

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 27 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

**Victims' response to the Defence request for leave to appeal
the Decision on confirmation of charges
(ICC-01/21-01/25-152)**

Source: Office of Public Counsel for Victims

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I. INTRODUCTION

1. The Common Legal Representatives of the Victims (the “CLRv”) herewith file their response to the “Defence request for leave to appeal the Decision on confirmation of charges” (the “Request”).¹

2. Victims oppose the Request in its entirety. The Defence fails to identify any issue that satisfies the requirements of article 82(1)(d) of the Rome Statute (the “Statute”). Far from identifying discrete legal or factual questions warranting interlocutory review, the Request simply reiterates arguments submitted before Pre-Trial Chamber I (the “Chamber” or the “PTC”) and fully considered and rejected in the Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri (the “Confirmation Decision” and “Mr El Hishri” or the “Accused”).² Accordingly, the Request reflects nothing more than the Defence’s disagreement with the Chamber’s reasoning and its assessment of the evidence.

3. The Defence also fails to demonstrate that the purported issues identified in the Request are capable of significantly affecting the fairness or expeditious conduct of the proceedings, or the outcome of the trial, nor has it established that their immediate resolution by the Appeals Chamber would materially advance the proceedings. To the contrary, granting leave to appeal would only risk fragmenting the proceedings and causing unnecessary delay, without any corresponding procedural or substantive benefit. Such an outcome would be inconsistent with the interests of both the Victims and the Accused, as well as with the overarching objective of ensuring the fair, efficient and orderly administration of justice.

¹ See the “Defence request for leave to appeal the Decision on confirmation of charges”, [No. ICC-01/11-01/25-152](#), 22 July 2026 (the “Request”).

² See the “Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri” (Pre-Trial Chamber I), [No. ICC-01/11-01/25-143](#), 16 July 2026 (the “Confirmation Decision”).

II. PROCEDURAL BACKGROUND

4. The Confirmation of Charges hearing took place from 19 to 21 May 2026.³

5. On 16 July 2026, the Chamber issued the Confirmation Decision,⁴ in which it decided to confirm all the charges brought against Mr El Hishri and committed him to trial on the basis of those charges.

6. On 17 July 2026, the Registrar transmitted the record of the proceedings to the Presidency, including the Confirmation Decision.⁵

4. On 20 July 2026, the Presidency referred the case to a newly constituted Trial Chamber VII.⁶

5. On 22 July 2026, Trial Chamber VII elected its Presiding Judge and designated its Single Judge.⁷ On the same day, the Defence filed the Request,⁸ and the Registry transmitted to Trial Chamber VII the case record of the proceedings.⁹

III. SUBMISSIONS

A. Applicable law

6. Pursuant to the Court's well established jurisprudence, article 82(1)(d) of the Statute provides that leave to appeal may be granted where: (a) the impugned decision involves an issue that would significantly affect either: (i) the fair and expeditious

³ See the transcripts of the hearing held from 19 to 21 May 2026, [No. ICC-01/11-01/25-T-004-ENG ET WT](#), [No. ICC-01/11-01/25-T-005-ENG CT WT](#), and [No. ICC-01/11-01/25-T-006-ENG ET WT](#).

⁴ See the Confirmation Decision, *supra* note 2.

⁵ See the "Transmission to the Presidency of the Record of the Proceedings, including the 'Decision on the confirmation of charges against Mr Khaled Mohamed Ali El Hishri', ICC-01/11-01/25-143, dated 16 July 2026", [No. ICC-01/11-01/25-146](#), 17 July 2026.

⁶ See the "Decision constituting Trial Chamber VII and referring to it the case of *The Prosecutor v. Khaled Mohamed Ali El Hishri*" (Presidency), [No. ICC-01/11-01/25-147](#), 20 July 2026.

⁷ See the "Decision notifying the election of the Presiding Judge and the Single Judge" (Trial Chamber VII), [No. ICC-01/11-01/25-150](#), 22 July 2026.

⁸ See the Request, *supra* note 1.

⁹ See the "Transmission to Trial Chamber VII of the Record of the Proceedings, including the 'Decision on the confirmation of charges against Mr Khaled Mohamed Ali El Hishri', ICC-01/11-01/25-143, dated 16 July 2026", [No. ICC-01/11-01/25-153](#), 22 July 2026.

conduct of the proceedings; or (ii) the outcome of the trial; and (b) in the opinion of the relevant chamber, an immediate resolution of that issue by the Appeals Chamber may materially advance the proceedings.¹⁰

7. Particularly relevant to the resolution of the Request is the first requirement, regarding which the Appeals Chamber has clarified that an “issue” is “*an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion*”.¹¹

8. It must therefore be determined whether the purported “issue” identified in the Request constitutes an “*appealable issue*” within the meaning of article 82(1)(d) of the Statute, as interpreted by the jurisprudence of the Court. Indeed, “*while an application for leave to appeal should not contain in detail the arguments which the party intends to raise before the Appeals Chamber, it must still identify clearly the appealable issue, including by way of indicating a specific factual and/or legal error. Only in this case can the Chamber assess whether the issue, provided it was wrongly decided, may have implications on the fairness and expeditiousness of the proceedings or outcome of the trial*”.¹² Accordingly, the appealable issue “*must emanate from the relevant decision itself and cannot represent a hypothetical concern or abstract legal question*”.¹³

9. Moreover, the Court has consistently held that “*the mere fact that an issue is of general interest or could be raised in future pre-trial or trial proceedings is not sufficient to*

¹⁰ See the “Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal” (Appeals Chamber), [No. ICC-01/04-168 OA3](#), 13 July 2006, paras. 7-8. See also the “Decision on the ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-376](#), 13 February 2026, para. 4 and the “Decision on the Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-445](#), 21 May 2026, para. 4.

¹¹ See the “Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, *ibid.*, paras. 7-9. The Appeals Chamber has also emphasised that “*the Pre-Trial or Trial Chamber is vested with power to state, or more accurately still, to certify the existence of an appealable issue*”, *ibid.*, para. 20.

¹² See the “Decision on three applications for leave to appeal” (Pre-Trial Chamber I), [No. ICC-02/11-01/11-307](#), 30 November 2012, para. 70 (emphasis added).

¹³ See the “Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, *supra* note 10, para. 9; and the “Decision on the Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’”, *supra* note 10, para. 4.

warrant the granting of leave to appeal”,¹⁴ and “[l]eave to file interlocutory appeals against decisions should therefore only be granted in exceptional circumstances”.¹⁵

10. The Court’s jurisprudence further establishes that, in assessing whether an appealable issue would “significantly affect” the fair and expeditious conduct of the proceedings under article 82(1)(d) of the Statute, the notion of ‘fairness’ must be understood as making reference to situations “when a party is provided with the genuine opportunity to present its case – under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent – and to be appraised of and comment on the observations and evidence submitted to the Court that might influence its decision”.¹⁶ In turn, ‘expeditiousness’ must be read as “closely linked to the concept of proceedings ‘within a reasonable time’, namely the speedy conduct of proceedings, without prejudice to the rights of the parties concerned”.¹⁷

11. Finally, the Appeals Chamber stated that in order to determine whether an issue would significantly affect the “outcome of the trial” under article 82(1)(d) of the Statute, “[t]he Pre-Trial or Trial Chamber must ponder the possible implications of a given issue being wrongly decided on the outcome of the case. The exercise involves a forecast of the consequences of such an occurrence”.¹⁸

¹⁴ See the “Decision on the Prosecutor’s application for leave to appeal the Decision on the ‘Protocol on investigations in relation to witnesses benefiting from protective measures’” (Trial Chamber II), [No. ICC-01/04-01/07-2375-tENG](#), 8 September 2010, para. 4 (emphasis added). See also the “Decision on Ruto Defence’s Application for Leave to Appeal the ‘Decision on the Prosecution’s Request to Add New Witnesses to its List of Witnesses’” (Trial Chamber V(a)), [No. ICC-01/09-01/11-983](#), 24 September 2013, para. 20.

¹⁵ See the “Decision on the Prosecutor’s application for leave to appeal the Decision on the ‘Protocol on investigations in relation to witnesses benefiting from protective measures’”, *ibid.*, para. 4. See also the “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges” (Pre-Trial Chamber I), [No. ICC-02/11-01/11-464](#), 31 July 2013, para. 7; and the “Decision on the ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’” *supra* note 10, para. 4.

¹⁶ See, *inter alia*, the “Decision on the Prosecutor’s application for leave to appeal Pre-Trial Chamber III’s decision on disclosure” (Pre-Trial Chamber III, Single Judge), [No. ICC-01/05-01/08-75](#), 25 August 2008, para. 14.

¹⁷ *Idem*, para. 18.

¹⁸ See the “Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, *supra* note 10, para. 13.

12. The Defence seeks leave to appeal the following two purported issues: 1. “[t]he PTC erred in fact and in law in finding that the conduct forming the basis of the charges was committed in the context of, and was associated with, a non-international armed conflict” (the “First Purported Issue”);¹⁹ and 2. “[t]he PTC erred in law in finding that (a) Black Migrants, and other non-Libyans of different nationalities and ethnicities, were detained for reasons related to opposing SDF/RADA or its ideology, and therefore were part of the same civilian population that was attacked, and (b) the alleged perpetrators exercised powers attaching to the right of ownership over the other (Libyan) detainees” (the “Second Purported Issue”).²⁰ As demonstrated *infra*, neither issue identifies a discrete error arising from the Confirmation Decision that falls within the scope of interlocutory review under article 82(1)(d) of the Statute.

B. Merits of the Request

1. The Request does not identify “issues”, let alone “appealable issues” within the meaning of article 82(1)(d) of the Statute

13. Counsel posits that the Request should be rejected in its entirety as it does not meet the requirements of article 82(1)(d) of the Statute according to which “*the impugned decision involves an issue*” that is appealable.²¹

14. Indeed, by its own admission, and in relation to both issues, the Defence indicates that it has limited itself to “*broadly identify[ing] the incorrectness of the Impugned Decision*”²². However, merely asserting that alleged errors have significant consequences cannot dispense with the threshold requirement of identifying a genuine appealable issue under article 82(1)(d) of the Statute.²³

¹⁹ See the Request, *supra* note 1, paras. 2 and 22-33.

²⁰ *Idem*, paras. 2, and 34-43.

²¹ See *supra* paras. 7-9.

²² See the Request, *supra* note 1, paras. 33 (in relation to the First Purported Issue) and 43 (in relation to the Second Purported Issue).

²³ *Ibid.*

15. This is incorrect and accepting this position would amount to a major shift in the interpretation of article 82(1)(d) of the Statute. Indeed, as set out *supra*, and as properly cited by the Defence,²⁴ the conditions under article 82(1)(d) are cumulative: only issues that qualify as “*appealable issue*” can be certified for appeal. Accordingly, even if a purported error is alleged to be significant, this cannot compensate for the failure to identify an appealable issue in the first place. In fact, chambers of this Court have routinely rejected applications for leave to appeal on the sole basis that the appealing party failed to identify an appealable issue, without even proceeding to analysing whether the other criteria are met.²⁵

16. In the present case, the Defence focuses almost exclusively on whether the alleged broad incorrectness of the Confirmation Decision affects the fairness or outcome of the proceedings and whether its resolution would materially advance the proceedings, without demonstrating that the alleged incorrectness gives rise to a discrete issue, let alone an appealable issue. Accordingly, the Request should be rejected.

17. In the alternative, and assuming that the Chamber were to take it upon itself to determine whether the Defence’s allegations of the broad incorrectness of the Confirmation Decision give rise to appealable issues, the Request should likewise be rejected. The alleged incorrectness amounts to no more than disagreement with the Chamber’s findings and, in any event, does not affect the fairness or outcome of the proceedings, nor would its resolution materially advance the proceedings. Rather, it would cause delays, unnecessary for the Victims and the Accused.

²⁴ *Idem*, paras. 13-14, and 16.

²⁵ See, *inter alia*, the “Decision on Prosecutor’s Application for leave to appeal in part Pre-Trial Chamber II’s Decision on the Prosecutor’s applications for warrants of arrest under article 58” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-20](#), 19 August 2005, paras. 19–21; the “Decision on applications for leave to appeal” (Trial Chamber I), [No. ICC-01/04-01/06-1191](#), 27 February 2008, paras. 23-25; the “Decision on three applications for leave to appeal” (Pre-Trial Chamber I), [No. ICC-02/11-01/11-307](#), 29 November 2012, paras. 70-77; and the “Decision on Defence Request for Leave to Appeal Decision 1248”, (Trial Chamber IX), [No. ICC-02/04-01/15-1263](#), 22 May 2018, paras. 10-11.

2. *First Purported Issue*

18. The First Purported Issue does not constitute an appealable matter within the meaning of article 82(1)(d) of the Statute. Significantly, the Defence expressly accepts, for the purposes of its Request, both the Chamber's finding that a non-international armed conflict ("NIAC") existed during the charged period and the legal principles governing the nexus requirement.²⁶ Its challenge is directed solely at the Chamber's evaluation of the evidence and the factual conclusions it drew, rather than at any discrete legal or factual issue arising from the Confirmation Decision that is capable of interlocutory appeal.

19. In said Decision, the Chamber undertook a detailed and comprehensive assessment of the evidence before it and concluded that the conduct underlying the charges against the Accused was committed in the context of, and was associated with, a NIAC.²⁷ As already argued during the confirmation proceedings,²⁸ the Defence simply disagrees with the Chamber's assessment of the evidence and the conclusions it drew.²⁹ Such mere disagreement falls short of constituting an appealable issue under article 82(1)(d) of the Statute.

20. In this regard, it is well established that a chamber is entitled to assess the evidence as a whole and is under no obligation to provide an exhaustive account of every piece of evidence before it or to engage explicitly with every argument raised by the parties, including those advanced by the Defence.³⁰ Rather, a chamber is required to provide sufficient reasoning to demonstrate that it has considered the relevant evidence and applied the correct legal standard. The Confirmation Decision plainly

²⁶ See the Request, *supra* note 1, para. 22.

²⁷ See the Confirmation Decision, *supra* note 2, paras. 64-79.

²⁸ See the "Defence written notes and observations relating to factual and legal elements of the Prosecution's case against Mr Khaled Mohamed Ali El Hishri", [No. ICC-01/11-01/25-107](#), 6 May 2026, paras. 29-34.

²⁹ See the Request, *supra* note 1, paras. 27-29 where the Defence sets out the reasons for its disagreement with the Chamber's conclusions on the evidence.

³⁰ See, *inter alia*, the "Decision on the confirmation of charges (Pre-Trial I)", [No. ICC-01/04-01/07-717](#), 1 October 2008, para. 66. And the "Public Redacted Version Decision on the Confirmation of Charges" (Pre-Trial Chamber I), [No. ICC-02/05-02/09-243-Red](#), 8 February 2010, para. 45.

satisfies this requirement, setting out the factual and legal basis for its conclusion that the alleged conduct occurred in the context of, and was associated with, the NIAC identified during the charged period.³¹

21. Nor does the Defence explain how any alleged error in one aspect of the Chamber's reasoning would undermine its overall conclusion. The Confirmation Decision is based on multiple, mutually reinforcing findings supporting the existence of the requisite nexus. Even assuming that one factual inference were open to debate, the Defence does not explain why the Chamber's remaining findings would be insufficient to establish substantial grounds to believe that the nexus requirement was met.

22. Therefore, the Defence fails to demonstrate that the Chamber erred in law or in fact in concluding that there are substantial grounds to believe that the conduct underlying the crimes as confirmed in the Confirmation Decision took place in the context of, and was associated with, a NIAC,³² and that the Mitiga perpetrators, including Mr El Hishri, were aware of the factual circumstances that established the existence of said NIAC.³³ Its submissions amount to no more than a disagreement with the Chamber's assessment of the evidence and the conclusions it drew therefrom, notwithstanding the Defence's assertion to the contrary.³⁴ Such a disagreement does not give rise to an appealable issue under article 82(1)(d) of the Statute.

3. *Second Purported Issue*

23. As formulated,³⁵ the Second Purported Issue does not amount to an appealable issue but rather constitutes a mere disagreement with the Chamber's evaluation of the evidence and the conclusions it drew concerning the Black Migrants. In the Request, the Defence appears to take issue with the fact that the Chamber adopted a different

³¹ See the Confirmation Decision, *supra* note 2, paras. 64-79.

³² *Idem*, para. 77.

³³ *Idem*, para. 78.

³⁴ See the Request, *supra* note 1, para. 31.

³⁵ *Idem*, paras. 2, and 34-43.

approach to the allegations concerning the Black Migrants than the one reflected in the Warrant of Arrest. In doing so, the Defence attempts to demonstrate that the Chamber departed from its earlier assessment without proper justification and that this “*striking volte face when compared to its finding in the Warrant of Arrest*” with regard to the Sub-Saharan detainees “*simply goes unexplained in the Impugned Decision*”.³⁶ The Defence’s characterisation, however, misconceives both the nature of the confirmation proceedings and the Chamber’s reasoning.

24. The Defence’s contention is particularly untenable considering its own acknowledgment that the Confirmation Decision “*goes to great lengths*”³⁷ in addressing part of the relevant issues thereby, by its own admission, providing extensive and detailed reasoning in support of its finding concerning Black Migrants. The Defence’s disagreement with these reasoned conclusions cannot detract from the fact that the Chamber expressly explained the factual and legal basis upon which these findings were reached.

25. Indeed, the Defence cannot, on the one hand, acknowledge the breadth and depth of the Chamber’s reasoning and, on the other, maintain that the alleged departure from its earlier findings “*simply goes unexplained*”.³⁸ The fact that the Defence disagrees with the Chamber’s conclusions does not render the Chamber’s reasoning deficient or insufficient. Nor does it transform a reasoned assessment into an appealable issue. Rather, the Defence’s submissions reveal nothing more than its dissatisfaction with the outcome of the Confirmation Decision and its disagreement with the Chamber’s evaluation of the evidence regarding Black Migrants. These submissions concern the substance of the Chamber’s findings rather than any genuine failure to provide reasons. As such, these disagreements do not amount to an appealable issue within the meaning of article 82(1)(d) of the Statute.

³⁶ *Idem*, para. 37.

³⁷ *Idem*, para. 38.

³⁸ *Idem*, para. 37.

26. In any event, the fact that the Chamber adopted a different position concerning Black Migrants in the Confirmation Decision than in the Arrest Warrant does not constitute an appealable issue. The Confirmation Decision was rendered on the basis of a substantially more developed evidentiary record and pursuant to the legal standard governing confirmation proceedings, which is distinct from the standard applicable to the issuance of a warrant of arrest, as recognised by the Defence itself.³⁹ The Chamber was therefore required to assess a different body of evidence against a different statutory threshold. It follows that any differences between the Chamber's reasoning in the two decisions are the product of its assessment of a more complete evidentiary record in accordance with the applicable statutory framework, rather than evidence of any inconsistency, unexplained departure, or error of law or fact.

27. In sum, the Defence's submissions amount to nothing more than a disagreement with the Chamber's evaluation of the evidence concerning Black Migrants at the confirmation stage and do not give rise to an appealable issue within the meaning of article 82(1)(d) of the Statute.

C. No significant effect on the fairness or outcome of the proceedings

28. Even assuming *arguendo* that the Defence has identified appealable issues, it has nevertheless failed to demonstrate that the alleged errors are capable of significantly affecting either the fairness or expeditious conduct of the proceedings, or the outcome of the trial. Rather than substantiating that requirement, the Defence merely asserts, in abstract terms, that "[a] request for certification is not concerned with whether a decision was correctly reasoned, but only whether the issues significantly affect the fairness of the proceedings. Thus, the 'materially advance' criterion can be assessed only in relation to the consequences, not the correctness, of the decision from which interlocutory appeal is sought".⁴⁰ It then concludes, without any further analysis, that because the Confirmation Decision "is vitiated by legal and factual errors in the determination of such a

³⁹ *Idem*, para. 36.

⁴⁰ *Idem*, para. 20 (footnote omitted, emphasis original).

fundamental question as the existence of nexus between the alleged criminal acts and the NIAC [...] [and] by legal and factual errors as identified in the second issue, it is important for this to be remedied by the Appeals Chamber without delay”⁴¹. Such bare assertions fall well short of demonstrating, with the requisite degree of specificity, that the impugned findings are capable of significantly affecting the fairness or expeditious conduct of the proceedings or the outcome of the trial.

29. The Defence’s submissions concern the Chamber’s assessment of the evidence and the scope of the charges at the confirmation stage, both matters best resolved in the course of the trial process, where the evidence will be tested in full. They do not identify any concrete or immediate prejudice to the rights of the Accused arising from the Confirmation Decision. The parameters of the case have been defined in accordance with article 61 of the Statute, and the Defence will continue to enjoy the full procedural safeguards provided by the Statute and the other relevant provisions to ensure that it can be given a genuine opportunity to present its positions on these issues at trial.

30. Indeed, the Defence retains a full opportunity to challenge every aspect of the Prosecution’s case, including the existence of a nexus between the alleged conduct and the NIAC, Mr El Hishri’s knowledge of the factual circumstances establishing that conflict, and the factual allegations concerning the Black Migrants. These issues remain matters to be determined on the basis of the evidence presented at trial and are fully susceptible to adversarial testing through questioning, the presentation of Defence’s evidence, and legal submissions. The Defence has therefore failed to establish that the findings challenged in the Request are capable of significantly affecting either the fairness or the expeditious conduct of the proceedings.

31. For the same reasons, the Defence has likewise failed to demonstrate that the impugned findings are capable of significantly affecting the outcome of the trial. By their very nature, the Chamber’s findings at the confirmation stage are provisional and

⁴¹ *Idem*, paras. 31 and 42.

limited to determining whether there are substantial grounds to believe that the crimes charged were committed and that Mr El Hishri bears responsibility for them. They neither constitute findings of guilt nor predetermine the issues to be decided at trial. Rather, Trial Chamber VII will determine the Accused's guilt or innocence solely on the basis of the evidence adduced before it and the submissions of the parties and participants applying the standard of proof under article 66(3) of the Statute. In doing so, it remains entitled, where appropriate, to reach conclusions different from the ones reached in the Confirmation Decision.

32. The Request therefore seeks the intervention of the Appeals Chamber in relation to matters that remain subject to comprehensive litigation before the Trial Chamber. Accordingly, the Defence has failed to demonstrate that the alleged issues are capable of significantly affecting the fairness or expeditious conduct of the proceedings, or the outcome of the trial, as required by article 82(1)(d) of the Statute.

D. No need for immediate appellate intervention

33. The Defence has likewise failed to demonstrate that immediate resolution by the Appeals Chamber would materially advance the proceedings. Beyond asserting, in wholly conclusory terms, that immediate appellate intervention is warranted, the Defence offers no explanation as to how certification would promote the efficient conduct of these proceedings. The issues identified in the Request concern the Chamber's assessment of the evidence and the factual and legal basis upon which the charges were confirmed. These matters can be adequately addressed, if necessary, in the course of trial proceedings. As such, they do not warrant interlocutory review.

34. As set out *supra*,⁴² any purported deficiencies can be effectively addressed in the ordinary course of the proceedings through the procedural mechanisms provided by the Court's statutory texts. These include the Prosecution's continuing disclosure obligations, the filing of pre-trial and trial briefs, decisions, and the Defence's

⁴² See *supra* paras. 30-31.

opportunity to challenge the Prosecution's and Victims' evidence through questioning, the presentation of its own evidence, and legal submissions. These safeguards ensure that the Defence remains fully informed of the case it must meet and is afforded a full and effective opportunity to contest both the factual allegations and their legal characterisation. Consequently, any residual uncertainty can be resolved through the normal conduct of the proceedings, without the need for interlocutory review by the Appeals Chamber.

35. There is, moreover, no risk of irreparable prejudice or inefficiency arising from the deferral of appellate consideration. The Defence will retain a full opportunity at trial to challenge every aspect of the Prosecution's case, including the evidentiary basis for the confirmed charges and the Chamber's findings concerning the nexus between the alleged conduct and the NIAC, and the allegations relating to the Black Migrants. Nor has the Defence demonstrated any risk that, absent immediate appellate intervention, the proceedings would later need to be revisited, repeated, or otherwise duplicated. In these circumstances, there is no basis to conclude that early intervention by the Appeals Chamber is either necessary or that it would materially advance the proceedings.

36. On the contrary, granting leave to appeal at this stage would risk fragmenting the proceedings and causing unnecessary delay, contrary to the principles of judicial economy and expeditiousness. Interlocutory appeals are exceptional precisely because they interrupt the ordinary course of proceedings and should therefore be reserved for issues whose immediate resolution is necessary. This is not the case here. Rather than advancing the proceedings, interlocutory review of the purported issues would divert the parties, the participants and the Court from the preparation and conduct of the trial only to litigate matters that can be fully and more appropriately addressed on the basis of the complete evidentiary record before the Trial Chamber in the course of the trial proceedings. Accordingly, the Defence has failed to establish that immediate intervention by the Appeals Chamber would materially advance the proceedings, as required by article 82(1)(d) of the Statute.

IV. CONCLUSION

37. For the foregoing reasons, the CLRV respectfully submit that the Defence has failed to satisfy the requirements of article 82(1)(d) of the Statute, and that the Request should be rejected in its entirety.



Sarah Pellet



Paolina Massidda

Dated this 27th day of July 2026

At The Hague, The Netherlands