

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 10 March 2026

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

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

PUBLIC

Public redacted version of "Defence response to confidential redacted version of 'Prosecution request for evidence in the custody of the Registry' (ICC-01/11-01/25-45-Conf-Red)"

Source: Defence for Mr Khaled Mohamed Ali El Hishri

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

☒ The Office of the Prosecutor

☒ 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

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri (“Defence”) hereby responds to the Prosecution’s request for an order that the Registry allow the Prosecution access to, provide copies of, and transmit various items seized from Mr El Hishri in the Registry’s possession, and freeze money seized from Mr El Hishri until the conclusion of these proceedings.¹

2. For the reasons set out below, the Defence objects to the Prosecution having any access to Mr El Hishri’s mobile telephone and all SIM cards, or any data forensically extracted therefrom, without such access being properly judicially authorised. Further, the Defence objects to the money seized from him upon arrest being frozen and retained by the Registry until the conclusion of these proceedings. This money is required by his family to meet Mr El Hishri’s familial obligations.

3. The Defence also asks for a variation of the time limit, pursuant to Regulation 35 of the Regulations of the Court (“RoC”), to file this response.

II. CLASSIFICATION

4. This response is classified as confidential pursuant to Regulation 23*bis*(2) of the RoC because it is responsive to a document filed with the same classification.

III. REQUEST FOR VARIATION OF TIME

5. Regulation 35(2) of the RoC in relevant part provides:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

¹ Prosecution request for evidence in the custody of the Registry, ICC-01/11-01/25-45-US-Exp, 18 December 2025 (“Request”). The Defence has only been provided with a confidential redacted version of the Request, filed on 24 December 2025.

6. The confidential redacted version of the Request was filed on 24 December 2025, the day before two official holidays of the Court and the weekend of 27-28 December 2025. In accordance with Regulation 33(1)(c), the time limit for this response began to run on Monday, 29 December 2025, making the deadline Wednesday, 7 January 2026.

7. Counsel for Mr El Hishri travelled from The Hague back to his country of residence on 18 December 2025 but encountered technical difficulties there making it difficult for him to regularly and reliably access the Citrix system and his ICC emails. He returned to The Hague in the evening of 5 January 2026 but only became aware of the Request on 8 January 2026, the day after the expiry of the deadline to respond.

8. The Defence respectfully requests that the Pre-Trial Chamber (“PTC”) find that good cause has been shown to accept this response as valid notwithstanding its filing two days out of time. The requested variation of time is short, and no prejudice will be caused to the Prosecution. Further, the question of the freezing of Mr El Hishri’s money is important to him and, more consequentially, his large family [REDACTED].

IV. SUBMISSIONS

9. No position is taken with regard to the request that the Registry provide copies of the items enumerated in paragraph 6 of the Request. However, since there is no reason to believe any of these items constitute evidence in the case, there can be no justification for the Prosecution physically examining them.² The Prosecution’s interests will be adequately met by the Registry providing copies of these items. It is submitted that any and all copies made of the items should be immediately made available to the Defence.

10. Similarly, no position is taken with regard to the request that the Registry give access and provide a copy of the German case file, discussed in paragraph 7 of the

² See *Abd-Al-Rahman*, Public redacted version of “Decision on the Prosecution’s request for evidence in the custody of the Registry (ICC-0205-01/20-9-Red2) and the Registry’s request for instructions (ICC-02/05- 01/07-86-US-Exp), 20 August 2020, ICC-02/05-01/20-123-Conf”, ICC-02/05-01/20-123-Red, 9 July 2021 (“*Abd-Al-Rahman* Decision”), para. 21

Request. Again, any and all copies should be immediately made available to the Defence.

11. Regarding the items enumerated in paragraph 8 of the Request, apart from Mr El Hishri's mobile telephone and the six SIM cards, the Defence takes no position.

(a) Mr El Hishri's mobile telephone and six SIM cards

12. The Prosecution explains at paragraph 9 of the Request that the "German authorities have already forensically extracted data from Mr EL HISHRI's phone and provided a copy of this data to the Prosecution". However, the Prosecution provides no explanation of the legal bases upon which the German authorities (i) forensically extracted data from Mr El Hishri's mobile telephone, or (ii) provided a copy of this data directly to the Prosecution in the absence of judicial authorisation of either the German Courts or the PTC. The Defence submits that judicial authorisation from the PTC is being requested retroactively. This is unlawful.

13. Throughout the national extradition proceedings, the German authorities consistently affirmed that their role related exclusively to an examination and execution of the ICC arrest warrant, and that they had no involvement in investigations or the collection and analysis of evidence against Mr El Hishri. The legal basis upon which the German authorities undertook to forensically extract data from the phone is wholly unclear and appears to go well beyond their mandate. Similarly, the German authorities have evidently transmitted a copy of this data directly to the Prosecution without any judicial authorisation or oversight from the German Courts or the PTC. This unlawful action should not be condoned in any way.

14. To remedy these unauthorised and unlawful actions, the Defence submits that the PTC should order the Prosecution to destroy any and all copies of the phone data provided by the German authorities in order to ensure full respect for Mr El Hishri's rights as a Suspect to a fair trial under Article 67(1) of the Rome Statute.

(b) Mr El Hishri's money

15. The Prosecution requests an order that the Registry freezes the money seized from Mr El Hishri on his arrest in Germany. The sum amounts to [REDACTED]. This was Mr El Hishri's own money, destined in part to pay for [REDACTED]. Freezing this money, while Mr El Hishri is only a Suspect, would amount to a grave violation of the presumption of innocence. The Prosecution's request should be denied.

16. Even if the PTC considers that, in principle, Mr El Hishri's money can be frozen, the *Abd-Al-Rahman* Decision establishes that a Suspect may request permission from the Registrar to use part or all of the funds that have been seized to meet demonstrable familial obligations, with the Chamber's prior approval.³

17. The money seized from Mr El Hishri is needed by him in order that he can meet his familial obligations. [REDACTED], which Mr El Hishri pays for privately. In addition, Mr El Hishri [REDACTED]. [REDACTED]. [REDACTED]. Mr El Hishri must cover the family's day-to-day living and household expenses, and his children's school fees. Before his arrest, he was able to do so from his salary. Since his arrest, however, he receives no salary. [REDACTED].

18. The Defence respectfully requests that the PTC deny the Prosecution's freezing request for Mr El Hishri's [REDACTED], and approve the Registry's permission so that he can use these funds to meet his familial obligations.

V. CONCLUSION

19. For the foregoing reasons, the Defence respectfully requests that the PTC:

- (i) **FIND** that good cause has been shown to extend the time limit for this response;

³ *Abd-Al-Rahman* Decision, para. 25

- (ii) **DENY** the Prosecution's request to inspect Mr El Hishri's mobile telephone and all SIM cards and extract any data contained therein;
- (iii) **ORDER** the destruction of any and all copies of the mobile telephone data already provided by the German authorities;
- (iv) **DENY** the Prosecution's request for an order to freeze Mr El Hishri's seized money; and
- (v) **APPROVE** the Registry's release of these funds so that Mr El Hishri can meet his familial obligations.



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 10 March 2026
at The Hague, The Netherlands