

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 August 2026

TRIAL CHAMBER VII

Before: Judge Althea Violet Alexis-Windsor, Presiding Judge
Judge Miatta Maria Samba
Judge Beti Hohler

**SITUATION IN LIBYA
IN THE CASE OF
*THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI***

Public

**Defence supplementary submissions pursuant to the
“Order scheduling first status conference”**

Source: Defence of 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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☒ 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

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REGISTRY

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Mr Osvaldo Zavala Giler

☒ Counsel Support Section

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A. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri files these supplementary submissions ahead of the first status conference to be held before Trial Chamber VII ("TC"), pursuant to its order of 27 July 2026 ("Scheduling Order").¹
2. These submissions complement and should be read together with the joint Prosecution and Defence submissions filed earlier today.²

B. PROCEDURAL HISTORY

3. On 16 July 2025, authorities of the Federal Republic of Germany arrested Mr El Hishri pursuant to a warrant of arrest issued against him by Pre-Trial Chamber I ("PTC") on 10 July 2025.³
4. On 1 December 2025, Mr El Hishri was surrendered to the Court. His initial appearance took place on 3 December 2025.
5. The Confirmation of Charges Hearing took place from 19-21 May 2026.
6. On 16 July 2026, the charges were confirmed by the PTC.⁴
7. On 20 July 2026, the TC was constituted.⁵
8. On 27 July 2026, the TC scheduled the first status conference for 3 September 2026 and ordered the parties and participants to provide submissions on a number of topics by 25 August 2026.⁶

¹ [ICC-01/11-01/25-157](#), para 5

² [ICC-01/11-01/25-169](#)

³ [ICC-01/11-01/25-007](#)

⁴ [ICC-01/11-01/25-143](#)

⁵ [ICC-01/11-01/25-147](#)

⁶ [ICC-01/11-01/25-157](#)

C. SUBMISSIONS

1. Pre-trial deadlines

9. While the Defence joins the Prosecution in proposing that the trial should start on Tuesday, 8 June 2027, it asks that the Prosecution be required to finalise a number of pre-trial steps somewhat earlier than the dates proposed by the Prosecution.

10. The Defence submits that witnesses' identities which have been withheld from the Defence to date should now be disclosed without delay, and in any event no later than 30 days after the first status conference.

11. The Defence submits that the Prosecution's provisional list of witnesses and provisional list of exhibits should be filed before 4 January 2027. These provisional lists should be filed by the last day before the Court's winter recess, that is, Friday, 18 December 2026. Since these are not the final lists and can be amended, this earlier date ought not create undue difficulty for the Prosecution.

12. The Defence also requests that the Prosecution be directed to provide summaries of anticipated testimony with their provisional witness list. This will facilitate the Chamber's understanding of the Prosecution's upcoming evidence preparation,⁷ and enable the Defence to better organise its investigations and overall preparation.⁸

13. The Defence submits that the Prosecution should be required to complete its disclosure obligations with regards to evidence it intends to rely on at trial by 8 February 2027, that is, four months instead of three months before the start of trial. However, the pre-confirmation practice of disclosure of evidence on a rolling basis, which proved to be very helpful, should continue.

⁷ *Ongwen*, Decision Setting the Commencement Date of the Trial, [ICC-02/04-01/15-449](#), 30 May 2016, para. 3. *See also Ntaganda* Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, [ICC-01/04-02/06-382](#), 9 October 2014, para. 9.a; Ruto and Sang, Decision on the schedule leading up to trial, [ICC-01/09-01/11-440](#), 9 July 2012, para. 11

⁸ *See eg Ongwen*, Prosecution's submission of Provisional List of Witnesses and Provisional Witness Summaries (P-0006, P-0009, P-0018, P-0119, P-0275 and P-0339), [ICC-02/04-01/15-458](#), 7 June 2016; *Yekatom and Ngaïssona*, Order to provide a Preliminary Witness List, [ICC-01/14-01/18-528](#), 22 May 2020

14. In addition, the Defence submits that the Prosecution should be required to file its final list of witnesses and final list of exhibits by 8 February 2027.

15. The Defence submits that 8 March 2027 should be the deadline for the very last request(s) for admission of prior recorded testimony under Rule 68(3). The Prosecution will, or should, have a very good idea well before 8 March 2027 of which witnesses it wishes to call *viva voce*, and those it intends to call pursuant to Rule 68(3). The Defence welcomes the Prosecution's statement that it shall endeavour to make its requests on a rolling basis, but encourages it to make such applications as soon it determines which witnesses it will want to call under Rule 68(3).

16. The Defence does not object to the Prosecution filing its Pre-Trial Brief by 17 March 2027.

17. The Defence submits that 7 May 2027 should be the deadline for the very last request(s) for admission of prior recorded testimony under Rule 68(2)(b), (c) and/or (d). Again, the Prosecution will, or should, have a very good idea well before that date of which of its witnesses:

- (i) provide evidence that goes to proof of matters other than the alleged acts and conduct of the Accused within the meaning of Rule 68(2)(b);
- (ii) have died or, in its view, are otherwise unavailable to testify orally within the meaning of Rule 68(2)(c); and/or
- (iii) have, in its view, been subjected to interference within the meaning of Rule 68(2)(c).

18. The Prosecution should make any requests for admission of prior recorded testimony under Rule 68(2)(b), (c) and/or (d) as soon as it becomes aware that the applicable test under each of these sub-Rules is met, and in any event on a rolling basis. The Defence will respond to such applications as and when they are filed, but takes

this opportunity to submit that *viva voce* evidence should be the default mode of testimony.

19. The Defence welcomes the Prosecution's proposal to submit applications for its witnesses to give evidence via audio/video link pursuant to Article 69(2)/Rule 67 on a rolling basis, and by 7 May 2027 at the latest. The Defence will respond to such applications as and when they are filed, but takes this opportunity to submit that reception of audio/video link evidence should very much be the exception to the rule.

2. Languages to be used by the parties

20. Lead Counsel for the Defence, Yasser Hassan, has sought leave from the Chamber to use Arabic during the first status conference, as he was authorised by the PTC to do during the pre-trial stage of proceedings. The Defence will be prepared to make an oral request for authorisation for Lead Counsel to use Arabic during the trial during the first status conference.

21. The Defence will also use English during the trial.

D. CONCLUSION

22. The Defence respectfully requests the Chamber to consider these submissions.



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 25th day of August 2026

At The Hague, The Netherlands