

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25
Date: 30 June 2026
Date of original: 1 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 of the non-disclosure of certain materials related to five 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 ‘ICC’) issues the present decision on the Prosecution’s request for authorisation to withhold certain annexes to statements and associated materials related to P-0371, P-0446, P-0595, P-0711 and P-0720 (the ‘Request’).¹

I. Procedural history and submissions

1. On 3 March 2026, the Prosecution filed the Request, seeking the Chamber’s authorisation to withhold certain annexes to statements and associated materials (the ‘Associated Materials’) related to five witnesses (P-0371, P-0446, P-0595, P-0711 and P-0720, together the ‘Witnesses’) whose statements were relied upon in the Warrant of Arrest and have been disclosed accordingly, without redaction to their identity.² The Prosecution alleges that the Associated Materials cannot safely be disclosed at this stage because doing so would: (i) pose an objectively justifiable risk to the safety of P-0446, [REDACTED] P-0371 and P-0595, as well as [REDACTED] P-0711 and P-0720 (the ‘Affected Individuals’);³ (ii) heighten the risk to P-0371, P-0595, P-0711 and P-0720’s [REDACTED];⁴ and, as a result, (iii) carry the risk to prejudice further or ongoing investigation.⁵ It therefore argues that withholding the Associated Materials is necessary and adds that such non-disclosure order would align with the standard redactions applied to the Witnesses’ statements.⁶ The Prosecution further submits that ‘no less intrusive measures short of non-disclosure are available and feasible in the circumstances. Furthermore, withholding [the Associated Materials] does not prejudice the Defence at this preliminary stage of the proceedings’.⁷ A confidential redacted version of the Request was notified on 11 March 2026.⁸

2. No responses were received within the deadline set by the Chamber.⁹

II. Applicable law

3. The Chamber refers to 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) and (4), and 121 of the Rules of Procedure and Evidence (the ‘Rules’) and incorporates by reference the applicable law as set out in its prior

¹ ICC-01/11-01/25-76-Conf-Exp, with three annexes; all *ex parte*, Prosecution and VWS only.

² Request, para. 2.

³ Request, paras 15-28.

⁴ Request, paras 29-30.

⁵ Request, para. 31.

⁶ Request, paras 3, 32.

⁷ Request, para. 3.

⁸ ICC-01/11-01/25-76-Conf-Red.

⁹ See Transcript of hearing of 4 March 2026, ICC-01/11-01/25-T-003-CONF-ENG ET, p. 17.

decision.¹⁰ The Chamber further clarifies that the Court's protection obligation extends, not only to witnesses, victims and their families, but also to other persons who might be at risk on account of the activities of the Court.¹¹

III. Determination

4. In order to determine whether the relevant criteria are fulfilled, the Chamber divides the forthcoming analysis as follows: (i) individual assessment for each of the Affected Individuals as to whether there is an objectively justifiable risk to their safety; (ii) assessment of the necessity of the requested protective measures; and (iii) assessment of the proportionality of the requested protective measures.

a) Individual assessment of the existence of an objectively justifiable risk

5. The Chamber notes the Prosecution's submission that the safety of the Affected Individuals, as well as the Witnesses, is at risk by virtue of [REDACTED].¹² This assessment has been supported by the Victims and Witnesses Unit (the 'VWU') which recently indicated, in respect of a similar application, that [REDACTED].¹³ [REDACTED].¹⁴

6. Specifically, for P-0446, the Chamber recalls that a witness's recent contact information is highly sensitive information, the disclosure of which, particularly in the current circumstances, raises an objectively justifiable risk to a witness's safety.¹⁵ For the same reasons, and with respect to P-0595 [REDACTED], [REDACTED].

¹⁰ Confidential redacted version of '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-Red (the 'First Decision on Non-disclosure'), paras 14-18.

¹¹ 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, paras 1-3, 54-56; *The Prosecutor v. Bosco Ntaganda*, [Protocol establishing a redaction regime](#), ICC-01/04-02/06-411-AnxA, paras 2, 24-27.

¹² Request, paras 16-21. The Chamber notes in this regard that the Prosecution has had no direct contact with nor has it been able to confirm available information on the current whereabouts of some of the Affected Individuals. See Request, paras 20-21, 32.

¹³ 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 'VWU Observations'), para. 7. See also 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, para. 6.

¹⁴ See paragraph 9 below.

¹⁵ See Transcript of hearing of 3 December 2025, ICC-01/11-01/25-T-001-ENG ET, p. 8, referring to [Chambers Practice Manual](#) (2014), paras 98 to 100, Category B.1.

7. Concerning the [REDACTED] of both P-0711 and P-0720, as well as P-0371 [REDACTED], the Chamber notes that [REDACTED],¹⁶ [REDACTED]. [REDACTED].¹⁷ In the circumstances, given the local context and [REDACTED] further discussed below, disclosure of such information poses particularly high risks to the safety and well-being of [REDACTED] witnesses [REDACTED].

8. Having considered the content of the Associated Materials and [REDACTED], and in light of its further assessment of the overall security and political environment in the following sub-section, the Chamber finds that the Prosecution has established for each of the Affected Individuals and Witnesses the existence of objectively justifiable risks to their safety, as well as their physical and psychological well-being.

b) Necessity of the non-disclosure

9. 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 and/or their family members, including outside the country; and (iii) the Prosecution's and VWU's capacity to intervene in emergency situations.¹⁸ The Chamber emphasises [REDACTED]¹⁹ and, in this regard, notes the Prosecution's submission that [REDACTED].²⁰

10. Moreover, the Chamber finds that the considerations which form part of its prior assessment are equally relevant to [REDACTED]. In this regard, the Chamber takes into account VWU's observation that [REDACTED] and VWU's related conclusion that the threat [REDACTED] 'is not a reflection of their status as a witness, but a reflection of the overall environment'.²¹

11. Finally, the Chamber has considered alternative measures and finds the Prosecution's submission in this regard persuasive.²² First, the Chamber is of the view that [REDACTED] must be set aside as it is either too invasive, representing an unnecessary and irreversible disruption into the lives of the Affected Individuals, or simply not feasible given that the Court

¹⁶ See Request, para. 25.

¹⁷ First Decision on Non-disclosure, paras 43, 47; Request, paras 12, 20 [REDACTED].

¹⁸ First Decision on Non-disclosure, paras 46-49, notably referring to 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.

¹⁹ First Decision on Non-disclosure, paras 48-49.

²⁰ Request, para. 32.

²¹ VWU Observations, para. 7. See also para. 8 ('[REDACTED]').

²² Request, e.g. paras 32-33.

is not currently in contact with them. Second, disclosure of the Associated Materials in redacted form is either insufficient to mitigate the existing risks or would require disclosure of an item the content of which is redacted in full. Third, 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.²³

12. In light of the above, and particularly having had regard to the available protective framework in the context of the current security and political situation in Libya, the Chamber considers that withholding the Associated Materials constitutes the least intrusive and only realistic measure available to mitigate the safety risks detailed in the prior section. The Chamber therefore finds that protective measures in the form of the present non-disclosure order are necessary.

c) Proportionality of the non-disclosure

13. The Chamber notes that the Associated Materials consist of a total of 31 items.²⁴ None of these items were cited in Mr El Hishri's Arrest Warrant. Further, the Chamber observes that the Associated Materials relate to five witnesses whose statements were themselves disclosed, with only discrete standard redactions applied. The Defence accordingly has access to the identity and testimonial evidence of these five witnesses in its preparation for the confirmation hearing. Further, with respect to items related to P-0446 and P-0711, the Chamber notes that their content, either in full or in large part, is being made available to the Defence in another format, *i.e.* via disclosure of relevant transcripts and/or translations.²⁵ In the view of the Chamber, this significantly reduces the impact that a non-disclosure order will have.

14. Considering the above, and particularly given their limited relevance for the present case and/or duplicative nature of their content, the Chamber is of the view that non-disclosure of the Associated Materials 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, the Chamber finds that the temporary measure of withholding the Associated

²³ First Decision on Non-disclosure, para. 52 *referring to* VWU Observations, para. 27.

²⁴ The Chamber notes that, of these 31 items, seven are translations (*see* Annex 1 to the Request, ICC-01/11-01/25-76-Conf-Exp-Anx1).

²⁵ *See* Request, paras 33, 35, footnotes 10 and 11.

Material is proportionate at this stage of the proceedings and does not on its own nor cumulatively unduly prejudice the Defence.

d) Conclusion

15. Accordingly, the Chamber grants the Request and hereby authorises the Prosecution to withhold the Associated Materials from the Defence.

16. The Prosecution must monitor the continued necessity of the present order and proceed to disclose the Associated Materials when it is satisfied that such disclosure will not endanger the Affected Individuals and/or Witnesses. 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, to disclose the 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 Request in full; and

AUTHORISES the Prosecution to withhold the Associated Materials, as listed in Annex 1 to the Request.

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



Judge Iulia Antoanella Motoc, Presiding



Judge Reine Adélaïde Sophie Alapini-Gansou



Judge María del Socorro Flore Liera

Dated this Tuesday, 30 June 2026

At The Hague, The Netherlands