

**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 parts of P-0361, P-1570, P-1666, P-1692 and P-1737's evidence

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 parts of P-0361, P-1570, P-1666, P-1692 and P-1737’s evidence’ (respectively the ‘Request’ and the ‘Five Witnesses’).¹

I. Procedural history

1. On 17 March 2026, the Prosecution filed the Request, seeking authorisation to ‘withhold the identity of the [Five Witnesses], including their statements, materials and any identifying information, and to disclose anonymous summaries of the parts of their evidence relevant to the Defence’ because ‘[d]isclosing the identity and cooperation of the [Five Witnesses] may gravely endanger them [REDACTED]’.²

2. On 23 March 2026, the Defence filed its response to the Request (the ‘Response’),³ 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’;⁴ (ii) ‘[t]he Prosecution’s stated concerns [on the Five Witnesses [REDACTED] safety] are evidentially unsupported and wholly misplaced’;⁵ (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’;⁶ and, that (iv) disclosing only summaries is prejudicial to the Defence.⁷ Therefore, the Defence submits that the Request should be rejected and that the Five Witnesses’ statements should be redisclosed together with their identities.⁸

II. Applicable law

¹ 17 March 2026, ICC-01/11-01/25-87-Conf-Exp (Confidential redacted version filed on 18 March 2026) with confidential *ex parte* annexes 1-2 (ICC-01/11-01/25-87-Conf-Exp-Anx1; ICC-01/11-01/25-87-Conf-Exp-Anx2). A corrected version of Annex 1 (ICC-01/11-01/25-87-Conf-Exp-Anx1-Corr) was filed on 8 April 2026.

² Request, paras 4, 10. See also Request, paras 3, 49.

³ 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.

⁴ Response, para. 12. On 17 March 2026, the Chamber granted the Defence’s request to file a consolidated response (see email from the Defence to the Chamber on 17 March 2026 at 15:57) and instructed the Defence to file it by 23 March 2026 at 12pm (see email from the Chamber on 17 March 2026 at 17:40).

⁵ Response, para. 20.

⁶ Response, para. 22.

⁷ Response, para. 24.

⁸ Response, para. 31.

3. 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 (the ‘Rules’) and regulation 42 of the Regulations of the Court.

4. The Chamber incorporates by reference the applicable law as set out in its prior decision.⁹

5. 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 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’.¹⁰

III. Determination

6. 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’.¹¹ 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.

7. 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 Five 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

8. The Chamber notes that the Five Witnesses [REDACTED].¹² In this regard, the Chamber also notes that, according to the Prosecution’s risk assessment, four of the Five Witnesses [REDACTED] are at ‘[REDACTED]’ risk of physical harm and intimidation should their

⁹ 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’).

¹⁰ See article 68(5) of the Rome Statute.

¹¹ Response, paras 12-13.

¹² Request, paras 14, 21-23.

identity be disclosed to SDF/RADA whilst P-0361's risk has been assessed as '[REDACTED]' given that the witness '[REDACTED]'.¹³

9. The Chamber recalls that, according to the VWU, '[REDACTED]' and that '[REDACTED]'.¹⁴

10. Furthermore, the Prosecution submits that the Five Witnesses face '[REDACTED]'¹⁵ or '[REDACTED]'¹⁶ risks to their psychological well-being due to the '[REDACTED] abuse [they suffered] during their detention'.¹⁷ On this point, the Chamber recalls that the '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'.¹⁸

11. The Chamber also notes that '[n]one of the [Five Witnesses] have expressly consented to the disclosure of their identity and many conveyed alarming security concerns'.¹⁹ More specifically, P-1692 and P-1737 have expressly refused the disclosure of their identity.²⁰ [REDACTED].²¹

12. Considering the mental health situation of the Five Witnesses [REDACTED], and the risk assessments conducted by the Prosecution and the VWU, the Chamber is satisfied that objectively justifiable risks to their safety have been established. In addition, the Chamber finds that disclosure of their identities and identifying information [REDACTED] could gravely endanger them [REDACTED], meeting the threshold under article 68(5) of the Statute.²² Furthermore, given the nature of the evidence provided by P-0361, the Chamber considers that this would [REDACTED].

b) Necessity of the non-disclosure

¹³ Request, paras 14, 17. See also Annex 2 to the Request, pp 5, 7, 11, 14, 18.

¹⁴ 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, para. 7 (the 'VWU's Observations').

¹⁵ Request, para. 26. Annex 2 to the Request, pp 8, 18.

¹⁶ Request, para. 26. Annex 2 to the Request, pp 5, 11, 14.

¹⁷ Request, para. 26.

¹⁸ VWU's Observations, para. 21.

¹⁹ Request, para. 34.

²⁰ Request, paras 27, 36.

²¹ Request, para. 35.

²² For these reasons, the Chamber rejects the Defence's submission that '[t]he Prosecution's stated concerns [on the Five Witnesses [REDACTED] safety] are evidentially unsupported and wholly misplaced' (Response, para. 20).

13. 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 the VWU's capacity to intervene in emergency situations.²³

14. In the Request, the Prosecution submits that the protection measures currently in place for the Five Witnesses are limited to '[REDACTED]',²⁴ which '[REDACTED]'.²⁵ In respect to [REDACTED], the Chamber notes that the witness '[REDACTED]'.²⁶ and that the witness '[REDACTED]'.²⁷

15. In analysing the necessity of non-disclosure of the Five Witnesses' identity and identifying information as well as 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,²⁸ could expose them to immediate and irreversible harm. In this respect, the Chamber recalls that, for a similar application, the VWU advised that non-disclosure of identity details and identifying information would assist in the mitigation of safety risks.²⁹

16. The Chamber also notes that some of the Five Witnesses have [REDACTED]: '[REDACTED]', while '[REDACTED]'.³⁰

17. 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 'unduly increase their jeopardy and that of other detainees and third parties mentioned in their statements without providing information of significant additional relevance to the Defence at this stage of the procedure'.³¹ 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

²³ First Decision on Non-Disclosure, paras 46-49.

²⁴ Request, para. 29.

²⁵ Request, para. 32.

²⁶ Request, para. 32.

²⁷ Request, para. 23. See also Annex 2 to the Request, p. 17.

²⁸ Request, paras 24, 40, 43.

²⁹ VWU's Observations, para. 27.

³⁰ Request, para. 31. See also Annex 2 to the Request, pp 3, 5, 13-15.

³¹ Request, paras 41, 46.

agrees with the Prosecution³² that the Defence's suggestion to disclose the material solely to the Defence³³ does not sufficiently mitigate the risks faced by the Five Witnesses [REDACTED], as well as other innocent third parties – who may not be aware that they are named in Court's documents.

18. In light of the above, given the prevailing circumstances, the Chamber finds that the non-disclosure of the Five 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

19. The Chamber notes that the Five Witnesses will be not relied upon by the Prosecution during the confirmation of charges hearing but they provide information, which has been included in the anonymous summaries, that falls under the rule 77 of the Rules and/or article 67(2) of the Statute.³⁴ Considering that the Prosecution is not relying upon the Five Witnesses for the confirmation of charges proceedings, the Chamber considers that this reduces the impact that the disclosure of only anonymous summaries has on the Defence.

20. The Chamber notes that the Defence has been granted access to anonymous summaries of the relevant portions of the Five Witnesses' statements. The Chamber has reviewed both the witness statements, ranging from 25 to 45 pages, and the summaries, ranging from one to four pages and containing *verbatim* extracts or quotations from the witnesses' statements, and considers that these summaries provide information that could be material for the preparation of the Defence. While the Chamber understands that the Defence may wish to contact the Five Witnesses to clarify certain points,³⁵ it considers that, at this stage of the proceedings, the risk to their safety [REDACTED]. In this regard, the Chamber further notes that the Prosecution 'has refrained from including incriminating evidence in the anonymous summaries unless such evidence was intertwined with information which may be relevant to the Defence' and that the underlying materials contain information which may unduly expose third parties.³⁶

21. Considering the above, and particularly in light of the limited scope of the confirmation of charges hearing, the temporary nature of these protective measures and the fact that the

³² Request, para. 43.

³³ Response, para. 22.

³⁴ Request, para. 11.

³⁵ Response, paras 27-28.

³⁶ Request, para. 46.

Prosecution will not rely upon the Five Witnesses for the hearing as well as the [REDACTED] risk to their safety [REDACTED], the Chamber is of the view that the disclosure of only anonymous summaries has no significant impact on the Defence's preparation for the 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, 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

22. Accordingly, the Chamber grants the Request and hereby authorises the Prosecution (i) to withhold from the Defence the Five 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 Five Witnesses.

23. 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 which would allow disclosure of further information to the Defence. 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 Prosecution should 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. In this regard, the Chamber clarifies that the Prosecution should be ready, immediately should the 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.

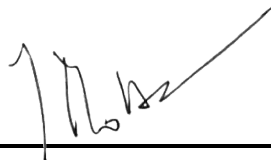
FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution's Request;

AUTHORISES the Prosecution to withhold the identity and identifying information of P-0361, P-1570, P-1666, P-1692 and P-1737, 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-0361, P-1570, P-1666, P-1692 and P-1737, 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