, and argues that: (i) the Defence 'is prejudiced by having to respond to the very heavily redacted Requests'; and, (ii) 'granting the proposed measures will cause significant prejudice to the Defence's ability to investigate and make meaningful submissions during the confirmation of charges hearing in respect of nearly half of the witnesses (17 out of 40) relied on in support of the warrant of arrest'.³³ Therefore, the Defence requests the Chamber to reject the Requests 'in their entirety' and to 'redisclose' the Seventeen Witnesses redacted statements 'with their identities made fully available to the Defence'.³⁴

26. The Defence submits, *inter alia*, that: (i) the Requests are 'heavily redacted' and therefore it does not have a 'fair opportunity to make informed and meaningful submissions to correct or contradict the evidence or assertions';³⁵ (ii) the disclosure of the identity and identifying information of the Seventeen Witnesses does not give rise to an objectively justifiable risk to the safety of the witnesses because the assertion that, "Mr [El Hishri], his associates and SDF/RADA have the capacity and motivation to interfere with and intimidate witnesses" and that "any identities disclosed to Mr [El Hishri] are at risk of becoming known to SDF/RADA" are unfounded;³⁶ and, (iii) 'P-0872, P-1046, P-0551 and P-0439 have not objected to the disclosure of their identities'.³⁷ Regarding the first point, the Defence submits that, even if the redacted versions of the Seventeen Witnesses' statements are disclosed, it is 'unable to

³¹ Third Request, para. 3.

³² First Request, para. 3; Second Request, para. 4; Third Request, para. 3.

³³ Response, para. 3.

³⁴ Response, para. 33.

³⁵ Response, para. 9.

³⁶ Response para. 12.

³⁷ Response, paras 16-19.

investigate very nearly half of the Prosecution's witnesses' and the non-disclosure 'will result in the hearing to confirm the charges [...] to be unfair to Mr El Hishri'.³⁸ Regarding the second point, the Defence further submits that 'Mr El Hishri has demonstrated no motivation and no intention to disclose the identities of any Prosecution witnesses that he learned since being detained at the ICC Detention Centre. He has demonstrated no intention of intimidating or interfering with witnesses'.³⁹

27. Additionally, with respect to the proposed summary of P-0342's evidence, the Defence argues that 'any exculpatory material from [P-0342], or material that could be material for the Defence's preparations, must be disclosed'.⁴⁰

iii. The Observations

28. VWS submits that '[REDACTED]'.⁴¹ VWS considers that '[REDACTED]'.⁴²

29. The Chamber notes that VWS concurs with the risk assessment informing the Requests regarding the '[REDACTED]'.⁴³ and that overall VWS 'is of the view that the non-disclosure of identity details and identifying information [of the Seventeen Witnesses] will assist in mitigating the risks to [these witnesses [REDACTED]]'.⁴⁴ The VWS further considers that the non-disclosure [REDACTED].⁴⁵

30. The Chamber further notes that VWS has [REDACTED]⁴⁶ and that it confirms [REDACTED].⁴⁷

iv. Determination

31. The Chamber recalls that, in order to rule on a request to withhold the identity of certain witnesses, it must strike a balance between the rights of the Defence and the need to protect the witnesses.⁴⁸

32. In order to determine whether the criteria to grant the Requests are fulfilled, the Chamber divides the forthcoming analysis into three levels: (i) an individual assessment for each of the

³⁸ Response paras 29, 31.

³⁹ Response, para. 14.

⁴⁰ Response, para. 32.

⁴¹ Observations, para. 6.

⁴² Observations, para. 7.

⁴³ Observations, para. 8.

⁴⁴ Observations para. 27. See also Observations paras 15, 20, 24.

⁴⁵ Observations, paras 15, 20, 24.

⁴⁶ Observations, para. 5.

⁴⁷ Observations, para. 22.

⁴⁸ See article 68(1) of the Statute.

Seventeen Witnesses to assess whether there is an objectively justifiable risk to their safety; (ii) an assessment of the necessity of the requested protective measures; and, (iii) and, assessment of the proportionality of the requested protective measures.

i. Individual assessment of the existence of an objectively justifiable risk

33. At the outset, the Chamber notes that P-0497, P-0670, P-0719, P-0925, P-1031, P-0635, P-0644, P-0568, P-0054, P-0650 and P-0665 [REDACTED], while P-0872 and P-1046 have not yet been able to provide informed consent '[REDACTED]'.⁴⁹ The Chamber further notes that [REDACTED]'.⁵⁰ The Chamber also notes that P-0551 'could not provide informed consent [REDACTED]'.⁵¹ and that, while P-0439 said 'he has no security concerns regarding disclosure', the Prosecution alleges that '[REDACTED]'.⁵²

34. In light of the Requests and the available information, the Chamber deems it appropriate to divide the Seventeen Witnesses into three different groups: (i) [REDACTED]; (ii) [REDACTED]; and, (iii) [REDACTED].

a) First group: [REDACTED] (P-0872 and P-0568)

35. The Chamber notes that, [REDACTED] P-0872 and P-0568.⁵³ The Prosecution alleges that [REDACTED].⁵⁴ Regarding P-0568, the Prosecution submits that '[REDACTED]'.⁵⁵ The Prosecution further submits that it '[REDACTED]'.⁵⁶

36. [REDACTED].⁵⁷ Consequently, the Chamber considers that disclosing P-0872's and P-0568's identities would pose an objectively justifiable risk to their safety [REDACTED].

b) Second group: [REDACTED] (P-0342, P-0497, P-0670, P-0719, P-0925, P-0943, P-1031, P-0635, P-0644, P-1046, and P-0665)

37. The Chamber will now evaluate the following witnesses: P-0342, P-0497, P-0670, P-0719, P-0925, P-0943, P-1031, P-0635, P-0644, P-1046 and P-0665. According to the

⁴⁹ See First Request, para. 31; Second Request, para. 33; Third Request, para. 34.

⁵⁰ First Request, para. 31.

⁵¹ Third Request, para. 34.

⁵² Third Request, para. 35.

⁵³ Second Request, para 20.

⁵⁴ Second Request, para 23(c).

⁵⁵ Second Request, para 34.

⁵⁶ Second Request, para 30.

⁵⁷ Second Request, para 20.

Prosecution, they are all at risk by virtue of [REDACTED]. [REDACTED]. This assessment has been supported by VWS [REDACTED].⁵⁸ [REDACTED].

38. [REDACTED], the Chamber considers that the existence of an objective justifiable risk has been established given that the disclosing the identity of the witnesses in this category [REDACTED].

39. Regarding P-0342, the Prosecution additionally requests to disclose a summary of the relevant parts of his statement.⁵⁹ Anonymous summaries of witness statements, generally deprive the defence of access to more information than do mere redactions, therefore the Chamber must ensure that their use does not disproportionately disadvantage the defence and that disclosing a summary of the statement is indeed the only way to effectively protect the witness.⁶⁰ In relation to P-0342, the Chamber notes that '[REDACTED] of limited to no relevance to the [El Hishri] case'.⁶¹

c) Third Group: [REDACTED] (P-0054, P-0439, P-0551 and P-0650)

40. The Chamber will now evaluate the following witnesses: P-0054, P-0439, P-0551 and P-0650. The Prosecution alleges that these witnesses face psychological risks.⁶² In particular, the Prosecution submits that P-0439, P-0551 and P-0650 'were subjected to extremely severe violations of physical and psychological integrity by SDF/RADA, including sexual and gender-based violence'.⁶³ Finally, the Prosecution submits that P-0554 'was subjected to extremely serious abuse during his detention by SDF/RADA'.⁶⁴

41. The Chamber notes that '[REDACTED]'.⁶⁵

42. Additionally, the Chamber notes that [REDACTED] P-0054, P-0439, P-0551, and P-0650 [REDACTED].⁶⁶

⁵⁸ Observations, para. 7.

⁵⁹ First Request, para. 2.

⁶⁰ See Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Azis Ag Mohamed Ag Mahmoud*, Decision on the Prosecution Requests for Authorization to Withhold the Identities of Witnesses P-0100, P-0111, P-0130, P-0576, P-0581, P-0583, P-0589, P-0592, P-0593 and P-0594, 28 January 2018, ICC-01/12-01/18-174-Red2-tENG, para. 28.

⁶¹ First Request, paras 2, 8(a).

⁶² See Second Request, para. 3; Third Request, para. 3.

⁶³ Third Request, para. 24.

⁶⁴ Third Request, para. 25.

⁶⁵ Observations, para. 21

⁶⁶ Third Request, para. 3.

43. Finally, the Chamber also notes that certain among these witnesses have reported to the Prosecution that ‘[REDACTED]’.⁶⁷

44. Considering [REDACTED], the Chamber is satisfied that an objective justifiable risk has been established in the sense that the disclosing the identity of the witnesses in this category [REDACTED].

ii. Necessity of the non-disclosure

45. In order to assess the necessity of the non-disclosure of the identity details and identifying information of the Seventeen Witnesses, the Chamber analysed the following factors: (i) the current security and political situation in Libya; (ii) the capacity of SDF/RADA to intimidate and/or interfere with witnesses; (iii) the Prosecution and VWS’ capacity to intervene in emergency situations; (iv) the protective measures currently in place for the Seventeen Witnesses; (v) the location of the Seventeen Witnesses [REDACTED]; and, (vi) other relevant circumstances.

46. First, the Chamber notes that ‘Libya's political and security landscape remains defined by the *de facto* institutional partition [REDACTED]’ and that ‘political challenges are further compounded by the militias’ operational autonomy despite their administrative incorporation, [REDACTED]’.⁶⁸ In January 2026, the Registry submitted that ‘[t]he security situation in Libya remains volatile, characterized by a persistent territorial fragmentation and by the proliferation of armed actors, [REDACTED]’.⁶⁹

47. Second, it is clear that SDF/RADA [REDACTED].⁷⁰ SDF/RADA has also control over strategic locations, such as the military part of Mitiga airport⁷¹ and ‘it is suspected that [REDACTED]’.⁷² Furthermore, as indicated by the Registry, ‘in late August-early September 2025’ there have been ‘sporadic clashes between pro-GNU forces and al-rada and its allies’.⁷³

48. The Chamber notes that the ‘[REDACTED]’⁷⁴ and, therefore, acknowledges [REDACTED].⁷⁵

⁶⁷ Third Request, para. 17. See also Third Request, para. 21.

⁶⁸ Annex I to the Report, paras 2, 3.

⁶⁹ Annex I to the Report, para. 7.

⁷⁰ First Request, paras 16(c), 16(e); Second Request, paras 23(c), 25; Third Request, paras 11, 17(a), 17(c).

⁷¹ Annex I to the Report, para. 14.

⁷² Observations, para. 9.

⁷³ Annex I to the Report, para. 13.

⁷⁴ First Request, paras 20, 25, 36; Second Request, paras 27, 42; Third Request, paras 29, 39. *See also* Observations, para. 26.

⁷⁵ First Request, para. 25; Second Request, para. 27; Third Request, para. 29.

49. In the Requests, the Prosecution submits that [REDACTED].⁷⁶ The VWS specifies that ‘[REDACTED]’.⁷⁷ [REDACTED]⁷⁸ and, [REDACTED].⁷⁹ Furthermore, the Chamber notes that [REDACTED].⁸⁰ Additionally, VWS specified that [REDACTED].⁸¹

50. In analysing the necessity of non-disclosure of the Seventeen Witnesses’ identity and identifying information, the Chamber also took in consideration where the witnesses [REDACTED] reside and it concluded that the Seventeen Witnesses [REDACTED].

51. The Chamber also notes that some of the Seventeen Witnesses have [REDACTED]⁸² and others have [REDACTED]⁸³ [REDACTED],⁸⁴ [REDACTED]. Additionally, [REDACTED].⁸⁵

52. The Chamber further notes that according to VWU, ‘based on its review of the available information [REDACTED], [it] is of the view that the non-disclosure of identity details and identifying information will assist in mitigating the risks to the witnesses [REDACTED] who are subject of this submission’.⁸⁶

53. Taking into account the risk assessment made by the Prosecution, the information provided by VWS and the Registry’s Report, as well as the protective measures currently in place, the Chamber finds that the requested non-disclosure effectively mitigates the risk to the Seventeen Witnesses [REDACTED]. Given the prevailing circumstances, the Chamber finds that no less intrusive and feasible alternatives exist to mitigate or eliminate this risk and therefore finds that such non-disclosure is necessary.

54. With respect to P-0342, taking into account the limited relevance of his evidence to the present case, the substance of his witness statement as well as his [REDACTED], the Chamber considers that the disclosure of a summary of his statement constitutes the least intrusive and only feasible measure to mitigate or eliminate the risk to his [REDACTED] safety. Accordingly, the Chamber finds that the non-disclosure of his identity details, identifying information, and full witness statement is necessary.

⁷⁶ First Request, para. 25; Second Request, para. 27; Third Request, para. 29.

⁷⁷ Observations, para. 10.

⁷⁸ Second Request, para. 30.

⁷⁹ See First Request, para. 28; Second Request, para. ; Third Request, para. 32.

⁸⁰ Third Request, para. 32.

⁸¹ Observations, para. 11.

⁸² P-0719, P-0925, P-0670, P-0644.

⁸³ P-0719.

⁸⁴ P-0925, P-1031.

⁸⁵ P-0719, P-0925, P-0943, P-1031, P-0635, P-0644, P-1046. See First Request, para. 29; Second Request, para. 31.

⁸⁶ Observations, para. 27.

iii. *Proportionality of the non-disclosure*

55. Having established the existence of an objectively justifiable risk and the necessity of the requested non-disclosure, the Chamber turns to its assessment of the proportionality of these measures, namely whether the non-disclosure of the identities of the witnesses unduly prejudices the rights of the Defence. In principle, the Defence should know the identity of all incriminating witnesses, especially the ones who testify about the acts and conduct of the suspect, but the Chamber recalls that the scope of the confirmation proceedings is limited and that Chamber is not required to systematically examine the credibility of each witness for the purpose of confirmation of charges.⁸⁷

56. The Chamber notes the Defence submission that ‘Mr El Hishri has demonstrated no motivation and no intention to disclose the identities of any Prosecution witnesses’.⁸⁸ Moreover, the Chamber recalls that, as argued by the Prosecution,⁸⁹ the Chamber adopted 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.⁹⁰ However, the Chamber considers that disclosing the identity details and other identifying information that would enable the Defence to investigate the Seventeen Witnesses may lead to inadvertent disclosure. At this stage, the risk to the Seventeen Witnesses is considered [REDACTED]. Whilst, as submitted by the Defence,⁹¹ the requested non-disclosure concerns 17 out of 40 Prosecution witnesses, the Chamber notes that the redactions sought by the Prosecution are limited to identity details and identifying information of the Seventeen Witnesses and that the Defence has been granted access to the redacted versions of their statements as well as of the annexes and related materials. Having reviewed the proposed redactions, the Chamber finds that they do not materially hinder the understanding of the substance of the statements. The Chamber also notes that the evidence provided by the Seventeen Witnesses is not the only evidence relied upon by the Prosecution and instead is corroborative of other evidence that is available to the Defence.⁹² For instance, the Defence has received the evidence of other 22 crime-based witnesses, in relation to which the Defence is

⁸⁷ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘Ali Kushayb’), 12 May 2021, ICC-02/05-01/20-386, para. 32. See also Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 41.

⁸⁸ Response, para. 14.

⁸⁹ First Request, para. 14; Second Request, para. 13; Third Request, para. 15.

⁹⁰ Transcript of hearing, 3 December 2025, ICC-01/11-01/25-T-001-ENG, p. 8.

⁹¹ Response, para. 29.

⁹² First Request, para. 45; Second Request, para. 51; Third Request, para. 48.

already in a position to carry out investigations. This reduces the potential prejudice of the requested non-disclosure with respect to the Seventeen Witnesses.

57. Considering all the above factors, and particularly in light of the heightened risks faced, the Chamber considers that the temporary measure of non-disclosure of the identity details and identifying information of the Seventeen Witnesses is proportionate and does not unduly prejudice the defence.

58. In regards to P-0342, considering the low relevance of his evidence for the present case [REDACTED],⁹³ the Chamber considers it proportionate to provide only a summary of his statement to the Defence.

iv. Conclusion

59. For the reasons set out above, the Chamber finds that the protective measure sought by the Prosecution is necessary and proportionate and, balancing the interests at stake, the Chamber considers that there are no other alternative and feasible protective measures to implement at this stage. Accordingly, the Chamber grants the Requests, subject to the specifications set forth below, and authorises the Prosecution (i) to withhold the Seventeen Witnesses' identity from the Defence; and, (ii) to apply redactions to identifying information contained in their statements, their annexes or related materials, as proposed in the annexes to the Requests. This authorisation extends to any translations of the witnesses' statements, their annexes or related materials and the metadata linked to the evidence.

60. The authorisation to withhold P-0872's and P-0568's identity is provisional and must be re-evaluated as soon as the Prosecution [REDACTED] carried out a thorough risk assessment. The Chamber expects the Prosecution to [REDACTED] with them before the start of the confirmation hearing and revert back to the Chamber with an updated assessment and request, as appropriate.

61. With regard to P-0342, the Chamber grants the Prosecution's request to only disclose a summary of the relevant part of P-0342 witness statement, ensuring that any and all exculpatory accounts from this witness are disclosed verbatim, to the extent it is possible to do so while respecting the Chamber's above order on the non-disclosure of his identity.

⁹³ First Request, para. 41.

62. Regarding the authorisation to withhold the identity of the rest of the Seventeen Witnesses, the Chamber encourages the Prosecution [REDACTED], while simultaneously enabling the disclosure of further information to the Defence.

63. Finally, the Chamber instructs the Prosecution to monitor the continued necessity of the present non-disclosure orders. When circumstances have changed and where, importantly, the individual concerned have clearly provided their consent for the disclosure of their identity, the Chamber authorises the Prosecution to disclose lesser-redacted version of the relevant material without seeking prior approval from the Chamber. In these specific circumstances, and where the Prosecution assesses that it can lift redactions previously applied to identifying information of witnesses, the Prosecution need not submit to the Chamber individual applications for variation of the protective measures ordered, but must clearly specify in its relevant Disclosure Note that disclosure of the relevant witnesses' identity is being effected per the present authorisation.

64. In any event, the non-disclosure orders issued by way of the present decision are largely contingent upon the current stage of the proceedings and, as a result, will need to be re-evaluated in full upon transfer to trial in case the charges are confirmed. Noting that the hearing for the confirmation of the charges is scheduled to start on 19 May 2026, the Chamber instructs the Prosecution to liaise with the relevant witnesses with a view to prepare them for and obtain their consent for what could be an imminent rescission and/or variation of the present protective measures. Indeed, noting that the present assessment is largely dependent on the current stage of the proceedings, the Chamber clarifies that the Prosecution should be ready, immediately should the charges be confirmed, either to lift the non-standard redactions or to submit a further application for judicial review and approval, as appropriate, should it seek the continuation of the present measures.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution's Requests to withhold the identities of 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 and to continue using these pseudonyms in the current proceedings;

AUTHORISES the Prosecution to disclose the relevant material applying redactions to identity details and identifying information as proposed in the annexes of the Requests;

AUTHORISES the Prosecution not to disclose the witness statement of P-0342 and to disclose only a summary of it;

ORDERS the Prosecution to monitor the continued necessity of the non-disclosure orders, review and lift non-standard redactions as appropriate, and/or seize the Chamber, as per paragraphs 60, 62, 63 and 64 above;

INSTRUCTS the Prosecution and Defence to file public redacted versions of the Requests and the Response within 10 and 15 days of the notification of the present decision, respectively.

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 Flore Liera

Dated this Wednesday, 25 March 2026

At The Hague, The Netherlands