

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/25

Date: 8 October 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

Decision on the Adoption of Protocols

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

TRIAL CHAMBER VII (the ‘Chamber’) of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Khaled Mohamed Ali El Hishri*, having regard to Articles 64(2), 3(a), and 6(e) and 68(1) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Adoption of Protocols’.

I. Procedural history

1. On 3 September 2026, the Chamber held a status conference to discuss, *inter alia*, the commencement date of the trial and the deadlines leading up to it (the ‘Status Conference’).¹ During the Status Conference, the Chamber instructed the Registry to liaise with the parties and participants in relation to 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 (the ‘Contact with Witness Protocol’), the Dual Status Witness Protocol and the Protocol on the exceptions to disclosure in the form of redaction of information (the ‘Redaction Protocol’) (collectively, the ‘Protocols’) and put relevant updated versions thereof on the record by 18 September 2026. The Chamber further instructed that ‘[i]f needed, the Registry should do so with a report on the proposed amendment to these protocols, identifying if and where disagreements exist’.²

2. On 18 September 2026, the Registry filed its report indicating that the parties and participants agree on the application and content of the Dual Status Witness Protocol, but that disagreements remain regarding the remainder of the Protocols (the ‘Report’).³

II. Submissions and analysis

A. Dual Status Witness Protocol

3. The Chamber notes that the parties agree on the application of the Dual Status Witness Protocol recently adopted in the *Duterte* case, which contains minor

¹ Transcripts of hearing, [ICC-01/11-01/25-T-007-ENG](#); ICC-01/11-01/25-T-008-CONF-EXP.

² [T-007](#), p. 31.

³ [Registry Report on Protocols Pursuant to the Chamber’s Instructions](#), ICC-01/11-01/25-187 (with confidential Annex I and public Annex II; a corrigendum to Annex I was notified on 29 September 2026, ICC-01/11-01/25-187-Conf-AnxI-Corr).

amendments to the version applicable at the pre-trial stage in this case.⁴ Noting that the amendments are uncontested, the Chamber adopts the Dual Status Witness Protocol as filed in Annex II to the Report.⁵

B. Contact with Witness Protocol

4. In relation to the Contact with Witness Protocol, the Chamber notes that both the Defence and the Prosecution suggest amendments to the version of the Protocol adopted by the Pre-Trial Chamber in the case and that some of these amendments are contested.⁶ The Chamber will examine first the two proposals from the Defence, followed by the three Prosecution's proposals.

5. Concerning the Defence's proposals, the Chamber notes that the Defence suggests an amendment to paragraph 33 and the addition of a new paragraph (identified as paragraph 29).⁷ The Prosecution agrees to both proposals, subject to two clarifications.⁸ Having considered their content, and agreeing with the Prosecution's clarifications, the Chamber retains the Defence's suggested amendments.

6. Concerning the Prosecution's proposals, the Chamber notes the Prosecution proposed three additions, namely to paragraphs 6, 15, and 40.⁹ The Office of the Public Counsel for Victims (the 'OPCV') does not object to these additions.¹⁰ The Defence objects to these additions.¹¹

7. The Prosecution proposes the following amendment (in bold) to paragraph 6:

Parties and participants are under a general obligation not to disclose to third parties any confidential document or information.

⁴ [Report](#), ICC-01/11-01/25-187, paras 17-18 referring to [Annex](#) to the Registry Submission of the Dual Status Witness Protocol, 30 January 2026 (notified on 2 February 2026), ICC-01/11-01/25-63-Anx. For the Dual Status Witness Protocol adopted in the *Duterte* case, see Trial Chamber III, *The Prosecutor vs. Rodrigo Roa Duterte*, [Annex IV](#) to Registry Submission of the Witness Preparation, Familiarisation, Vulnerability, Dual Status Witness and Redactions Protocols, 15 June 2026, ICC-01/21-01/25-464-AnxIV.

⁵ [Annex II](#) to Report, ICC-01/11-01/25-187-Conf-AnxII.

⁶ [Report](#), ICC-01/11-01/25-187, paras 5-16. For the version of the Protocol adopted at the pre-trial stage, see Transcript of hearing, 3 December 2025, [ICC-01/11-01/25-T-001-ENG](#), p. 8 referring to Annex to [Chambers Practice Manual](#), 8th edition, 2024.

⁷ [Report](#), ICC-01/11-01/25-187, paras 8-11.

⁸ [Report](#), ICC-01/11-01/25-187, paras 12-14.

⁹ [Report](#), ICC-01/11-01/25-187, para. 6; Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr.

¹⁰ [Report](#), ICC-01/11-01/25-187, paras 7, 15.

¹¹ [Report](#), ICC-01/11-01/25-187, para. 8; Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr.

Intermediaries should not have access to confidential information except for identity or contact details of prospective witnesses or witnesses, for the purposes of carrying out their functions. This Protocol sets out the conditions and procedures in which the disclosure of confidential documents or information to third parties as part of investigative activities by a party or participant is exceptionally permissible.¹²

8. The Defence submits that this addition is unnecessary. The Defence further submits that the practical effect of this amendment would unduly limit the scope and freedom of Defence investigations and do so in a way the Prosecution's activities were not limited.¹³

9. The Prosecution responds that its proposal is in line with the Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries (the 'Guidelines'),¹⁴ the Code of Conduct for Intermediaries (the 'Conduct Code')¹⁵ and the Court's case law. Further, the Prosecution submits that its proposal does not preclude the Defence or the Prosecution from using intermediaries to *assist them* in their investigations, including by 'identifying evidentiary leads and/or witnesses and facilitating contact with potential witnesses' or assisting in communications 'where direct communication with the Court could endanger the safety of the victim/witness'.¹⁶

10. The Chamber notes that, as stipulated in Annex I to the Guidelines, intermediaries may undertake a number of different functions, including (i) to assist a party or participant to conduct investigations by identifying evidentiary leads and/or witnesses and facilitating contact with (potential) witnesses; and (ii) to communicate with a victim/witness in situations in which direct communication with the Court could endanger the safety of the victim/witnesses. Considering that the activities carried out under any of these functions may include the preservation and the collection of evidence and acting as the first contact point, the Chamber finds that the proposed amendment – particularly to the extent it proposes to limit the type of

¹² Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 2.

¹³ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 2.

¹⁴ [Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries](#), March 2014.

¹⁵ [Code of Conduct for Intermediaries](#), March 2014.

¹⁶ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, pp. 2-3.

information that can be shared with intermediaries – would hamper the counsels’ ability to rely on intermediaries to fulfil the aforesaid functions.

11. The Chamber is mindful of the complex security landscape reported in Libya.¹⁷ In this respect, the Chamber notes that, as pointed out by the Defence,¹⁸ intermediaries are bound by confidentiality obligations in the fulfilment of their functions in accordance with the Guidelines and the Conduct Code. Having considered the risks highlighted in the Court’s jurisprudence and the specific circumstances of this case, the Chamber decides that paragraph 6 should read as follows (changes marked in bold):

Parties and participants are under a general obligation not to disclose to third parties any confidential document or information. **Intermediaries should only have access to confidential information beyond identity or contact details of prospective witnesses or witnesses, where directly and absolutely necessary for the exercise of their functions.** This Protocol sets out the conditions and procedures in which the disclosure of confidential documents or information to third parties as part of investigative activities by a party or participant is exceptionally permissible.

12. The Prosecution’s next proposed amendment is to paragraph 15 (in bold) as follows:

Where a witness has stated that he or she has suffered sexual or gender based crimes and it is apparent that the witness has not discussed the violence with members of his or her family **and/or ethnic or clan-based community**, parties and participants must exercise particular caution in investigating the allegations, in order to protect the privacy, dignity and well-being of the witness. Parties and participants shall not reveal information about the witness’s alleged victimisation to the family members of the witness or to persons who can reasonably be expected to communicate it to family members **and/or to members of the witness’s ethnic or clan-based community**. Where there are no suitable alternative investigative avenues, the investigating party or participant may communicate the information to such individuals that the witness has stated he or she has informed or has confirmed are aware of the sexual or gender based crimes suffered, provided that in

¹⁷ [T-007](#), pp. 4-5.

¹⁸ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 2.

doing so the investigating party or participant does not reveal that the witness is a witness of the Court.¹⁹

13. The Defence submits that the proposed addition is vague, disproportionate and unworkable. The Defence submits that the proposed addition may require the parties to investigate whether a witness has discussed victimisation with any member of their ethnic or clan-based community, that the prohibition covers an enormous proportion of the country's population, that the term 'ethnic or clan-based community' is unclear and that the requirement is too subjective to be practicable.²⁰

14. The Prosecution responds that the proposed addition does not preclude the Defence from seeking to speak with individuals whom the victim has explicitly stated that they discussed their evidence with. The Prosecution submits that information on the ethnicity of witnesses is easily accessible as in general, witnesses are asked to identify their ethnic origin. Further, their clan affiliation is often indicated by the Libyan naming conventions. The Prosecution submits that in the context of this case, the risks of stigmatization and rejection to the individual victim and other immediate family members extend beyond the immediate family to the broader ethnic group/clan.²¹

15. The Chamber notes that paragraph 15 safeguards the protection of the privacy, dignity and well-being of witnesses who have reported being victims of sexual or gender-based crimes. More specifically, when it is apparent that the witness has not discussed this with members of his or her family, investigating parties and participants must exercise caution in investigating these allegations. In the course of discussions with, amongst others, family members, parties and participants shall not reveal the witness's alleged victimisation. Paragraph 15 also prescribes that investigating parties and participants may discuss sexual and gender-based crimes only with the individuals with whom the witness has explicitly stated that they discussed the allegations, provided that their status as a witness of the Court is not revealed.

¹⁹ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 4.

²⁰ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 4.

²¹ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 5.

16. The Chamber notes that the proposed addition of ‘members of the witness’s ethnic or clan-based community’ intends to capture a larger group of persons in respect of whom particular caution must be exercised. The Chamber observes in this regard the information pointing to risks of stigmatisation and rejection in the relevant communities for alleged victims of sexual and gender-based crimes.²² At the same time, the Chamber notes that the Prosecution’s proposed amendment does not alter the category of individuals with whom the investigating party or participant may discuss the allegations of sexual and gender-based crimes with. The Chamber further notes that, in light of the information provided by the Prosecution,²³ ‘members of the witness’s ethnic or clan-based community’ will in all likelihood be persons who can reasonably be expected to communicate the witness’s alleged victimisation to family members.

17. In light of the above, in accordance with Articles 64(2) and 68(1) of the Statute, the Chamber considers that paragraph 15 in its original form adequately provides for the protection concerns pointed out by the Prosecution. Accordingly, the Chamber rejects the Prosecution’s proposed amendments to paragraph 15.

18. The Prosecution’s next proposed amendment is to paragraph 40 (in bold) as follows:

The representative of the calling party or participant present at the interview shall not prevent or dissuade the witness from answering questions freely. In the event that the calling party or participant objects to any part of the procedure followed or any particular line or manner of questioning of the witness, it shall raise the issue with the party or participant conducting the interview outside of the presence of the witness. The disagreement shall be recorded and shall not impede or unduly disrupt the interview. The party or participant conducting the interview may, in the event of repeated interference by the calling party or participant, adjourn the interview and apply to the Chamber for leave to conduct it without the presence of the representative of the calling party or participant. **The calling party or participant, may in the event of a disagreement regarding procedure followed, or a particular line or manner of questioning of the witness, adjourn**

²² Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 5.

²³ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 5.

the interview and apply to the Chamber for appropriate measures, including discontinuance of the interview.²⁴

19. The Defence submits that the proposed amendment contravenes the spirit of the paragraph itself, namely that the calling party shall not interfere, and should not prevent or dissuade the witness from answering questions freely. The Defence submits that it gives the calling party significant power to adjourn an interview, which is potentially highly disruptive of a party's investigations. The Defence submits that the fact that this amendment was not proposed in *Duterte* underscores that this amendment is unnecessary and undesirable.²⁵

20. The Prosecution responds that in the original provision, the investigating party may have resort to the Chamber where it requests leave to conduct an interview in the absence of the calling party or participant. The Prosecution submits that the amended provision would also enable the Chamber to intervene if there is an improper manner or line of questioning or disagreement regarding procedure, which the parties cannot resolve themselves. The Prosecution further submits that the provision applies to all parties and participants.²⁶

21. The Chamber notes that the proposed amendment to paragraph 40 increases the ambit of the circumstances in which the calling party or participants may wish to seek the Chamber's intervention regarding the procedure followed or a particular line or manner of questioning. The Chamber is unconvinced by the Defence's argument that this would contravene the spirit of the original provision. Paragraph 40 clearly provides a framework whereby parties and participants are expected to raise and work out any disagreement during the course of the interview, in a way that is transparent and not unduly disruptive. The Chamber further considers that the requested addition falls squarely within its function to balance witness protection with the requirements of a fair trial under Article 64(2) of the Statute. Finally, the Chamber notes that if it is seized of a manifestly ill-founded or disruptive application, it may authorise the investigative party to continue the interview without the presence of a representative of the calling party or participants. Therefore, the Chamber accepts the Prosecution's

²⁴ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, pp. 5-6.

²⁵ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 6.

²⁶ Annex I to Report, ICC-01/11-01/25-187-Conf-AnxI-Corr, p. 6.

proposal and retains the suggested amendments to paragraph 40 as follows (changes marked in bold, including additional minor adjustments):

The representative of the calling party or participant present at the interview shall not prevent or dissuade the witness from answering questions freely. In the event that the calling party or participant objects to any part of the procedure followed or any particular line or manner of questioning of the witness, it shall raise the issue with the party or participant conducting the interview outside of the presence of the witness. The disagreement shall be recorded and shall not impede or unduly disrupt the interview. The party or participant conducting the interview may, in the event of repeated interference by the calling party or participant, adjourn the interview and apply to the Chamber for leave to conduct it without the presence of the representative of the calling party or participant. **The calling party or participant may, in the event of persistent disagreement regarding procedure followed, or a particular line or manner of questioning of the witness, adjourn the interview and, as soon as practicable, apply to the Chamber for appropriate measures, including discontinuance of the interview.**

22. For the foregoing reasons, the Chamber adopts the Contact with Witness Protocol with the amendments indicated above to paragraphs 6 and 40, and instructs the Registry to file it on the record of the case.

C. Redaction Protocol

23. In relation to the Redaction Protocol, the Prosecution and the OPCV indicate that they do not have any additional submissions to make regarding the Protocol adopted in the *Duterte* case.²⁷ This version contains amendments to the version of the Protocol applicable at the pre-trial stage in this case,²⁸ specifically in relation to the application and lifting of redactions to victim application forms and related material of dual status witnesses.²⁹

24. The Defence submits that, as a matter of principle, it opposes the Redaction Protocol in its entirety. The Defence submits that every single redaction should be

²⁷ [Report](#), ICC-01/11-01/25-187, paras 19-20, *referring to* Trial Chamber III, *The Prosecutor vs. Rodrigo Roa Duterte*, [Annex V](#) to Registry Submission of the Witness Preparation, Familiarisation, Vulnerability, Dual Status Witness and Redactions Protocols, 15 June 2026, ICC-01/21-01/25-464-AnxV (the ‘*Duterte* Redaction Protocol’).

²⁸ [T-001](#), p. 8 *referring to* [Chambers Practice Manual](#), paras 98-100.

²⁹ [Duterte Redaction Protocol](#), paras 8-10.

made only with the prior authorisation of the Chamber, upon application by the Prosecution and after having heard the Defence. The Defence submits that the system of redaction codes set out in the Protocol deprives Mr El Hishri of a complete understanding of a given witness's evidence. In the alternative, notwithstanding its fundamental opposition, the Defence submits that it has no additional comments to make regarding the Protocol.³⁰

25. The Chamber notes that the Redaction Protocol is in line with established practice at the Court,³¹ which carefully balances, on the one hand, the protection of victims, witnesses and other persons at risk as a result of the activities of the Court and, on the other, the rights of the accused and a fair and impartial trial. The Chamber further notes that, pursuant to the proposed Protocol,³² discrete categories of information covered under Rule 81(2) and (4) of the Rules of Procedure and Evidence may be redacted. Additionally, the Chamber notes that in the existing practice, the basis for the redactions is clearly identified by way of the use of codes, both in the document disclosed and in the Prosecution's corresponding report. As the redactions are applied directly in the document by way of redaction boxes and without altering the format of the document, the scope of the redacted information is immediately apparent to the reader, with minimal impact on the document's readability. Further, the use of pseudonyms allows the reader to identify whether the same person is referenced across multiple documents.

26. In addition, the Chamber recalls that redactions remain the exception and that, in accordance with the proposed Protocol,³³ it is incumbent upon the Prosecution to monitor the continued necessity of redactions and to re-disclose evidence with lesser redactions as soon as reasons justifying them cease to exist. Finally, the Chamber notes that, in accordance with the proposed Protocol,³⁴ the Defence may at any time challenge standard redactions applied pursuant to the Protocol and, in this case, the Prosecution retains the burden to justify the necessity of the challenged redaction.

³⁰ [Report](#), ICC-01/11-01/25-187, paras 21-22.

³¹ See [Chambers Practice Manual](#), pp. 22-25.

³² [Duterte Redaction Protocol](#), paragraph 3.

³³ [Duterte Redaction Protocol](#), paragraph 7.

³⁴ [Duterte Redaction Protocol](#), paragraphs 1, 5.

27. In light of these considerations, the Chamber finds that the implementation of the Protocol is compatible with the principles of transparency and equality of arms and accordingly rejects the Defence's submissions in this respect. Noting that the amendments made in the context of the *Duterte* case are not contested by the parties, the Chamber adopts the Redaction Protocol as adopted in the *Duterte* case and therefore instructs the Registry to file the aforesaid Protocol on the record of the case.

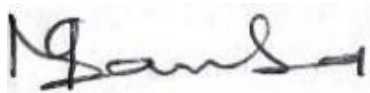
FOR THESE REASONS, THE CHAMBER HEREBY

ADOPTS the Protocols as indicated above in paragraphs 3, 22 and 27;

INSTRUCTS the Registry to file the Contact with Witness and Redaction Protocols on the record of the case as indicated above in paragraphs 22 and 27.



Judge Althea Violet Alexis-Windsor
Presiding Judge



Judge Miatta Maria Samba



Judge Beti Hohler

Done in both English and French, the English version being authoritative.

Dated 8 October 2026

At The Hague, The Netherlands