

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11 OA
Date: 22 September 2025

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Damdin, Presiding
Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN LIBYA

PUBLIC

**ICCBA Request for leave to file submissions under Rule 103
of the Rules of Procedure and Evidence**

Source: ICC Bar Association

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

☒ 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

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☒ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and
Reparations Section**

☒ **Other**

Mr Khaled Mohamed Ali El Hishri

I. INTRODUCTION

1. This request for leave is submitted pursuant to Rule 103 of the Rules of Procedure and Evidence (“RPE”) by the International Criminal Court Bar Association (“ICCBA”). The ICCBA seeks authorisation to file observations on the undesirability of the Appeals Chamber delivering its judgment on the Prosecution’s appeal¹ against the warrant of arrest against Mr Khaled Mohamed Ali El Hishri² (respectively, “Appeal Brief” and “Warrant of Arrest”) before receiving legal arguments on Mr El Hishri’s behalf.

II. THE ICCBA

2. The ICCBA was established in 2016 and is registered as a non-profit foundation in The Netherlands. It is independent of the Court and of the States Parties. It is primarily funded by member subscriptions. In 2019, the ICCBA was officially recognised by the Assembly of States Parties as an independent representative body in accordance with Rule 20(3) of the RPE.³

3. The ICCBA serves as a collective voice for the independent lawyers who represent defendants, victims and others before the ICC. Its membership is drawn from the ICC’s List of Counsel, as well as the more junior jurists who serve as support staff on counsel teams. The ICCBA is the only organisation which brings together the expertise and experience of private lawyers who are qualified to practice before the ICC. In this role it engages with the organs of the Court, the Assembly of States Parties and others to represent external counsel and their teams.

4. In addition to its role addressing questions of legal representation, the ICCBA has an important role to play on substantive questions of defence and victims’ rights before

¹ Prosecution Appeal Brief concerning the “Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri” (ICC-01/11-188), [ICC-01/11-199-US-Exp](#), 1 August 2025; reclassified as public on same day

² 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

³ [ASP Resolution ICC-ASP/18/Res.6](#), 6 December 2019, paras 78-81

the Court. In this respect it is the ICC equivalent of the Association of Defence Counsel practising before the International Courts and Tribunals (“ADC-ICT”). That body was initially established at the instigation of judges of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in recognition of the need for a body which could make collective representations for defence counsel involved in all cases at the ICTY.⁴ This reflects the fact that, while the Prosecution is represented by one unified entity and therefore able to speak to matters in a Court-wide way, that is not the case for the defence (or, at the ICC, for victims).

5. This role of the ICCBA means that it is uniquely placed to assist the Court on certain matters. These include both (a) questions concerning legal representation and (b) questions concerning core defence and victims’ rights.

6. The ICCBA is thus similar to the ADC-ICT. The provision of *amicus curiae* submissions has been an important function of the ADC-ICT since its founding, with such submissions frequently welcomed by the judges of the *ad hoc* tribunals.

7. The ICCBA has been recognised at the ICC as qualified to provide *amicus* observations. On 18 April 2024, Pre-Trial Chamber III granted it leave to file observations in the *Kony* case.⁵

8. The ICCBA emphasizes that any submissions made by it are produced entirely independently of counsel and support staff acting in the case in question.

⁴ See ICTY Press Release, ‘Judges’ Plenary Session adopt reforms concerning Defense Counsel Teams’, 19 July 2002, available at: <https://www.icty.org/en/press/judges-plenary-session-adopt-reforms-concerning-defense-counsel-teams>.

⁵ Decision on the ICC Bar Association’s ‘Request for leave to file submissions under Rule 103 of the Rules of Procedure and Evidence’ and the ‘OPCD Request for Leave to Make Submissions on the Registry Report of 25 March 2024, [ICC-02/04-01/05-495](#), 18 April 2024

III. PROCEDURAL HISTORY

9. On 3 April 2025, the Prosecution applied for a warrant of arrest for Mr El Hishri.⁶
10. On 10 July 2025, Pre-Trial Chamber I issued the Warrant of Arrest.
11. On 15 July 2025, the Prosecution filed its notice of appeal in part against the warrant of arrest,⁷ under Article 82(1)(a) of the Rome Statute, Rule 154(1) of the Rules of Procedure and Evidence (“Rules”), and Regulation 64(1).
12. On 16 July 2025, Mr El Hishri was arrested by national authorities in the Federal Republic of Germany in execution of the arrest warrant.⁸ He remains in detention in Germany pending transfer to The Hague.
13. On 1 August 2025, the Prosecution filed the Appeal Brief, pursuant to Regulation 64(2).
14. On 8 August 2025, the Office of Public Counsel for the Defence filed a request for leave to make submissions to the Appeals Chamber on Mr El Hishri’s right to be heard through counsel (“OPCD Request”).⁹

IV. SUMMARY OF PROPOSED SUBMISSIONS

15. In the event that leave is granted, the ICCBA would make submissions concerning the following matters.

⁶ Prosecution’s application under article 58 for a warrant of arrest against Khaled Mohamed Ali El Hishri (“Khaled AL HISHRI”), ICC-01/11-172-US-Exp, 3 April 2025; public redacted version filed on 30 July 2025 ([ICC-01/11-172-Red](#))

⁷ Prosecution Notice of Appeal of the “Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri” (ICC-01/11-188-US-Exp), [ICC-01/11-191-US-Exp](#), 15 July 2025; reclassified as public on 1 August 2025

⁸ See [ICC, Situation in Libya: Khaled Mohamed Ali El Hishri arrested for alleged crimes against humanity and war crimes](#), 18 July 2025

⁹ Request for Leave to Make Submissions on Mr El Hishri’s Right to be Heard through Counsel, OPCD, [ICC-01/11-203](#), 8 August 2025

16. The fundamental importance of the principle of *audi alteram partem* in international criminal proceedings
17. The importance of Mr El Hishri's arguments being taken fully into consideration by the AC before it delivers its judgment on the appeal
18. Absent any urgency, the AC should receive submissions from defence counsel of Mr El Hishri's choosing
19. The case is in its very earliest stages. There is no urgency. It is preferable for the AC to defer ruling on the OTP's Appeal until full defence submissions have been received and considered
20. No prejudice would be caused to the OTP by the AC agreeing to defer ruling

V. REQUEST FOR LEAVE

21. In light of the foregoing, the ICCBA respectfully requests that the Appeals Chamber:

GRANT LEAVE to the ICCBA to file submissions on the above identified matters pursuant to Rule 103 of the RPE.

Respectfully submitted,



Philippe Larochelle
President of the ICCBA

Dated this 22 September 2025
at The Hague, The Netherlands