

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/11-01/25
Date: 23 February 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 second 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 28 January 2026, at the first status conference, the Chamber instructed the Prosecution and the Defence (the “Parties”) to consult and file joint submissions on the disclosure process and preparations in anticipation of the confirmation of charges hearing, and to submit these submissions to the extent possible by 23 February 2026. The Chamber further invited the Parties to identify any issues or items to include on the agenda of the second status conference,¹ which was subsequently scheduled for 4 March 2026 (“4 March 2026 status conference”).²

2. On 18 February 2026, the Parties discussed the joint submissions on the disclosure process and the agenda points for the second status conference.

B. SUBMISSIONS

Disclosure

3. In accordance with the Chamber’s disclosure orders,³ the Prosecution has now disclosed to the Defence all items of evidence that were relied upon by the Chamber in the arrest warrant.⁴ This includes translations into Arabic of the statements of 40 witnesses relied upon by the Chamber, and which the Prosecution will rely upon in the Pre-Confirmation Hearing Brief and List of Evidence, in accordance with rule 76(3) of the Rules of Procedure and Evidence.

4. The Prosecution has also disclosed a number of additional items. The total number of disclosed items to date is 1,996, which includes information that is classified

¹ Transcript of First Status Conference, ICC-1/11-01/25-T-002-ENG ET, pp. 20-21.

² Scheduling order for the second status conference, email from Pre-Trial Chamber I dated 13 February 2026 at 10:54.

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 In one case, the Prosecution disclosed relevant verbatim extracts of a witness statement (LBY-OTP-02790777) on 21 January 2026. The Chamber authorised this form of disclosure on 20 February 2026 (ICC-01/11-01/25-69-Conf-Red).

as either incriminating, potentially exonerating and assessed to be material to the Defence's preparation.

5. The Prosecution continues to organise disclosed materials according 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, for each item disclosed to the Defence, the Prosecution continues to indicate their level of classification ("public" or "confidential") and provide the basis for any proposal to use a level of classification other than public.⁷ Each item is disclosed 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 the 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

6. The Prosecution intends to disclose and rely upon summaries, most with verbatim extracts, of the relevant sections of 9 witness statements that it relied upon in the arrest warrant application in relation to jurisdiction that the Chamber did not rely upon in the arrest warrant. The Prosecution will apply for authorisation to disclose these summaries under article 61(5) before 19 March 2026 and will simultaneously disclose them to the Defence.

7. The Defence will object to any application for authorisation to use anonymous witness summaries for the reasons it has previously articulated. The Defence submits that anonymous witness statements and summaries make it impossible for Mr El Hishri to adequately understand the case, and the evidence underlying the case,

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.

against him. The Defence submits that it also makes it impossible for the Defence to conduct meaningful investigations into the allegations against Mr El Hishri.

8. As mentioned in the joint submissions of the Parties dated 15 January 2026, the Prosecution's investigation has continued and is ongoing.¹⁰ Accordingly, the Prosecution will disclose additional relevant items on a rolling basis until 19 March 2026. The Prosecution has determined that it will disclose and rely upon the evidence of 10 additional witnesses for the confirmation hearing by 19 March 2026. As the security situation of the Prosecution witnesses still residing in Libya continues to be extremely volatile and hostile, where appropriate, the Prosecution will request the Chamber to authorise redactions and delayed disclosure of discrete items of evidence pursuant to rule 81(4) of the Rules to protect the identity of these witnesses by 19 March 2026.

9. The Defence will object to the use during the confirmation hearing of any evidence disclosed after 5 February 2026 that was in the Prosecution possession before 5 February 2026.

10. The translation into Arabic of these witness statements to which rule 76(3) applies is on schedule for disclosure by 19 March 2026.

11. However, in the case of 2 additional but highly relevant witness interviews, which are currently still in progress, it is not yet certain that the Arabic translations will be finalised by 19 March. This could lead to a narrow request for a variation of the time limit pursuant to regulation 35(2) of the Regulations ahead of the deadline, on which the Prosecution could provide additional details at the status conference.

12. The Defence awaits details of any request for a variation of the time limit to disclose Arabic translations of new material, but notes that any delays impact on Mr

¹⁰ ICC-01/11-01/25-53, para. 4.

El Hishri's ability to adequately understand the case, and the evidence underlying the case, against him.

13. Any undue disclosure delays may result in a Defence application to adjourn the confirmation hearing.

Prosecution and Defence submissions on other matters

14. The Defence intends to challenge the jurisdiction of the Court in this case and the admissibility of this case before the Court under Article 19 of the Statute. The Defence proposes to file its written submissions 14 days prior to the start of the confirmation hearing.

15. The Defence intends to seek interim release. Preparations, including communication with third States, are ongoing. The written request for interim release will be filed as soon as it is ready, but it is impossible for the Defence to provide a date at this stage.

16. In light of the incomplete state of Prosecution disclosure, the Defence 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 recalls the PTC's orders that (i) any Rule 78 disclosure must be made by 9 April 2026, and (ii) any grounds for excluding criminal responsibility and/or submissions raising the existence of an alibi must be filed by 16 April 2026. The Defence will review its position once Prosecution disclosure has been concluded and will use its best endeavours to meet these deadlines. However, depending on what additional disclosure is made by 19 March, and the results of any Defence investigations arising therefrom, the Defence may have to make a limited application for a variation of the time limit pursuant to regulation 35(2) of the Regulations.

17. Neither the Prosecution nor, at this stage, the Defence intend to call experts for the confirmation hearing, and will consult on the possibility of joint designation and instruction of experts should the case be confirmed for trial. The Defence's position regarding the calling of one or more experts may change once disclosure has been concluded.

18. The Prosecution does not intend to make a request to call witnesses *viva voce* at the confirmation hearing.

Proposed agenda items for the second status conference

19. As a result of its consultations, in addition to any of the above points, the Prosecution and Defence propose the following agenda items for the 4 March 2026 status conference, namely: (1) disclosure update; (2) deadlines and procedures for defence challenges to jurisdiction and admissibility; and (3) the reclassification as public of certain filings and decisions made to date.

C. CONCLUSION

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



Nazhat Shameem Khan
Deputy Prosecutor



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 23rd day of February 2026

At The Hague, The Netherlands