

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/11-01/25
Date: 18 September 2026

TRIAL CHAMBER VII

Before: Judge Althea Violet Alexis-Windsor, Presiding Judge
Judge Miatta Maria Samba
Judge Beti Hohler

SITUATION IN LIBYA

**IN THE CASE OF *THE PROSECUTOR v. KHALED MOHAMED ALI EL
HISHRI***

**PUBLIC
With CONFIDENTIAL ANNEX I
And PUBLIC ANNEX II**

Registry Report on Protocols Pursuant to the Chamber's Instructions

Source: Registry

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
M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☒ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. Introduction

1. Pursuant to the oral instructions issued by Trial Chamber VII (“Chamber”) during the Status Conference held on 3 September 2026 (“Status Conference” and “Instructions”, respectively),¹ the Registry hereby submits the present report on the three Protocols (“Report”) in the case of the Prosecutor v. Khaled Mohamed Ali El Hishri (“Case”).

II. Procedural History

2. On 3 September 2026, during the Status Conference, the Chamber ordered the Registry to liaise with the parties and participants and, in case of agreement, to put relevant updated versions of three Protocols by 18 September 2026, namely:
 - (i) Protocol on the Handling of Confidential Information during Investigations and Contact Between A Party or Participant and Witnesses of the Opposing Party or of A Participant (“Contact with Witness Protocol”);
 - (ii) Dual Status Witness Protocol; and
 - (iii) the exceptions to disclosure in the form of redaction of information (“Redactions Protocol”).
3. The Chamber further instructed that, if necessary, the Registry should prepare a report on the proposed amendments to the Protocols, identifying whether and, if so, where any disagreements exist.²

III. Classification

4. Pursuant to regulation 23 *bis*(1) of the Regulations of the Court, Annex I to the present report is classified as confidential as it refers to confidential information concerning Prosecution’s witnesses. The Registry will consult

¹ Transcript of 03 September 2026, ICC-01/11-01/25-T-007-ENG, p. 36, lines: 9-25 and p.37, lines: 1-4.

² *Ibid.*

with the Prosecution in order to file a public redacted version thereof, in due course.

IV. Submissions

Contact with Witness Protocol

5. In accordance with the Instructions, on 8 September 2026, the Registry circulated to the parties and participants³ the version of the “Protocol on the Handling of Confidential Information during Investigations and Contacts between a Party or a Participant and Witnesses of the Opposing Party, or of a Participant” (“Contact with Witness Protocol”) adopted by Pre-Trial Chamber I⁴ in the Case.
6. On 10 September 2026, the Office of the Prosecutor (“Prosecution”) communicated its proposed edits to paragraphs 6, 15 and 40.⁵
7. On the same day, the Common Legal Representatives of Victims (“CLRVs”) indicated that they had no objection to the Registry placing on the record of the Case the version of the Contact with Witness Protocol adopted by Pre-Trial Chamber I and that they did not intend to propose any amendments thereto.⁶ Subsequently, the CLRV confirmed that they had no objection to the Prosecution’s proposal.⁷
8. On 15 September 2026, the Defence Team for Mr El Hishri (“Defence”) informed the Registry that it had no objection to the Registry placing on the record of the Case the version adopted by the Pre-Trial Chamber I.⁸ Additionally, the Defence indicated that it opposed the amendment proposed by the Prosecution and elaborated on its position in the document. Finally,

³Registry email to parties and participants sent on 8 September 2026 at 17:21.

⁴Transcript of 3 December 2025 Status Conference, ICC-01/11-01/25-T-001-ENG, p.8, lines 13-16. See [Chambers Practice Manual](#).

⁵Prosecution’s email to parties and participants received by the Registry on 11 September 2026 at 11:21.

⁶CLRVs email to parties and participants received by the Registry on 10 September 2026 at 14:47.

⁷CLRVs email to parties and participants received by the Registry on 10 September 2026 at 15:02.

⁸Defence email to the parties and participants received by the Registry on 15 September 2026 at 17 :29.

the Defence proposed the addition of a new paragraph and an amendment to paragraph 33.

9. The Defence's proposed new paragraph (identified as paragraph 29) reads as follows:

"Where a party or participant, in the course of an interview or meeting with an individual, learns that the individual is a witness of another party within the meaning of this Protocol, it shall immediately inform the calling party or participant. Specifically, should it become clear that a person with whom the Prosecution has contact is a Defence witness within the meaning of this Protocol, the Prosecution will promptly inform the Defence and disclose materials collected during the course of that contact. The disclosure of these materials will be governed by the disclosure regime applicable in this case."

10. The Defence added:

"This proposed addition was made and accepted in Duterte. The amendment aims to address a situation where the Prosecution has contact with a Defence witness during the course of Prosecution investigations. The amendment would require the Prosecution to inform the Defence about this contact and disclose materials collected during this contact. This seeks to address the fact that the Prosecution may be investigating other cases across Libya situation and may encounter persons who have agreed to be Defence witnesses in the El Hishri case. For consistency, the amendment would also be reflected in the additional obligation in paragraph 33 requiring a non-calling party to notify the calling party of any inadvertent contact with a witness."

11. The Defence proposed amendment (in **bold**) to paragraph 33, reads as follows:

"If a party or participant comes into contact with a person during investigation and it becomes clear that he or she is a witness of an opposing party or participant, the party or participant shall refrain from any discussion of the case and shall under no circumstances seek the witness's consent to be interviewed directly. **The party or participant shall immediately inform the calling party or participant of the inadvertent contact.** A witness's consent to be interviewed may be obtained only through the calling party or participant, in accordance with this protocol."

12. On 17 September 2026, the Prosecution provided (i) further comments on the Defence's opposition and (ii) its agreement to the Defence's proposed

amendment.⁹

13. The Prosecution's agreement to the additional paragraph proposed by the Defence is set out below:

"The Prosecution agrees to this amendment on the understanding that this obligation to inform the calling party applies to both the Prosecution and the Defence; and, that this language is only included to make it clear, if it was not otherwise clear, that the obligations also apply to the Prosecution, including to promptly inform and disclose materials."

14. The Prosecution's agreement to the Defence's proposed amendment to paragraph 33, is set out below:

"The Prosecution agrees to this amendment on the understanding that this obligation to inform the calling party applies to both the Prosecution and the Defence."

15. On 17 September 2026, the CLRVs confirmed that they had no additional comments.¹⁰

16. The Registry notes that disagreements exist between the parties regarding paragraphs 6, 15 and 40 of the Contact with Witness Protocol and has summarised the respective positions in Confidential Annex I to the present Report.

Dual Status Protocol

17. In accordance with the Instructions, the Registry consulted the parties and participants regarding the use of the Dual Status Witness Protocol.¹¹ To that end, the Registry circulated the version of the Dual Status Witness Protocol recently filed in the case of *The Prosecutor v. Rodrigo Roa Duterte*, which

⁹ Prosecution's email to parties and participants received by the Registry on 17 September 2026 at 16:00.

¹⁰ CLRVs email to parties and participants received by the Registry on 17 September 2026 at 16:57.

¹¹ Registry email to parties and participants sent on 9 September 2026 at 09:53.

contains minor amendments to the version of the Dual Status Witness Protocol applicable at the pre-trial stage in the Case.¹²

18. This amended version of the Dual Status Witness Protocol was agreed by the Prosecution,¹³ the Defence,¹⁴ and the CLRVs.¹⁵ It is transmitted as Annex II to the present filing. The amendments to the version applicable at the pre-trial stage of the Case are reflected in footnotes.

Redactions Protocol

19. On 7 September 2026, the Registry liaised with the parties and participants, pursuant to the Chamber's Instructions.¹⁶ On 10 September 2026, the CLRVs indicated that they had no additional submissions to make with regard to the Redactions Protocol, since paragraphs 8 and 9 of the same addressed the point raised in paragraph 29 of their filed observations (ICC-01/11-01/25-170).¹⁷
20. On the same day, the Prosecution indicated that they equally did not have any submissions to make regarding the Redactions Protocol as adopted in the Duterte case.¹⁸
21. On 15 September 2026, the Defence provided its observations, stating that, as a matter of principle, it opposes the Redaction Protocol in its entirety. It submits that the Protocol should not apply. Specifically, it indicates that paragraph 1 of the Protocol should be dis-applied and that any redaction should be made only with the prior authorisation of the Chamber, upon

¹² Registry, "Registry Submission of the Dual Status Witness Protocol", dated 30 January 2026 and notified 2 February 2026, ICC-01/11-01/25-63-Anx.

¹³ Prosecution email to Registry received on 10 September 2026 at 11:11.

¹⁴ Defence email to Registry received on 15 September 2026 at 17:12. The Defence further indicated that its agreement is subject to its observations concerning the Redactions Protocol.

¹⁵ CLRVs email to Registry received on 10 September 2026 at 14:57.

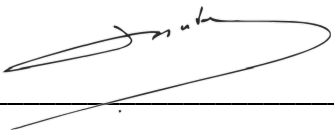
¹⁶ Email sent by the Associate Legal Officer/Courtroom Officer to the parties and participants, dated 7 September 2026 at 16:48.

¹⁷ Email from CLRVs to the Associate Legal Officer/Courtroom Officer dated 10 September 2026 at 14:26, citing CLRVs, Submissions on behalf of Victims on the matters identified in the " Order Scheduling the First Status Conference" (No. ICC - 01/11 - 01/25 - 157), ICC-01/11-01/25-170, dated 25 August 2026.

¹⁸ Email from the Prosecution to the Associate Legal Officer/Courtroom Officer dated 10 September 2026 at 15 :10.

application by the Prosecution and after having heard the Defence. It further submits that the system of redaction codes set out in paragraph 3(ii) of the Redaction Protocol deprives Mr El Hishri of a complete understanding of a given witness' evidence and, consequently, of the ability to conduct a thorough investigation. It contends that such ability is essential to Mr El Hishri's case in order to ensure that he has an equal opportunity to investigate the charges against him.

22. Furthermore, the Defence argues that full transparency in the proceedings, including in relation to the material on the Case record, is essential to equality of arms, balanced against considerations relating to the protection of witnesses. In the alternative, notwithstanding its fundamental opposition, and with all due respect to the future determination of the Chamber, the Defence submits, as its subsidiary position, that it has no additional comments to make regarding the Protocol.



Marc Dubuisson
Director, Division of Judicial Services on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 18 September 2026

At The Hague, The Netherlands