

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/11-01/25
Date: 15 January 2026

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge María del Socorro Flores Liera
Judge Reine Adélaïde Sophie Alapini-Gansou

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

Public

**Joint Prosecution and Defence submissions on the disclosure process and the
agenda of the first status conference**

Source: Office of the Prosecutor
Defence of Mr Khaled Mohamed Ali El Hishri

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

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A. INTRODUCTION

1. On 3 December 2025, at the initial appearance hearing, the Chamber instructed the Prosecution and the Defence (the “Parties”) to consult with each other on the timing and format for the disclosure of evidence and related matters, and to submit concrete and joint proposals to the extent possible by 15 January 2026. The Chamber further invited the Parties to raise any other matters to include on the agenda of the first status conference,¹ which was subsequently scheduled for 28 January 2026 (“28 January 2026 status conference”).²

2. On 12 January 2026, the Prosecution and Defence met to discuss the joint submissions on the disclosure process and the agenda of the first status conference.

B. SUBMISSIONS

Disclosure timeline, format and process

3. In accordance with the Chamber’s disclosure orders,³ on 11 December 2025 and 5 January 2026, the Prosecution disclosed items of evidence to the Defence that were relied upon by the Chamber in the arrest warrant. The Prosecution will next disclose items of evidence relied upon in the arrest warrant on 22 January 2026, followed by disclosure on a rolling basis by 26 January for a set number of witnesses for whom the Prosecution will simultaneously apply for authorisation to impose non-standard redactions to those items of evidence.⁴ The final disclosure of items relied upon in the arrest warrant will take place on 5 February 2026.

4. The Prosecution’s investigation has been ongoing since it applied for the arrest warrant. Accordingly, the Prosecution is also reviewing items of evidence for disclosure that were not relied upon in the warrant decision. The Prosecution

¹ Transcript of First Appearance hearing, ICC-1/11-01/25-T-001-ENG ET, pp. 8-12.

² ICC-01/11-01/25-51.

³ Transcript of First Appearance hearing, ICC-1/11-01/25-T-001-ENG ET, p. 8; Email from the Chamber on 10 December 2025 at 14:25; ICC-01/11-01/25-46-Conf, para. 10.

⁴ ICC-01/11-01/25-46-Conf, para. 10.

anticipates that it will complete this review and disclose relevant items on a rolling basis until 19 March 2026.

5. In accordance with Rule 76(3) of the Rules, the Prosecution is translating its witness statements into a language Mr EL HISHRI fully understands and speaks, namely Arabic, and is disclosing these translations.

6. Regarding the format in which materials are provided to the Defence, the Prosecution notes that it has followed the recent practice in the case of *The Prosecutor v. Rodrigo Roa Duterte* by aiming to organise disclosed materials in accordance to general themes, namely (i) contextual elements; (ii) alleged crimes; and (iii) modes of liability,⁵ while providing separate packages for materials classified as incriminating, exonerating, or falling under rule 77 of the Rules in relation to each theme.⁶ Likewise, the Prosecution has, for each item disclosed to the Defence, indicated their level of classification (“public” or “confidential”) and provided the basis for any proposal to use a level of classification other than public.⁷ It is also accompanying each item with notes in the metadata identifying the relevant (incriminating, exonerating and/or rule 77) section(s) for disclosure,⁸ and populating the “Related to witness” metadata field to ensure that the Defence and Chamber can access the total number of witnesses in relation to whom material has been disclosed as well as all the evidentiary items disclosed in relation to each such witness.⁹

7. In its consultation meeting, the Parties agreed to liaise with a view to resolving any issues arising out of the disclosure process *inter partes* and seize the Chamber only if an agreement cannot be reached after exhausting *inter partes* consultations. The Chamber may decide to set a deadline for raising any matters arising from the disclosure process once the final disclosure deadline is set.

⁵ See ICC-01/21-01/25-114, paras. 13-15.

⁶ See ICC-01/21-01/25-114, para. 16.

⁷ See ICC-01/21-01/25-114, para. 17.

⁸ See ICC-01/21-01/25-114, paras. 18-19.

⁹ See ICC-01/21-01/25-114, para. 20.

8. The Prosecution considers that the forensic extraction of Mr EL HISHRI's telephone that it has in its possession constitutes material which was "obtained from or belonged to" Mr EL HISHRI within the meaning of Rule 77 of the Rules, and the Prosecution will disclose a copy of this material forthwith.

9. The Parties propose that the Prosecution shall complete the disclosure process of all materials it intends to rely upon at the confirmation hearing by 19 March 2026, including the totality of the witness statements and their translations, the exculpatory material that it has identified thus far, and the material falling under rule 77 of the Rules (61 days before the Confirmation Hearing). This is without prejudice to the Prosecution's ongoing duty to provide the Defence with any exonerating evidence in accordance with article 67(2) of the Statute which is being disclosed on a rolling basis.

10. At the Prosecution's request, the Defence will consider providing a list of keyword search terms to assist the Prosecution's ongoing identification of such material in its evidence repositories.

Document containing the charges and Pre-confirmation brief

11. The Parties further propose that the Prosecution shall submit its Document containing the charges ("DCC"), together with the list of evidence, and Pre-confirmation brief ("PCB"), one week following the completion of the disclosure process, namely on 26 March 2026 (54 days before the Confirmation Hearing).

Prosecution and Defence submissions on other matters

12. The Defence notes that it is considering making submissions challenging the jurisdiction of the Court and the admissibility of the case under Article 19 of the Statute. This will engage the provisions of Rule 58 of the Rules.

13. The Defence presently considers it unlikely that it will be in a position to reach any agreements on facts in advance of the confirmation hearing. Further, given the limited amount of disclosure made to date, it does not at this stage anticipate

submitting any evidence to which Rule 78 of the Rules might apply, including grounds for excluding criminal responsibility and/or raising the existence of an alibi. The Defence will provide its final position by the deadline to be set by the Chamber.

14. The Defence also notes that it will file an application for interim release before the confirmation hearing.

15. The Defence will request the Chamber's leave to address it orally in Arabic during status conferences and the confirmation of charges hearing. The Defence stands ready to file a formal written request if ordered to do so.

16. The Prosecution is still evaluating whether to seek to call witnesses *viva voce* at the confirmation hearing, with final confirmation to be provided by the deadline to be set by the Chamber.

Proposed agenda items for the first status conference

17. As a result of its consultations, in addition to any of the above points, the Prosecution and Defence propose the following three agenda items for the 28 January 2026 status conference, namely: (1) the proposed deadline for the completion of the Prosecution's disclosure process; (2) the proposed deadline for filing of the Prosecution's DCC, LoE, and PCB; and (3) the implementation of a protocol addressing dual status witnesses.

C. CONCLUSION

18. The Prosecution and Defence respectfully request the Chamber to consider these submissions.



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Deputy Prosecutor



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El
Hishri

Dated this 15th day of January 2026

At The Hague, The Netherlands