

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/25

Date: 28 July 2026

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
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 “Prosecution’s request for correspondence in possession of the Defence”, ICC-01/11-01/25-131-Conf, 12 June 2026

Source: Office of the Prosecutor

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

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M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

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Reparations Section

☐ Other

A. INTRODUCTION

1. The Prosecution requests, pursuant to articles 54(1)(a) and (b), 54(3)(a), 57(3)(a) and (c) of the Rome Statute, and rules 58(1), 78 and 79(4) of the Rules of Procedure and Evidence, that Pre-Trial Chamber I order the Defence to disclose any correspondence or communications sent from Mr El Hishri's Defence team to the Libyan government and/or [REDACTED] requesting information about the declaration by the State of Libya accepting the exercise of the Court's jurisdiction under article 12(3) of the Statute ("Declaration").

2. In particular, the Prosecution seeks access to [REDACTED].¹

B. CLASSIFICATION

3. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, this request is filed as confidential, as it refers to documents and filings filed under the same classification. The Prosecution will file a public redacted version as soon as practicable following the re-classification of the mentioned confidential material.

C. SUBMISSIONS

4. On 18 May 2026, the Defence filed an addendum to its jurisdictional challenge annexing a document [REDACTED].²

5. Given that its content is refuted by the Libyan authorities, that such a position has never been expressed by [REDACTED], that the document was not provided through official channels or addressed to the Court, [REDACTED], the Prosecution made an *inter partes* request to the Defence for the disclosure of "any correspondence or communications sent from Mr El Hishri's Defence team to the Libyan government and/or [REDACTED] requesting information about the declaration by the State of Libya accepting the exercise of the Court's jurisdiction under article 12(3) of the Rome Statute."³

6. The Defence refused to provide the communications on the sole basis that the "[REDACTED]."⁴ The Defence's reasoning for rejecting the Prosecution's request lacks merit and is unpersuasive:

¹ [REDACTED].

² Addendum to Corrected Version of "Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute, 06-05-2026" (ICC-01-11-01-25-108-Conf-Corr), [ICC-01/11-01/25-119-Conf](#), para. 2.

³ E-mail titled "Request for disclosure of correspondence", 29 May 2026, 09:35h.

⁴ E-mail titled "Re: Request for disclosure of correspondence", 09 June 2026 12:42h.

First, the correspondence sought by the Prosecution is originated from the Defence, not [REDACTED], and therefore it is not up to [REDACTED] to give permission on whether or not it should be shared with the Prosecution; and

Second, it is unclear why the [REDACTED] would take this strict stance about the disclosure of the Defence's correspondence when it purportedly permitted [REDACTED] to be introduced into the record of the case.

7. The Prosecution, therefore, requests that the Chamber orders the production of such communications.

8. The document [REDACTED] contradicts the official position taken by the recognised government of Libya, which continued to reaffirm the validity of the Declaration:

- a. in its submissions to the Court, Libya confirmed that “[u]nder the laws and legislations in force in the State of Libya, the Cabinet has the authority to make a declaration pursuant to article 12 (3) of the Rome Statute; and it is also competent to authorise a representative of the State to present such a declaration.”;⁵
- b. in a communication dated 22 May 2026, Prime Minister Aldabaiba reaffirmed the content of his letter “concerning the State of Libya’s recognition of the jurisdiction of the International Criminal Court”;⁶ and
- c. Libya has also reaffirmed its continuous commitment to the Declaration, and by implication its validity, before the UNSC.⁷

9. Establishing the circumstances of its production is imperative to the proper assessment of the jurisdiction challenge, in particular given the fact that the document lacks certain indicia of

⁵ Annex to the Transmission of Observations from the State of Libya in relation to the Defence’s Challenge to the Jurisdiction of the Court, [ICC-01/11-01/25-129-Conf-Anx-tENG](#).

⁶ [ICC-01/11-01/25-123](#); [ICC-01/11-01/25-123-Anx](#).

⁷ See, e.g., UNSC, 10052nd meeting, U.N. Doc. [S/PV.10052](#), 25 November 2025, p. 20 (“We welcome the progress made by the ICC on the situation in Libya over the past six months, as the protection of the rights of Libyan victims is a priority for the Libyan Government and the relevant authorities. This was also manifested in the cooperation announced until the end of 2027 and the guarantee of accountability in partnership with the Libyan institutions under Article 12, paragraph 3, of the ICC Statute in order to strengthen the rule of law and human rights in the country. This will advance international justice and the aspirations of Libyans in their goal of ending impunity and protecting the rights of innocent Libyans.”); UN Web TV, Security Council, [The Situation in Libya, 22 May 2026](#), at 01:24:09-01:24:22 (the Permanent Representative of Libya to the United Nations, Mr. El-Sonni, quoted Prime Minister Aldabaiba reaffirming “the commitment of the cabinet to cooperating closely with the ICC pursuant to article 12, paragraph 3”).

reliability. For example, [REDACTED]. Moreover, the document has not been officially transmitted to the Court through the designated channel for such communications.

10. The Defence, being the party bringing the challenge to the jurisdiction of the Court bears the burden of proof to substantiate its allegations with the supporting materials.⁸ It is also best placed to produce the requested correspondence in its possession.

11. The Prosecution's request is limited to any correspondence and/or communication originating from the Defence team and sent to Libyan authorities. It does not encompass any potentially confidential response emanating from such authorities. As such, there is no basis to request [REDACTED] authorisation for disclosure.⁹

12. Disclosure of external correspondence by the Defence on this particular issue, furthermore, does not unduly prejudice the suspect and, in any event, should there be any information that is deemed objectively confidential, the Defence could make a request to apply discrete redactions with proper justification.¹⁰

D. RELIEF SOUGHT

13. For the foregoing reasons, the Prosecution respectfully requests that the Chamber order the Defence to disclose any correspondence or communications sent from Mr El Hishri's Defence team to the Libyan government and/or [REDACTED] requesting information about the declaration by the State of Libya accepting the exercise of the Court's jurisdiction under article 12(3) of the Statute.



Nazhat Shameem Khan
Deputy Prosecutor

Dated this 28th day of July 2026

At The Hague, The Netherlands

⁸ Rule 58(1) of the Rules of Procedure and Evidence. See Decision in *Mbarushimana* on the "Defence Challenge to the Jurisdiction of the Court", [ICC-01/04-01/10-451](#), para. 4.

⁹ See *Bemba et al.* Decision on Defence Requests for Prosecution Requests for Assistance, Domestic Records and Audio Recordings of Interviews, [ICC-01/05-01/13-1234](#) ("*Bemba et al.* RFA Decision"), para. 12.

¹⁰ [Lubanga RFA Decision](#), para. 12.