

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No. ICC-01/11-01/25

Date: 30 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

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

PUBLIC

Public redacted version of “Defence preliminary consolidated response to Prosecution requests regarding contact restrictions” (ICC-01/11-01/25-39-Conf)

Source: Defence for Mr Khaled Mohamed Ali El Hishri

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Mr Osvaldo Zavala Giler

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I. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri (“Defence”) makes this preliminary consolidated response to the Prosecution’s various requests for contact restrictions (“Pending Requests”), and the Registry’s various observations thereon (“Observations”). The Defence reiterates that it has only been given access to confidential redacted versions of these filings. These contain many dozens of redactions. At the date of filing, the Defence has no understanding of the legal and factual basis or bases said to justify these restrictions. This is necessarily, therefore, an inadequate and incomplete response to the Pending Requests and can only address the Prosecution’s submissions in the most general of terms.

2. The Defence may be in a position to make a fuller and more meaningful consolidated response if and when it receives greater detail of the legal and factual basis or bases for the requested restrictions. The Defence is significantly prejudiced by the situation it faces.

II. CLASSIFICATION

3. This consolidated response is classified as confidential pursuant to Regulation 23*bis*(2) of the Regulations of the Court (“RoC”) because it is responsive to documents filed with the same classification.

III. PROCEDURAL HISTORY

4. On 10 July 2025, Pre-Trial Chamber I (“PTC”) issued the warrant of arrest against Mr El Hishri.¹

5. On 16 July 2025, Mr El Hishri was arrested in the Federal Republic of Germany.

¹ Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri, ICC-01/11-188-US-Exp, 10 July 2025; ICC-01/11-188-US-Exp-tARB, 15 July 2025; reclassified as public on 31 July 2025

6. On 4 August 2025, the Prosecution filed its first request for “measures to restrict Mr EL HISHRI’s communications from the Detention Centre in The Hague immediately upon his surrender to the International Criminal Court” (“First Request”).² The measures requested are set out in unredacted form in paragraphs 27 and 28 of the confidential redacted version of the First Request to which the Defence has access, although the evidential basis for seeking the restrictions is heavily redacted.

7. On 5 August 2025, the Registry provided its observations on the First Request (“First Observations”).³

8. On 31 October 2025, the Prosecution filed additional information said to be of relevance to the First Request, together with a second request for contact restrictions (“Second Request”).⁴ The confidential redacted version of the Second Request is accompanied by an Annex containing six unredacted documents originating from the Dutch Ministry of Justice, the Dutch Minister for Legal Protection, and an excerpt of Dutch internal regulations on detainees (with their English translations), and three additional documents redacted in their entirety. Again, the evidential basis for seeking the restrictions is heavily redacted in the confidential redacted version of the Second Request, as are the requested additional restrictions themselves.

9. On 5 November 2025, the Registry provided its observations on the Second Request (“Second Observations”).⁵ The confidential redacted version is heavily redacted.

² Prosecution’s request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, ICC-01/11-201-US-Exp, 4 August 2025, para. 1; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-16-Conf-Red

³ Registry’s Observations on the “Prosecution’s request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court” (ICC-01/11-201-US-Exp) dated 4 August 2025, ICC-01/11-202-US-Exp, 5 August 2025; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-17-Conf-Red

⁴ Prosecution’s provision of additional information regarding contact restrictions and second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, ICC-01/11-212-US-Exp, 31 October 2025; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-21-Conf-Red

⁵ Registry’s Observations on the “Prosecution’s provision of additional information regarding contact restrictions and second request for contact restrictions pursuant to regulation 101(2) of the Regulations of

10. On 26 November 2025, the PTC issued its first decision on contact restrictions (“First Decision”) in which it *inter alia* dismissed the Second Request but invited the Prosecution to file an amended request.⁶

11. On 1 December 2025, the Prosecution filed additional information regarding its requests for contact restrictions and an amended second request (“Amended Request”).⁷ Again, the evidential basis for seeking the restrictions is heavily redacted in the confidential redacted version, as are the requested additional restrictions themselves.

12. Also on 1 December 2025, Mr El Hishri was surrendered to the custody of the Court.

13. Later on 1 December 2025, the PTC issued by email an urgent order to the Registry to provisionally implement the contact restrictions requested in paragraphs 27 and 28 of the First Request.⁸

14. On 4 December 2025, the Prosecution filed a further request for contact restrictions (“Further Request”).⁹ Once again, the evidential basis for seeking the restrictions is heavily redacted in the confidential redacted version, as are the requested additional restrictions themselves.

the Court” (ICC-01/11-212-US-Exp) dated 31 October 2025, ICC-01/11-213-US-Exp, 5 November 2025; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-22-Conf-Red

⁶ First decision on contact restrictions, ICC-01/11-219-US-Exp, 26 November 2025, para. 7; confidential redacted version filed on 4 December 2025, ICC-01/11-01/25-24-Conf-Red

⁷ Prosecution’s provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, ICC-01/11-220-US-Exp, 1 December 2025; confidential redacted version filed on 4 December 2025, ICC-01/11-01/25-25-Conf-Red

⁸ Decision communicated by email, subject “[Confidential] Order to the Registry to provisionally implement contact restrictions”, 1 December 2025 at 19:37

⁹ Prosecution’s further request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, ICC-01/11-01/25-31-US-Exp, 4 December 2025; confidential redacted version filed on 5 December 2025, ICC-01/11-01/25-31-Conf-Red

15. On 5 December 2025, the Registry provided its observations on the Amended Request (“Third Observations”).¹⁰ The confidential redacted version is heavily redacted.

16. Also on 5 December 2025, the PTC issued various orders by email, including an order to the Defence “to file a consolidated response to pending requests regarding contact restrictions by no later than C.O.B. on Monday 15 December 2025” (“Order for Response”).¹¹

17. On 9 December 2025, the Registry provided its observations on the Further Request (“Fourth Observations”).¹² Again, the confidential redacted version is heavily redacted.

18. On 11 December 2025, the Defence filed a motion seeking access to unredacted versions of the Pending Requests, and requesting an extension of the deadline to file its consolidated response thereto until seven days after the Defence has received unredacted versions of the Pending Requests and Observations.¹³

19. On 11 December 2025, the PTC issued by email an order maintaining the deadline of Monday, 15 December 2025 for a consolidated Defence response, in addition to further orders for submissions regarding the *ex parte* classification of certain Prosecution filings (“Order of 11 December 2025”).¹⁴

¹⁰ Registry’s Observations on the “Prosecution’s provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, 1 December 2025, ICC-01/11-220-US-Exp, ICC-01/11-01/25-33-US-Exp, 5 December 2025; confidential redacted version filed on 9 December 2025, ICC-01/11-01/25-33-Conf-Red

¹¹ Order communicated by email, subject “[Confidential – 01/11-01/25] Order following notification of Prosecution request ICC-01/11-01/15-31-US-Exp (*sic.*) and 31-Conf-Red”, 5 December 2025 at 16:13

¹² Registry’s Observations on the “Prosecution’s further request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, 4 December 2025, ICC-01/11-01/25-31-US-Exp, ICC-01/11-01/25-36-US-Exp, 9 December 2025; confidential redacted version also filed on 9 December 2025, ICC-01/11-01/25-36-Conf-Red

¹³ Defence motion for access to unredacted versions of pending requests regarding contact restrictions, 11 December 2025, ICC-01/11-01/25-37-Conf

¹⁴ Decision communicated by email, subject “[Confidential – 01/11-01/25] Order following notification of Defence Motion 01/11-01/25-37-Conf, 11 December 2025 at 14:51

IV. APPLICABLE LAW

20. Article 67(1) of the Rome Statute enumerates the rights of the accused:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, **to a fair hearing conducted impartially**, and to the following minimum guarantees in full equality [...] ¹⁵

21. Regulations 101(2) and (3) of the RoC provide as follows:

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- (a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- (c) Could be harmful to a detained person or any other person;
- (d) Could be used by a detained person to breach an order for non-disclosure made by a judge;
- (e) Is against the interests of public safety; or
- (f) Is a threat to the protection of the rights and freedom of any person.

3. The detained person shall be informed of the Prosecutor's request **and shall be given the opportunity to be heard or to submit his or her views**. In exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request. In such a case, the detained person shall, as soon as practicable, be informed **and shall be given the opportunity to be heard or to submit his or her views**. ¹⁶

V. SUBMISSIONS

(a) The Defence has been prejudiced by the ex parte classification of important information relating to the Pending Requests

22. The Defence reiterates its submission that a fundamental feature of fairness in judicial proceedings is the right of a party to be heard. It is an essential characteristic of natural justice, encapsulated in the maxim *audi alteram partem*.

¹⁵ Added emphasis

¹⁶ Added emphasis

23. Regulation 101(3) makes it clear that a detained person must be informed of the Prosecutor's request for contact restrictions, and shall be given the opportunity to be heard or to submit his or her views. However, in order for a detained person to be able to *meaningfully* realise this right, he or she must be able to know what the basis for the request is.

24. In Mr El Hishri's case, the Pending Requests and the Registry's Observations are redacted to such an extent that the Defence does not, at the date of filing, know the evidence or anything other than the most basic assertions upon which the Pending Requests are based. The Defence has no fair opportunity to make informed and meaningful submissions to correct or contradict the evidence or assertions. The situation that the Defence faces has seriously prejudiced its ability to adequately respond to the Pending Requests. Faced with the heavily redacted Pending Requests and Observations, the only submissions that the Defence can make are generic arguments of principle, and submissions on the over-broad and unworkable nature of some of the requested restrictions.

25. The Defence puts the PTC and Prosecution on notice that it will wish to make more concrete and focused supplementary submissions if and when it receives lesser redacted or unredacted versions of the relevant filings, and discussed in the PTC's Order of 11 December 2025.

(b) The proposed contact restrictions are not justified

26. The Pending Requests should be dismissed. They are unjustified because there are no reasonable grounds to believe that Mr El Hishri intends to or will disseminate confidential information, or put the safety and security of victims, witnesses, and their families at risk.

27. Mr El Hishri knows that the Prosecution holds no reliable evidence against him and is confident that the Prosecution will fail to persuade the PTC during confirmation

proceedings that there are substantial grounds to believe that he committed any crimes within the jurisdiction of the Court. He has no interest in doing anything that would unlawfully obstruct the proceedings. He knows that doing so would be counterproductive since, if he were to be found to have engaged in obstruction, it would supply the Prosecution with a basis for arguing that this was evidence of a guilty mind. However, Mr El Hishri knows he is not guilty of anything and that his innocence will be established through unobstructed confirmation proceedings.

28. In any event, the only persons Mr El Hishri wishes to be able to speak with and meet, for now, are close family members: [REDACTED]. Since his arrival at the ICC Detention Centre, he has been able to speak with his mother and wife on one occasion each only. Preventing him from being able to speak with his close family members is an unnecessary and disproportionate interference in his right to respect for family life, as protected by *inter alia* Article 17(1) of the International Covenant on Civil and Political Rights,¹⁷ Article 21(1) of the Arab Charter on Human Rights,¹⁸ Article 18(1) of the African Charter on Human and Peoples' Rights,¹⁹ Article 8(1) of the European Convention on Human Rights,²⁰ and Article 11(2) of the American Convention on Human Rights.²¹

29. Mr El Hishri's mother, [REDACTED]. Mr El Hishri was visiting his mother in Germany, [REDACTED], when he was arrested on 16 July 2025.

30. Mr El Hishri and his wife, [REDACTED], have [REDACTED] children [REDACTED]. All, therefore, are minor.

¹⁷ "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

¹⁸ "No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation."

¹⁹ "The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral."

²⁰ "Everyone has the right to respect for his private and family life, his home and his correspondence."

²¹ "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

31. There are no reasonable grounds to believe that contact between Mr El Hishri and his [REDACTED] mother, wife, or minor children could: (i) prejudice or otherwise affect the outcome of these proceedings, or any other investigation; (ii) be harmful to himself or any person; (iii) be used to breach any non-disclosure order; (iv) be against the interests of public safety; or (v) be a threat to the protection of the rights and freedom of any person.²²

32. Mr El Hishri needs to be able to maintain contact with his mother [REDACTED]. These are matters about which, as a loving son, he is naturally extremely concerned.

33. Additionally, Mr El Hishri needs to be able to maintain contact with his wife and children in order to continue to play an active role in their lives as a devoted husband and father. Notwithstanding his detention, he is determined to continue to be as involved as possible in the upbringing of his children, and in supporting and giving paternal guidance to their educational and social development. He cannot do this if he is deprived of the chance to regularly speak with them by telephone. It is absurd to suggest that he would use the limited telephone time available to him to speak with his young children about school, homework and other such parent-children subjects in order to communicate confidential information with the intention of obstructing these proceedings, or of harming others.

34. Libya is a conservative society in which the family's role in overseeing the education of children and in fulfilling social obligations is of paramount importance. [REDACTED]. It is crucial for Mr El Hishri to be able to communicate regularly by telephone [REDACTED].

35. Although the contact restrictions proposed in the First Request may not directly impact on the nature of the contact Mr El Hishri wishes to maintain with his family, the restriction on the quantity and duration of non-privileged telephone calls contained in

²² *Contra* First Request, para. 7

paragraph 28(a) of the First Request undeniably would. Two 60-minute telephone calls per week is not enough. Mr El Hishri is detained in a country and society with which he has no familiarity. Both he and his family members need to be in much greater contact with each other than two short telephone calls per week. The Defence notes that [REDACTED] if the PTC were to so order.²³ It is respectfully requested that, if the PTC decides to accede to some or all of the proposed restrictions, it orders the Registry to make arrangements for the maximum number of telephone calls to Mr El Hishri's family per week as possible, and for as long a duration as possible.

(c) Many of the proposed contact restrictions are disproportionate, not possible or unworkable

36. While the Defence is unable to make meaningful submissions on the Prosecution's purported reasons why contact restrictions should be made, or on any of the proposed contact restrictions contained in the Prosecution's Amended Request, as supplemented by the Further Request, it is in a position to make the following observations on the fact that a number of restrictions proposed in the First Request are not technically possible, or are unworkable, or are overly broad, or are not proportionate:

- (i) Regarding verification of identities and contact details, the Defence notes that [REDACTED].²⁴ If the Prosecution is to be consulted about potential contacts, in order that this be done as expeditiously as possible it should be ordered to provide any input within a limited period of time. The Defence submits that it would be reasonable to order that any input from the Prosecution must be given within 24 hours. The Defence also supports the Registry's recommendation as set out in paragraphs 17 and 19 of the First Observations. For confidentiality reasons, any consultation with the Prosecution should involve the sharing of only minimal personal information about Mr El

²³ First Observations, para. 22

²⁴ First Observations, para. 8

Hishri's contacts, and only after the Defence has been given an opportunity to submit its views on the matter;

- (ii) The Prosecution proposes at paragraph 27(b) of the First Request that Mr El Hishri and his authorised contacts should only be allowed to communicate using Standard Arabic, and be prohibited from using "obscure, slang or coded language". This is unworkable. Mr El Hishri and his family use the Arabic spoken in Libya. Although the accent and the majority of words used by them should be comprehensible to most non-Libyan Arabic-speaking Registry staff, there are nonetheless words and phrases that are unique to Libya that may not be immediately understood. The use of Libyan Arabic may result in Registry suspicions that Mr El Hishri and his family are violating a condition that authorises the use of Standard Arabic only, or that they are using "obscure, slang or coded language". Further, the Prosecution makes no effort to define with any precision what is meant by "obscure, slang or coded language". Words that may be used completely naturally and unproblematically in the context of an entirely innocent family discussion may be interpreted as being obscure or coded. The PTC will appreciate that all families use special and unique vocabulary, phrases and idioms when talking among themselves that will be unfamiliar and even nonsensical to non-family members. The use of innocent family vocabulary and idiom during authorised telephone calls could very easily be misinterpreted by Registry staff as obscure or coded language, resulting in the termination of the call and reports as violations of the contact restrictions. This imprecise and overly broad proposed condition is unworkable and should be denied;
- (iii) At paragraph 27(c) of the First Request, the Prosecution proposes an absolute prohibition on *any* discussion between Mr El Hishri and his authorised contacts related to the case or potential witnesses. However, at paragraph 28(h), it is proposed that authorised contacts should be informed that no

confidential or *protected* information may be discussed. There is a tension between these two proposed conditions. The first is significantly more restrictive and, it is submitted, more disproportionate and unworkable than the second. It is unreasonable to bar Mr El Hishri from discussing *any* aspect of his case with his authorised contacts. This would prohibit him from talking, for example, about the contents of public filings, mundane matters such as dates and preparations for status conferences, and applications for provisional release. Such an overly broad restriction would be both absurd and, it is submitted, unlawful. It should therefore be denied;

- (iv) Regarding the proposal that a log of all non-privileged telephone calls and visits be maintained by the Registry and shared with the Prosecution,²⁵ the Defence notes and supports the position of the Registry at paragraph 20 of the First Observations. The PTC and, if eventually applicable, the Trial Chamber, should always be the arbiter of whether the confidential details contained in a Registry log can be shared with the Prosecution, and only after hearing from the Defence;
- (v) Similarly, regarding the proposal that there be a report to the PTC and Prosecution whenever restrictions are not respected,²⁶ the Defence notes and supports the position of the Registry at paragraph 27 of the First Observations. The Prosecution has not made any convincing demonstration that there should be a departure from the standard practice as set out in paragraph 27. That standard practice should be followed in the event a violation is suspected, [REDACTED]. [REDACTED];
- (vi) Finally, the Prosecution seeks a restriction ensuring no unannounced or unauthorised individual *passively or actively listens* to calls with Mr El Hishri

²⁵ First Request, paragraph 28(d)

²⁶ First Request, paragraph 28(e)

by prohibiting the use of speaker phone. This is unreasonable and unworkable. It is unreasonable because during his few weekly telephone calls with his close family, it will be unduly burdensome for Mr El Hishri to repeat his news to 10 or more family members, one after the other. It is inevitable that all authorised family members will want to engage in a collective family discussion with Mr El Hishri, and he with them. Anything else would be wholly unnatural and an unreasonable diminution of the collective experience. Moreover, the prohibition of the use of speaker phone will be difficult to police. It would be impossible to identify when speaker phone was being used as opposed to, for example, a mobile handset's regular (individual use) speaker with the volume increased to the maximum, especially if the handset is of mediocre quality, or the internet connection is poor. This proposed restriction is unworkable and should be denied.

Respectfully submitted,



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 30 March 2026
at The Hague, The Netherlands