

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 2 June 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 redacted version of ‘Addendum to Corrected Version of “Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute” (ICC-01/11-01/25-108-Conf-Corr)’

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”) files this addendum to its challenge to the jurisdiction of the International Criminal Court, originally filed on 30 April 2026 (“Jurisdiction Challenge”).¹
2. This addendum is filed in order to place on the record an important document [REDACTED] (“[REDACTED]”)² concerning the legal status of the purported acceptance [REDACTED] of the exercise of the Court’s jurisdiction over Libyan territory from 2011 to the end of 2027 (“Purported Article 12(3) Declaration”).
3. The Defence respectfully requests that the Pre-Trial Chamber accept this addendum, notwithstanding its strong encouragement to the Defence to present its Jurisdiction Challenge “at the earliest possible opportunity, and ideally before the end of the month of April.”³ The [REDACTED] is dated [REDACTED] and was received by Counsel for Mr El Hishri on the same day. It could not have been disclosed before then, and no reference to it could have been made in the Jurisdiction Challenge. It is further submitted that neither the Prosecution nor the Office of Public Counsel for Victims/any legal representatives for victims will be prejudiced by receiving this addendum now since they have nearly a month – by 12 June 2026 – to respond to the Jurisdiction Challenge.⁴

II. CLASSIFICATION

4. This request is classified as confidential pursuant to Regulation 23bis(2) of the Regulations of the Court because it contains references to a confidential document. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

5. In Chapter A of the Jurisdiction Challenge, the Defence submitted that the Purported Article 12(3) Declaration accepting the Court’s jurisdiction is invalid. Only an organ of the State with

¹ Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute, ICC-01/11-01/25-108-Conf; corrected version and public redacted version both filed on 6 May 2026

² Annex 1, LBY-D37-0000-0344; LBY-D37-0000-0346

³ T-003, 4 March 2026, p. 16

⁴ Order setting time limits for observations in relation to the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute (ICC-01/11-01/25-108-Conf), ICC-01/11-01/25-116, paras 4, 6

the legal capability to bind the State to international treaties may lodge such a declaration.⁵

6. Both the 2015 Libyan Political Agreement (“Skhirat Agreement”) and the 2023 amendments to the Libyan Constitution clearly define the respective roles of the President/Presidential Council and the legislature in the conclusion and subsequent ratification of international agreements and treaties.⁶ Article 8(2)(f) of the Skhirat Agreement granted the nine-member Presidency Council of the Council of Ministers, which included the Prime Minister, the power to “[c]onclude international agreements and conventions provided that they are endorsed by the House of Representatives.”⁷

7. A new interim executive authority was established in March 2021. On 10 March 2021, the House of Representatives endorsed the Government of National Unity, under Prime Minister Aldabaiba.⁸ On 15 March 2021, a new three-person Presidential Council⁹ was sworn in, the President¹⁰ of which is Mohamed Younis Al Menfi.

8. In February 2023, the Constitution of Libya was amended by the Thirteenth Constitutional Amendment (“Amendment”).¹¹ It amended the text of Articles 17 to 30 of Chapter Three of the Constitution relating to the System of Governance, and entered into force upon its issuance on 21 February 2023. It was published in the Official Gazette on 23 February 2023. Article 22 enumerates the powers of the President (that is, the Presidential Council itself). Article 22(16) provides that the President/Presidential Council is the representative of the State in its external relations and has the power to conclude treaties and agreements in accordance with this Amendment.

9. As explained in the Jurisdiction Challenge, Article 16 provides that “[t]he National Assembly shall ratify international treaties and agreements by a majority of its members”¹² The

⁵ Jurisdiction Challenge, paras 13-14

⁶ Jurisdiction Challenge, para. 17, citing Libyan Political Agreement (17 December 2015), <https://unsmil.unmissions.org/sites/default/files/Libyan%20Political%20Agreement%20-%20ENG%20.pdf>.

⁷ Jurisdiction Challenge, para. 17, citing Libyan Political Agreement (17 December 2015), art. 8(2)(b), <https://unsmil.unmissions.org/sites/default/files/Libyan%20Political%20Agreement%20-%20ENG%20.pdf>.

⁸ Special Envoy for Libya Ján Kubiš Briefing to the UN Security Council (24 March 2021), https://unsmil.unmissions.org/sites/default/files/se_jan_kubis_briefing_to_security_council_-_24_march_2021_english.pdf

⁹ Alternatively, Presidency Council

¹⁰ Alternatively, Chairperson

¹¹ Jurisdiction Challenge, para. 24, citing Constitution of Libya, LBY-D37-0000-0003; LBY-D37-0000-0026

¹² Jurisdiction Challenge, para. 17, citing Constitution of Libya, art. 16, LBY-D37-0000-0003; LBY-D37-0000-0026

National Assembly is defined as “compris[ing] two chambers: the House of Representatives and the Senate.”¹³

10. It was demonstrated in the Jurisdiction Challenge that, by letter written to the Prosecution on 18 May 2025, the House of Representatives unambiguously expressed its disavowal of the validity of the Purported Article 12(3) Declaration [REDACTED].¹⁴

11. It was further demonstrated in the Jurisdiction Challenge that, by open letter authored by the Judicial and National Reconciliation Committee of the House of Representatives, dated 16 May 2025, the validity of the Purported Article 12(3) Declaration was unambiguously refuted.¹⁵

12. Finally, it was demonstrated in the Jurisdiction Challenge that, by letter of the President of the Supreme Judicial Council of Libya to the President of the Presidential Council of the Government of National Unity, the judiciary of Libya does not accept “the marginalization of its role or the encroachment upon its original and exclusive jurisdiction to try crimes committed on the territory of Libya, regardless of the legal characterization of such acts.”¹⁶

13. At the date of filing of the Jurisdiction Challenge, the Defence was not in possession of [REDACTED] concerning the validity of the Purported Article 12(3) Declaration. [REDACTED].

14. On [REDACTED], the situation changed when Counsel for Mr El Hishri received [REDACTED]. That [REDACTED] the Purported Article 12(3) Declaration. Moreover, the [REDACTED] puts the following points beyond doubt:

(i) [REDACTED];

(ii) [REDACTED];

¹³ Jurisdiction Challenge, para. 17, citing Constitution of Libya, art. 3, LBY-D37-0000-0003; LBY-D37-0000-0026

¹⁴ Jurisdiction Challenge, paras 21, 23, citing Letter from the House of Representatives to Prosecution (dated, wrongly, 20 May 2025), LBY-D37-0000-0001; LBY-D37-0000-0024. The Defence notes that this letter was never disclosed by the Prosecution under either Article 67(2) of the Rome Statute or Rule 77 of the Rules of Procedure and Evidence

¹⁵ Jurisdiction Challenge, paras 22-23, citing Open Letter from Judicial and National Reconciliation Committee of the House of Representatives (17 May 2025), LBY-D37-0000-0021; LBY-D37-0000-0044. The Defence notes that this letter, too, was never disclosed by the Prosecution under either Article 67(2) of the Rome Statute or Rule 77 of the Rules of Procedure and Evidence

¹⁶ Jurisdiction Challenge, para. 25, citing LBY-D37-0000-0022; LBY-D37-0000-0045

(iii) [REDACTED];

(iv) [REDACTED];

(v) [REDACTED].

15. The [REDACTED] is unambiguous. [REDACTED]. It states in the clearest possible terms that [REDACTED] the Purported Article 12(3) Declaration. This further supports the Defence's position that the Purported Article 12(3) Declaration was made in manifest violation of fundamental rules of Libyan internal law regarding competence to conclude treaties.

16. The Purported Article 12(3) Declaration is devoid of validity. It represents no basis conferring jurisdiction on the Court in Mr El Hishri's case.

IV. RELIEF SOUGHT

17. The Defence respectfully reiterates its request that the Pre-Trial Chamber:

FIND that the Court has no jurisdiction to try Mr El Hishri;

FIND that there is no legal basis for the continuation of the proceedings against Mr El Hishri;

and

ORDER Mr El Hishri's immediate and unconditional release, with prejudice.

Respectfully submitted,



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 2 June 2026
at The Hague, The Netherlands