

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No. ICC-01/11-01/25

Date: 29 July 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 consolidated request for leave to reply to
Prosecution and Victims responses to Defence request
for leave to appeal Decision on confirmation of charges**

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:

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| ☒ 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 |

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I. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri (“Defence”) requests leave to reply to the Prosecution’s¹ and Victims’² respective responses to the Defence’s request for leave to appeal³ the Pre-Trial Chamber’s decision on confirmation of charges.⁴
2. This request is made pursuant to Regulations 24(5) and 34(c) of the Regulations of the Court (“RoC”). The issues identified below – all relating to the first proposed ground of appeal – are limited to new issues raised in the Prosecution and Victims Responses which the Defence could not reasonably have anticipated.

II. PROCEDURAL HISTORY

3. On 10 July 2025, Pre-Trial Chamber I (“PTC”) issued the Warrant of Arrest against Mr El Hishri (“Warrant of Arrest”).⁵ On 16 July 2025, Mr El Hishri was arrested in Germany pursuant to that Warrant of Arrest.
4. On 1 December 2025, Mr El Hishri was surrendered to the custody of the Court. On 3 December 2025, Mr El Hishri had his initial appearance before the Court.⁶
5. On 26 March 2026, the Prosecution filed the Document Containing the Charges

¹ Prosecution response to “Defence request for leave to appeal ‘Decision on confirmation of charges’”, [ICC-01/11-01/25-154](#), 24 July 2026 (“Prosecution Response”)

² Victims’ response to the Defence request for leave to appeal the Decision on confirmation of charges ([ICC-01/11-01/25-152](#)), [ICC-01/11-01/25-156](#), 27 July 2026 (“Victims Response”)

³ Defence request for leave to appeal Decision on confirmation of charges, [ICC-01/11-01/25-152](#), 22 July 2026 (“Defence Request”)

⁴ Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri, [ICC-01/11-01/25-143](#), 16 July 2026 (“Impugned Decision”)

⁵ Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri, [ICC-01/11-188-US-Exp](#), 10 July 2025; [ICC-01/11-188-US-Exp-tARB](#), 15 July 2025; reclassified as public on 31 July 2025

⁶ ICC-01/11-01/25-T-001

("DCC"),⁷ its Pre-Confirmation Brief ("PCB"),⁸ and its list of evidence.⁹

6. On 28 April 2026, the Defence filed its notes and observations on the factual and legal elements of the Prosecution's case ("Defence Submissions").¹⁰

7. The Confirmation Hearing took place between 19 and 21 May 2026.¹¹

8. On 16 July 2026, the PTC issued the Impugned Decision.

9. On 22 July 2026, the Defence Request was filed.

10. The Prosecution Response was filed on 24 July 2026. The Victims Response was filed on 27 July 2026.

III. SUBMISSIONS

11. In accordance with Regulation 24(5) of the RoC, this request concerns, and is limited to, new issues raised in the Prosecution and Victims Responses which the Defence could not reasonably have anticipated. The key word in the test is "reasonably". Many of the points advanced by the Prosecution and the Office of Public Counsel for Victims ("OPCV") amount to arguments that are so irrational that no reasonable Party or Participant would have made them. Other points misrepresent the Defence Request. The issues could not reasonably have been expected.

12. *Firstly*, if granted leave, the Defence will address the Prosecution and OPCV arguments that the appealable issues raised in the Defence Request are insufficiently developed, or too vague and nebulous.¹² The Defence will demonstrate that the first

⁷ Document Containing the Charges, [ICC-01/11-01/25-92](#), 26 March 2026

⁸ Pre-Confirmation Brief, ICC-01/11-01/25-94-Conf-Corr, 24 April 2026 (public redacted version filed on 1 May 2026, [ICC-01/11-01/25-94-Corr-Red](#))

⁹ Prosecution's submission of the List of Evidence, [ICC-01/11-01/25-93](#), 26 March 2026

¹⁰ Defence written notes and observations relating to factual and legal elements of the Prosecution's case against Mr Khaled Mohamed Ali El Hishri, , [ICC-01/11-01/25-107](#), 28 April 2026

¹¹ ICC-01/11-01/25-T-004; ICC-01/11-01/25-T-005; ICC-01/11-01/25-T-006

¹² Prosecution Response, paras 4 and 6. *See also* Victims Response, para. 17

proposed ground of appeal identified in the Defence Request amounts to a sufficiently “discrete factual or legal question”.

13. *Secondly*, if granted leave, the Defence will address the arguments that the appealable issue raised in the Defence Request amount to mere disagreements with the Impugned Decision.¹³ These arguments are so fallacious and irrational that they could not reasonably have been anticipated. Specifically, the Defence will situate its acknowledgment that the PTC correctly set out the legal principles applicable to the determination of whether the charged conduct was committed in the context of, and was associated with, a non-international armed conflict (“NIAC”) within its identification of the first error of fact and law.¹⁴

14. Additionally, the Defence will reply to the Prosecution’s submissions that the specified “several particulars” raised in the Defence Request¹⁵ are mere disagreements with the PTC’s assessment of the evidence, and show that they instead go to substantiate and identify the nature of the PTC’s first error of fact and law.

15. Moreover, the Defence will make submissions on the irrelevance of the Prosecution’s and OPCV’s recitation of the PTC’s assessment and findings concerning the context of the charged conduct, and its association with a NIAC to the question of whether an appealable issue had been identified in the first error of fact and law.¹⁶

16. *Thirdly*, if granted leave, the Defence will correct the Prosecution’s misrepresentation that the Defence confused its submissions relating to the nature and importance of the DCC as the principal charging document in the context of the requirement under Article 82(1)(d) of whether the first error of fact and law “significantly affect[s] the fair and expeditious conduct of the proceedings or the

¹³ Prosecution Response, para. 7; Victims Response, para. 17

¹⁴ Prosecution Response, para. 10, 1st bullet point

¹⁵ Prosecution Response, para. 10, 2nd bullet point

¹⁶ Prosecution Response, paras 8-9; Victims Response, paras 19-21

outcome of the trial” with the appealable issue requirement.¹⁷ The Defence will demonstrate that there was no conflation or “confusion” of these two requirements.

17. *Fourthly*, if granted leave, the Defence will correct the Prosecution’s and OPCV’s unsustainable submissions that the appealable issues identified by the Defence would not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.¹⁸ Again, these arguments are so fallacious and irrational that they could not reasonably have been anticipated.

18. Specifically, the Defence will address the unreasonableness of the Prosecution’s submission that the Defence’s arguments on this point are “insufficient”.¹⁹ The fact that the Prosecution may, subjectively, have preferred more detailed submissions on the fair and expeditious conduct of the proceedings requirement under Article 82(1)(d) is of no relevance to the assessment that the PTC must undertake.

19. Additionally, the Defence will demonstrate the extent to which the need for the DCC to be free of errors is of fundamental importance to the fair and expeditious conduct of the proceedings or the outcome of the trial. Particularly, it must be free of errors in its assessment of the contextual elements of the alleged war crimes, notably the association of the charged conduct with a NIAC. The Defence will show that this point is singularly self-evident, and that Prosecution and OPCV arguments to the contrary border on the absurd.²⁰

20. Moreover, the Defence will address the Prosecution’s fallacious argument that if the Defence’s “emphasis on [...] the consequences of any given issue in a confirmation decision were sufficient for the purpose of article 82(1)(d), then it would imply that leave to appeal should almost always be granted for any issue arising from such a decision

¹⁷ Prosecution Response, para. 11

¹⁸ Prosecution Response, paras 21-25; Victims Response, paras 28-32

¹⁹ Prosecution Response, para. 22

²⁰ Prosecution Response, para. 23; Victims Response, paras 28-29

[and] would *de facto* amount to an appeal as of right against decisions confirming the charges”.²¹ The Defence will submit that the Prosecution’s thinly disguised appeal to an “opening of the floodgates” argument is both inappropriate and without merit.

21. *Fifthly*, if granted leave, the Defence will address the Prosecution’s and OPCV’s arguments that no showing was made that immediate appellate intervention was needed to materially advance the proceedings.²² The fact that the Defence may be able to challenge the (non-existent) evidence of a NIAC nexus at trial is no answer to the Defence’s complaint that, even at the confirmation of charges stage of proceedings, there is simply no evidence of a nexus. Immediate determination of this issue would self-evidently “move forward” the proceedings, by “ensuring that the proceedings follow the right course”²³ and “[remove] doubts about the correctness of the decision or [map] a course of action along the right lines.”²⁴ The Prosecution’s and OPCV’s argument is so fallacious and irrational that it could not reasonably have been anticipated.

IV. CONCLUSION

22. For the foregoing reasons, the Defence respectfully requests that the PTC authorise it to reply to the Prosecution and Victims Responses.

²¹ Prosecution Response, para. 24

²² Prosecution Response, para. 26; Victims Response, paras 33-36

²³ *Situation in the Democratic Republic of Congo*, Judgement on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, ICC-01/04-168, 13 July 2006 (“DRC Leave to Appeal Judgment”), para. 15

²⁴ DRC Leave to Appeal Judgment, paras 14-15

Respectfully submitted,

A handwritten signature in black ink, reading "Yasser Hassan", written in a cursive style.

Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 29 July 2026
at The Hague, The Netherlands