

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 01 July 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 response to Prosecution’s request to maintain contact restrictions”, ICC-01/11-01/25-105-Conf, 21 April 2026

Source: Defence for Mr Khaled Mohamed Ali El Hishri

Document 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

I. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri (“Defence”) files this response to the Prosecution’s request to maintain contact restrictions by which Mr El Hishri is separated from Arabic-speaking detainees at the ICC Detention Centre (“DC”).¹
2. The Defence opposes the Request insofar as it relates to the maintenance of restrictions preventing him from associating with Arabic-speaking detainees at the DC – the only detainees with whom he can have any meaningful communication – and submits that such restrictions should be lifted. The Defence makes no submissions on restrictions relating to his contacts with family members outside the DC.
3. The Prosecution is unable to point to anything done by Mr El Hishri since his arrival at the DC on 1 December 2025 to substantiate the claim that he represents a current threat to the security of victims or (potential and perceived) witnesses (together, “Witnesses”) in his case. To the contrary, the fact he has complied to the letter with the conditions of the restrictions on his contacts with family outside the DC indicates that he is a person who can be trusted not to attempt to influence or intimidate Witnesses, whether by the instrumentalization of other Arabic-speaking detainees or otherwise.

II. CLASSIFICATION

4. This response is classified as confidential pursuant to Regulation 23*bis*(2) of the RoC because it is responsive to a document filed with the same classification.

III. PROCEDURAL HISTORY

5. The Defence adopts the procedural history set out in paragraph 4 of the Request.

¹ Confidential redacted version of “Prosecution’s request to maintain contact restrictions”, ICC-01/11-01/25-103-Conf-Exp, 13 April 2026, ICC-01/11-01/25-103-Conf-Red, 14 April 2025 (“Request”)

IV. APPLICABLE LAW

6. Regulation 101(2) of the RoC provides 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.

7. Regulation 201 of the Regulations of the Registry, in relevant part, states as follows:

Segregation

1. The Chief Custody Officer may order that a detained person be segregated from all or some of the other detained persons in order to maintain security and good order of the detention centre or for the safety of any person(s) therein. Such a measure can be resorted to only when it is necessary and proportionate. Segregation under this regulation is without prejudice to measures taken pursuant to regulation 202 *bis*.

[...]

4. No detained person may be kept in segregation for more than seven consecutive days without review. The Chief Custody Officer shall review all cases of segregation at least once a week and report thereon to the Registrar.

5. If further segregation is necessary in accordance with sub-regulation 1 above or requested in accordance with sub-regulation 7 below, the Chief Custody Officer shall report the matter to the Registrar before the end of the seven-day period, providing the reasons for its extension. Any such extension(s) of segregation shall not exceed seven days.

[...]

8. For the time the detained person is segregated, the Chief Custody Officer shall ensure that the detained person *still enjoys access to meaningful human contact* and, to the extent possible, enjoys his or her general entitlements under the present Regulations and the Regulations of the Court.²

9. Segregation ordered or requested pursuant to this regulation shall be terminated as soon as the basis for it no longer exists.

² Added emphasis

[...]

V. SUBMISSIONS

(a) The existing contact restrictions are not necessary

8. The Prosecution argues that the existing contact restrictions remain necessary to safeguard the integrity of the proceedings and the safety and security of victims, witnesses and their families.³

9. Paragraph 8 a-k of the Request, which purports to substantiate the argument that “[REDACTED]” is entirely redacted. The Defence has no way of challenging, testing or contradicting the assertions set out therein. This is deeply unfair.

10. The Defence can only request that the Pre-Trial Chamber (“PTC”) interrogate the claims set out in paragraph 8 a-k and scrutinise whether any alleged threats and/or interference can truly be said to be connected with clear knowledge or belief on the part of “[REDACTED]” that the [REDACTED] in Mr El Hishri’s case before the ICC. The PTC should be vigilant to whether any of the incidents listed at paragraph 8 a-k are not merely [REDACTED], unrelated to [REDACTED]. Only if there is clear evidence that [REDACTED] because of [REDACTED], and not for one or more other reasons, could it be said that the Prosecution’s claim might be substantiated. In any other case, no connection between interference of persons [REDACTED] and Mr El Hishri’s case will have been established.

11. Even if there is clear evidence that [REDACTED] because of [REDACTED], there is no evidence in the Request that [REDACTED] on the orders, or pursuant to solicitation or inducement, of Mr El Hishri. Any acts of [REDACTED] irrespective of the involvement of Mr El Hishri. Therefore, the Prosecution cannot reasonably advance the argument that [REDACTED], or interference with proceedings, can only be achieved by

³ Request, paras 7-14

the extension of the contact restrictions. This fatally undermines the suggestion that the contact restrictions are necessary or proportionate to a legitimate aim.

12. The Prosecution acknowledges the absence of reported violations by Mr El Hishri of the existing contact restrictions.⁴ It is right to do so: there have been no violations. Since Mr El Hishri's arrival at the DC, he has done nothing to substantiate any fears of an intention to intimidate any Witness or otherwise interfere with the proceedings. The use of the word "may" in the Prosecution's assertion that the lack of (detected) violations "may be attributable to the preventative functions of the restrictions themselves" itself demonstrates the extent to which the argument is speculative. It is equally possible that there have been no violations because Mr El Hishri has no desire to make contact, directly or indirectly, with any Witnesses.

13. The more time that passes during which Mr El Hishri is subject to restrictions prohibiting contact with his Arabic-speaking detainees, and no contact with Witnesses occurs that can be attributable to him, the more the PTC should subject the Prosecution's assertions of necessity to anxious scrutiny. No weight should be attached to speculation on the part of the Prosecution.

(b) The existing contact restrictions do not strike a fair balance with Mr El Hishri's rights

14. Mr El Hishri is segregated from other Arabic-speaking detainees in the DC. He is unable to communicate with the other, non-Arabic speaking, detainees. He does not speak English or French. Even if he is not *stricto sensu* held in solitary confinement, his conditions of detention leave him in a state of segregation that amounts to *de facto* solitude.

⁴ Request, para. 13

15. Regulation 201(8) of the RoR makes it clear that while a detained person is segregated, the Chief Custody Officer shall ensure that he still enjoys access to meaningful human contact.

16. “Meaningful human contact” has been interpreted by the European Committee for the Prevention of Torture as:

the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.⁵

17. It is impossible for Mr El Hishri to engage in “empathetic interpersonal communication” with co-detainees with whom he cannot speak. He cannot understand what the non-Arabic speaking detainees say to him, and they cannot understand him. Even if he is not physically separated from non-Arabic speaking detainees, the existence of the language barrier means he is linguistically isolated – and thereby socially isolated – from other detainees. Mr El Hishri’s inability to engage in meaningful communication in a language he speaks and understands equates to a deprivation of meaningful human contact. This in turn amounts to a violation of Regulation 201(8) of the RoR.

18. The PTC cannot permit a situation where Regulation 201(8) of the RoR is being violated. This is not a case where violation amounts to an interference in Mr El Hishri’s right to privacy and family life.⁶ It is submitted that prolonged deprivation of empathetic interpersonal communication amounts to a breach of his right not to be subjected to inhuman treatment,⁷ an absolute right that permits of no exceptions, limitations or derogations.

⁵ [European Committee on Crime Problems \(CDPC\), Draft Recommendation Rec\(2006\)2-rev of the Committee of Ministers to member States on the European Prison Rules, Commentary, 20 February 2020, page 34](#)

⁶ *Contra* Request, para. 15

⁷ See Article 3 of the European Convention on Human Rights

19. But even if the prolonged deprivation of empathetic interpersonal communication does not (yet) reach the minimum level of severity of mental suffering so as to amount to inhuman treatment, when weighed in the balance against the unsubstantiated risks to Witnesses posed by Mr El Hishri personally, the inference in his right to meaningful human contact becomes “undue”. The continuation of the existing restrictions is therefore rendered disproportionate.

VI. CONCLUSION

20. For the foregoing reasons, the PTC should dismiss the Request in its entirety.

Respectfully submitted,



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 01 July 2026

at The Hague, The Netherlands