

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 May 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

URGENT

Public Document

Application for Reconsideration or Leave to Appeal

Pursuant to Article 82(1)(d) of the Rome Statute

With Annexes XXX classified Confidential Ex Parte Registry Only

Source: Dr. Omer Shatz, Adv. (List of Counsel), on behalf of Victim a/05013/25

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 |

REGISTRY

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M. Zavala Giler, Osvaldo | ☒ Counsel Support Section |
| ☒ Victims and Witnesses Unit | Detention Section |
| ☒ Victims Participation and Reparations Section | Other |

1. This is an application for reconsideration or leave to appeal ("Application") on the Pre-Trial Chamber's ("PTC") "Decision on victims' participation and legal representation dated **11 May 2026** and notified to the undersigned on **12 May 2026** ("Impugned Decision"), pursuant to article 82(1)(d) of the Rome Statute ("Statute"), rule 155 of the Rules of Procedure and Evidence ("RPE"), and regulation 65 of the Regulations of the Court ("RoC").
2. The Application is submitted on behalf of Victim **a/05013/25** ("Victim"), **SGBV** and **direct** victim of **both** the Defendant in this case ("El Hishri") and of Osama Elmasry/Almasri Njeem ("Almasri"). The Victim Participation and Reparation Section ("VPRS") accepted the Victim's application with its 17 annexes in connection with the Situation in Libya (ICC-01/11), the Office of the Prosecutor ("OTP") is currently assessing the Victim's potential **dual status** with interviews scheduled in June, the Registry classified the victim as a **Group A** victim, and the PTC authorised the Victim's participation in the pre-trial proceedings, including in the Confirmation of Charges ("CCH") hearings.
3. The undersigned, an ICC Lead Counsel and ICCBA full member, is representing the Victim *pro-bono* on behalf of **front-LEX**, a Civil Society Organisation ("CSO") specializing in litigation of international crimes committed against people on the move in Libya and the Central Mediterranean.
4. The Impugned Decision covers two principal matters: the **participation** of victims, and their legal **representation**. The Application does *not* challenge the PTC's decision to authorise the Victim and 63 other Group A applicants to participate at the pre-trial stage. Rather, the Application's scope is limited to the PTC's decision on her legal representation in the pre-trial proceedings.

5. The Application presents two grounds of appeal. The first ground is **procedural**. It does not concern the content of the Impugned Decision but its timing. The Victim argues that because the decision on legal representation of victims in the CCH hearings has been issued 5 working days before the commencement of these hearings, the PTC **deprived the Victim from exercising her legal right under the Statute to appeal this decision**. Because the time frame for lodging an application for leave to appeal is *also* 5 working days, the timing of the Impugned Decision effectively leaves the PTC and potentially the Appeal Chamber ("AC") no time (1 working hour) to adjudicate the Application.
6. The second ground is **substantive**. As a result of the Defendant's alleged crimes, the Victim suffers severe physical and psychological **trauma** and is under medical and psychological care to date. As part of her pursuit for justice and **recovery**, the Victim empowered the undersigned as her legal representative in ICC proceedings related to her victimization in Libya and specifically in connection with proceedings against the Defendant and Almasri. Due to her severe trauma, the Victim **only trust the undersigned** to represent her in ICC proceedings. The Victim posed, explicitly in paragraph 15 of the VPRS application form and on numerous other exchanges with the Registry/VPRS, both in writing and orally, a sole condition: to have the undersigned representing her in these proceedings. The Victim was willing her legal representative will do so with other LRVs, be it alongside the Office of Public Counsel for Victims ("OPCV") or as part of a Common Legal Representative ("CLR") team. The Victim was also willing her LRV will represent other victims, notably other members of the group of **non-Libyan** victims she is a member of.
7. The Registry proposed the undersigned and four other legal representatives of victims ("LRV") to form, together with the OPCV, a Common Legal Representative ("CLR") team that would represent all the victims in the pre-trial

proceedings. Although the undersigned's understanding is that all LRVs including the OPCV agreed to the Registry's proposal, from the Impugned Decision the undersigned learns that in parallel the OPCV expressed its opposition to this proposal in its submissions to the PTC.

8. In addition, the Registry informed the undersigned that some unknown non-parties to the proceedings expressed concerns that because one of the three nationalities one of the four lawyers composing the CLR (the undersigned) is holding is Israeli, and since Libyan law supposedly criminalizes contact with Israelis, there may be a conflict of interest between the Victim's *distinct* interest as SGBV victim to have her LRV being a member of the CLR, and the Libyan victims' interest not to be exposed to a potential risk of penalization. Notwithstanding such institutional position amounts to discrimination on the basis of nationality, echoing the sanctions and professional risks many ICC personnel are exposed to in the Palestine situation including the undersigned , in order to resolve this potential albeit miniscule (e.g., Ghedaffi's daughter – a Libyan national – was represented by an Israeli ICC Counsel¹) conflict, the undersigned and the Registry agreed that the latter will recommend the PTC to separate the Victim's legal representation from the CLR team.
9. The Impugned Decision rejected the Registry's proposal to form a CLR team of three LRVs alongside a separate representation of the undersigned – be it of the Victim alone or all non-Libyans. The Impugned Decision adopted the Registry's alternative proposal, to have only the OPCV representing the collective and potentially conflicting interests of the different groups of victims and no less than 64 individuals, including the Victim. By so doing the PTC ignored the Victim's condition as expressed in its VPRS application, disregarded her distinct interest as SGBV victim, and imposed on her a legal representative

¹ <https://www.timesofisrael.com/israeli-lawyer-demands-justice-for-gaddafi-and-his-kin/>

she does not trust and as noted above actively acted against her explicit wish by opposing the undersigned's representation and ostensibly misrepresented her interest by not being aware of her condition.

10. The processing of the Application is extremely **urgent**. This urgency stems from the timing in which the Impugned Decision was issued: 5 working days – the legal period for filing an application pursuant to Article 82(1)(d) of the Statute – before the CCH hearings. This consequential grave deprivation of the Victim's most fundamental right to due process, including her legal right under the Statute to seek leave to appeal on the decision to refuse her request to be represented by her own ICC counsel, is the basis for the Victim's **alternative** application for reconsideration of the Impugned Decision. In the alternative to the Application for leave to appeal, therefore, the Victim respectfully requests the PTC to reconsider and subsequently modify the Impugned Decision, in a way that would allow the undersigned to represent the Victim on the last two out of the three days of the CCH hearings (20-21 May 2026), and in this capacity to accord the undersigned **five minutes** from the time assigned to the closing part of the pleadings that has been accorded to victims.

I. Concise Factual Background: Victim's Participation

11. The Victim submitted her Application for Participation pursuant to Rule 89(1) of the RFE already on **29 January 2026**. But only 3 months later, on **4 May 2026**, namely **two weeks** before the CCH hearings, the Registry transmitted its Group A and Group B victim applications and report ("Report"). The Report, which also included recommendation on the legal representation of victims (see Section II), classified the Victim as a **Group A**.
12. What is worse, the Impugned Decision was rendered on **11 May 2026** (and notified to the undersigned on 12 May 2026), i.e., **3 or 4 working days** (excluding

Ascension Day and the weekend) before the commencement of the CCH hearing on **19 May 2026 at 10:00 AM**.

13. The Application challenges the PTC decision on the legal representation of the Victim during the pre-trial phase, **first and foremost during the CCH hearings**. Rule 155(1) of the RFE grants the Victim **5 days** to submit its Application, i.e., until **Monday 18 May 2026 at 23:59 CET**.

14. It follows that the Impugned Decision left the PTC and potentially the Appeal Chamber ("AC") about **one working hour** (between 18/5/26 at 23:59 and 19/5/26 at 10:00) to consider the merits of the Victim's Application with respect to her legal representation in the CCH hearings.

15. As noted above, the Impugned Decision adopted the VPRS's assessment and authorised the participation of the Victim in the present proceedings, alongside **63** other Group A applicants, out of more than **5,000** victims the Defendant has allegedly victimized as per the Document Containing the Charges ("DCC") (para 8 of the Impugned Decision).

II. Concise Legal Arguments: Victim's Legal Representation

16. The legal representation of the Victim, let alone the imposition of a legal representative she is opposing, involves an issue that would significantly affect the **fair** conduct of the proceedings and potentially the outcome of the trial.

17. Since the same matter is likely to arise should the charges be confirmed and the case proceeds to trial, an immediate resolution either by the PTC in the form of reconsideration, or by the Appeals Chamber in the form of appeal, may materially advance the proceedings.

18. More importantly, where the Impugned Decision bears directly upon procedural fairness, victims' participation and their legal representation, leave to appeal is particularly warranted.
19. The fact the Impugned Decision left no time for the Victim – whose distinct interest as SGBV victim should be carefully considered – to exercise her fundamental legal right to due process, including but not limited to her right to seek judicial review, protection and remedy in the form of submitting an application for leave to appeal pursuant to Article 82(1)(d) of the Statute, that is, one that would be seriously adjudicated prior to the CCH hearings that were scheduled to start.

III. Relief Sought

20. To conclude, both the inability to seek leave to appeal on a decision on legal representation in the CCH hearing due to the date the Impugned Decision was rendered (the procedural ground), and the disregard to the Victim's explicit condition and distinct interest in having her ICC counsel at least co-representing her in the pre-trial proceedings, are issues that significantly affects the fairness and also ultimately the expeditiousness of the proceedings.
21. The timing of the Impugned decision eliminates the Victim's most fundamental procedural rights under the Statute. In light of the imminent hearings scheduled, the Victim respectfully requests the Chamber to reconsider and/or vary the Impugned Decision pursuant to its inherent powers to ensure fairness and proper administration of justice. Considering this week's schedule, the Victim favours an immediate reconsideration of the Impugned Decision and its modification in a manner that would allow her legal representative to represent

her in the last two days of the CCH hearings. The PTC has authority to reconsider interlocutory procedural determinations where necessary to prevent unfairness, procedural prejudice, or manifest inconsistency with the rights of participants in proceedings.

22. In the alternative, the Victim seeks leave to appeal on the Impugned Decision in order to allow the undersigned to represent her in any subsequent proceedings in the pre-trial phase.



Dr. Omer Shatz, Adv.
Legal Representative of the Victim