

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/11-01/25
Date: 14 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

Public redacted version of "Corrected version of 'Prosecution response to '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'" filed on 10 September 2026, ICC-01/11-01/25-181-Conf-Exp

Source: Office of the Prosecutor

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A. INTRODUCTION

1. On 3 September 2026, the Defence filed a request¹ (the “Request”) seeking review of the non-inclusion of [REDACTED] on Khaled EL HISHRI (“Mr EL HISHRI”)’s non-privileged contact list.

2. The Prosecution opposes this request. [REDACTED] has been excluded from Mr EL HISHRI’s contact list since January 2026 and the basis for this exclusion continues to exist. Based on [REDACTED] contact between Mr EL HISHRI and [REDACTED] could prejudice the current proceedings and endanger victims and actual and perceived Prosecution witnesses. Excluding [REDACTED] is necessary and proportionate to protect the safety of witnesses and ensure the integrity of the proceedings.

3. The Prosecution notes that the contact restrictions regime implemented by Pre-Trial Chamber I (the “Pre-Trial Chamber”) continues in effect until further adjudication by the Trial Chamber.² The Prosecution intends to submit its renewed request for contact restrictions to the Trial Chamber in the coming days, where it will expand more fully on the necessity of maintaining all of the current restrictions.

B. CONFIDENTIALITY

4. This submission is filed as confidential, *ex parte* in accordance with regulation 23bis(2) of the Regulations of the Court (“RoC”) because of its sensitive and confidential content. Such content includes, *inter alia*, references to filings marked with the same classification as well as information provided *ex parte* by the Prosecution and the Registry to the Pre-Trial Chamber, as well as the Pre-Trial Chamber’s decisions on same.

5. The Defence will be provided with a confidential redacted version of this filing containing all of the substantive information provided by the Prosecution with regards to its concerns regarding contact between Mr EL HISHRI and [REDACTED].

6. The Prosecution will file a public redacted version of the present submission as soon as practicable after the Defence has filed a public redacted version of its Request.

¹ ICC-01/11-01/25-179-Conf-Exp, (“The Request”).

² ICC-01/11-01/25-144 (“Fourth Decision on Contact Restrictions”), para. 19.

C. PROCEDURAL HISTORY

1. Procedural history of the existing contact restrictions regime

7. On 16 July 2025, the authorities of the Federal Republic of Germany arrested Mr EL HISHRI pursuant to a warrant of arrest issued against him by the Pre-Trial Chamber on 10 July 2025.³ [REDACTED].⁴

8. On 4 August 2025, the Prosecution requested measures to restrict Mr EL HISHRI's communications from the Detention Centre in The Hague, to be implemented immediately upon his surrender to the International Criminal Court ("ICC" or the "Court").⁵

9. On 1 December 2025, Mr EL HISHRI was surrendered to the ICC. On the same day, the Pre-Trial Chamber granted the Prosecution's request for contact restrictions on an *interim* basis, pending final adjudication.⁶ In addition to other measures, the Pre-Trial-Chamber limited Mr EL HISHRI's communications to a restricted number of persons, with the exception of duly appointed counsel and diplomatic or consular assistance under regulations 97 and 98 of the RoC. [REDACTED].⁷

10. Following its provisional order of 1 December 2025, the Pre-Trial Chamber issued a final decision on 20 February 2026, maintaining the restriction to the number of non-privileged contacts as well as [REDACTED]⁸ and ordered the Prosecution to submit a further reasoned request to maintain the contact restrictions for a longer period, if warranted, by no later than 13 April 2026.⁹ Subsequently, on 13 May 2026, the Pre-Trial Chamber granted the Prosecution's request to maintain the existing contact restrictions until the issuance of the confirmation of charges decision.¹⁰

³ [REDACTED].

⁴ [REDACTED].

⁵ ICC-01/11-01/25-16-US-Exp ("First Request for Contact Restrictions"), a confidential redacted version was filed on 3 December 2025, *see* ICC-01/11-01/25-16-Conf-Red.

⁶ *See* ICC-01/11-01/25-54-Conf-Anx9 ("Email Decision on Contact Restrictions"). *See also* First Request for Contact Restrictions, paras. 27-28; ICC-01/11-01/25-54-Conf-Anx16 ("Email Clarifications regarding Contact Restrictions").

⁷ As per the Pre-Trial-Chamber's email order on 1 December 2025 and the further clarifications issued on 9 December 2025, Email Decision on Contact Restrictions; Email Clarifications regarding Contact Restrictions.

⁸ ICC-01/11-01/25-70-Conf-Exp-Corr ("Second Decision on Contact Restrictions"), para. 38(ii), a confidential redacted version as filed on 20 February 2026, *see* ICC-01/11-01/25-70-Corr-Red.

⁹ Second Decision on Contact Restrictions, paras. 38, 47 and p. 20.

¹⁰ ICC-01/11-01/25-118-Conf ("Third Decision on Contact Restrictions"), paras. 15, 16 and p. 7.

11. On 22 June 2026, the Prosecution requested that the existing contact restrictions remain in place until the commencement of trial.¹¹

12. On 16 July 2026, the Pre-Trial Chamber granted the Prosecution's request to maintain the existing contact restrictions pending adjudication by the Trial Chamber.¹²

2. Procedural history of the exclusion of [REDACTED] from the list of non-privileged contacts

13. In January 2026, the Defence requested to add [REDACTED] to the list of non-privileged contacts for Mr EL HISHRI. [REDACTED]. The Prosecution provided its assessment of information in its possession showing that allowing contact between [REDACTED] and Mr EL HISHRI "may reasonably enable interference with victims, witnesses, or ongoing investigations".¹³

14. On 13 January 2026, the Defence was informed by the Detention Centre that the Registry had decided, based on [REDACTED], that [REDACTED] would not be added to Mr EL HISHRI's non-privileged contact list ("Non-inclusion Decision").¹⁴ As result of this decision, Mr EL HISHRI is neither allowed to have phone contact nor in-person visits with [REDACTED].¹⁵

15. [REDACTED].[REDACTED].¹⁶

16. Although aware of the Non-inclusion Decision since January 2026, the Defence did not raise the matter with the Prosecution until 31 August 2026, when it indicated to the Prosecution that it would potentially challenge this decision before the Trial Chamber.¹⁷

17. On 3 September 2026, more than seven months after being informed of the Non-inclusion Decision, the Defence filed its Request¹⁸ seeking review of the non-inclusion of [REDACTED] on Mr EL HISHRI's non-privileged contact list. Despite having been aware [REDACTED],

¹¹ ICC-01/11-01/25-137-Conf-Exp ("Second Request to Maintain Contact Restrictions"), a confidential redacted version was filed on 24 June 2026 *see* ICC-01/11-01/25-137-Conf-Red.

¹² Fourth Decision on Contact Restrictions, paras. 19, 23 and p. 8.

¹³ Prosecution observations on request to communicate with Khaled EL HISHRI [REDACTED].

¹⁴ Email from the Detention Section to Defence Counsel of 13 January 2026 at 10:59, as forwarded by the Defence to the Prosecution on 31 August 2026 at 16:01.

¹⁵ Second Decision on Contact Restrictions, para. 38(ii).

¹⁶ Email from Trial Chamber VII to the Defence, VWU and Prosecution, [REDACTED] 14 August 2026 13:48.

¹⁷ Email from Defence Counsel to the Prosecution on 31 August at 16:01.

¹⁸ 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 ("Defence review request").

[REDACTED]¹⁹[REDACTED]²⁰[REDACTED]²¹. As a result, the Prosecution was deprived of any meaningful opportunity to respond to or oppose the Defence's request for a shortened deadline. Had such an opportunity been afforded, the Prosecution would have opposed the request on the basis that any purported urgency arose solely from the Defence's more than seven-month delay in challenging the Non-inclusion Decision.

D. SUBMISSIONS

18. The Prosecution recalls the jurisprudence of this Court, as reiterated by the Pre-Trial Chamber,²² that contact restrictions are preventive in nature, and any contact restrictions 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.²³ The Prosecution further notes that the Appeals Chamber has repeatedly held that, while contact restrictions are necessary for the purpose of preserving the integrity of the proceedings, this necessity must be "weighed against the accused's right to privacy and family life".²⁴

19. Maintaining the existing contact restrictions between Mr EL HISHRI and [REDACTED] is necessary and proportionate for the prevention of disorder and crime and the protection of the rights and freedom of others. In particular, the Prosecution opposes any contact between Mr EL HISHRI and [REDACTED] for the following reasons: (1) Mr EL HISHRI and SDF/RADA have the capacity and motivation to interfere with and intimidate (potential and perceived) Prosecution witnesses or otherwise prejudice the proceedings; (2) there are reasonable grounds to believe that [REDACTED]; and (3) excluding [REDACTED] from the non-privileged contact list is necessary and proportionate to protect the safety of witnesses and ensure the integrity of the proceedings.

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² Second Decision on Contact Restrictions, para. 34.

²³ *Ibid*, See also ICC-01/04-02/06-785-Red, para. 42; ICC-01/04-01/07-1243-tENG-Red ("Katanga & Ngudjolo Chui Decision on Contact Restrictions"), para. 19.

citing European Court of Human Rights ("ECtHR"), *Messina v. Italy*, Appl. no. 25498/94, "Judgment", 28 September 2000; *Lavents v. Latvia*, Appl. no. 58442/00, "Judgment", 28 November 2002; *Van der Ven v. The Netherlands*, Appl. No. 50901/99, "Judgment", 4 February 2003; *Kornakovs v. Latvia*, Appl. No. 61005/00, "Judgment", 15 June 2006; *Moiseyev v. Russia*, Appl. No. 62936/00, "Judgment", 9 October 2008. See also, e.g., ECtHR, *Lorsé and other v. The Netherlands*, Appl. no. 52750/99, "Judgment", 4 February 2003, paras. 82-86; *Kanalas v Romania*, Appl. no. 20323/14, "Judgment", 6 December 2016, paras. 53-55.

²⁴ The Prosecutor v. Alfred Yekatom and Patrice-Édouard Ngaïssona, Decision on fourteenth Registry report on the implementation of the restrictions on contacts of Mr Ngaïssona, ICC-01/14-01/18-2872, 5 February 2026, para.13, citing Appeals Chamber, The Prosecutor v. Bosco Ntaganda, Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, ICC- 01/04- 02/06-1817-Conf, para. 101 (public redacted version filed on the same day, ICC-01/04-02/06-1817 Red.

3. Mr EL HISHRI and SDF/RADA have the capacity and motivation to interfere with and intimidate (potential and perceived) Prosecution witnesses or otherwise prejudice the proceedings

20. Since Mr EL HISHRI's surrender to the Court, the Pre-Trial Chamber has consistently assessed that the contact restrictions regime is necessary for the safety and security of victims, actual and potential witnesses, and their families and the integrity of the proceedings.²⁵ In doing so, the Pre-Trial Chamber *inter alia* found that "the potential and perceived Prosecution witnesses, as well as their families, continue to face concrete and genuine risks to their safety".²⁶ Most recently, in July 2026, the Pre-Trial Chamber noted the necessity of maintaining contact restrictions due to "Mr EL HISHRI and his associates' alleged involvement in witness intimidation, their capability to interfere with individuals they perceive to be potential or actual witnesses, and the precarious security situation in Libya."²⁷ The Pre-Trial Chamber has repeatedly found that SDF/RADA have established methods of surveillance, control, and intimidation, and that it demonstrates its ability to identify, monitor, and potentially target individuals within territory under its influence.²⁸

21. Preventing communications between Mr EL HISHRI and members of SDF/RADA in Libya is essential for the protection of witnesses in this case. The Prosecution, and the Court more broadly, [REDACTED]. As previously submitted by the Prosecution,²⁹ and [REDACTED], [REDACTED].³⁰ [REDACTED].

22. As a result of this, [REDACTED]. [REDACTED]. [REDACTED].

23. The Prosecution avers that all efforts must be taken to prevent [REDACTED]. The Prosecution submits that it is in Mr EL HISHRI's interests [REDACTED], that the trial against Mr EL HISHRI be prejudiced wherever possible. The Pre-Trial Chamber found that Mr EL HISHRI had significant influence within SDF/RADA with general authority, including over co-perpetrators and Sheikhs who feared and obeyed him.³¹ The Pre-Trial Chamber further found that the Prosecution's evidence demonstrates the existence of a common plan between

²⁵ See First Decision on Contact Restrictions; Second Decision on Contact Restrictions; Third Decision on Contact Restrictions; Fourth Decision on Contact Restrictions. As noted above, the Prosecution will submit a request to maintain the existing contact restrictions shortly, *see* para. 3 above.

²⁶ Third Decision on Contact Restrictions, para. 12.

²⁷ Fourth Decision on Contact Restrictions, para. 14; citing Second Decision on Contact Restrictions, para. 43.

²⁸ Second Decision on Contact Restrictions, para. 35; Third Decision on Contact Restrictions, para. 12.

²⁹ Second Request to Maintain Contact Restrictions, para. 22.

³⁰ ICC-01/11-01/25-111-Conf-AnxI ("Registry Report on Security and Political Situation in the State of Libya"), para. 38.

³¹ ICC-01/11-01/25-143 ("Confirmation Decision"), paras. 154-155.

Mr EL HISHRI, [REDACTED].³² The Prosecution submits that Mr EL HISHRI's authority in SDF/RADA, together with the [REDACTED] interests of Mr EL HISHRI [REDACTED], pose a continued risk to witnesses and the integrity of the current proceedings overall. The Prosecution's case implicates not only Mr EL HISHRI, but also his [REDACTED], [REDACTED] and [REDACTED].

24. The dominance of [REDACTED] in the leadership and daily activities of SDF/RADA requires that heightened scrutiny be applied to contacts between Mr EL HISHRI and [REDACTED], and restrictions be implemented where justified in evidence. [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵ [REDACTED].³⁶

4. There are reasonable grounds to believe that [REDACTED]

25. The Prosecution assesses that contact between Mr EL HISHRI and [REDACTED] poses a risk under Regulation 101(2) (b), (d) and (f) RoC namely that it could prejudice the outcome of the proceedings against Mr EL HISHRI through the risk of potential interference with witnesses, could be used to breach an order for non-disclosure made by the Pre-Trial Chamber, and could constitute a threat to the physical and psychological safety and well-being, rights and freedoms of prosecution witnesses and/or their family members.

26. The Prosecution's concerns regarding contact between Mr EL HISHRI and [REDACTED] stem from [REDACTED] which indicate that [REDACTED], [REDACTED].

27. The [REDACTED] demonstrate that he [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].

28. The Prosecution has evidence which shows that [REDACTED]. In its review of [REDACTED] the Prosecution reviewed correspondence between Mr EL HISHRI and [REDACTED] indicating that [REDACTED] performs a number of functions in relation to Mr EL HISHRI's role in SDF/RADA.³⁹ In particular, the [REDACTED] between Mr EL HISHRI and members of SDF/RADA leadership, including [REDACTED], while Mr EL HISHRI was

³² *Ibid*, para. 146.

³³ [REDACTED].

³⁴ Confirmation Decision, para. 153.

³⁵ *Ibid*.

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

outside of Libya. This enabled Mr EL HISHRI to maintain a position of authority in SDF/RADA.

i. [REDACTED]

29. [REDACTED]⁴⁰ [REDACTED]⁴¹ [REDACTED].⁴² As such, [REDACTED] is regularly [REDACTED].

30. [REDACTED].⁴³ [REDACTED].⁴⁴ [REDACTED]⁴⁵, [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED],⁴⁸ [REDACTED].⁴⁹ [REDACTED].⁵⁰ [REDACTED].⁵¹ [REDACTED].

ii. [REDACTED] engaged Mr EL HISHRI [REDACTED]

31. The Prosecution has also [REDACTED] showing that [REDACTED] asked Mr EL HISHRI [REDACTED]⁵². [REDACTED].⁵³ [REDACTED].⁵⁴ [REDACTED].⁵⁵ [REDACTED].

iii. [REDACTED] has acted on behalf of Mr EL HISHRI in meetings with [REDACTED]

32. The Prosecution has reviewed messages which suggest that [REDACTED].⁵⁶ [REDACTED].⁵⁷ [REDACTED].⁵⁸ [REDACTED].⁵⁹ [REDACTED].⁶⁰

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

- iv. *[REDACTED] has acted on behalf of Mr EL HISHRI in meetings with [REDACTED]*

33. The Prosecution has reviewed message which show that [REDACTED].

34. [REDACTED]⁶¹ [REDACTED].⁶²

35. [REDACTED]⁶³ [REDACTED].⁶⁴ [REDACTED].⁶⁵ [REDACTED].⁶⁶

5. Excluding [REDACTED] is necessary and proportionate to protect the safety of witnesses and ensure the integrity of the proceedings

36. Maintaining contact restrictions between Mr EL HISHRI and [REDACTED] is necessary for the prevention of disorder and crime and the protection of the rights and freedom of others. As outlined by the Prosecution in previous submissions, [REDACTED] since Mr EL HISHRI's arrest.⁶⁷ The Pre-Trial Chamber found that the Prosecution has demonstrated that Mr EL HISHRI, his associates, and members of SDF/RADA having a history of, and the current capability to, surveil, interfere, contact, and eventually intimidate actual, potential, or perceived witnesses, victims, and collaborators with the Court.⁶⁸ This risk continues and will only heighten as the Prosecution moves through the pre-trial disclosure process, as acknowledged by the Pre-Trial Chamber.⁶⁹ On 2 September 2026, the Prosecution began the process of disclosing the identity of witnesses whose identities were previously withheld from the accused due to their vulnerable security situation. The protection of Prosecution witnesses and the integrity of the current proceedings necessitates continuing the existing contact restrictions between Mr EL HISHRI [REDACTED].

37. Restricting contact with [REDACTED] is proportionate given [REDACTED]. [REDACTED] exclusion from Mr EL HISHRI's list of non-privileged contacts under the

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ See ICC-01/11-01/25-35-Conf-Corr, ("Regulation 35 application"), para. 27, Annexes, a confidential redacted version was filed on 9 December 2025, see ICC-01/11-01/25-35- Corr-Red; First Request for Contact Restrictions, para. 17; Second Request for Contact Restrictions, para. 10; First Request to Maintain Contact Restrictions, para. 8; Second Request to Maintain Contact Restrictions, para. 13.

⁶⁸ Second Decision on Contact Restrictions, para. 35; Third Decision on Contact Restrictions, para. 12; Fourth Decision on Contact Restrictions, para. 14.

⁶⁹ Fourth Decision on Contact Restrictions, para. 15.

current contact restrictions regime is in accordance with law and clearly enunciated in both the RoC and the jurisprudence of the Court.

38. The Defence does not dispute the fact that there are legitimate grounds for contact restrictions in this case, but rather has argued that less restrictive measures are available “to achieve the legitimate aims pursued.”⁷⁰ The measures proposed by the Defence amount largely to responsive measures rather than preventive measures. The Pre-Trial Chamber, in examining the existing contact restrictions regime in July, found that the risks in the case could not be mitigated by measures other than the existing regime and reiterated the preventive nature of contact restrictions.⁷¹ The Prosecution submits that these risks, have, if anything, heightened since the Pre-Trial Chamber’s last decision and will remain heightened until the conclusion of the Prosecution’s case-in-chief.

39. It is essential to exercise caution and pursue a preventive approach where there is a demonstrated record of [REDACTED]. Mr EL HISHRI’s communications demonstrate that [REDACTED].

E. CONCLUSION

40. The Prosecution respectfully submits that the existing restrictions prohibiting contacts between [REDACTED] and Mr EL HISHRI be maintained.



**Mame Mandiaye Niang,
Acting Prosecutor**

Dated this 14th day of October 2026

At The Hague, The Netherlands

⁷⁰ The Request, para. 21.

⁷¹ Fourth decision on Contact Restrictions, para. 16.