

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11
Date: 27 August 2025

APPEALS CHAMBER

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

SITUATION IN LIBYA

Public Document

OPCV's request to appear before the Chamber
pursuant to regulation 81(4) of the Regulations of the Court

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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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**

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Reparations Section**

☐ **Other**

I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) requests to appear before the Appeals Chamber to represent the general interests of Victims in relation to the “Prosecution Appeal Brief concerning the ‘Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri’ (ICC-01/11-188)” (the “Arrest Warrant Appeal Brief”).¹

2. The Office has acted in numerous occasions based on its twofold mandate to appear in respect of specific issues and to represent the general interest of Victims. Since the Arrest Warrant Appeal Brief addresses alleged legal misinterpretation from Pre-Trial Chamber I, the matter brought under appeal directly affects the interests of the Victims insofar as it relates to the scope of victimisation. This is a pivotal matter which has a direct impact on whether the Victims will be acknowledged and repaired through a credible judicial process at a later stage before this Court. At the core of the raised issues lies the fundamental right of thousands of Victims to justice, accountability, and reparations for the atrocities they have endured.

3. Victims in contact with the Office urge for their voices to be heard and their concerns addressed in a court of law. In line with previous rulings in other situations and cases, it seems appropriate for the Appeals Chamber to authorise the OPCV to present observations on the merits of the Arrest Warrant Appeal Brief representing the general interests of Victims. Victims meaningful contribution to the legal issue *sub judice* will reinforce the victim-centred approach on which the Court bases its procedures. Allowing the Office to appear before the Appeals Chamber will thus ensure that the rights and interests of the Victims are represented and duly taken into account at this stage of the proceedings.

¹ See the “Prosecution Appeal Brief concerning the ‘Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri’ (ICC-01/11-188)”, [No. ICC-01/11-199](#), 1 August 2025 (the “Arrest Warrant Appeal Brief”).

II. PROCEDURAL BACKGROUND

4. On 26 February 2011, the United Nations Security Council referred the Situation in the Libyan Arab Jamahiriya (the "Situation in Libya") since 15 February 2011 to the Court, in accordance with article 13(b) of the Rome Statute (the "Statute").²

5. On 3 April 2025, the Prosecution applied for a warrant of arrest for Khaled Mohamed Ali El Hishri ("Mr El Hishri").³

6. On 12 May 2025, Libya conveyed its acceptance of the Court's jurisdiction over its territory from 2011 until the end of 2027 – after lodging an extension of time scope.⁴

7. On 10 July 2025, Pre-Trial Chamber I issued the "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" (the "Arrest Warrant").⁵

8. On 1 August 2025, the Prosecution filed the Arrest Warrant Appeal Brief.⁶

9. On 8 August 2025, the Office of Public Counsel for the Defence filed a Request for Leave to Make Submissions on Mr El Hishri's Right To Be Heard through Counsel.⁷

² See the United Nations Security Council, UN Doc. [S/RES/1970 \(2011\)](#), 26 February 2011.

³ See the "Prosecution's application under article 58 for a warrant of arrest against Khaled Mohamed Ali El Hishri ('Khaled AL HISHRI')", No. ICC-01/11-172-US-Exp, 3 April 2025, with under seal, *ex parte*, annexes 1-11; and the "Public Redacted Version of 'Prosecution's application under article 58 for a warrant of arrest against Khaled Mohamed Ali EL HISHRI ('Khaled AL HISHRI')", ICC-01/11-172-US-Exp, 3 April 2025", [No. ICC-01/11-172-Red](#), 30 July 2025.

⁴ See the "Transmission of Article 12(3) Declaration by the State of Libya", No. ICC-01/11-180-Conf-Exp, 20 May 2025; the "Transmission of Article 12(3) Declaration by the State of Libya", [No. ICC-01/11-180-Corr-Red](#), 8 August 2025 (registered on 11 August 2025), with confidential *ex parte* Annex I available to the Registry and Prosecution only and Public Redacted Annex II, [No. ICC-01/11-180-AnxII-Red](#).

⁵ See the "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" (Pre-Trial Chamber I), [No. ICC-01/11-188](#) (the "Arrest Warrant").

⁶ See the Arrest Warrant Appeal Brief, *supra* note 1.

⁷ See the Request for Leave to Make Submissions on Mr El Hishri's Right To Be Heard through Counsel, [No. ICC-01/11-203](#), 8 August 2025.

III. SUBMISSIONS

A. The OPCV's twofold mandate to appear in respect of specific issues and to represent the general interest of Victims

10. Pursuant to regulation 81(4) of the Regulations, “[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues; [...] and (e) Representing a victim or victims throughout the proceedings, on the instruction or with the leave of the Chamber, when this is in the interests of justice”.⁸ This provision was amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be initiated either upon instruction of the Chamber or upon request of the Office itself. In this regard, the Principal Counsel recalls that the OPCV was established as an independent permanent office within the Court “able to provide expert advice and assistance” on Victims' issues.⁹ Since the Office's inception, the practice of the Court and the responsibilities entrusted to the OPCV by both the Chambers and Victims have greatly contributed to the development of such expertise.

11. In accordance with the wording of article 68(3) of the Statute, Victims may submit observations on matters which affect their personal interests “at stages of the proceedings determined to be appropriate by the Court”.¹⁰ This includes the present stage of the proceedings where the Suspect is yet to be handed over to the Court. Allowing for Victims meaningful contribution to the legal issue *sub judice* will further reinforce

⁸ See regulation 81(4) of the Regulations of the Court, Doc. [ICC-BD/01-05-16](#).

⁹ See FULFORD (A.), “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

¹⁰ See, *mutatis mutandis*, the “Decision regarding the Registry's First Assessment Report on Applications for Victim Participation, the Registry's First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims' procedural position” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-227-Red](#), 21 June 2019, para. 39: “[...] in line with the object and purpose of article 68(3) of the Statute [...], the Chamber believes that victims must be allowed to play a meaningful role in the proceedings, but in a manner which is not prejudicial to or inconsistent with the rights of the suspects and a fair and impartial trial”.

the victim-centred approach on which the Court bases its procedures.¹¹ Indeed, said approach recognises a victim *“as a rights holder to whom the duty bearer – in this case the Court, the TFV and the Rome Statute system as a whole – owes an obligation it must fulfil. This approach also enables one to look at the fundamental structural causes that underlie the failure to realise one’s rights if and when that occurs”*.¹² Recognising the Victims’ right to be heard in this matter will thus strengthen their trust in the Court and affirm their position as key stakeholders in the pursuit of justice.

12. The Office has been engaged in the Situation in Libya for several years. The Principal Counsel maintains contact with Victims and Victims’ organisations which have shared their views and concerns about the proceedings before the Court. This is precisely the situation foreseen by regulation 81(4) of the Regulations, where the OPCV is uniquely placed to convey the views and concerns of such Victims. On this basis, the Office has been granted leave to appear on specific issues pertaining to the general interests of Victims.¹³ In other instances, the Office appeared at the Chambers’

¹¹ See, for instance, [ICC publishes questionnaire on Revised Victims Strategy](#), 15 August 2024.

¹² See the Court’s Revised strategy in relation to victims, Assembly of States Parties of the International Criminal Court, [ICC-ASP/11/38](#), Eleventh session, The Hague, 5 November 2012, para. 6.

¹³ See the “Decision on the ‘OPCV’s request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court’” (Pre-Trial Chamber I), [No. ICC-01/18-439](#), 4 June 2025; the “Decision on the OPCV’s ‘Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court’” (Appeals Chamber), [No. ICC-02/18-54 OA](#), 21 July 2023; the “Decision on requests for victims’ involvement and access to filings” (Appeals Chamber), [No. ICC-01/21-66 OA](#), 21 March 2023. See also the “Decision on requests for victims’ involvement and access to filings” (Appeals Chamber), [No. ICC-02/18-60 OA](#), 24 August 2023; the “Public redacted version of the ‘Decision authorizing the views, concerns and general interests of the victims’” (Pre-Trial Chamber I), [No. ICC-01/18-256-Red](#), 7 August 2024, para. 8. See further, *inter alia*, the “Decision on the ‘Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan’ (ICC-02/17-35) and on the ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (ICC-02/17-39)’” (Pre-Trial Chamber II), [No. ICC-02/17-43](#), 12 June 2019; the “Decision on the OPCV’s request to participate in the reparations proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2858](#), 5 April 2012; the “Decision on the OPCV’s ‘Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims’ application process’” (Pre-Trial Chamber III), [No. ICC-02/11-01/11-57](#), 13 March 2012; the “Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)” (Trial Chamber II), [No. ICC-01/04-01/07-1205](#), 12 June 2009; and the “Order on the Office of Public Counsel for Victims’ request filed on 21 November 2007” (Trial Chamber I), [No. ICC-01/04-01/06-1046](#), 27 November 2007, para. 2.

request.¹⁴ Trial Chamber I, for instance, has confirmed that the OPCV can appear in respect of specific issues pursuant to regulation 81(4)(b) of the Regulations by filing “an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)”.¹⁵ Said practice reflects the obligation binding on the OPCV to provide, where appropriate, assistance to Victims in accordance with its role and mandate before the Court.

13. In the *Duterte* case, in appointing the Office to represent the collective interests of potential victims, the Chamber recently recalled, *mutatis mutandis*, that “it is the responsibility of the OPCV to represent potential victims ‘who have already communicated with the Court in relation to [this] case’ within the meaning of rule 59 of the Rules. [...] In view of the foregoing, the Chamber hereby finds it appropriate that the Prosecution and the OPCV submit their written observations on the [Jurisdictional] Challenge [...]”.¹⁶

B. The Arrest Warrant Appeal Brief affects the general interest of Victims

14. Whether Pre-Trial Chamber I has limited its *rationae materiae* jurisdiction by misinterpreting the requirement enshrined in articles 7 and 8 of the Statute is a fundamental question that has a direct bearing on many Victims – since the Arrest Warrant as it stands narrows the scope of potential victims of the alleged crimes. As such, the Prosecution’s request for rearticulation of the law in the Arrest Warrant and a partial reversal of its legal findings affects the general interest of Victims. In

¹⁴ See, *inter alia*, the “Order setting time limits for observations in relation to the ‘Defence Challenge with Respect to Jurisdiction’ (ICC-01/21-01/25-121)” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-128](#), 7 May 2025 (the “Duterte Order”); and the transcripts of the hearings held on 30 October 2007, [No. ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 20-23, and on 4 December 2007, [No. ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 52-54.

¹⁵ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents” (Trial Chamber I), No. [ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

¹⁶ See the Duterte Order, *supra* note 14, paras. 3-4.

particular, its request that “*additional victimisation may properly be charged against Mr EL HISHRI*”¹⁷ is of utmost relevance for Victims.

15. Victims in contact with the Office expressed both disappointment at the prospect of being denied justice; as well as their deep concern for the hundreds of individuals still in Libya, who remain hopeful that their voices could be heard and their concerns addressed in a court of law. The issuance of the Arrest Warrant and the proposed amendment to its scope irrefutably concern Victims’ personal interests, particularly in light of the recent arrest of Mr El Hishri and his imminent transfer to the ICC, as well as the initiation of the judicial procedures. Allowing the Office to appear before the Appeals Chamber will ensure that the rights and interests of all these Victims are represented and duly taken into account at the present stage of the proceedings. In addition, their observations can illustrate the severe impact of a narrower legal interpretation and will ensure that legal arguments do not remain abstract but are grounded in the lived experiences of those most affected by the alleged crimes.

16. The Arrest Warrant Appeal Brief addresses a crucial matter which has a direct impact on whether the suffering of Victims could be later acknowledged and repaired through a credible judicial process before this Court. Thus, the interpretation challenge *sub judice* puts Victims’ fundamental rights at stake.¹⁸ Denying Victims’ legitimate expectation that their grievances can be addressed by this Court would send the disheartening message that the ICC has summarily disregarded their views and concerns.

¹⁷ See the Arrest Warrant Appeal Brief, *supra* note 1, para. 59.

¹⁸ See, for instance, the “Separate opinion of Judge Sang-Hyun Song” appended to the “Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the ‘Directions and Decision of the Appeals Chamber’ of 2 February 2007” (Appeals Chamber), No. [ICC-01/04-01/06-925 OA8](#), 13 June 2007, para. 16: “*victims of serious crimes have a special interest that perpetrators responsible for their suffering be brought to justice, and this interest is protected by human rights norms*”.

17. In this respect, the OPCV's involvement in the matter could support the Arrest Warrant Appeal Brief by further refining its arguments, as well as by providing key concepts of victimisation in the Situation in Libya *vis-à-vis* the nexus requirement of articles 7 and 8 of the Statute.¹⁹ By sharing the Victims' perspectives, the OPCV would present legal arguments that are not merely theoretical, but are rooted in the contextualised experiences of those who have endured suffering. Such perspective can only be provided by the Victims.

18. The practice of the Court has so far allowed for the views and concerns of Victims to be heard in proceedings on victims' matters, as well as the need to protect the general interests of the Victims, recognising that the intervention of the Office is warranted. The unique procedural challenge presented to the Appeals Chamber under the Arrest Warrant Appeal Brief – *i.e.* an appeal of an already executed arrest warrant – shall not hinder the Victims' possibility to present their views and concerns in matters intrinsically related to them. To the contrary, the analysis of an alleged ill-founded arrest warrant and its possible correction is justified at this juncture where the pre-trial proceedings have not yet initiated.

19. Accordingly, the Office submits that Victims should have the opportunity to present observations and that their general interests should be protected at this stage of the proceedings.

¹⁹ See, for instance, [Report of the Independent Fact-Finding Mission on Libya](#), Human Rights Council, A/HRC/52/83, 3 March 2023.

IV. CONCLUSION

20. For the foregoing reasons, the Principal Counsel respectfully requests the Appeals Chamber to authorise the OPCV to appear before it to represent the general interests of Victims, authorising her to file written submission on the Arrest Warrant Appeal Brief, within a deadline to be established by the Chamber.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 27 day of August 2025

At The Hague, The Netherlands