

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/25
Date: 19 October 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

**Prosecution Response to “Defence request for authorisation for Lead Counsel to
use Arabic at trial”**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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☐ 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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M. Zavala Giler, Osvaldo

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Reparations Section

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A. INTRODUCTION

1. On 8 October 2026, the Defence filed a request¹ (the “Request”) seeking authorisation from the Chamber for Lead Counsel to use Arabic in the examination of Arabic-speaking witnesses and in oral pleadings during the trial.

2. The Prosecution opposes this blanket Request as it fails to demonstrate any specific circumstances that may exceptionally justify the use of a non-working language during discrete portions of trial. There is no discernible benefit to either the accused or the impacted community in allowing the Request, and there is a clear loss of efficiency in allowing the Request in the present case where the majority of parties and participants, as well as the Chamber, do not speak Arabic.

B. SUBMISSIONS

1. The Request fails to demonstrate any specific circumstances that may exceptionally justify the use of a non-working language during discrete portions of trial

3. The Prosecution recalls the Trial Chamber’s ruling on the Defence request to use Arabic during the status conference of 3 September, in which it found that there may be “exceptional circumstances” which may “justify use of Arabic for discrete portions of the Trial”.² This is consistent with the practice of Trial Chamber III, in which the Presiding Judge instructed the parties and participants that requests to address the Court in a language other than a working language, even if a Court language, must be “exceptional”.³

4. The Prosecution submits that the Request fails to demonstrate any specific circumstances justifying this exceptionality. If granted, the Request would apply to large portions of the Trial, in which the majority of witnesses the Prosecution intends to call will testify in Arabic. Considering that Arabic is the language of the accused, his associates, and the majority of victims, it is also likely that witnesses for both the Defence and the Legal Representatives of victims would likewise testify in Arabic. Defence Lead Counsel seeks to make all his oral

¹ ICC-01/11-01/25-203, (“The Request”).

² Email order from Trial Chamber VII, “[ICC-01/11-01/25 - Public] Re: Request for leave to use Arabic during forthcoming status conference”, (‘Email Decision on Arabic Request’) 25 August 2026 at 17:23.

³ *Duterte* Transcript of Status Conference of 13 October 2026, ICC-01/21-01/25-T-012-CONF-ENG ET 13-10-2026 1/43 T, pp. 40-41.

submissions in Arabic during the course of the trial. The Request therefore cannot be considered to be a request to use Arabic for “discrete portions of the Trial.”

5. Moreover, the extensive nature of the Request demonstrates a clear distinction between this case and the practice in *Al Mahdi*, cited by the Defence in support of its application.⁴ The Prosecution recalls that pleading orally in Arabic in *Al Mahdi*⁵ was allowed in the context of the limited scope of *Al Mahdi* proceedings, which involved a guilty plea on a single charge. This is not comparable to the Request which, if granted, would apply a blanket permission to use of Arabic by Lead Counsel, day in and day out, throughout a full trial addressing complex and novel legal issues.

6. The Request relied on the Common Legal Representative of Victims (CLRV)’s submission in favour of using of Arabic in the proceedings. However it omitted to mention the specific circumstances in which such authorisation should be considered, namely “where specific circumstances so require in the interests of the victims they represent”.⁶ Further, CLRV provided the examples that would give rise to these specific circumstances as “certain portions of the opening statements” or “during the questioning of particularly vulnerable witnesses”.⁷ No such circumstances are put forward in the present request, which seeks a blanket authorisation for Lead Counsel’s questioning of Arabic-speaking witnesses, as well as for his oral submissions before the Chamber.

7. The Request, and the purported benefits outlined therein, must be weighed against the interests of the Chamber and the majority of parties and participants. The majority of parties and participants in the present case - including the Prosecution, the Legal Representatives for the Victims, representatives of the Registry who may intervene in the proceedings, and the Defence co-counsel - do not speak or understand Arabic. Moreover, the Judges in this Chamber are also non-Arabic speakers.

⁴ The Request, para 28.

⁵ *Al Mahdi*, ICC-01/12-01/15-421, Decision on the “Defence Request to Make Oral Submissions in Arabic”.

⁶ ICC-01/11-01/25-170, Submissions on behalf of Victims on the matters identified in the “Order Scheduling the First Status Conference”, para. 17.

⁷ *Ibid*

2. The Defence request is not adequately justified

8. Not only does the Request fail to demonstrate the necessary exceptional circumstances, but it also lacks adequate justification. The Defence has submitted its request under article 50(3) of the Statute, which provides that “at the request of any party to a proceeding [...], the Court shall authorize a language other than English or French to be used by such a party[...], provided that the Court considers such authorization to be adequately justified”. In so doing, the Defence seeks to exclude the possibility of an assessment of their request according to the criteria of rule 41 of the Rules of Procedure and Evidence (“Rules”).⁸

9. Rule 41 of the Rules provides two criteria for assessing requests to use an official language of the Court as a working language:

(a) That language is understood and spoken by the majority of those involved in a case and any of the Parties or participants in the proceedings so request; or

(b) the Presidency considers that it would facilitate the efficiency of the proceedings.

10. The Prosecution submits that notwithstanding the lack of automatic application of rule 41 in requests under Article 50(3), it still provides relevant and useful criteria for assessing whether a request under article 50(3) is “adequately justified” especially considering the broad scope of the Request.

11. As noted above and conceded by the Defence,⁹ the Request plainly fails to meet the criteria that the majority of parties or participants speak or understand Arabic. The Request, if granted will require the majority of parties and participants, as well as the Chamber, to follow significant portions of the Defence submissions and their questioning of witnesses through interpretation. This will undoubtedly result in an overall slowdown of the process which will be compounded over time while offering no clear benefit to the Accused, the impacted communities, or the administration of justice as a whole.

12. Contrary to the Defence’s assertion,¹⁰ use of Arabic by Lead Counsel will not meaningfully contribute to allowing either the Accused or the impacted communities to closely

⁸ The Request, paras 16-19.

⁹ The Request, para 17.

¹⁰ The Request, paras 20-25.

follow the proceedings. As noted by the Trial Chamber in its decision of 25 August, “interpretation into Arabic is already being provided to the Accused to meet the requirements under Article 67(1)(f) of the Statute”.¹¹ The Chamber went on to note that as a result, it “fails to see how the Defence Counsel’s use of Arabic would be ‘of assistance to the Accused’”.¹² This interpretation will continue to be available to the Accused throughout trial as attested by the Registry.¹³ He will also be able to properly communicate with the Defence team and lead counsel in Arabic, as and when he wishes to provide instructions. There is no gain in clarity for the Accused by allowing lead Defence counsel to address the Court in Arabic.

13. Furthermore, livestreaming in Arabic will also be available to the public, as previously noted by the Chamber in assessing the Defence’s earlier request.¹⁴ The livestreams are made available both on the Court’s official website and on YouTube. Contrary to the Defence’s assertions,¹⁵ should the Request be granted, only questioning of witnesses or oral pleading by lead counsel for the Defence exclusively, will be broadcast in the original Arabic, while the Chamber’s direction of such proceedings, and any interventions by other parties and participants, including the Defence’s co-counsel, will be broadcast via interpretation. Once again, there is no gain in either clarity nor, as abstractly submitted by the Defence, to “the Court’s credibility, legitimacy and relevance in the region.”¹⁶

14. There is also no clear disadvantage to the Defence or the Accused in requiring Lead Counsel to use a working language of the Court, which he is expected to fluently speak.¹⁷ By contrast, conducting proceedings in a language understood by the Chamber has a clear and tangible benefit of allowing the Judges to more easily follow and manage proceedings in a timely manner. Similarly, it allows the other parties and participants to understand the arguments which they may wish to challenge without delay.

¹¹ Email Decision on Arabic request.

¹² Email Decision on Arabic request.

¹³ Transcript of Status Conference of 3 September 2026, ICC-01/11-01/25-T-007-ENG ET WT 03-09-2026 35 T, page 18.

¹⁴ Email Decision on Arabic request.

¹⁵ The Request, paras 22-25.

¹⁶ The Request, paras 22-25.

¹⁷ As demonstrated in the status conference of 3 September 2026 and as required by rule 22(1) of the Rules of Procedure and Evidence. Also as noted by Lead Counsel in the Status Conference of 4 March, ICC-01/11-01/25-T-003-CONF-ENG ET 04-03-2026 18 PT, page 5 in which he indicated that the Defence team works in English.

C. CONCLUSION

15. For the reasons set out above, the Prosecution respectfully submits that the Request should be rejected.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', with a large, stylized flourish on the left side.

**Mame Mandiaye Niang,
Acting Prosecutor**

Dated this 19th day of October 2026

At The Hague, The Netherlands