

**Cour
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**International
Criminal
Court**

Original: English

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

Date: 26 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

Public redacted version of “Prosecution’s submissions pursuant to the ‘Order scheduling first status conference’”, ICC-01/11-01-25-173-Conf, 25 August 2026

Source: Office of the Prosecutor

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A. INTRODUCTION

1. The Prosecution provides the following submissions on the agenda items for the first status conference, pursuant to the Chamber's order of 27 July 2026 (the "Scheduling Order").¹
2. These submissions are complementary and additional to the joint Prosecution and Defence submissions filed on this same date ("Joint Submissions").²

B. CONFIDENTIALITY

3. This submission is filed as confidential in accordance with regulation 23*bis*(2) of the Regulations of the Court ("RoC") as it contains sensitive information relating to the Prosecution's witnesses and [REDACTED].
4. The Prosecution will file a public redacted version of the present submission as soon as practicable.

C. SUBMISSIONS

5. The Prosecution refers to the Joint Submissions with regards to the agreed commencement date proposed for trial, as well as certain intermediary deadlines.³ The Prosecution hereby provides submissions on the remaining issues and interim deadlines identified in the Scheduling Order.
6. The Prosecution respectfully submits that the timeline presented in the Joint Submissions and as set out herein reflects the time needed to address pre-trial matters given the scope and scale of the present case. The case comprises 17 charged crimes and it is alleged that Mr EL HISHRI personally committed each of the charged crimes. The number of identified victims of direct perpetration estimated in this case at the confirmation hearing stage is one of the highest in the history of the Court. The Prosecution asserts that these factors, together with the practical realities of ensuring witness wellbeing and protection in a complex security landscape, necessitate the proposed deadline.
7. As also advanced in the Joint Submissions, the Parties agree that a staggered timeline will ensure an efficient and expedient pre-trial process to the benefit of all and would avoid any

¹ Order Scheduling the First Status Conference, [ICC-01/11-01/25-157](#), para 5.

² Joint Prosecution and Defence submissions pursuant to the "Order scheduling first status conference", [ICC-01/11-01/25-169](#) ("Joint Submissions"), para. 2.

³ [Joint Submissions](#), paras. 10-14.

improper prejudice to the Accused. As such, the Prosecution proposes the adoption of the following intermediary deadlines leading up to the commencement of trial on 8 June 2027.

8. The Prosecution proposes a deadline of 4 January 2027 for the Prosecution's provisional list of witnesses and provisional list of evidence. This deadline is consistent with prior practice in other Trial Chambers.⁴

9. Also in line with prior practice,⁵ the Prosecution proposes a deadline of 8 March 2027 for the Prosecution to:

- (i) complete the process of transcription of audio and video-recorded evidence;
- (ii) provide translation of evidence where required;
- (iii) complete its disclosure obligations with regards to evidence it intends to rely on at trial; and
- (iv) provide a final list of witnesses.⁶

10. The Prosecution proposes a deadline of 17 March 2027 for submission of:

- (i) the Prosecution's Pre-Trial Brief; and
- (ii) its List of Evidence.

11. The Prosecution avers that submitting the Pre-Trial Brief and List of Evidence 7 working days⁷ later than the deadline for disclosure of evidence and provision of the witness list will not

⁴ See *Duterte* Transcript of hearing on 27 May 2026, [ICC-01/21-01/25-T-009-Red-ENG](#), ICC-01/21-01/25-T-009-Red-ENG ("Duterte Status Conference"), p. 47, l. 7-8 (5 months prior to the start of trial); *Yekatom & Ngaïssona* Decision Setting the Commencement Date of the Trial, [ICC-01/14-01/18-589](#) ("Yekatom & Ngaïssona Decision"), para. 6 (5 months prior to the start of trial).

⁵ See *Duterte* Directions on the conduct of proceedings, [ICC-01/21-01/25-471](#) ("Duterte Directions"), paras. 13, 59; *Duterte Status Conference*, p. 47 (3 months prior to the start of trial); *Abd-Al-Rahman* Directions on the conduct of proceedings, [ICC-02/05-01/20-478](#), ("Abd-Al-Rahman Directions") paras. 5, 47 (3 months prior to the start of trial); [Yekatom & Ngaïssona Decision](#), para. 10; *Yekatom & Ngaïssona* Initial Directions on the Conduct of the Proceedings, [ICC-01/14-01/18-631](#), para. 33 (3 months prior to the start of trial); *Said* Decision Setting the Commencement Date of the Trial and Related Deadlines, [ICC-01/14-01/21-243](#), paras. 23-25; *Said* Directions on the Conduct of Proceedings, [ICC-01/14-01/21-251](#) (3 months prior to the start of trial).

⁶ The List of Witnesses shall include (i) the witness pseudonym and identity (including different spellings if applicable); (ii) known kinship or other relationship to other witnesses or other relevant persons in this case; (iii) summary of anticipated testimony; (iv) projected order of calling; (v) estimated length of questioning by the Prosecution; (vi) whether testimony is expected to be submitted via Rule 68 of the Rules; (vii) anticipated in-court protective measures to be sought, if any; and (viii) anticipated requests under Rule 74 of the Rules. See *Duterte Directions*, para. 15.

⁷ See footnote 5 above.

unduly prejudice the Defence and would allow for better distribution of the workload for the Prosecution team. The Defence will have final disclosure of materials upon which the Prosecution intends to rely by 8 March 2027 (on a rolling basis) and will have the provisional list of evidence by 4 January 2027.

1. Anticipated Evidence

i. Estimated number of witnesses to be called and number of hours of in-court testimony

12. The Prosecution currently estimates that it will rely on the evidence of approximately 85 witnesses at trial, including expert witnesses.

13. The Prosecution currently anticipates calling about [REDACTED] witnesses to provide *viva voce* testimony at trial.⁸ The Prosecution anticipates introducing the evidence of the remaining witnesses under rule 68 of the Rules of Procedure and Evidence (“the Rules”). The Prosecution refers to its submissions under Section v., below, regarding its proposed use of the different provisions of rule 68.

14. The Prosecution currently estimates that its direct examination of these witnesses will take approximately 450 hours. This estimation is based on a calculation of an examination time of between six to twelve hours per crime base witness, an average of three and a half hours for expert witnesses testifying under rule 68(3), and between one and two hours for all other witnesses testifying pursuant to rule 68(3).

15. The Prosecution notes that the potential hours needed for crime base witnesses is justified with regards to the nature of the crimes alleged in this case, the individual circumstances of the witnesses, and the extensive range of their anticipated testimony, which will often cover multiple charges, a large number of individual incidents, as well as important linkage evidence. The Prosecution will consider a number of factors in requesting direct examination time for *viva voce* crime base witnesses. These include the extreme vulnerability of witnesses due to the level of trauma experienced, the lengths of detention of witnesses which vary from a few days to many years, the extent and nature of the crimes they were subjected to or witnessed, and the roles which various witnesses were forced to undertake while detained, [REDACTED]. The evidence which the witnesses can provide regarding the acts and conduct of the accused is

⁸ The Prosecution uses the term ‘*viva voce*’ to refer to witnesses who will be called to give their entire testimony orally (not under rule 68(3)).

extensive, noting that this case has one of the highest numbers of direct perpetration incidents of any accused before this Court. These factors, and the individual circumstances of each witness, required a tailored approach and so the range of hours required as outlined above is broad in order to reflect these nuances. The Prosecution will provide a breakdown of direct examination time needed for each witness in the list of witnesses which will be submitted prior to the commencement of trial.

ii. Use of expert witnesses

16. The Prosecution is currently considering calling up to eleven expert witnesses in the following areas of expertise:

- a. The armed hostilities in Libya between 2011 and 2020;
- b. The evolution and structure of SDF/RADA;
- c. Impact of trauma on memories, witness recall and testimony;
- d. Libyan cultural context;
- e. Torture methods, including sexualised torture;
- f. Clinical and/or forensic psychiatrist;
- g. Clinical and/or forensic medical doctor;
- h. Satellite imagery; and
- i. Technical digital and multimedia evidence expert(s).

iii. Testimony given by audio or video link

17. The Prosecution intends to call as many of its *viva voce* and rule 68(3) witnesses as possible to testify in person at the seat of the Court. However, the Prosecution anticipates that some witnesses may need to testify via audio/video link in situations where they are unable to travel to the seat of the Court. The Prosecution will make the proper requests to the Chamber as soon as practicable should the need arise.

iv. Estimated volume of documentary and other non-testimonial evidence to be relied upon at trial

18. To date, the Prosecution has disclosed approximately 800 items of incriminating documentary and non-testimonial evidence to the Defence, of which 152 items were relied upon in the Prosecution's Pre-Confirmation Brief.⁹

19. The Prosecution is in the process of determining the overall quantity of documentary and other non-testimonial evidence that it intends to rely on at trial. The Prosecution intends to rely upon the documentary evidence and items which were put before the Pre-Trial Chamber for the purposes of the confirmation of charges, along with additional items which have or will be disclosed on a rolling basis to the Defence until the final disclosure deadline.

v. Use of rule 68 of the Rules

20. The Prosecution preliminarily estimates that it will call approximately [REDACTED] witnesses to give *viva voce* testimony and that it will seek the introduction of previously recorded evidence under rule 68 of the Rules for the remainder of its witnesses. The Prosecution is in the process of making these assessments and currently estimates that it will seek to introduce the evidence of approximately [REDACTED] witnesses under rule 68(2)(b), [REDACTED] under rule 68(2)(c), [REDACTED] crime base witnesses under rule 68(3), and up to 11 expert witnesses under rule 68(3) of the Rules. The Prosecution will update and finalise this assessment in due course.

21. For the approximately [REDACTED] crime base witnesses for whom the Prosecution will seek to tender their evidence under rule 68(3) of the Rules, the Prosecution intends to conduct a limited supplementary examination-in-chief.

2. Languages to be used by the parties, participants and witnesses the parties intend to call

22. Counsel for the Prosecution intends to use English during the proceedings.

23. The Prosecution intends to rely on the evidence of approximately 85 witnesses. Of these witnesses, the Prosecution expects that all but the expert witnesses will speak Arabic.

⁹ Corrected Version of "Pre-Confirmation Brief, ICC-01/11-01/25-94-Conf, 26 March 2026", [ICC-01/11-01/25-94-Conf-Corr.](#)

24. The Prosecution notes that Libyan Arabic is a distinct dialect and will require interpreters with this specific linguistic experience in order to ensure that witness testimony is conveyed in a manner which allows the Chamber and parties to fully understand the nuance of the testimony.

25. The Prosecution anticipates that newly interviewed witnesses will primarily speak either Arabic or English.¹⁰ The determination of the witnesses' spoken languages is derived at this stage from the languages used during their interviews and the information currently available to the Prosecution.

3. Disclosure of outstanding material in the Prosecution's possession and related issues

i. Whether the Prosecution's investigations are still ongoing.

26. The Prosecution continues to conduct further focused investigations that are necessary in particular to: (i) complete pending investigative steps that the Prosecution had started but could not conclude before the confirmation hearing; (ii) where necessary, re-interview certain witnesses to seek further clarifications; and (iii) collect additional evidence that was not previously available and assess it in light of evidence that has already been obtained. The objective of these investigations is to ensure that the Court is not deprived of significant, relevant and probative evidence necessary to establish the truth. [REDACTED]. In any event, these investigative steps will be concluded sufficiently in advance of the proposed date for the commencement of the trial and related deadlines, without any prejudice to the Defence.

ii. Timing and volume of outstanding evidence pursuant to article 67(2) of the Statute and rules 76 and 77 of the Rules

27. In pre-confirmation, the team reviewed approximately 16,000 items.

28. To date, the Prosecution has disclosed a total of 3,473 items, including 1,838 items that are witness statements/transcripts or other witness-related material. The disclosed evidence includes approximately 69 items identified as including potentially exonerating information. The Prosecution will continue its ongoing review for article 67(2) and rule 77 material, and will ensure its timely disclosure on a rolling basis.

¹⁰ [REDACTED].

29. The Prosecution is continuing to review the undisclosed material currently in its possession. At this stage, the Prosecution estimates that there are approximately 3,000 items in the collection pending review and disclosure where necessary.

30. The suspect's phone material was disclosed in its entirety to the Defence on 22 January 2026 under Rule 77. The Prosecution is conducting an ongoing review to identify material upon which it will seek to rely during trial and will re-disclose this material to the Defence as soon as practicable, and in advance of the disclosure deadline.

31. The Prosecution's current collection also includes [REDACTED] which is being assessed for relevance and potential disclosure on an ongoing basis. Any relevant material will be disclosed to the Defence as soon as practicable.

iii. Transcription and translation issues

32. The Prosecution currently has 75 outstanding translation and transcription requests related to this case. The Prosecution notes that it will continue to require translation and transcription support for the remainder of its investigative process.

33. As outlined above, the Prosecution is currently conducting a review of the suspect's phone as well as other [REDACTED]. It cannot currently anticipate the number of items from this which will require translation, but notes that all items contained therein are in Arabic; any material which the Prosecution seeks to rely upon will require translation for trial proceedings.

34. The Prosecution will ensure that any transcriptions or translations of material upon which it intends to rely will be completed before March 2027 in order to comply with the proposed disclosure deadline of 8 March 2027.

iv. Protective measures for witnesses (including additional need for redactions, delayed disclosure or referrals to the Court's witness protection programme)

35. The Prosecution is mindful of its obligations and those of the Chamber under article 68(1) to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. The Pre-Trial Chamber, in reviewing these risks, found the security situation in Libya to be "precarious" and, in granting the Prosecution's request for contact restrictions in

the pre-confirmation period, found that the evidence provided by the Prosecution “[REDACTED].”¹¹

36. In this context, the Prosecution is engaged in an ongoing exercise to assess the risks to each witness it intends to rely on in trial proceedings and take any necessary steps to ensure protection. This process is lengthy and complex and requires continued engagement with both internal and external stakeholders in order to find practicable and victim-centred solutions. [REDACTED]. The Prosecution is actively consulting with VWS to receive its advice on issues of witness protection [REDACTED].

37. The Prosecution anticipates that the majority of witnesses will require in-court protective measures under article 68(1) and (2) of the Rome Statute (the “Statute”) and rule 87 of the Rules. These protective measures are likely to be necessary due to the current security situation in Libya [REDACTED], the vulnerability of a number of witnesses and the sexual violence suffered and witnessed by a number of Prosecution witnesses.

38. The Prosecution does not intend to call any witnesses who are currently under 18 years of age.

v. Disclosure of witnesses’ identity which have been withheld from the Defence

39. The complex security landscape in which this trial is proceeding has required the Pre-Trial Chamber to authorise the withholding of the identity of a number of Prosecution witnesses in the pre-confirmation period. The Prosecution relied on the witness evidence of 63 witnesses for the Confirmation of Charges and, of these, the Prosecution disclosed the identity of 24 witnesses. The Prosecution is conducting an ongoing security assessment and review of the witnesses whose identity was not disclosed, as authorised by the Pre-Trial Chamber,¹² in addition to new witnesses and witnesses who were not relied upon for the confirmation of charges but may be relied upon for trial.

40. The Prosecution will continue to conduct individual risk assessments for newly interviewed witnesses and to disclose the identity of these witnesses as soon as the necessary

¹¹ Corrected version of the ‘Confidential redacted version of the “Second decision on contact restrictions”’, [ICC-01/11-01/25-70-Conf-Red-Corr](#), para 35.

¹² Public redacted version of Decision on the Prosecution’s requests to authorise the nondisclosure of the identity and identifying information of 17 witnesses, [ICC-01/11-01/25-69-Red](#); Public redacted version of Decision on the Prosecution’s request for authorisation of the non-disclosure of certain materials related to five witnesses, [ICC-01/11-01/25-97-Red](#).

protection measures are in place. Based on the information currently available, the Prosecution is endeavouring to disclose the identity of its witnesses on a rolling basis. Should the Prosecution be unable to disclose the identity of any witness, it will provide a motivated application for delayed disclosure by 8 March 2027 or by any relevant deadline set by the Chamber.

vi. Disclosure of material obtained pursuant to article 54(3)e of the Statute

41. The Prosecution has not entered into any article 54(3)(e) agreement in this case.

4. Update and forecast on additional applications by victims to participate in the proceedings

42. The Prosecution is continuing to liaise with OPCV regarding dual status victims and witnesses pursuant to section 3 of the dual status protocol adopted by the Pre-Trial Chamber.¹³

5. Other issues

i. Request pursuant to Article 56 of the Statute

43. The Prosecution assesses that it may need to submit requests pursuant to article 56 of the Statute in relation to unique investigative opportunities. The Prosecution anticipates making any such request at the earliest opportunity, should the need arise. The Prosecution does not expect any such request to impact on the disclosure process or the commencement of the trial.

ii. Proposal for separate ex parte session or status conference

44. The Prosecution notes that *ex parte* sessions should only be used when strictly necessary in order to uphold the principles of open justice. However, the Prosecution notes that should the Chamber wish to discuss any specific issues related to the security and protection of witnesses, it will be necessary to discuss these issues *ex parte*. If the Chamber wishes to discuss these issues, the Prosecution proposes that a separate *ex parte* session or status conference be held with the Prosecution and VWS in order to discuss the relevant issues.

¹³ Annex to the Registry Submission of the Dual Status Witness Protocol, [ICC-01/11-01/25-63-Anx.](#)

D. CONCLUSION

45. The Prosecution respectfully requests the Chamber to consider these submissions.

A handwritten signature in dark ink, consisting of stylized, cursive letters that appear to read 'Nazhat Shameem Khan'.

Nazhat Shameem Khan
Deputy Prosecutor

Dated this 26th day of August 2026

At The Hague, The Netherlands