

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25
Date: 09 October 2026

TRIAL CHAMBER VII

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

SITUATION IN LIBYA

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

PUBLIC

Public Redacted Version of “Defence request for review of the non-inclusion of an individual in Mr El Hishri’s list of non-privileged contacts and the non-authorisation of a visit to Mr El Hishri at the Detention Centre” (2 September 2026, ICC-01/11-01/25-179-Conf-Exp)

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”, “KEH”) files this request on the record and seeks review of the Registry’s decision not to include [REDACTED] on the list of his non-privileged contacts (“Contact List Decision”). The Defence respectfully requests that the Chamber review the Contact List Decision, quash the Contact List Decision, and order [REDACTED] inclusion on the list of non-privileged contacts (“Contact List”).

2. Additionally, the Defence requests that the Chamber review the Detention Unit’s decision not to authorise [REDACTED] visit to KEH at the Detention Centre (“Visit Decision”) which decision was made as a direct consequence of the Contact List Decision.

II. CLASSIFICATION

3. This request is classified as confidential *ex parte* pursuant to Regulation 23bis(2) of the Regulations of the Court because of the confidential and *ex parte* nature of the material included herein.

III. PROCEDURAL HISTORY

1. In January 2026, the Defence requested the addition of [REDACTED] to the Contact List (“Contact List Request”).

2. On 13 January 2026, the Detention Unit rejected the Contact List Request. It explained that the Victims and Witnesses Unit (“VWU”) had carried out an analysis on the basis of information provided by the Office of the Prosecutor (“OTP”, “Prosecution”) and concluded that [REDACTED] would not be added to the contact list. No further details or explanations were provided.

3. On 19 August 2026, the Defence submitted a visit request form to the Detention Unit (“Visit Request”) asking that [REDACTED] be permitted to visit KEH, together with

supporting documentation.¹

4. On 27 August 2026, the Detention Unit refused the Visit Request on the basis of its prior Contact List Decision.²

5. On 31 August 2026, the Defence requested the disclosure of any and all information shared by the Prosecution with the VWU in relation to [REDACTED] and the Contact List Request.³

6. On 1 September 2026, the Prosecution informed the Defence that it had determined that [REDACTED] posed “a potential risk to the safety of individuals and integrity of proceedings.”⁴

7. On the same day, the Defence requested evidence of this assertion made in respect of [REDACTED].⁵ The Prosecution responded that the evidence could be found [REDACTED].⁶

8. As a result of informal communications with the Prosecution, the Defence understands that its objection to the inclusion of [REDACTED] on the Contact List is based on [REDACTED].

9. On 2 September 2026, in light of material obstacles faced by the Defence in accessing the data contained in KEH’s phone, the Defence asked the Prosecution to provide it with a copy of [REDACTED].⁷

IV. APPLICABLE LAW

¹ Email from the Defence to the Detention Unit, sent on 19 August 2026, at 15:15.

² Email from Detention Unit to Defence, sent on 2 September 2026, at 16:44.

³ Email from the Defence to the Prosecution, sent on 31 August 2026, at 16:01.

⁴ Email from Prosecution to Defence, sent on 1 September 2026, at 17:31.

⁵ Email from the Defence to Prosecution, sent on 1 September 2026, at 17:42.

⁶ Email from the Defence to Prosecution, sent on 1 September 2026, at 17:42; Email from the Prosecution to Defence, at 19:43.

⁷ Email from the Defence to the Prosecution, sent on 2 September 2026, at 11:26.

10. Regulation 99 of the Regulations of the Court (“RoC”) makes it clear that “every detained person shall be entitled to: [...] communicate by letter or telephone with his or her family and other persons.”

11. Regulation 101(2) of the RoC only allows restrictions to this entitlement, on the request of the Prosecutor, 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.

12. Regulation 101(3) of the RoC goes on to state that: “The detained person shall be informed of the Prosecutor’s request and shall be given the opportunity to be heard or to submit his or her views.”

13. Any restrictions on detainee contact must be consistent with the right to privacy and family life and therefore, must, be, “necessary, *inter alia*, for the prevention of disorder and crime and the protection of the rights and freedom of others; proportionate to the

legitimate aim pursued; and in accordance with the law.”⁸

V. SUBMISSIONS

A. The reasons provided in the Contact List Decision do not constitute “reasonable grounds to believe” that contact between KEH and [REDACTED] would result in any of the concerns identified in Regulation 101(2)

14. The Prosecution bears the burden of proving that there exist reasonable grounds to believe that contact between [REDACTED] and KEH could result in any of the concerns identified in Regulation 101(2).⁹ None of the information received by the Defence from either the Registry or the Prosecution even indicate which provision of Regulation 101(2) is relied upon to not include [REDACTED] on the Contact List. This circumstance falls very far short of demonstrating reasonable grounds to believe that including [REDACTED] on the Contact List would jeopardise the integrity of the proceedings and/or put at risk the safety of individuals.

15. The Defence understands that the decision not to include [REDACTED] on the Contact List was reached following a vetting assessment conducted by the VWU, taking into account information provided by the Prosecution. Further, the communication from the Detention Unit references the previous order of the Pre-Trial Chamber (“PTC”) on “a series of contact restrictions on communications” with no indication of how [REDACTED] falls within that order.¹⁰

16. The Defence’s informal communication with the Prosecution indicated that the concerns identified in the information that the Prosecution provided to the VWU were

⁸ Second Decision on Contact Restrictions, 30 March 2026, ICC-01/11-01/25-70-Conf-Exp-Corr, para. 34 (public redacted version filed on 23 June 2026) (“Second Decision on Contact Restrictions”). *See also* Ntaganda, Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts, 18 August 2015, ICC-01/04-02/06-785-Red, para. 42; ECtHR, *Messina v. Italy*, Appl. no. 25498/94, Judgment, 28 September 2000, paras 59-74; ECtHR, *Lavents v. Latvia*, Appl. no. 58442/00, Judgement, 28 November 2002, paras 134-143; ECtHR, *Van der Ven v. The Netherlands*, Appl. no. 50901/99, Judgement, 4 February 2003, paras 64-72; ECtHR, *Kornakovs v. Latvia*, Appl. no. 61005/00, Judgement, 15 June 2006, paras 134-136.

⁹ Regulations of the Court, Regulation 101(2) (“if the Prosecutor has reasonable grounds to believe”).

¹⁰ Email from the Detention Unit to the Defence, sent on 13 January 2026, at 10:59.

related to [REDACTED]. This communication contained no reference to the specific provisions of Regulation 101(2) that form the basis of the Prosecution's information that was shared with the VWU.

17. Further, the Contact List Decision purports to be based, at least in part, on provisional contact restrictions imposed by the PTC that have since been replaced by more permissive contact restriction measures. The Prosecution's information is insufficient to show reasonable grounds to believe that contact between KEH and [REDACTED] would fall afoul of the more permissive contact restrictions.

18. The information currently available to the Defence is so lacking in detail that the Defence cannot understand the basis of the highly prejudicial Contact List Decision. It is unreasonable to claim that decisions such as these that have a significant impact on an Accused's rights to family life and privacy can be supported by such tenuous justifications.

19. The Defence reserves its right to supplement these submissions if and when it is informed of more detailed legal and factual considerations underpinning the Contact List Decision beyond mere unevidenced assertions.

B. Excluding [REDACTED] from the Contact List is not necessary for the aim pursued

20. Both ICC and human rights jurisprudence make it clear that a restriction on a detainee's rights to privacy and family life, such as the prohibition of contact with [REDACTED], must be "necessary" to achieve a legitimate aim.¹¹ Such a restriction "must be the least restrictive possible to the rights of the detained person."¹²

¹¹ See also *Ntaganda*, Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts, 18 August 2015, ICC-01/04-02/06-785-Red, para. 42; ECtHR, *Messina v. Italy*, Appl. no. 25498/94, Judgment, 28 September 2000, paras 59-74; ECtHR, *Lavents v. Latvia*, Appl. no. 58442/00, Judgement, 28 November 2002, paras 134-143; ECtHR, *Van der Ven v. The Netherlands*, Appl. no. 50901/99, Judgement, 4 February 2003, paras 64-72; ECtHR, *Kornakovs v. Latvia*, Appl. no. 61005/00, Judgement, 15 June 2006, paras 134-136.

¹² *Al Hassan*, Decision on Mr Al Hassan's restrictions and accesses while in detention, 21 January 2020, ICC-01/12-01/18-557-Red3, para. 10.

21. The Defence submits that lesser restrictive measures are available to the Detention Unit which can achieve the legitimate aim pursued. These are provided in the Second Decision on Contact Restrictions and include the following: “prohibition on case-related discussions”; “[o]bscure or coded language aimed at bypassing or violating the ordered measures may not be used”; “prohibition of recordings”; “[a]ctive monitoring of non-privileged telephone calls”; “intercept[ion] and confiscate[ion] [of] correspondence when restrictions are believed to be violated”; and “[t]he Detention Centre staff [...] must immediately end conversations when restrictions are believed to be violated”.¹³

22. The aforementioned measures are sufficient to address the risks and concerns that the Prosecution and VWU have preliminarily identified. Should communication result in a breach of the contact restrictions, the Detention Centre staff is required to end all communications preventing any “risk to the safety of individuals and the integrity of the ICC proceedings.”¹⁴

C. The rationale for the Visit Decision is exclusively based on the Contact List Decision

22. Given that the Visit Decision was based exclusively on the flawed and unreasonable Contact List Decision, it follows that the Visit Decision was equally flawed and unreasonable. For the same reasons that the Contact List Decision must be quashed, the Visit Decision must also be quashed.

VI. RELIEF SOUGHT

23. For the foregoing reasons, the Defence respectfully requests that the Trial Chamber:

- i) authorise [REDACTED] inclusion on the Contact List; and

¹³ Second Decision on Contact Restrictions, para. 38.

¹⁴ Email sent from the Prosecution to the Defence, sent on 1 September 2026, at 17:31.

- ii) authorise [REDACTED] visit to KEH in the Detention Centre.

Respectfully submitted,

A handwritten signature in black ink, reading "Yasser Hassan", written in a cursive style.

Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 09 October 2026

at The Hague, The Netherlands