

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11
Date: 8 August 2025

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Damdin, Presiding
Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN LIBYA

Public

**Request for Leave to Make Submissions on Mr El Hishri's
Right To Be Heard through Counsel**

Source: Office of Public Counsel for the Defence

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☐ 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

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REGISTRY

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Mr Zavala Giler, Osvaldo

☒ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☒ **Other**

Mr Khaled Mohamed Ali El Hishri

1. The ICC Office of the Prosecutor (“OTP”) has lodged an appeal requesting the Appeals Chamber to “correct an arrest warrant after it has been executed”.¹ The OTP Appeal Brief raises significant jurisdictional litigation and challenges aspects of the arrest warrant that initiated the article 59 proceedings for the named defendant, currently in custody in a State Party. For these reasons, the Office of Public Counsel for the Defence (“OPCD”) seeks leave to make submissions on the suspect’s rights at this stage including, of utmost importance, his right to have a Counsel appointed to best represent him.

I. RELEVANT PROCEDURAL BACKGROUND

2. On 10 July 2025, Pre-Trial Chamber I issued a Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri.²
3. On 15 July 2025, the OTP filed a notice of appeal of the Warrant of Arrest (“OTP Notice of Appeal”), under seal, *ex parte*, pursuant to article 82(1)(a) of the Rome Statute.³
4. The next day, Mr El Hishri was arrested in the Federal Republic of Germany where he “will remain in [...] custody [...] pending the completion of the national proceedings as foreseen in article 59 of the Rome Statute”.⁴
5. On 1 August 2025, the Prosecution filed, under seal, *ex parte*, the Appeal Brief concerning the Warrant of Arrest (“OTP Appeal Brief”).⁵
6. On the same day, the Appeals Chamber ordered the Registry to reclassify, as public, the appellate litigation initiated by the OTP.⁶

II. OPCD REQUEST FOR LEAVE TO APPEAR

7. The OPCD requests leave to make submissions pursuant to Regulation 77(4)(d) of the Regulations of the Court to “[a]dvanc[e] submissions, on the instruction or with the leave of the Chamber, on behalf of the person entitled to legal assistance when defence

¹ *Situation in Libya*, Prosecution Appeal Brief concerning the “Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri” (ICC-01/11-188), 1 August 2025, [ICC-01/11-199](#) (“OTP Appeal Brief”), para. 5.

² *Situation in Libya*, Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri, 10 July 2025, [ICC-01/11-188](#) (“Warrant of Arrest”). The Warrant of Arrest was reclassified as public by the Pre-Trial Chamber on 31 July 2025, see *Situation in Libya*, Order to the Registry to reclassify the warrant of arrest for Mr Khaled Mohamed Ali El Hishri, 31 July 2025, [ICC-01/11-198](#).

³ *Situation in Libya*, Prosecution Notice of Appeal of the “Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri” (ICC-01/11-188-US-Exp), 15 July 2025, [ICC-01/11-191](#) (“OTP Notice of Appeal”), paras 4, 7.

⁴ ICC Press Release, [Situation in Libya: Khaled Mohamed Ali El Hishri arrested for alleged crimes against humanity and war crimes](#), 18 July 2025.

⁵ [OTP Appeal Brief](#).

⁶ *Situation in Libya*, Order on reclassification of documents, 1 August 2025, [ICC-01/11-200](#).

counsel has not been secured or when the mandate of temporary counsel is limited to other issues”.

8. In the specific circumstances of this case, the OPCD has not been notified of any Counsel assigned to protect Mr El Hishri’s rights in these ICC proceedings. While he presumably retains counsel for the ongoing domestic proceedings,⁷ the absence of any designated ICC Counsel protecting his rights triggers this OPCD request for leave to make these submissions.

III. **OPCD PROPOSED SUBMISSIONS**

9. In the present appeal, the OTP acknowledges the unique stage of proceedings where the suspect is already engaged in article 59 proceedings in a State Party.⁸ Moreover, the OTP’s challenge is self-identified as both novel procedural litigation⁹ and substantially impactful to the entirety of the pre-trial proceedings as one pertaining to jurisdiction *ratione materiae*.¹⁰
10. The Appeals Chamber held that “the Statute provides the suspect against whom a warrant of arrest has been issued with an opportunity to challenge the admissibility of the case even before the person is arrested and surrendered to the Court.”¹¹ In practice, Chambers have allowed suspects the possibility to make submissions in the context of article 19 proceedings even when they had not been surrendered to the court or had appeared, finding that their surrender or appearance could not be made contingent on State’s compliance with a request for surrender.¹² In these instances, these suspects had appointed ICC Counsel to provide such assistance and representation.¹³

⁷ ICC Press Release, [Situation in Libya: Khaled Mohamed Ali El Hishri arrested for alleged crimes against humanity and war crimes](#), 18 July 2025.

⁸ [OTP Appeal Brief](#), para. 1 stating “In due course, after his initial appearance, proceedings to confirm the charges against Mr EL HISHRI will commence.”

⁹ [OTP Appeal Brief](#), para. 5 stating “To the Prosecution’s knowledge, the Appeals Chamber has not yet had occasion to correct an arrest warrant after it has been executed.”

¹⁰ [OTP Appeal Brief](#), para. 13 stating “[...] a purported ruling on the scope of the Court’s jurisdiction *ratione materiae* is likely to affect the future course of pre-confirmation proceedings [...]”.

¹¹ *Situation in DRC*, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”, 13 July 2006, [ICC-01/04-169](#), para. 51.

¹² *Prosecutor v. S. Gbagbo*, Decision on the conduct of the proceedings following Cote d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo, 15 November 2013, [ICC-02/11-01/12-15](#), para. 8, citing to *Prosecutor v. Gaddafi and Al-Senussi*, Decision on the Conduct of the Proceedings Following the “Application on behalf of the Government of Libya pursuant to Article 19 of the Statute”, 4 May 2012, [ICC-01/11-01/11-134](#), para. 11 and *Prosecutor v. Gaddafi*, Decision on the conduct of the proceedings following the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”, 26 April 2013, [ICC-01/11-01/11-325](#), para. 8.

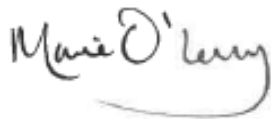
¹³ *Prosecutor v. S. Gbagbo*, Decision on the conduct of the proceedings following Cote d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo, 15 November 2013, [ICC-02/11-01/12-15](#), para. 5; *Prosecutor v. Gaddafi and Al-Senussi*, Decision Appointing Counsel from the OPCD as Counsel for Saif Al-Islam Gaddafi, 17 April 2012, [ICC-01/11-01/11-113](#); *Prosecutor v. Gaddafi and Al-Senussi*, Registration of the provisional

11. If granted leave to make submissions, the OPCD will outline Mr El Hishri's equal right to an assigned ICC Counsel given:

- (i) the fact that a Warrant of Arrest has already been issued thus triggering his participatory rights as a suspect in his proceedings before the ICC; and
- (ii) Mr El Hishri's statutory right to lodge – and, therefore, respond to – challenges on jurisdiction, as provided for in article 19(2), and his procedural right to be allowed to make observations under rule 58(3) which cannot be contingent on his transfer to the Court.

IV. **RELIEF REQUESTED**

12. The OPCD respectfully requests the Appeals Chamber to grant it leave to make submissions on the suspect's rights at this stage including, of utmost importance, his right to have a Counsel appointed to best represent him.



Marie O'Leary
Acting Principal Counsel of the OPCD

Dated this 8th day of August 2025
at The Hague, The Netherlands

acknowledgment of the appointment of Mr. Benedict Emmerson as counsel for Mr. Abdullah Al-Senussi, 15 January 2013, [ICC-01/11-01/11-253](#).