

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/11-01/25
Date: 10 April 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 request for authorisation to submit
anonymous summaries of ten 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 request for authorisation to submit anonymous summaries of P-0337, P-0339, P-0347, P-0442, P-0685, P-0706, P-0713, P-0764, P-0767 and P-1059’s relevant evidence’ (the ‘Request’).¹

I. Procedural history

1. On 10 March 2026, the Prosecution filed the Request, seeking authorisation to disclose anonymous summaries of P-0337, P-0339, P-0347, P-0442, P-0685, P-0706, P-0713, P-0764, P-0767 and P-1059 (the ‘Ten Witnesses’), on whose evidence it intends to rely on for the confirmation of charges against Mr El Hishri.² More specifically, the Prosecution requests to withhold the identity and identifying information as well as the statements and associated materials of the Ten Witnesses and only disclose anonymous summaries of their evidence because ‘[d]isclosing the identity and cooperation of the [Ten Witnesses] may gravely endanger them [REDACTED]’.³
2. On 17 March 2026, the Defence requested the Chamber an extension of time to reply to the Request and to provide a consolidated response to this Request and another non-disclosure request filed by the Prosecution⁴ by 20 March 2026.⁵
3. On the same day, the Chamber granted the Defence’s request and instructed the Defence to file its consolidated response by 23 March 2026.⁶

¹ 10 March 2026, ICC-01/11-01/25-81-Conf-Exp (Confidential redacted version filed on 12 March 2026) with confidential *ex parte* Annexes 1-3 (ICC-01/11-01/25-81-Conf-Exp-Anx1; ICC-01/11-01/25-81-Conf-Exp-Anx2; ICC-01/11-01/25-81-Conf-Exp-Anx3). A corrected version of Annex 1 (ICC-01/11-01/25-81-Conf-Exp-Anx1-Corr) was filed on 8 April 2026.

² See Request, paras 3, 10.

³ Request, paras 3-4, 10, 47.

⁴ Prosecution’s request for authorisation to submit anonymous summaries of parts of P-0361, P-1570, P-1666, P-1692 and P-1737’s evidence, 17 March 2026, ICC-01/11-01/25-87-Conf-Exp (Confidential redacted version filed on the same day).

⁵ Email from the Defence to the Chamber on 17 March 2026 at 15:57.

⁶ Email from the Chamber on 17 March 2026 at 17:40.

4. On 18 March 2026, as instructed by the Chamber,⁷ the Victims and Witnesses Unit (the ‘VWU’) filed its observations on the Request (the ‘Observations’),⁸ [REDACTED],⁹ [REDACTED].¹⁰

5. On 23 March 2026, the Defence filed its response to the Request (the ‘Response’),¹¹ alleging that (i) it ‘has no fair opportunity to make informed and meaningful submissions to correct or contradict the evidence or assertions’ as ‘the [the Request and the other non-disclosure request] are very heavily redacted’;¹² (ii) ‘[t]he Prosecution’s stated concerns [on the Ten Witnesses [REDACTED] safety] are evidentially unsupported and wholly misplaced’;¹³ (iii) there is a less intrusive measure that could be granted which is the ‘restriction of the disclosure of the identity of a witness to the Defence team only, without disclosure to the Suspect’;¹⁴ and, that (iv) disclosing only summaries is prejudicial to the Defence.¹⁵ Therefore, the Defence submits that the Request should be rejected in its entirety and that the Ten Witnesses’ statements should be redisclosed together with their identities.¹⁶

II. Applicable law

6. The Chamber recalls articles 57(3)(c), 61(3) and (5), 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 and regulation 42 of the Regulations of the Court.

7. The Chamber incorporates by reference the applicable law as set out in its prior decision.¹⁷

8. The Chamber also recalls that ‘[w]here the disclosure of evidence or information [...] may lead to the grave endangerment of the security of a witness or his or her family, the

⁷ Email from the Chamber on 11 March 2026 at 15:40.

⁸ Victims and Witnesses Unit’s Observations on the “Prosecution’s request for authorisation to submit anonymous summaries of P-0337, P-0339, P-0347, P-0442, P-0685, P-0706, P-0713, P-0764, P-0767 and P-1059’s relevant evidence” (ICC-01/11-01/25-81-Conf-Exp), ICC-01/11-01/25-88-Conf-Exp.

⁹ Observations, ICC-01/11-01/25-88-Conf-Exp, para. 6 *referring to* Victims and Witnesses Unit Observations on the Prosecution’s requests for non-disclosure of the identity and identifying information of certain witnesses, 9 February 2026, ICC-01/11-01/25-64-Conf-Exp (the ‘First Observations’).

¹⁰ Observations, para. 6.

¹¹ Defence consolidated response to Prosecution’s requests for authorisation to submit anonymous summaries of 15 witnesses (ICC-01/11-01/25-81-Conf-Red and ICC-01/11-01/25-87-Conf-Red), ICC-01/11-01/25-90-Conf.

¹² Response, para. 12.

¹³ Response, para. 20.

¹⁴ Response, para. 22.

¹⁵ Response, para. 24.

¹⁶ Response, para. 31.

¹⁷ Decision on the Prosecution’s requests to authorise the non-disclosure of the identity and identifying information of 17 witnesses, 20 February 2026, ICC-01/11-01/25-69-Conf-Exp (Confidential redacted version filed on the same day), paras 14-18 (the ‘First Decision on Non-Disclosure’).

Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof’,¹⁸ and that consequently, at the confirmation of charges hearing, ‘the Prosecutor may rely on documentary or summary evidence’.¹⁹

III. Determination

9. At the outset, the Chamber notes the Defence’s submission that the Request is very heavily redacted and that, therefore, ‘[t]he Defence has no fair opportunity to make informed and meaningful submissions to correct or contradict the evidence or assertions’.²⁰ The Chamber, having reviewed the redactions applied, finds that they are necessary not to reveal the information sought to be protected nor increase existing safety risks, and accordingly concludes that no lesser redacted version of the Request can be provided.

10. In order to determine whether the relevant criteria are fulfilled, the Chamber divides the forthcoming analysis as follows: (a) an individual assessment for each of the Ten Witnesses to assess whether there is an objectively justifiable risk to their safety [REDACTED], and whether they would face a grave endangerment to their security; (b) an assessment of the necessity of the requested protective measures; and, (c) an assessment of the proportionality of the requested protective measures.

a) Individual assessment of the existence of an objectively justifiable risk and of a grave endangerment to their security

11. The Chamber notes that the Ten Witnesses [REDACTED].²¹ In this regard, the Chamber also notes that ‘[REDACTED], resulting in increased risks to their physical safety’.²²

12. The Chamber recalls that, according to the VWU, ‘[REDACTED]’ and that ‘[REDACTED]’.²³

13. Furthermore, in respect of [REDACTED], the Chamber notes that ‘[REDACTED]’ and that ‘[REDACTED]’.²⁴ [REDACTED], the VWU concluded that [REDACTED] and that

¹⁸ See article 68(5) of the Statute.

¹⁹ See article 61(5) of the Statute.

²⁰ Response, paras 12-13.

²¹ Request, paras 14, 21, 22. See also Annex II to the Request.

²² Request, para. 13.

²³ First Observations, para. 7.

²⁴ Observations, para. 7.

‘[REDACTED]’.²⁵ In this regard, the Chamber notes that ‘[REDACTED]’ and that it is in ‘[REDACTED]’.²⁶

14. The Chamber also notes the Prosecution’s risk assessment of the Ten Witnesses [REDACTED], concluding they were all at [REDACTED], [REDACTED] or [REDACTED] risks of physical harm and/or intimidation should their cooperation with the Court become known to SDF/RADA [REDACTED].²⁷

15. Furthermore, the Prosecution alleges that P-0685, P-0713, P-0764, P-0767, [REDACTED] and P-0706 are particularly vulnerable and the disclosure of their identities ‘would foreseeably and materially endanger the psychological wellbeing of [these witnesses]’.²⁸ In this regards, the Chamber recalls that ‘VWU is of the view that the disclosure of identity or identifying information can exacerbate existing mental suffering of witnesses who were identified as vulnerable’ as it ‘could raise fear of reprisals, stigmatization or community ostracization’.²⁹

16. Additionally, based on the Prosecution’s submissions, ‘[n]one of the [Ten Witnesses] have expressly consented to the disclosure of their identity’ and that ‘many conveyed security concerns while emphasizing that their statements mostly pertain to [REDACTED] other than SDF/RADA’.³⁰ The Prosecution submits that it ‘[REDACTED]’.³¹

17. Considering [REDACTED], the particular vulnerability of certain witnesses, and the risk assessments conducted by the VWU and the Prosecution, the Chamber is satisfied that objectively justifiable risks to their safety have been established. In particular, the Chamber finds that disclosure of their identities and identifying information [REDACTED] could endanger them [REDACTED], meeting the threshold under article 68(5) of the Statute. Furthermore, given the nature of their evidence, as discussed further below, the Chamber considers that this would also [REDACTED].

b) Necessity of the non-disclosure

²⁵ Observations, para. 9.

²⁶ Observations, para. 9.

²⁷ Annex 2 to the Request, pp 3, 6, 10, 12, 15, 19, 21, 23, 27, 30.

²⁸ Request, para. 26. See also Annex 2 to the Request, pp. 14-15, 19, 21, 22-23, 25-26.

²⁹ First Observations, para. 21.

³⁰ Request, para. 33.

³¹ Request, para. 33.

18. At the outset, and given that no change in circumstances have since occurred, the Chamber recalls its prior assessment of (i) the current security and political situation in Libya; (ii) the capacity of SDF/RADA to intimidate and/or interfere with witnesses [REDACTED]; and, (iii) the Prosecution's and VWU's capacity to intervene in emergency situations.³²

19. In the Request, the Prosecution submits that the protective measures currently in place for the Ten Witnesses are limited to '[REDACTED]',³³ which '[REDACTED]'.³⁴ The Prosecution further submits that '[REDACTED]'.³⁵

20. In analysing the necessity of the non-disclosure of the Ten Witnesses' identity, identifying information, statements and associated materials, the Chamber also takes into consideration [REDACTED], namely [REDACTED]. Accordingly, and as further discussed below, risks arising from any disclosure, whether deliberate or inadvertent, during Defence investigative activities or monitored non-privilege contacts,³⁶ could expose them to immediate and irreversible harm.

21. The Chamber also notes that some of the Ten Witnesses have [REDACTED]. Concretely, '[REDACTED]'.³⁷

22. Furthermore, the Chamber notes the [REDACTED] of the Ten Witnesses because they either '[REDACTED]'³⁸ [REDACTED]. In the present case, the Prosecution further contends that the need for the disclosure of only anonymous summaries of the Ten Witnesses' evidence is also due to the '[REDACTED]'.³⁹

23. With regards to the possibility of disclosing redacted statements and associated materials, even if heavy redactions were applied, the Chamber notes the Prosecution's submission that this would '[REDACTED]' and '[REDACTED]'.⁴⁰ Further, in light of the above circumstances, notably the heightened risks, the threat actor's capacities, and the irreversible damages which could result from inadvertent disclosure during investigations, the Chamber agrees with the Prosecution⁴¹ that the Defence's suggestion to disclose the material solely to

³² First Decision on Non-Disclosure, paras 46-49.

³³ Request, para. 28.

³⁴ Request, para. 16.

³⁵ Request, para. 31.

³⁶ See Request, paras 25, 37, 40.

³⁷ Request, para. 30.

³⁸ Request, para. 38. See also para. 11.

³⁹ Request, para. 20.

⁴⁰ Request, para. 38.

⁴¹ Request, para. 40.

the Defence⁴² does not sufficiently mitigate the risks faced by the Ten Witnesses [REDACTED].

24. Finally, the Chamber notes that the VWU '[REDACTED]'.⁴³ More generally, the Chamber recalls that, in respect of a similar application, the VWU advised that non-disclosure of identity details and identifying information would assist in the mitigation of safety risks.⁴⁴

25. In light of the above, given the prevailing circumstances, the Chamber finds that the non-disclosure of the Ten Witnesses' identity details, identifying information, statements and associated materials is necessary and that, at present, constitutes the least intrusive and only feasible measure to mitigate or eliminate the risks to their safety [REDACTED].

c) Proportionality of the non-disclosure

26. The Chamber recalls that, 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. Furthermore, the Chamber recalls that the scope of the confirmation proceedings is limited and that the Chamber is not required to systematically examine the credibility of each witness for the purpose of the confirmation hearing.⁴⁵

27. The Chamber notes that the Defence has been granted access to anonymous summaries of the relevant part of their statements and that these summaries, ranging from 1 to 22 pages, are the only documents upon which the Prosecution intends to rely during the confirmation of charges hearing.⁴⁶ In the present case, the Prosecution submits that the relevance of the Ten Witnesses is limited to the 'on-going armed conflict in Libya that arose from the 2011 revolution' and the Chamber notes that the summaries will be 'mostly relied upon [by the Prosecution] to demonstrate the existence of the continuous non-international armed conflict in Libya since 2011 revolution'.⁴⁷ In this regard, the Chamber further notes that 'none of the information provided by the Ten Witnesses pertain to [Mr El Hishri]'s acts and conduct'.⁴⁸

⁴² Response, para. 22.

⁴³ Observations, para. 12.

⁴⁴ First Decision on Non-Disclosure, para. 52 *referring to* First Observations, para. 27.

⁴⁵ 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.

⁴⁶ Request, para. 43.

⁴⁷ Request, paras 4, 44.

⁴⁸ Request, para. 44.

This reduces the potential prejudice of the requested non-disclosure with respect to the Ten Witnesses.

28. Moreover, the Chamber refers to the recent notification of the Document Containing the Charges,⁴⁹ as well as the Prosecution's Pre-Confirmation Brief.⁵⁰ Considering the scope and nature of the Ten Witnesses' evidence, and having had regard to the Prosecution's intended use of the same during the confirmation of charges hearing, the Chamber is satisfied that: (i) such evidence is corroborative of other evidence available to the Defence; and that (ii) this reduces the impact of the temporary measure sought.

29. Considering all the above factors, and particularly in light of the marginal relevance of the evidence provided by the Ten Witnesses with respect to the present case, the Chamber is of the view that the disclosure of only anonymous summaries has no significant impact on the Defence's preparation for the confirmation of charges hearing. Having considered the Request both on its own and in combination with the Prosecution's other decided upon or pending applications for non-disclosure orders, [REDACTED], the Chamber therefore finds that the temporary measures sought in the Request are proportionate at this stage of the proceedings and do not on their own nor cumulatively unduly prejudice the Defence.

IV. Conclusion

30. Accordingly, the Chamber grants the Request, subject to the specifications set forth below, and hereby authorises the Prosecution (i) to withhold from the Defence the Ten Witnesses' identity and identifying information as well as their statements and associated materials; and, (ii) to only disclose anonymous summaries of the relevant parts of the evidence provided by the Ten Witnesses.

31. The Prosecution must monitor the continued necessity of the present order and liaise with the VWU to determine whether alternative, less restrictive, protective measures may become available. Noting that the present assessment is largely dependent on the current stage of the proceedings and will need to be re-evaluated in full upon transfer to trial in case the charges are confirmed, 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 at a later stage of the proceedings. In this regard, the Chamber clarifies that the Prosecution should be ready, immediately should the

⁴⁹ 26 March 2026, ICC-01/11-01/15-92.

⁵⁰ 26 March 2026, ICC-01/11-01/25-94-Conf.

charges be confirmed, either to disclose the statements and associated materials, or to submit a further application for judicial review and approval, as appropriate, should it seek the continuation of the present measures.

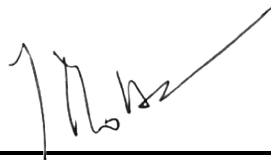
FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution's Request;

AUTHORISES the Prosecution to withhold the identity and identifying information of P-0337, P-0339, P-0347, P-0442, P-0685, P-0706, P-0713, P-0764, P-0767 and P-1059, as well as the statements and other identifying associated materials, as listed in the first column of the corrected version of Annex 1; and,

AUTHORISES the Prosecution to submit and rely upon anonymous summaries of the relevant parts of the evidence provided by P-0337, P-0339, P-0347, P-0442, P-0685, P-0706, P-0713, P-0764, P-0767 and P-1059, as prepared.

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 Friday, 10 April 2026

At The Hague, The Netherlands