

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 17 April 2026

Date of the original: 28 January 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

THE PROSECUTOR V. KHALED MOHAMED ALI EL HISHRI

Public redacted version of

Decision on the Prosecution's request for evidence in the custody of the Registry

Decision 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

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the Prosecution’s request for evidence in the custody of the Registry (the ‘Request’)¹ pursuant to articles 54(1)(a) and (b), 54(3)(a), 57(3)(a) and (c) of the Rome Statute (‘Statute’), and rule 77 of the Rules of Procedure and Evidence.

I. Procedural History

1. On 10 July 2025, the Chamber issued an arrest warrant for Mr Khaled Mohamed Ali El Hishri (the ‘Arrest Warrant’ and ‘Mr El Hishri’)² [REDACTED].³
2. On 16 July 2025, Mr El Hishri was arrested in Germany.
3. On July 2025, following an email request by the Prosecution,⁴ the Chamber issued an order on freezing of assets found on Mr El Hishri at the time of his arrest.⁵
4. On 2 December 2025, Mr El Hishri was surrendered to the Court, and on the same day, the Registry submitted its report on the arrest and surrender of Mr El Hishri (the ‘Report’).⁶ An Addendum to the Report was filed on 12 December 2025.⁷
5. On 18 December 2025, the Prosecution submitted the present Request *ex parte* and under-seal.
6. On 23 December 2025, the Chamber ordered the Prosecution to file a redacted version of the Request to allow the Defence to file a response and further instructed the Registry to file its observations.⁸
7. On 24 December 2025, the Prosecution filed a confidential redacted version of the Request.⁹

¹ Prosecution’s request for evidence in the custody of the Registry, 18 December 2025, ICC-01/11-01/25-45-US-Exp.

² Warrant of Arrest for Mr Khaled M Mohamed Ali El Hishri, 10 July 2025, ICC-01/11-01/25-7.

³ [REDACTED].

⁴ E-mail from the Prosecution to the Chamber on 17 July 2025, at 14:50.

⁵ Order to the Registry in relation to the Prosecution’s request under articles 57(3)(e) and 93(1)(k) of the Rome Statute, 17 July 2025, ICC-01/11-01/25-10-US-Exp.

⁶ [REDACTED].

⁷ [REDACTED].

⁸ E-mail Order from the Chamber on 23 December 2025 at 12:14.

⁹ ICC-01/11-01/25-45-Conf-Red.

8. On 8 January 2026, pursuant to the Chamber's instruction, the Registry provided its observations on the Request, under seal and *ex parte* (the 'Observations').¹⁰ A redacted version was filed the following day.¹¹

9. On 9 January 2026, a day after the standard 10-day deadline, the Defence filed its response objecting to parts of the Request (the 'Response')¹² and sought a variation of the time limit.¹³

10. On 12 January 2026, the Chamber issued an email decision on the upcoming reclassification of two relevant orders dated July 2025 and, as a result, set the deadline of 19 January 2026 for the Defence to file any further submissions following reclassification.¹⁴

11. On [REDACTED] 14 January 2026, [REDACTED] the Chamber made available to the Defence [REDACTED]¹⁵ [REDACTED] a confidential redacted version of the freezing order of 17 July 2025.¹⁶

12. No further submissions were filed by the Defence.

II. Submissions

13. In the Request, the Prosecution submits that the Chamber should order the Registry to allow it to inspect all seized items transferred from the Republic of Germany¹⁷ and to either provide a copy of or to allow the Prosecution to copy the relevant seized items.¹⁸ Additionally, the Prosecution requests permission to inspect and copy the German case file and the photographic evidence contained in a CD ROM therein.¹⁹ The Prosecution submits that immediate access to these documents is necessary to continue with the investigation and provide the Chamber with relevant information.²⁰

14. The Prosecution requests permission to inspect and, if relevant, extract data from items listed in paragraph 8(a) to 8(n) of the Request outside the Registry's premises.²¹

¹⁰ Observations on the Prosecution's Request for Access to Evidence in the Custody of the Registry, 8 January 2026, ICC-01/11-01/25-49-US-Exp.

¹¹ ICC-01/11-01/25-49-Conf-Exp-Red.

¹² 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), 9 January 2026, ICC-01/11-01/25-50-Conf.

¹³ Response, para. 3.

¹⁴ E-mail Order from the Chamber on 12 January 2026 at 15:59.

¹⁵ [REDACTED].

¹⁶ ICC-01/11-01/25-10-Conf-Corr-Red.

¹⁷ [REDACTED].

¹⁸ Request, para. 8.

¹⁹ Request, para. 7.

²⁰ Request, para. 7.

²¹ Request, para. 8.

15. Lastly, the Prosecution requests that the Registry be ordered to freeze the money seized from Mr El Hishri, which is now packed in sealed evidence bags, and to take appropriate measures to ensure that the amount collected is not subject to devaluation due to the passage of time.²²

16. In its observations, the Registry submits that it has no objections to the Prosecution inspecting the items listed in paragraph 6 of the Request and either receiving copies of or being permitted to copy all the items.²³ Further, it has no objections to the Prosecution inspecting the items listed in paragraph 8 of the Request.²⁴ Concerning the documents in the German case file, the Registry confirms that they have been scanned and filed in the case file (either confidential or *ex parte*).²⁵ The Registry accordingly submits that the provision of the documents which were not yet made available to the parties can be effected by way of reclassification orders.²⁶ In relation to the CD-ROM, the Registry confirms that it contains the photographic records of the results of the search conducted by the German authorities on Mr El Hishri.²⁷

17. Further, the Registry considers the USD 9.400 as seized pending further orders by the Chamber.²⁸ Other funds in dinars and dirhams also remain retained by the Registry and the money is subject to the order issued of 17 July 2025.²⁹

18. In its response, the Defence informs that it takes no position in relation to the request for provision of copies of items listed in paragraph 6 of the Request and finds no justification for the Prosecution to physically inspect the items.³⁰ Regarding the items listed in paragraph 7 of the Request, the Defence also takes no position and asks that the same copies be immediately made available to the Defence.³¹

19. In relation to the inspection of items enumerated in paragraph 8 of the Request, the Defence takes no position but objects to the request to inspect Mr El Hishri's mobile telephone and the six SIM cards, and extract any data therein.³² The Defence submits that the German authorities had no legal basis for extracting data from Mr El Hishri's phone and providing the

²² Request, para. 11.

²³ Observations, para. 10.

²⁴ Observations, para. 10.

²⁵ Observations, paras 11-12.

²⁶ Observations, paras 13-16.

²⁷ Observations, para. 17.

²⁸ Observations, para. 19.

²⁹ Observations, para. 20.

³⁰ Response, para. 9.

³¹ Response, para. 10.

³² Response, para. 11.

Prosecution with a copy.³³ The Defence further argues that in order to remedy the unauthorised actions, the Prosecution should be ordered to destroy all copies of the phone data provided to them by the German authorities.³⁴

20. Further, the Defence submits that the Prosecution's request for freezing of the money seized from Mr El Hishri at the time of his arrest should be denied.³⁵ The funds were intended to be used by Mr El Hishri to meet his familial obligations as the sole provider of his family.³⁶

III. Determination by the Chamber

21. Before analysing the Request, the Chamber will rule on the Defence's request for variation of time. Applying the standard provided in the second sentence of Regulation 35(2) of the Regulations of the Court (the 'Regulations'), the Chamber has considered the reasons set forth by the Defence relating to the technical challenges encountered during the period immediately before the deadline for the filing of its Response. The challenges appear to have been, at least in part, outside the control of the Defence. The Chamber notes that the proceedings in this case are in the early stages and, in the present circumstances, on an exceptional basis, finds it appropriate to vary the time limit in order to consider the Defence's Response in rendering the present decision. The Chamber reminds parties and participants that requests for extension of time must be submitted, whenever it is possible to do so, before the relevant time limit has elapsed.

22. [REDACTED].³⁷ Mr El Hishri's mobile telephone and six SIM cards were in this category of items. Therefore, actions undertaken after Mr El Hishri's arrest, including to secure and provide the Court with copies of the data on his mobile telephone, fall within the scope of the Chamber's order.

23. Furthermore, the Chamber notes that the Prosecution's request in respect of the mobile telephone and the six SIM cards is essentially for the purpose of conducting an in-depth analysis of the items. The request is consistent with article 54(1)(a) which provides that '...in order to establish the truth, the Prosecution shall extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally...'. To that

³³ Response, para. 12.

³⁴ Response, para. 14.

³⁵ Response, para. 15.

³⁶ Response, paras 15-18.

³⁷ [REDACTED].

end, it is the Chamber's view that there is a reasonable possibility that the Prosecution may, upon further review of these items, find relevant information in addition to what the German authorities were able to find, thus the request is in pursuance of a legitimate aim. The Registry is therefore ordered to allow the Prosecution to inspect all items listed in paragraph 8 of the Request outside of the Registry's premises and, where relevant, extract data therein. The Prosecution is instructed to take all necessary measures to safeguard Mr El Hishri's personal information. Further, if the Prosecution subsequently concludes that any data extracted from a seized item is not relevant to the present proceedings, it shall immediately destroy or permanently delete any such information.

24. The Chamber notes that, with respect to paragraph 6 of the Request, there are no objections save for the Defence's general assertion that it is not necessary for the Prosecution to physically inspect the items, which the Chamber does not find persuasive. Accordingly, the Chamber orders the Registry to allow the Prosecution to inspect and copy all items listed at paragraph 6 of the Request.

25. Considering that the Prosecution anticipates that it will complete its review and disclose relevant items on a rolling basis, and at the latest by 19 March 2026,³⁸ the Chamber considers that the disclosure regime will suffice to ensure timely provision of copies of the relevant material to the Defence.³⁹ Accordingly, the Chamber is of the view that the Defence need not simultaneously be provided with copies of the relevant material.

26. Having considered the Registry's Observations, and for the contents of the German case file which have not yet been made available to the parties, the Chamber determines that immediate access to some of these items by both parties is readily feasible and appropriate. Consequently, the Chamber hereby orders the Registry to reclassify Annexes 8 and 9 of the report (ICC-01/11-01/25-28-Conf-Exp-Anx8 and ICC-01/11-01/25-28-Conf-Exp-Anx9) as confidential, *ex parte*, only available to the Prosecution and the Defence. Further, the Registry is ordered to grant the Prosecution access to the CD-ROM contained in the file and to make copies of its contents. Regarding Annex 1-B, the Chamber notes that Registry observation on access thereto is limited on account of the fact that the translation of its contents is still incomplete. The Chamber considers that, to avoid any possible prejudice to the parties due to

³⁸ See, Joint Prosecution and Defence submissions on the disclosure process and the agenda of the first status conference, 15 January 2026, ICC-01/11-01/25-53, para. 4.

³⁹ See, Prosecution's Third Communication of the Disclosure of Evidence, 26 January 2026, ICC-01/11-01/25-57, para. 8.

inadvertent access to sensitive information, it would be prudent to await the finalisation of the translation. Therefore, having regard to the expected date for completion of the translation of Annex 1-B, the Registry is ordered to revert back to the Chamber with further observation on access thereto by no later than 24 February 2026.

27. Regarding the 9.400 US Dollars and the amounts of 516 Dinars and 3667,5 Dirhams, the Chamber confirms that the said funds are subject to the freezing order issued on 17 July 2025. Having considered the Prosecution request in respect of these funds, the Registry is ordered to take appropriate measures to ensure that the funds are not subject to devaluation.⁴⁰

28. Further, the Chamber considered the Defence's request that all funds seized be released to Mr El Hishri so that he could meet his familial obligations. However, in light of the fact that the Chamber had found that the funds may be proceeds of crimes for which the warrant of arrest was issued,⁴¹ in the absence of tangible evidence to the contrary, the request is not adequately substantiated. Additionally, the Defence has not presented sufficient material in support of the existence of the purported familial needs. If the Defence wishes to proceed with this request, it should place a motivated request in writing before the Chamber, supported by evidence in relation to the source of the funds in question.

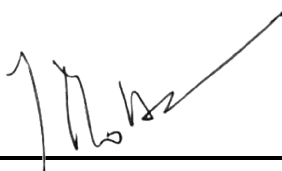
⁴⁰ ICC-01/11-01/25-10, paras 9-10.

⁴¹ ICC-01/11-01/25-10, para. 9.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **GRANTS** the Defence's request for variation of time limit;
- b) **GRANTS** the Request;
- c) **ORDERS** the Registry to allow the Prosecution to inspect all items listed in paragraph 8 of the Request, outside the Registry premises, and where relevant, extract data contained therein;
- d) **ORDERS** the Registry to allow the Prosecution to inspect and make copies of items listed in paragraph 6 of the Request;
- e) **ORDERS** the Registry to reclassify ICC-01/11-01/25-28-Conf-Exp-Anx8 and ICC-01/11-01/25-28-Conf-Exp-Anx9 as confidential, *ex parte*, only available to the Prosecution and the Defence;
- f) **ORDERS** the Registry to permit the Prosecution to copy the photographic evidence contained in the CD ROM in the German case file;
- g) **ORDERS** the Registry to file further observations on access to Annex 1-B of the Addendum by no later than 24 February 2026;
- h) **MAINTAINS** its order on freezing of the funds; and
- i) **ORDERS** the Registry to take appropriate measures to ensure that the funds are not subject to devaluation.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Iulia Antoanella Motoc, Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Friday, 17 April 2026

At The Hague, The Netherlands