

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

*No. ICC-01/11-01/25
Date: 13 April 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

Defence request for reclassification of ICC-01/11-01/25-6-AnxI

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”) respectfully requests that the Pre-Trial Chamber order the reclassification of document ICC-01/11-01/25-6-AnxI (“Annex I”) as confidential, no longer *ex parte* the Defence, pursuant to Regulation 23bis of the Regulations of the Court.

II. SUBMISSIONS

2. On 8 August 2025, the Registry filed the *Public Redacted version of “Corrected Version of Transmission of Article 12(3) Declaration by the State of Libya”, 08 August 2025, ICC-01/11-180-Corr-Exp-Corr With confidential EX PARTE Annex 1 available to the Registry and Prosecution only and Public Redacted Annex II* (“Transmission of the Article 12(3) Declaration”).¹ On 2 December 2025, the Transmission of the Article 12(3) Declaration was transferred into the case record ICC-01/11-01/25.² Annex I is described as a supplementary document endorsing the formal declaration submitted by the State of Libya to the Registry on 14 May 2025.³ Only the Registry and Prosecution have sight of Annex I.
3. The Defence submits that the continued *ex parte* classification of this document is no longer justified and is inconsistent with the right of the Defence to understand an important aspect of the case against Mr El Hishri.
4. At the time of the filing of the Transmission of the Article 12(3) Declaration, Mr El Hishri had not yet been transferred to the custody of Court and was not yet represented by Defence counsel. Any restrictions on access of this document to the public may then have been, and indeed may continue to be, justified. But since then, circumstances have materially changed. Mr El Hishri is now before the Court and is represented by a Defence team actively participating in the proceedings.
5. Annex I relates directly to the declaration submitted by the State of Libya pursuant to Article 12(3) of the Rome Statute. The Defence is preparing to raise a jurisdictional challenge to the

¹ ICC-01/11-180-Corr-Red

² ICC-01/11-01/25-6-Corr-Red

³ ICC-01/11-01/25-6-Corr-Red, fn 3

case before the Court, for which Annex I appears to be of direct relevance. Denying access to this material would impair the Defence's ability to effectively prepare and present its case.

6. Further, the Prosecution has access to Annex I. In accordance with the principle of equality of arms, the Defence must *inter alia* be able to access material relevant to the proceedings under conditions that do not place it at a substantial disadvantage *vis-à-vis* the Prosecution.⁴ The Defence's continued inability to apprise itself of the contents of Annex I undermines this principle and risks causing prejudice.
7. Finally, the Defence can advise the Pre-Trial Chamber that it has discussed this matter *inter partes* with the Prosecution; the Prosecution has helpfully indicated that they have no objection to this request.
8. In accordance with Regulation 23bis of the Regulations of the Court, it is submitted that the basis for the original classification of Annex I no longer exists.

III. RELIEF SOUGHT

9. For the reasons set out above, the Defence respectfully requests that the Pre-Trial Chamber **ORDER** the reclassification of Annex I as confidential, no longer *ex parte* the Defence.

Respectfully submitted,



Yasser Hassan

Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 13th April 2026

at The Hague, The Netherlands

⁴ See *eg. Bemba*, Decision on the Prosecutor's application for leave to appeal Pre-Trial Chamber III's decision on disclosure, ICC-01/05-01/08-75, 25 August 2008, para. 14