

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/25
Date: 10 September 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

Observations on behalf of victims on the “First joint Prosecution and Defence submission on agreed fact” (No. ICC-01/11-01/25-180)

Source: Office of Public Counsel for Victims

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

1. The Common Legal Representatives of the Victims (the “CLR”) take note of the “First joint Prosecution and Defence submission on agreed facts” filed on 9 September 2026.¹

2. In accordance with rule 69 of the Rules of Procedure and Evidence (the “Rules”), the interests of the victims must be taken into account when considering agreements between the Defence and the Prosecutor as to facts or evidence in a given case.² Said rule provides that “*a Chamber may consider [alleged facts agreed upon by the parties] as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interest of justice, in particular the interests of the victims*”.³ Accordingly, the relevant chamber retains the discretion to decline to treat an agreed fact as proven where doing so would be inconsistent with the interests of the victims.⁴ The latter must consequently have a meaningful opportunity to be heard before the Chamber determines whether to accept an agreement as to facts or evidence. Indeed, the Chamber cannot properly assess whether an agreed fact is consistent with the interests of the victims without affording them an opportunity to make submissions on the proposed agreement.⁵

3. This interpretation of rule 69 of the Rules is confirmed by the established jurisprudence of the Court which has expressly invited or permitted victims to make observations on proposed agreed facts, and has considered their views before

¹ See the “First joint Prosecution and Defence submission on agreed facts”, [No. ICC-01/11-01/25-180](#), 9 September 2026.

² As noted by the Presiding Judge of Trial Chamber V in the context of the *Yekatom and Ngaïssona* case, “[w]hen deciding if it consider[s] agreed facts as being proven, the Chamber will take into account the views of the representatives of the victims”. See Transcript of Status Conference Hearing (Trial Chamber V), [No. ICC-01/14-01/18-T-012-ENG](#), 9 July 2020, p. 50, lines 11-13.

³ See rule 69 of the Rules of Procedure and Evidence (emphasis added).

⁴ See also, *mutatis mutandis*, in this regard, the general power of a Trial Chamber under article 69(3) of the Rome Statute “to request the submission of all evidence that it considers necessary for the determination of the truth”.

⁵ See also the “Submissions on behalf of Victims on the matters identified in the ‘Order Scheduling the First Status Conference’ (No. ICC-01/11-01/25-157)”, [No. ICC-01/11-01/25-170](#), 25 August 2026, paras. 10-11.

determining whether to treat those facts as proven.⁶ The established practice thus recognises that an agreement between the parties does not, by itself, determine whether a fact will be treated as proven. Rather, the Chamber retains the responsibility to assess the agreement in light of the interests of justice, including the interests of the victims, and to do so after giving victims an effective opportunity to be heard.

4. The CLRV welcome the efforts undertaken by the Parties to reach agreements as to facts and evidence pursuant to rule 69 of the Rules. Having reviewed the lists of agreed facts set out in Annexes A, B and C, they are satisfied that the agreements presently before the Chamber do not negatively impact the interests of the victims. The CLRV therefore have no further observations to make on these agreements.

5. Noting the parties' commitment to resuming efforts to agree on further facts,⁷ the CLRV reserve the victims' right to make observations on any further agreements reached by the parties.

Respectfully submitted,



Sarah Pellet



Paolina Massidda

Dated this 10th day of September 2026

At The Hague, The Netherlands

⁶ See, *inter alia*, the "Decision on the Joint Submission on Agreed Facts" (Trial Chamber V), [No. ICC-01/14-01/18-835](#), 19 January 2021, para. 3; the "Decision on Joint Agreed Facts Submission" (Trial Chamber IX), [No. ICC-02/04-01/15-500](#), 19 July 2016, para. 2; the "Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial" (Trial Chamber VI), [No. ICC-01/04-02/06-507](#), 12 March 2015, para. 14(ii); the "Decision on Prosecution and Defence joint submission on agreed facts" (Trial Chamber VI), [No. ICC-01/04-02/06-662](#), 22 June 2015, para. 4; the "Order setting deadlines for agreements as to facts and evidence and for the filing of expert reports" (Trial Chamber III), [No. ICC-01/05-01/08-872](#), 6 September 2010, para. 20; the "Decision on agreements between the parties" (Trial Chamber I), [No. ICC-01/04-01/06-1179](#), 20 February 2008, para. 11; and the "Decision Setting the Commencement Date of the Trial and Related Deadlines" (Trial Chamber VI), [No. ICC-01/14-01/21-243](#), 21 February 2022, para. 17.

⁷ See the "First joint Prosecution and Defence submission on agreed facts", *supra* note 1, para. 3.