

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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*No. ICC-01/11-01/25
Date: 24 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 the existing contact restrictions until the commencement of trial and to grant additional measures”(ICC-01/11-01/25-137-Conf-Red)

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:

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☐ Legal Representatives of the Victims

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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 the existing contact restrictions until the commencement of trial and to grant additional measures.¹
2. The Defence reiterates its opposition to the Prosecution’s position that restrictions preventing Mr El Hishri from associating with Arabic-speaking detainees at the ICC Detention Centre (“DC”) – the only detainees with whom he can have any meaningful communication – should be maintained, and submits that such restrictions should be lifted. The Defence opposes the Prosecution’s additional request to grant the Victims and Witnesses Unit (“VWU”) access to recordings of Mr El Hishri’s telephone conversations on the grounds that the request is neither justified nor necessary.
3. The Defence makes no submissions regarding restrictions relating to Mr El Hishri’s contacts with family members outside the DC.

II. CLASSIFICATION

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

III. PROCEDURAL HISTORY

5. The Defence adopts the procedural history as set out in paragraphs 5 to 9 of the 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;

¹ Confidential redacted version of “Prosecution’s request to maintain the existing contact restrictions until the commencement of trial and to grant additional measures”, ICC-01/11-01/25-137, 22 June 2026, ICC-01/11-01/25-137-Conf-Red, 24 June 2026 (“Request”).

- (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 (“RoR”), 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.

[...]

7. In the circumstances referred to in sub-regulation 1, a detained person may ask to be segregated from all or some of the other detained persons. Upon receipt of such a request and the reason(s) for it, the Chief Custody Officer shall inform the medical officer, who ***shall inform the detained person of the consequences that segregation may have on his or her physical and mental health*** and ensure that he or she understands such consequences. The Chief Custody Officer shall then determine whether the requested segregation is acceptable and shall report the outcome to the Registrar. Sub-regulations 2 and 4-6 apply *mutatis mutandis*.²

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.³

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

[...]

V. SUBMISSIONS

(a) The existing contact restrictions are not necessary

8. The Prosecution continues to argue that the existing contact restrictions remain necessary to safeguard the integrity of the proceedings and the safety and security of victims, (potential and perceived) witnesses and their families.⁴

9. As with paragraph 8(a-k) of the Prosecution’s request to maintain contact restrictions from

² Emphasis added.

³ Emphasis added.

⁴ Request, paras 12-20.

April 2026,⁵ paragraph 13(a-d) of the Request, which purports to substantiate the argument that “SDF/RADA maintains both the capability and motivation to identify and intimidate victims and (potential and perceived) witnesses and their families” is entirely redacted. The Defence again has no way of challenging, testing or contradicting the assertions set out therein. This continues to be deeply unfair.

10. Crucially, the Prosecution concedes that “[REDACTED]”.⁶ If [REDACTED] the redacted incidents and Mr El Hishri’s case [REDACTED], it [REDACTED] restricting Mr El Hishri’s contact with detainees with whom he can actually communicate is necessary to prevent further supposed incidents of “interference” with witnesses. It is, therefore, even more vital for the Pre-Trial Chamber (“PTC”) to be vigilant as to whether any of these incidents are not merely [REDACTED] Mitiga Prison, [REDACTED] totally unrelated to their status as witnesses. Only if there is clear evidence that witnesses are being targeted because of their status as witnesses in this case, and not for one or more other reasons, could it reasonably be said that the Prosecution’s claim is substantiated. In any other case, no connection between interference of persons who happen to be witnesses and Mr El Hishri’s case will have been established.

11. If these redacted incidents are of a similar nature to the supposed “hostile and threatening posts” on social media included by the Prosecution in Annex II to the Request, it is unlikely that they include a proven connection to Mr El Hishri or that they even constitute any form of threat or intimidation. The social media posts included in this Annex mainly contain [REDACTED]. Most glaringly, the social media post from [REDACTED] included in this Annex simply contains a call [REDACTED].⁷ Even if this is seen as criticism of the charges that the Prosecution has brought, it cannot be said to constitute a threat to anyone, witness or Court staff member. If good faith criticism of the Court and attempts to hold the Court to its own standards are considered to “denounce, expose, or intimidate perceived witnesses” and to create a “climate of hostility”, the essential right to speak freely about as important a matter as an international criminal trial is no longer protected.

12. Further, even if there is clear evidence that witnesses are being targeted because of their status as witnesses, there is no evidence in the Request that such targeting has been carried out on the orders, or pursuant to solicitation or inducement, of Mr El Hishri. Any potential acts of

⁵ 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 2026 (“April Request”).

⁶ Request, para. [REDACTED].

⁷ LBY-OTP-05567296-0001.

targeting of witnesses have been undertaken generally by “SDF/RADA” while Mr El Hishri has been subject to the existing contact restrictions. The contact restrictions and Mr El Hishri’s faithful obedience to them have had no impact on any alleged acts of targeting of witnesses.

13. Mr El Hishri’s prior detention in Germany is of particular relevance to his current segregation from Arabic-speaking detainees. In Germany, Mr El Hishri was detained alongside Arabic-speaking detainees yet the Prosecution have pointed to no incidents of witness targeting tied to Mr El Hishri during that detention. Despite having had the same opportunity to “instrumentalise” Arabic-speaking co-detainees in Germany as he would have in the DC if he were detained alongside Arabic-speaking co-detainees, Mr El Hishri did not use that opportunity to threaten any witnesses or victims. Therefore, the Prosecution cannot reasonably advance the argument that preventing threats to witnesses, or interference with proceedings, can only be achieved by the extension of these contact restrictions and preventing Mr El Hishri from contact with Arabic-speaking co-detainees. This fatally undermines the suggestion that the contact restrictions are necessary or proportionate to a legitimate aim.

(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 any language other than Arabic. 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.

15. Regulations 201(1) and 201(4) of the RoR make it clear that segregation is an exceptional measure that must be temporary and reviewed every seven days. The Prosecution’s current request to maintain this contact restriction until the commencement of trial indicates that this is not a temporary measure but instead one that the Prosecution will seek to have extended indefinitely. This cannot be allowed under the core legal texts that regulate the operation of this Court.

16. As argued by the Defence in its response to the April Request,⁸ Regulation 201(8) of the RoR obligates the Chief Custody Officer to ensure that detainees in segregation have access to meaningful human contact. This argument was not addressed in the PTC’s decision on the April

⁸ Defence response to Prosecution’s request to maintain contact restrictions, ICC-01/11-01/25-105-Conf, 21 April 2026, paras. 14-19.

Request.⁹ The Defence respectfully submits that the PTC must engage in the argument in its consideration of the instant Request.

17. The Defence reiterates that “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.¹⁰

18. 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.

19. 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. It is submitted that prolonged deprivation of empathetic interpersonal communication amounts to a breach of his right not to be subjected to inhuman treatment,¹¹ an absolute right that permits of no exceptions, limitations or derogations.

20. 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.

21. The suffering and consequent impact on Mr El Hishri’s physical and mental health caused by his isolation from any fellow detainee with whom he can have meaningful human contact

⁹ Decision on the Prosecution’s request to maintain contact restrictions, ICC-01/11-01/25-118-Conf, 13 May 2026.

¹⁰ [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.

¹¹ See Article 3 of the European Convention on Human Rights.

risks a violation of the Registry's obligation to ensure the "physical and mental health of detained persons".¹² Regulation 201(7) of the RoR imposes a duty on the Chief Custody Officer to inform a detained person who has requested his or her own segregation that segregation carries consequences on "physical and mental health". This duty highlights the reality that extended segregation can be deleterious to a detainee's health. The potential negative impact on Mr El Hishri's mental health of an extended period of deprivation of empathetic interpersonal communication may not yet be apparent. However, the potential for such a negative impact on Mr El Hishri's mental health must be considered when weighing the deprivation of Mr El Hishri's rights against the Prosecution's speculative submissions that contact with other Arabic-speaking detainees may result in a threat to witnesses or the integrity of the proceedings. Ordering the imposition of a situation of *de facto* segregation is a step that should only be taken as a last result, and only in the most compelling of circumstances. The present situation is very far from one presenting such compelling circumstances.

22. Additionally, in the *Abd-Al-Rahman* Sentencing Judgment, Trial Chamber I used Mr Abd-Al-Rahman's exceptional behaviour in the DC as a "model detainee" as proof of a mitigating circumstance that should be taken into account in his sentencing.¹³ This Judgement followed on from the *Ntaganda* Sentencing Judgment, in which the Chamber assigned weight specifically to Mr Ntaganda's conduct *vis-à-vis* other detainees, including factors such as his "good to excellent relationships with other detainees" and the fact that he had "intervened appropriately with the management of the ICC DC on behalf of other detainees".¹⁴ Even if the Trial Chamber determined that the overall gravity of the crimes Mr Ntaganda was convicted of outweighed his good conduct *vis-à-vis* other detainees, weight for such good conduct was accorded nonetheless.¹⁵

23. The restriction on Mr El Hishri's contact with other Arabic-speaking detainees does not merely deprive him of his only avenue of empathetic interpersonal communication in detention, it also robs him of the opportunity to demonstrate exceptional good conduct toward, and interaction with, the only detainees with whom he can communicate as mitigation in the event he is ever convicted after trial of one or more of the counts of which he is accused. This places

¹² RoR, Regulation 162bis(1).

¹³ *Abd-Al-Rahman* Sentencing Judgment, [ICC-02/05-01/20-1281-Red](#), para. 74. See also *Ntaganda* Sentencing Appeal, [ICC-01/04-02/06-2667-Red](#), paras 6, 260.

¹⁴ *Ntaganda* Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 234.

¹⁵ *Ntaganda* Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 235 (the Trial Judgment was upheld on appeal).

him at a significant and unfair disadvantage when compared to other accused at the DC who can meaningfully communicate with fellow detainees and demonstrate exceptional good conduct. It is unlawfully discriminatory.

(c) Additional measures proposed are neither necessary nor proportionate

24. Additionally, the Prosecution requests the Chamber to “grant[] VWU access to all recordings of Mr EL HISHRI’s telephone conversations (past and future) for retroactive and ongoing analysis”.¹⁶ However, they point to nothing to show a change of circumstances since the April Request or the PTC’s last decision to justify this additional violation of Mr El Hishri’s rights to privacy and family life.

25. As the Prosecution properly concedes, Mr El Hishri has not violated his contact restrictions and there is no evidence that he intends to do so in the future. The Prosecution merely speculates that there exist “heightened risks in the phase leading to trial”.¹⁷ This speculation is neither specific nor founded in any factual basis. It, therefore, cannot justify any changes to Mr El Hishri’s detention regime, let alone changes that allow yet more sets of prying eyes (or ears) into his private conversations with his young family.

26. The Prosecution argues that risks are elevated by the alleged connection of some other members of Mr El Hishri’s family to SDF/RADA.¹⁸ Even if this is the case, this is not new information. The Prosecution was aware of this potential when it first requested contact restrictions in August 2025,¹⁹ when it renewed its request in December 2025,²⁰ and when it again renewed its request in April 2026.²¹ It provides no reason beyond mere speculation about the stage of proceedings as to why this situation suddenly creates a heightened risk that it had apparently not created when Mr El Hishri was first detained or in the lead up to the confirmation hearing. It provides no reason because there is none. The situation has not materially changed and Mr El Hishri has continually proven his willingness and ability to abide to the letter to the restrictions placed on him that render his conversations with his family unconnected and

¹⁶ Request, para. 21.

¹⁷ *Ibid.*, para. 22.

¹⁸ *Ibid.*, para. 24.

¹⁹ Confidential Redacted Version of “Prosecution’s request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, ICC-01/11-201-USExp, 4 August 2025, ICC-01/11-01/25-16-Conf-Red, 3 December 2025, para. 16.

²⁰ Prosecution’s further request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court ICC-01/11-01/25-31-Conf-Red, 4 December 2025.

²¹ 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 2026.

irrelevant to his case before the Court or any investigations in Libya.

27. The impact on Mr El Hishri's rights to privacy and family life is clearly disproportionate to whatever speculative benefit may arise from further monitoring by an additional section of the Registry of communications that have proven to be innocuous and to contain no threat to any victims, witnesses, or the integrity of any proceedings. Human rights law consistently underscores the vital role of contact with family in ensuring the mental well-being and rehabilitation potential of detained persons.²² This is particularly true for foreign prisoners who are not from the country in which they are detained and are therefore stripped from their culture and any familiar surroundings, along with being kept away from their families.²³ Increased monitoring of such family communication inevitably causes family members to be more cautious and less spontaneous in their communication, which hampers the ability of the communication to truly maintain the connection between the detained person and their family.²⁴ Discussions are inevitably more guarded and less natural. Knowledge of ever more persons eavesdropping in on day-to-day family discussions inevitably has a chilling effect on family members' freedom to express themselves. Family members may be unwilling to discuss private topics that they should be allowed to ventilate and that are utterly unrelated to the case out of embarrassment at being listened to by strangers.²⁵ This phenomenon is potentially all the more acute in the context of more conservative societies such as that of Libya where speakers are likely to be more concerned about what others think of them.

28. Additionally, the Prosecution's request is internally contradictory. The Prosecution simultaneously argues that VWU needs access to Mr El Hishri's private family calls because the staff at the DC who already have access to these calls are unable to monitor calls for potential breaches of contact restrictions²⁶ and that the DC staff should be ordered to report any breaches of contact restrictions to the VWU.²⁷ If the DC staff are incapable of detecting contact restriction breaches, they would also be incapable of informing the VWU about such contact restriction

²² [The United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (The Nelson Mandela Rules), Rules 43(3), 58, 106, 107; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991](#), 1992, CPT/Inf (92) 3, para. 51; [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), UN GA Res. 43/173, 9 December 1988, Principles 15, 19.

²³ [European Prison Rules, 2020](#), Rule 37.2.

²⁴ K. Owens, C. Cobb, & L. Cranor, *"You Gotta Watch What You Say": Surveillance of Communication with Incarcerated People*, 2021, at [cs.washington.edu](https://www.cs.washington.edu) (accessed on 3 July 2026).

²⁵ *Ibid.*

²⁶ Request, para. 21.

²⁷ *Ibid.*, para. 24.

breaches.

29. The Prosecution's request is an example of unjustifiable "mission creep" which has the effect of increasingly narrowing Mr El Hishri's rights to privacy and family life while in detention. The request should be firmly rejected.

VI. CONCLUSION

30. For the foregoing reasons, the PTC should dismiss the Request, insofar as it relates to the maintenance of restrictions preventing him from associating with Arabic-speaking detainees at the DC and granting the VWU access to recordings of Mr El Hishri's telephone conversations.

Respectfully submitted,



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Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 24 July 2026
at The Hague, The Netherlands